

APPLICATION FORM

ZONING MAP AMENDMENT
BOONE COUNTY PLANNING COMMISSION

(See Boone County Zoning Regulations)
SECTION A (To be completed by applicant)

- 1. Name of Project Future Properties, LLC
- 2. Location of Project 8145 Mall Road, Florence, Kentucky
- 3. Total Acreage of Site 12.20377
- 4. Current Zoning of Site C-2
- 5. Proposed Zoning (Classification being requested) C-3
- 6. Proposed Uses (please specify each use) Sales and service of new and used marine crafts and related accessories and sporting equipment; in addition to current uses (antique mall and cabinet shop)
- 7. Names of Applicant(s) Future Properties, LLC
Phone Number (513) 621-8900 Fax No. (513) 629-9444
- 8. Address of Applicant(s) c/o Timothy B. Theissen, Strauss & Troy, 50 East RiverCenter Blvd., Suite 1400, Covington, Kentucky 41011
City State Zip
- 9. Name of Property Owner(s) Future Properties, LLC
Phone Number (513) 621-8900 Fax No. (513) 629-9444
- 10. Address of Property Owner(s) c/o Timothy B. Theissen, Strauss & Troy, 50 E. River-Center Blvd., Suite 1400, Covington, Kentucky 41011
City State Zip
- 11. Proposed Building Intensities (please specify) Same as current
- 12. Are there any existing buildings on the site? Yes
How many? One
- 13. Deed Book 623 Page No. 232 Group No. 1642 & 2040A
- 14. Are you also applying for:
Conditional Use Permit
Dimensional Variance
- 15. Have you submitted a Concept Development Plan? Yes
- 16. Have you had a pre-application meeting with BCPC Staff? Yes
- 17. Please check the following organizations/agencies which you have discussed the proposed development within the last several months:

- Boone County Water and Sewer District
- Florence Water and Sewer Commission
- Union Light Heat and Power
- Cincinnati Bell
- Owen County Rural Electric
- Boone County Public Works Department
- Kentucky Transportation Cabinet
- City of Florence Public Services Department
- Boone County Building Department

EXHIBIT

“A”

STAFF REPORT

Request of **Timothy B Theissen, Strauss & Troy (applicant) for Future Properties, LLC (owner)** to consider a Zoning Map Amendment from Commercial Two (C-2) to Commercial Services (C-3) for an approximate 12 acre tract located at 8145 Mall Road, Florence, Kentucky. The request is for a zone change to allow sales and service of new and used marine crafts and related accessories and sporting equipment, in addition to existing antique mall and cabinet shop.

September 27, 2000

REQUEST

The request is for a Zoning Map Amendment from Commercial Two (C-2) to Commercial Services (C-3) to permit the sales and service of new and used marine crafts and related accessories within the former Swallen's Department Store. The approximate 12 acre site is located at 8145 Mall Road, Florence, Kentucky.

The applicant's submitted Concept Development Plan indicates that the building will be divided into three tenant spaces. The existing Antique Mall has 40,800 square feet of internal floor space, the existing Builders Cabinet has 15,033 square feet of internal floor space, and the proposed Hern Marine tenant space is to have 17,000 square feet of internal floor space. Hern Marine's lease also specifies that they will have 57,000 square feet of outdoor space to display and store boats. The 57,000 square feet of outdoor storage and display is proposed in four separate areas. These areas include:

1. The breeze way between the building and the Florence Center Strip Mall (5,700 square feet);
2. The chain link fence area behind the Hern Marine lease space (8,800 square feet);
3. The northwestern portion of the parking lot (40,000 square feet) and;
4. The southeastern portion of the parking lot (2,500 square feet).

The applicant, on behalf of the property owner, has also submitted a list of the Permitted and Conditional Uses from the Commercial Services District (C-3). The list indicates which C-3 uses the property owner would be willing to eliminate from consideration if the tenants in the building are to change at a later date (see attachments).

SITE CHARACTERISTICS

The 12 acre site currently contains 387 parking spaces. Approximately 110 of these stalls are proposed to be removed for boat display and storage. The property is fairly level except for the portion that fronts Mall Road. The applicant's Concept Development Plan indicates that the elevation of the parking lot is approximately 25 feet lower than the Mall Road right-of-way.

