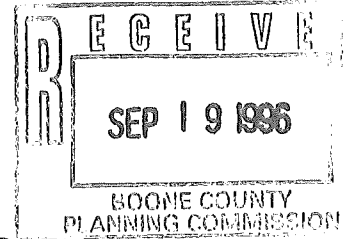


APPLICATION FORM
**BOARD OF ADJUSTMENT
 AND
 ZONING APPEALS ACTION**



(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 Thomas W. Breidenstein
 Phone Number 341-1881 Fax No. 341-1469
 Applicant's Address 2701 Turkeyfoot Road
Covington, KY 41017

	City	State	Zip
--	------	-------	-----
4. Description of Request: Appeal of Zoning Administrator's decision
of August 20, 1996 (attached).
5. Name of Development n/a
6. Location of Development 7703 U.S. 42
Florence, KY 41042
7. Acreage Under Review 0.54
8. Lot Number and Name of Subdivision (if part of a subdivision)
part of lots 33, 34, 35 Grandview Heights subdivision
9. Owner of Property Ronald D. & Rita M. Kirkwood & Michael R. & Carol W. Kirkwood
 Phone Number of Owner _____
10. Address of Property Owner 3203 Dixie Highway
Erlanger, KY 41018

	City	State	Zip
--	------	-------	-----
11. Proposed Use(s) on Site parking
12. Total Square Footage of Existing and/or Proposed Buildings
+/- 1,300 square feet
13. Current Zoning on Property 0-1
14. Deed Book 421 Page No. 26 Group No. 270
15. Is the site subject to a zone change? unknown
 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: Thomas W. Breidenstein
 Property Owner's Signature: Michael R. Kirkwood

(over)

BOARD OF ADJUSTMENT AND
ZONING APPEALS ACTION
APPLICATION
PAGE 2

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

1. Date Received SEPT 19, 1996 Fee Received 750.00 R# 11466
2. Is application complete? Yes _____ No _____
3. Staff Reviewer KELLY WALL
4. Scheduled Board Action Date 10/9/96
5. Board Action:
_____ **Approved**
_____ **Approved with Conditions** (See #6)
 Denial (See #7)
6. Conditions of Approval: _____

7. Reasons for Denial: UPHELD ZONING ADMINISTRATOR'S
DECISION - REFER TO MINUTES

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: Kirkwood Property - Appeal

APPLICANT: Thomas W. Breidenstein

LOCATION: 7703 US 42, Florence

ZONE: Office One (O-1)

DATE: October 9, 1996

REQUEST

In accordance with Sections 201, 220, 230, 240, 245, 253, and 254 of the Boone County Zoning Regulations, an Appeal of the Zoning Administrator's interpretation of the zoning regulations has been filed before the Florence Board of Adjustment and Zoning Appeals. Specifically, Thomas W. Breidenstein (applicant) on behalf of Ronald D. and Rita M. Kirkwood, and Michael R. and Carol W. Kirkwood (property owners), has filed an Appeal of the Zoning Administrator's interpretation of Section 1116 "Minimum Standards" (O-1 zone, passage that applies to the City of Florence only) of the Boone County Zoning Regulations. This section states that "no dwelling used as a residence can be altered, converted or remodeled to satisfy any of the standards as uses authorized in the Office One (O-1) zone as permitted uses or conditional uses. Newly constructed structures are necessary to satisfy the requirements and standards of the Office One (O-1) zone" (Section 1116 is attached). Due to the requirements of this section, the nature of the Appeal is whether a parking lot for a commercial enterprise that is unrelated to the site in question, and does not adjoin the lot in question, can be constructed on a lot in the O-1 zone where a pre-existing, nonconforming office use is housed in a structure originally designed for, and occupied as, a single family residence. The Zoning Administrator determination in question is explained in the attached letter to Mr. Thomas Breidenstein dated 8/20/96. This letter was in response to Mr. Breidenstein's attached letter dated 8/14/96.

DUTIES OF ZONING ADMINISTRATOR AND BOARD OF ADJUSTMENT AND ZONING APPEALS

Section 201 of the Boone County Zoning Regulations describes the authority of the Zoning Administrator. One of the roles of the Zoning Administrator is to determine the classification of any use of land, buildings or structures as a principally permitted, accessory, or conditional use in a specific zoning district. This includes the classification

of new uses or uses not specifically identified in the regulations, and the interpretation of the regulations in instances where there is not a precise "fit" between the regulations and existing site conditions or development objectives. This also includes determining whether a use is a pre-existing, nonconforming use and whether an alteration to such use would create an unauthorized expansion of it. In addition, one of the Board's duties is to hear and decide Appeals where it is alleged there is an error in any order, requirements, decision, interpretation, grant or refusal made by the Zoning Administrator.

DESCRIPTION OF SITE

The site in question is located at 7703 U.S. 42, Florence, Kentucky, and is approximately ½ acre in area. The site contains a detached, single family residence that has been converted to an office use, as well as a small parking area (contains approximately five spaces). In addition, the site has two street frontages (one on U.S. 42 and one on Woodland), and one curbcut on each of these frontages.

PERTINENT SITE HISTORY

On April 17, 1995, the Zoning Administrator determined that a legal pre-existing, nonconforming use was established in the detached, single family residence at 7703 U.S. 42 (see attached letter dated 4/17/95). This determination was in response to the fact that the owner wished to lease the premises for an office use (a psychologist office) - the structure had been rented as a residence immediately prior to that time, but had been legally used as an office in the past. Based on the evidence presented and researched, the Zoning Administrator determined that there had been no intent to abandon the previous office use of the premises.

On July 23, 1996, the owner's engineer (Robert L. Koster, P.E.) submitted a site plan application to expand the existing parking area at 7703 U.S. 42 from the existing five parking spaces to 15 parking spaces (application materials are attached). This plan indicated that the applicant for this proposal was "Dr. Fred Hausladen, M.D., Head and Neck Surgery, Associates, 7575 U.S. 42, Florence, Kentucky, 41042." Subsequently, because the Head and Neck Surgery, Associates facility is located approximately one to one and one half blocks to the east of the subject site, and due to the fact that the existing office use of the site had been determined to have pre-existing, nonconforming status, the Zoning Administrator called the owner's engineer to determine the nature of the expansion. When the owner's engineer explained that the parking lot expansion was intended to primarily accommodate parking from the Head and Neck Surgery, Associates facility rather

than an increase in business activity from the insurance business that currently occupies the premises (the office use at the subject site had changed from a psychologist office to an insurance office in the interim), the Zoning Administrator then informed the owner's engineer that such an expansion could not be permitted because it would constitute an expansion of a pre-existing, nonconforming use pursuant to the previous determination and Section 1116 of the zoning regulations.

After the conversation between the Zoning Administrator and the owner's engineer, Mr. Breidenstein called the Zoning Administrator to inquire about the proposed parking lot expansion and the pre-existing, nonconforming status of the use of the premises pursuant to Section 1116. Mr. Breidenstein then submitted a letter which requested a written determination from the Zoning Administrator regarding the matter; this letter also outlined Mr. Breidenstein's rationale as to why the parking lot expansion should be permitted (see attached letter dated 8/14/96). The Zoning Administrator rendered a written decision on the matter on August 20, 1996 (see attached letter dated 8/20/96).

The Appeal now under consideration was filed on September 19, 1996.

ISSUE

The Zoning Administrator previously applied (April 1995) Section 1116 "Minimum Standards" (O-1 zone, passage that applies to the City of Florence only) of the Boone County Zoning Regulations to permit an office use of the premises as a pre-existing, nonconforming use rather than prohibit an office use on the site altogether unless the existing residential structure was replaced with a newly constructed office structure. Consistent with this earlier determination, the Zoning Administrator has now determined that Section 1116 must be fulfilled in order to expand the pre-existing, nonconforming office use of the premises by adding a parking lot that largely serves an office facility that is unrelated to the use of the subject site and that is physically separated from the subject site. In his letter dated 8/14/96, the applicant has argued (among other arguments) that the residential structure itself is nonconforming, but not the office use per se. However, the Zoning Administrator had determined in April 1995 specifically that the office use had pre-existing, nonconforming status because it was maintained in a residential structure contrary to the provisions of Section 1116, and this determination was not appealed within the required thirty day time frame.

In addition, the applicant has argued in his letter dated 8/14/96 that the parking lot expansion is permitted by right because parking is a permitted accessory use in the Office One (O-1) zone and that Section 1116 uses the terminology "permitted uses or conditional uses," but does not specifically state "accessory uses." In response to this assertion, the

Zoning Administrator has determined that as an accessory use, parking is an integral component of the principally permitted or conditional use that it serves, and parking must generally be provided on the lot that it serves pursuant to the definition of "accessory use or structure" provided in Article 40 of the Boone County Zoning Regulations. Therefore, the expansion of such parking is an expansion of the pre-existing, nonconforming use as parking is an integral part of it.

Further, the applicant has argued that the addition of a new parking lot that is constructed in accordance with the current regulatory standards "will bring the site more in conformity with the intent of the O-1 zoning district." However, the Zoning Administrator has disagreed with this statement due to the fact that accessory uses can not be viewed in isolation from the principally permitted or conditional uses in which they serve, and due to the fact that Section 1116 is very explicit regarding its proper application regarding how the nonconformity would be eliminated in this case.

Both the applicant and Zoning Administrator agree to the fact that the proposed parking lot is properly classified as an accessory use.

DECISION AND BASIS FOR DECISION

The decision in question, and the basis for the decision, are fully described in the previously mentioned letter dated 8/20/96 from Kevin Wall, Director of Zoning Services, to Thomas Breidenstein, Esq., and are also briefly summarized above in the "Issue" section of this report. This letter was written in response to Mr. Breidenstein's letter to Kevin Wall dated 8/14/96.

CONCLUSION

As provided in Article 2 of the Boone County Zoning Regulations, an Appeal of the Zoning Administrator's decision may be granted by the Board of Adjustment and Zoning Appeals when it has been demonstrated that the decision is in error. Therefore, the applicant will need to demonstrate that Section 1116 permits a parking lot expansion as proposed, whereas the Zoning Administrator has determined that such an expansion constitutes an unpermitted expansion of a pre-existing, nonconforming use under the given circumstances. The Board will also need to consider the fact that Section 270 "Nonconforming Lots, Uses, and Structures" of the Boone County Zoning Regulations

states that it is the intent of the regulations to permit nonconforming uses until they are no longer nonconforming. As such, they can not be perpetuated by unpermissible expansions.

Respectfully submitted,



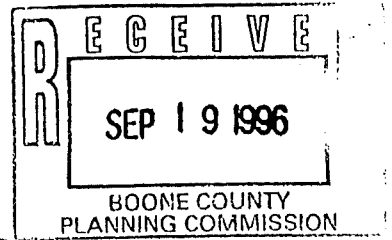
Kevin T. Wall, AICP CDT
Director, Zoning Services

KWpar

attachments:

- BOA Appeal Application
- 8/20/96 letter from Kevin Wall to Thomas Breidenstein
- 4/17/95 letter from Kevin Wall to Diane Williams
- 8/14/96 letter from Thomas Breidenstein to Kevin Wall
- Section 1116 "Minimum Standards," Office One (O-1) zone
- Site Plan application materials for parking lot expansion

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 Thomas W. Breidenstein
 Phone Number 341-1881 Fax No. 341-1469
 Applicant's Address 2701 Turkeyfoot Road
Covington, KY 41017

City State Zip
4. Description of Request: Appeal of Zoning Administrator's decision
of August 20, 1996 (attached).
5. Name of Development n/a
6. Location of Development 7703 U.S. 42
Florence, KY 41042
7. Acreage Under Review 0.54
8. Lot Number and Name of Subdivision (if part of a subdivision)
part of lots 33, 34, 35 Grandview Heights subdivision
9. Owner of Property Ronald D. & Rita M. Kirkwood & Michael R. & Carol W. Kirkwood
 Phone Number of Owner _____
10. Address of Property Owner 3203 Dixie Highway
Erlanger, KY 41018

City State Zip
11. Proposed Use(s) on Site parking
12. Total Square Footage of Existing and/or Proposed Buildings
+/- 1,300 square feet
13. Current Zoning on Property 0-1
14. Deed Book 421 Page No. 26 Group No. 270
15. Is the site subject to a zone change? unknown
 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: Thomas W. Breidenstein
 Property Owner's Signature: Ronald D. Kirkwood

(over)

BOARD OF ADJUSTMENT AND
ZONING APPEALS ACTION
APPLICATION
PAGE 2

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

1. Date Received SEPT 19, 1996 Fee Received 750.00 R# 11466
2. Is application complete? _____ Yes _____ No
3. Staff Reviewer _____
4. Scheduled Board Action Date _____
5. Board Action:
_____ Approved
_____ Approved with Conditions (See #6)
_____ Denial (See #7)
6. Conditions of Approval: _____

7. Reasons for Denial: _____

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

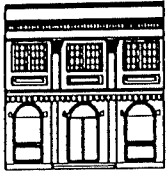
NOTE: See Boone County Planning Commission Fee Schedule for Board
of Adjustment Fees.

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.

BOONE COUNTY PLANNING COMMISSION

2995 Washington Street, Burlington, KY 41005
606-334-2196 FAX 606-334-2264



August 20, 1996

Mr. Thomas Briedenstein
Deters, Benzinger & LaVelle, P.S.C.
Thomas More Park
2701 Turkeyfoot Road
Covington, KY 41017

FAX: 341-1469

RE: Proposed Parking Lot at 7703 US 42, Florence, Kentucky (Kirkwood Property);
Office One (O-1) Zone

Dear Mr. Briedenstein:

In response to your request for a formal Zoning Administrator's decision regarding the above referenced request (letter dated August 14, 1996), I am providing the following determination. This request is in response to the fact that I verbally informed the property owner's engineer that a 15 space parking lot that largely serves an office use that is located approximately one block away from the subject site (Head and Neck Surgery Associates) can not be constructed on the lot in question without the requirements of Section 1116 of the Boone County Zoning Regulations being fulfilled. The owner's engineer had submitted a Minor Site Plan application for the intended parking lot (a Major Site Plan is required for the scope of work proposed, although the specific type of site plan application is not the point of contention at this juncture).

First, as you are aware, I have previously determined that the office use in the existing detached, single family residence located at 7703 US 42, Florence, is a pre-existing, nonconforming use. This is due to the requirements stated in Section 1116 of the Boone County Zoning Regulations (applies to City of Florence only) which states "no dwelling used as a residence can be altered, converted or remodeled to satisfy any of the standards as uses authorized in the Office One (O-1) zone as permitted uses or conditional uses. Newly constructed structures are necessary to satisfy the requirements and standards of the Office One (O-1) zone."

Pursuant to this section, I determined on April 17, 1995 that the office use of the structure in question has pre-existing, nonconforming status (refer to enclosed letter sent to Diane Williams, Dr. Kirkwood's first office tenant - a different office tenant has since taken

1966-1996

"30 YEARS OF PLANNING THE FUTURE OF BOONE COUNTY"

Mr. Thomas Briedenstein
August 20, 1996
Page 2

occupancy of the premises). Thus, your contention that the structure exclusively has pre-existing, nonconforming status and that the use (or more precisely, the *activity*) is conforming is moot. This decision was rendered and the owner was given constructive notice of the decision (was copied on the Williams letter) well over one year ago and it was not appealed within the thirty (30) day time frame as required by statute. Therefore, the decision stands as written. In addition, I informed Dr. Kirkwood in a telephone conversation in the same general time frame (April, 1995) that because the office use was pre-existing, nonconforming, the scope of the use may not be expanded in scope or size unless the requirements of Section 1116 were fulfilled.

Second, I wholly and completely reject your arguments that a parking lot proposed to serve a separate use on a completely separate lot (either in whole or part) does not constitute an expansion of the pre-existing, nonconforming use due to the following reasons.

- A. First, your letter states that Section 1116 applies only to principally permitted and conditional uses and not to accessory uses. I do not agree with this statement because it implies that an accessory use can stand alone without being an integral part of a principally permitted or conditional use. On the contrary, an accessory use must be performed in conjunction with, and be an integral part of, either a principally permitted or conditional use. Specifically, an "accessory use or structure" is defined in the Boone County Zoning Regulations as "a use or structure on the same lot as the principal use or structure and is subordinate in area, extent and purpose to the principle use or structure in which it serves. An accessory use or structure contributes to the comfort, convenience, and/or necessity for the occupants of the principal use or structure." Therefore, although your letter states that "the prohibition is against the use of dwellings as permitted or conditional uses only," an accessory use (which is the only use category that can be applied to parking in the O-1 zone) can not be segregated and considered in isolation without any regard for the principal use of the property but must be construed as an integral part of it, meaning that the existing parking is part of the pre-existing, nonconforming office use of the property.
- B. The parking lot is proposed to serve a completely separate use on a different lot that does not adjoin the lot in question and is therefore beyond the scope of, and is unrelated to, the lawful pre-existing use of the site (i.e., it is not accessory to the nonconforming use of the premises but accessory to a separate, unrelated business). Your letter even states that "this lot would be shared by the Head and Neck Surgery Associates located at 7575 US 42." In short, the parking lot expansion is not related to an increase in sales or the growing prosperity of the business that makes up the pre-existing, nonconforming use (such a parking lot

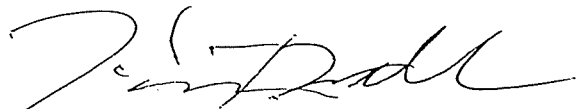
Mr. Thomas Briedenstein
August 20, 1996
Page 3

expansion could be permitted in that instance), but apparently due to that of another separate business at a different location (keeping in mind that an accessory use by definition is an integral part of the use it serves). This is reinforced by the fact that the proposed parking lot is approximately five times the size as the existing lot and contains three times as many parking spaces.

- C. Your letter states that the proposed parking lot/spaces will bring the site more into conformity with the intent of the O-1 zone (i.e., altering improvements to decrease nonconformity as permitted by the Zoning Regulations). I agree that the regulations do allow nonconformities to be decreased, however, I do not agree with the suggested application due to the reasons stated above and due to the fact that Section 1116 is very explicit regarding its proper application and how the nonconformity would be eliminated in this case (i.e., by replacing the existing residential structure with a new structure designed for the uses permitted in the O-1 zone).
- D. Pursuant to the definition of "accessory use or structure" as mentioned several times above, an accessory use must be located on the same lot as the principal use or structure which it serves. Thus, if the parking lot is not an accessory use, it amounts to a commercial parking facility which is not permitted in the O-1 zone (this statement is for informational purposes only, it is clearly acknowledged that your letter states that the proposed parking lot is accessory). Off premises parking is permitted by Section 3317 "Location of Parking Spaces" of the Zoning Regulations under certain circumstances, however, there is a presumption built into this section (as with all sections of the Zoning Regulations) that all other applicable requirements shall be met. In this instance such off premises parking constitutes the expansion of a pre-existing, nonconforming use, thus, all other applicable requirements can not be met.

As you are aware, this determination may be appealed to the Board of Adjustment and Zoning Appeals within thirty (30) days of today's date. Please call me if you have any questions or need any clarifications.

Sincerely,

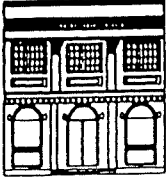


Kevin T. Wall, AICP CDT
Director, Zoning Services

KTW/vlm

Enclosure

BOONE COUNTY PLANNING COMMISSION



2995 Washington Street, Burlington, KY 41005
606-334-2196 FAX 606-334-2264

April 17, 1995

Dr. Diane Williams, Psy.D.
7703 U.S. 42
Florence, KY 41042

RE: Office Use of Real Property Located at
7703 U.S. 42, Florence, KY

Dear Dr. Williams:

The purpose of this letter is to inform you that after additional investigation, the Planning Commission staff has not located any records or other evidence that definitively confirms that the real property at 7703 U.S. 42, Florence, was used primarily as the former owner's residence rather than an office use as was claimed and supported by documentation that was submitted by both the current and former owners. Therefore, the Planning Commission will approve the zoning aspect of your Occupational License because the use is considered to be "pre-existing, nonconforming" pursuant to Chapter 100 of the Kentucky Revised Statutes as there has not been a demonstrated intent to abandon the nonconforming use.

However, the use of the property must be limited to the scope described in your letters dated 1/20/95 and 4/11/95. This entails a maximum of two professionals (a psychologist and a massage therapist at present), one clerical employee, and seeing clients primarily on a "one-on-one" basis with a few group sessions a week (your letter stated one or two group sessions a week with five clients each). Both of the current owners have stated that the former owner had "three to four" people working in the structure, thus, a total of three people working in the structure is within the scope of the nonconforming use.

As stated in my letter dated 1/31/95, any retail sales of goods must be incidental to the office use, and the goods may be sold only to the clients of the professional services offered on the premises (such as a veterinarian may sell pet tags or a travel agent may sell travel books). In short, any sale of goods must be in support of the professional services for the clients of the professional services and nothing more. Otherwise, the scope of the operation is beyond the pre-existing, nonconforming office use established by the former owner. As such, no advertising or

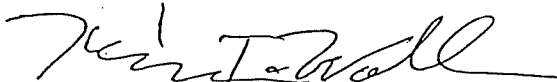
Dr. Diane Williams, Psy.D.
April 17, 1995
Page 2

signage which draws the public at large to any retail component of the operation is permitted, nor is the display of goods beyond the area of a counter space or a few shelves permitted (i.e., can not use one entire room for the display of goods). Based upon the "Ye Olde Herb Shoppe" experience, I strongly recommend that you do not conduct any incidental retail activities so that future zoning enforcement problems are avoided.

Although the Planning Commission staff will not actively investigate the past use of the property from this point forward without cause, the determination that the office use of the property has pre-existing, nonconforming status will be revoked if evidence that definitively confirms that the property was used primarily as the past owner's residence is discovered.

Please call me if you have any questions or need any clarifications.

Sincerely,



Kevin T. Wall, AICP CDT
Director, Zoning Services

cc: Michael Kirkwood, M.D., Owner
Don Martin, Zoning Enforcement Officer
Roger Rolfes, City Coordinator, City of Florence

DETERS, BENZINGER & LAVELLE, P.S.C.

Attorneys at Law

THOMAS MORE PARK

2701 TURKEYFOOT ROAD

COVINGTON, KENTUCKY 41017

TELEPHONE (606) 341-1881

TELECOPIER (606) 341-1469

12109 MADISON PIKE

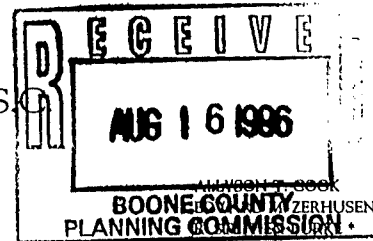
INDEPENDENCE, KENTUCKY 41051

TELEPHONE (606) 356-2312

PLEASE REPLY TO:

Covington

August 14, 1996



CHARLES H. DETERS *
GERALD E. BENZINGER
JOHN C. LA VELLE *
RICHARD G. MEYER
JAMES A. DRESSMAN III
KURT A. PHILIPPS, JR. **
ROBERT M. HOFFER
JOSEPH A. CLEVES, JR. *
ROBERT G. STEVENS
DANIEL T. MISTLER
DAVID V. KRAMER
MARK D. GUILFOYLE
ELIZABETH GRAHAM WEBER *
ERIC C. DETERS *†
JED K. DETERS

MATHEW R. KLEIN, JR.*
DANIEL J. WHALEN
THOMAS W. BREIDENSTEIN *
SEAN P. CALLAN *
DAVID W. BURLEIGH**
JAMES A. DIETZ

* Also admitted to practice in Ohio
† Also admitted to practice in Florida
** Also admitted to practice in Texas
** Admitted in Ohio

JAMES A. DRESSMAN, JR.
OF COUNSEL

Mr. Kevin T. Wall, AICP CDT
Director, Zoning Services
Boone County Planning Commission
2995 Washington Street
Burlington, KY 41005

Via fax at 334-2264 and regular U.S. Mail

re: **application of Michael Kirkwood; 7703 U.S. 42, Florence, KY 41042**

Dear Kevin:

I write this letter to request a formal Zoning Administrator's decision, pursuant to Article 2, §201 of the zoning regulations, relative to the proposed use of this property.

Recall, the use of the *house* on this property as an insurance office is classified as a pre-existing non-conforming use. My client has submitted an application for the installation of an accessory parking lot containing a total of 15 spaces. This lot would be shared by the Head and Neck Surgery Associates, located at 7575 U.S. 42. I submit to you that the installation of this accessory parking lot is not an expansion of a pre-existing, non-conforming use. Rather, it should be permitted as of right under the zoning regulations, for the following reasons:

I. Article 11, §1116

This provision of the City of Florence's version of the Boone County Zoning Regulations reads:

No *dwelling* used as a residence can be altered, converted or remodeled to satisfy any of the standards as uses authorized in the Office One (O-1) zone as *permitted uses* or *conditional uses*. Newly constructed *structures* are necessary to satisfy the requirements and standards of the Office One (O-1) zone. (emphasis added)

Applying this section to the facts of our case, it is clear that the *building* itself constitutes the pre-existing non-conformity (“dwelling” is defined by Article 40 as a “building” or “structure”). The *use* of the property (insurance office) is conforming to the O-1 district. The fact that an office use is being conducted within a residence creates the non-conformity.

My client does not intend to increase or enlarge the non-conformity (ie. the residential structure). Instead, my client intends to install a parking lot, as an accessory to the office use of the premises. Note that §1116 contains no prohibition against the use of formerly residential property for accessory purposes. The prohibition is against the use of dwellings as permitted uses or conditional uses only.

II. Article 2, §§270 - 274

Section 270 of the zoning regulations states that “uses or structures which are prohibited elsewhere in the same district (will not) be permitted on lots of nonconforming uses or structures.” Here, the non-conformity is the design, construction, and initial purpose of the structure; the current use is conforming. Also, the proposed use (a parking lot) is an accessory use which is not prohibited in the O-1 zone. In fact, parking is a necessity for modern suburban office developments, and is specifically listed as permissive accessory use. Thus, the proposed use is not prohibited under this section.

Section 274(1) states that non-conforming structures cannot be altered so as to increase their non-conformity, but can be altered so as to decrease non-conformity. Here, as stated the non-conformity is the building itself, not how it is being used. The additional parking spaces, designed and installed according to code, will bring this site more into conformity with the intent of the O-1 zoning district.

III. Conclusion

I realize this may be a rush, but is it possible for you to issue a decision on or before Tuesday, August 20, 1996? You indicated that August 21 is the deadline for applications to the Board of Adjustment. If need be, my client will seek a ruling from the Board.

Thank you.

Very truly yours,



Thomas W. Breidenstein

TWB:slb

cc: Joseph A. Cleves, Jr., Esq.
Dr. Michael Kirkwood
Bob Coster
Roger Rolfes, City Administrator, Florence

Q:\APPS\SHARE\SLB\KIRKWOOD\WALL.LTR

- b. Aquariums, botanical gardens and other natural exhibitions;
- c. Stages and similar assembly areas;
- 2. Accessory uses for an office facility:
 - a. Garages and parking;
 - b. Structures such as fences and walls;
 - c. Buildings such as storage sheds;
- 3. Directional and incidental signage (See Article 34);
- 4. Parking (See Article 33);
- 5. Temporary buildings incidental to construction.

SECTION 1113

Conditional Uses

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 office use; or b) the arrangement of uses, buildings, or structures will be compatible with the organization of permitted and accessory uses to be protected in the district:

- 1. Single-family or multi-family dwelling units provided the structure 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;
- 2. Nursery and day care centers;
- 3. Retail and sales of drugs and proprietary goods;
- 4. Medical clinics--out patient services.

SECTION 1114

Intensity

The maximum total intensity of all uses in an Office One district shall not exceed 20,000 square feet of gross floor area per acre.

SECTION 1115

Minimum Size

There is no minimum size or extent required of an Office One District.

SECTION 1116

Minimum Standards

See Article 31 for dimensional standards. (Site Plan Review is required for all permitted uses) (See Article 30).

THE FOLLOWING PASSAGE APPLIES TO THE CITY OF FLORENCE CITY LIMITS ONLY.

No dwelling used as a residence can be altered, converted or remodeled to satisfy any of the standards as uses

authorized in the Office One (O-1) zone as permitted uses or conditional uses. Newly constructed structures are necessary to satisfy the requirements and standards of the Office One (O-1) zone.

SECTION 1120
OFFICE TWO (O-2)

The purpose of the Office Two District is to consolidate those types of professional, research, business, service and similar uses which are based in office structures and which require and desire high levels of personal interaction. Such districts will be organized to provide employment labor markets. Districts will be located on suitable lands with convenient access from expressways, arterials or collectors. District plans will be organized to provide direct, central, convenient and safe collection of vehicles and pedestrian circulation.

SECTION 1121

Principally Permitted Uses

The following uses are permitted:

1. All principally permitted uses of an Office One (O-1) District;
2. Eating and drinking places including alcoholic beverages and with drive-thru facilities;
Eating and drinking places including alcoholic beverages and entertainment, but excluding drive-in or fast food franchise chains (**CITY OF FLORENCE ONLY**);
3. Retail sales of newspapers and magazines, drugs, and proprietary goods;
4. Banking and credit union service, including drive-in teller services.

SECTION 1122

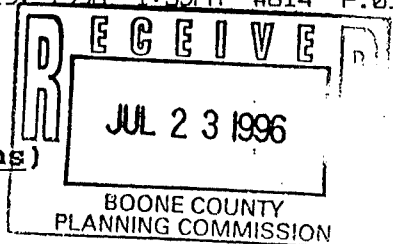
Accessory Uses

Accessory uses, buildings and structures customarily incidental and subordinate to the purposes of the district including:

1. Recreation uses or spaces of integral relation to the purpose of the district defined to be:
 - a. Museum, art and craft galleries, conservatories and other cultural exhibits;
 - b. Aquariums, botanical gardens and arborettums, nature preserves, wildlife sanctuaries and other natural exhibitions;
 - c. Historic sites, structures, monuments and other exhibits available for public viewing;
 - d. Amphitheaters, motion picture theaters, legitimate theaters, playhouses and other entertainment assemblies;
 - e. Auditoriums, exhibition halls and other public or miscellaneous assembly;
 - f. Golf courses, tennis courts, ice and roller skating, bowling and other sports activities;
 - g. Play lots or tot lots, playfields or athletic fields, recreation centers, gymnasiums, clubs and other athletic uses and structures;
 - h. Swimming beaches and swimming pools;
 - i. Picnicking, hiking areas, exercise trails and other recreational uses;
 - j. General, leisure, ornamental and other parks, spaces, trails, bikeway systems and similar uses;

SITE PLAN REVIEW

BOONE COUNTY PLANNING COMMISSION
(See Boone County Zoning Regulations)



SECTION A (To be completed by applicant)

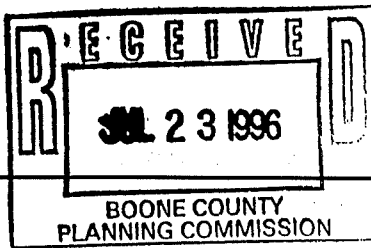
1. Type of Review: Major Site Plan Review
 Major Site Plan Review
 Minor Site Plan Review
2. Name of Project EMPLOYEE PARKING FOR HEAD & NECK SURGERY ASSOC.
3. Location of Project 7703 U.S. 42 FLORENCE, KY.
4. Total Acreage of Site 0.5 AC.
5. Total Acreage under Review 0.10 AC
6. Lot Number and Name of Subdivision (if part of a subdivision) _____
7. Owner of Property DR. MICHAEL KIRKWOOD, M.D.
 Phone Number 331-8392 Fax 282-2304
8. Address of Property Owner 100 FARMCREST CT.
LAKESIDE PARK KY. 41017
 City State Zip
9. Applicant's Name DR. FRED HAUSLADEN, M.D.
 Phone Number 289-9100 Fax 283-6046
10. Applicant's Address 7575 U.S. 42
Florence, Ky. 41042
 City State Zip
11. Height of Proposed Building or Addition _____
12. Square Footage of Existing Building(s) _____
13. Square Footage of Proposed Building(s) or Addition _____
14. Briefly describe the proposed improvements pertaining to this Site Plan Application: PAVING FOR Employee PARKING

15. Is the site subject to a:
 - Variance - Date _____
 - Conditional Use Permit - Date _____
16. Was the site subject to a zone change?
 If Yes, give date of approval _____
17. Current Zoning on Property OFFICE
18. Deed Book 421 Page No. 26 Group No. 270
19. Have you had a pre-application meeting with BCPC Staff? phone
20. Prior to construction or improvements, the applicant is recommended to submit copies of the Site Plan to the appropriate organizations/ agencies prior to approval by the Boone County Planning Commission.

Have you met or received preliminary approval from any of the following organizations/agencies? (check the appropriate organizations/agencies and answer either yes, no, or n/a)

- N/A Boone County Water and Sewer District
- Applied Florence Water and Sewer Commission
- N/A Union, Light, Heat and Power
- N/A Cincinnati Bell
- N/A Owen County Rural Electric

(over)



July 19, 1996

Mr. Ed Coleman, Planner
Boone County Planning and Zoning
2995 Washington Street
Burlington, Kentucky 41005

Re: Employee Parking - Head and Neck Surgery, Associates - 7703 U.S. 42 Florence, Ky.

Dear Mr. Coleman:

Enclosed, please find a completed application, five (5) copies of the site development plan for the above referenced project and a check for \$175 for plan review and inspection fee. We are proposing to add ten (10) spaces to the existing five (5) and widen the curb cut on Woodland Avenue. Per section 3136 of the Zoning Regulations, we do not propose stormwater detention.

If you should have any questions, or need further information, please do not hesitate to call.

Sincerely,

Robert Koster, P.E.

cc: Hal Hedges - Florence Water and Sewer
Rodney Crise - Florence Public Works Dept.
Dr. Fred Hausladen - Head and Neck Surgery, Associates
Dr. Michael Kirkwood

■ (606) 344-8779
■ 2512 Ann Street
■ Villa Hills, Kentucky 41017

ROBERT L. KOSTER P.E.		
Kentucky	Registered	Ohio
Indiana	Civil Engineer	Florida

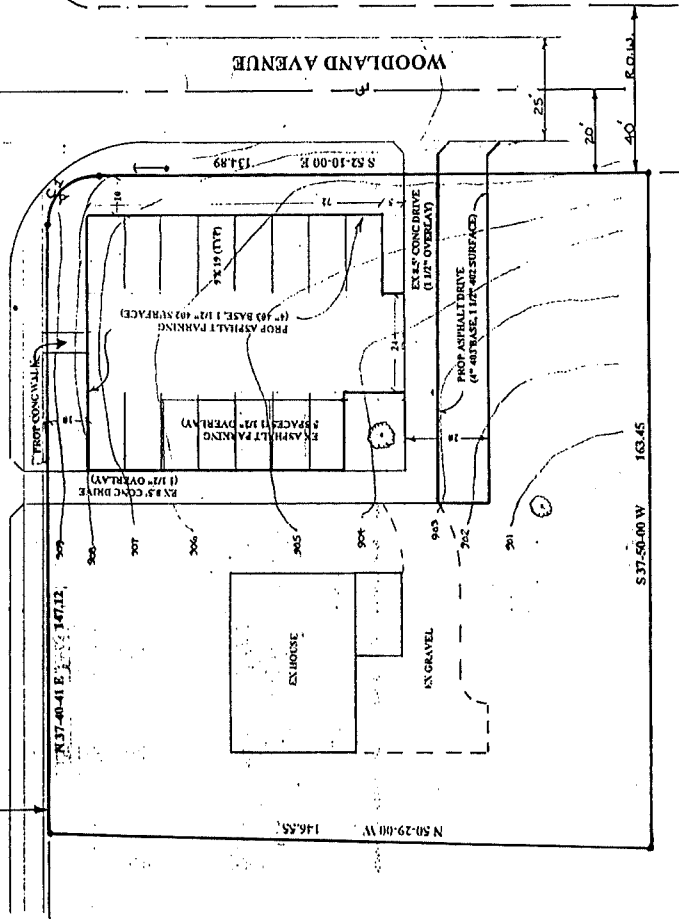
APPLICANT: DR. FRED HAUSLADEN, M.D.
 HEAD AND NECK SURGERY, ASSOCIATES
 7575 U.S. 42
 FLORENCE, KY. 41042

OWNER: DR. MICHAEL KIRKWOOD, M.D.
 100 FARMCREST COURT
 LAKESIDE PARK, KY 41017

PROPERTY: 7703 U.S. 42
 FLORENCE, KY 41042
 D.B. 421 P. 26

U.S. ROUTE 42

CURVE #1
 R = 11.00
 L = 18.88
 C = 16.59 N 63-45.31 E
 Δ = 96.09-19



EMPLOYEE PARKING	
FOR	
HEAD AND NECK SURGERY, ASSOCIATES	
SCALE: 1" = 30'	APPROVED BY:
DATE: 7/19/96	REVISER
DRAWN BY RLK	
7703 U.S. 42 FLORENCE, KENTUCKY 41042	
DRAWING NUMBER	
SHT 1 OF 1	

RLK **ROBERT L. KOSTER P.E.**
 Registered
 CIVIL ENGINEER
 Ohio
 Florida
 2512 Ann Street Villa Hills, Kentucky (606)344-8779

R.D. MOLIEN