ADJACENT LAND USES AND ZONING

North: Florence Center Strip Mall (C-2), Paddock Club Apartments (UR-1)
South: Sumerel Tire (C-2), Circuit City (C-3), and Single-Family Residential (SR-2)
East: Mall Road, Berkshire Farm (C-2), and Mall Road Strip Center (C-2)
West: Paddock Club Apartments (UR-1), and Single-Family Residential Uses (C-2)

RELATIONSHIP TO COMPREHENSIVE PLAN

The 1995 Boone County Comprehensive Plan's "2020 Land Use Plan" designates the site in question as a mixture of "Commercial", "Urban Density Residential", and "Rural Density Residential". The "Commercial" designation is described as "retail, corporate and professional office, interchange commercial, indoor commercial recreation, restaurants, services, etc." The "Urban Density Residential" designation is described as "attached housing, generally condominiums or apartments, of over 8 dwelling units per acre." The "Rural Density Residential" designation is described as "low density residential uses of up to one dwelling unit per acre, which are not part of a formal subdivision."

The Land Use Element (Area C-4: Camp Ernst Area, pp. 222-223) states the following regarding this area:

- A. "The Mall Road area should continue to develop as a regionally-oriented commercial district. This regionally-oriented growth should be confined to Mall Road and Houston Road, and should not expand onto U.S. 42, KY 18 or Hopeful Road. However, the highway-scaled, automobile oriented appearance of this growth should be minimized through the provision of pedestrian improvements, smaller facilities within outlots in conjunction with larger strip-style centers, multiple, scattered parking areas in lieu of large central parking areas, and street trees along Mall Road."

The "Future Land Use Development Guidelines" found in the Land Use Element make the following statements which relate to this proposal:

"Developments in Boone County must include landscaping to accompany the proposed project. This landscaping should be designed to improve the public view of a development, and should be incorporated into parking lots and other vehicle circulation areas as well as within open spaces and around structures. Landscaping is intended to minimize the visual impacts of the development from adjoining properties and roadways." ("Landscaping" p. 210).

The 2000 *Boone County Comprehensive Plan* Goals and Objectives include the following pertinent statements:

- A. Boone County businesses are developed in appropriate locations and are compatible with their surrounding area ("Business Activity", Goal).
- B. Compact, efficient development patterns shall be encouraged for business districts with appropriately sized and well-maintained buffer spaces between the business use and other land usage ("Business Activity", Objectives).
- C. Commercial uses shall be limited to strategic locations serving trade areas and neighborhood needs and shall have safe and affective access and ample parking space ("Business Activity", Objectives).
- D. Proper future growth management for Boone County is implemented ("Overall, Goal).

STAFF COMMENTS

1. The Zoning Map Amendment request was filed because the Commercial Two (C-2) regulations only permits small scale (50 vehicles or less) sales or leasing of new and used motor vehicles with the issuance of a Conditional Use Permit. A copy of the C-2 regulations are attached to the Staff Report. The applicant has indicated that the property owner is proposing to have 100 to 150 boats on site.
2. Although the applicant is proposing to remove 110 parking stalls for boat storage and display, the 277 remaining parking stalls would still meet the requirements. Article 33, Section 3323 of the *Boone County Zoning Regulations* requires integral shopping centers to provided 4 parking spaces per 1,000 feet of gross floor area for the first 30,000 square feet and 3 parking spaces per 1,000 feet of gross floor area thereafter. As a result, the 72,833 square feet of floor area requires 249 parking stalls.

3. Article 36, Section 3635 of the *Boone County Zoning Regulations* states that storage areas shall be screened from any public street right-of-way or if visible to an adjoining property. This screening shall be accomplished by solid continuous solid wood fence, wall, earthen berm, hedging, evergreen plant materials or combination thereof which is high enough to effectively screen the items mentioned from view. The applicant has informed Staff that he would like the Zoning Administrator to issue a waiver to use chain link fencing for the storage and display areas. The applicant and property owner believe that using a solid fence or wall would eliminate the view of the boats to prospective buyers and pose a security issue. Although Staff sees some rationale to this requested waiver, it should be pointed out that the storage and display areas that are located to the rear of the building are within clear view of the Paddock Club Apartments. The Planning Commission and Florence City Council may want to consider some conditions for these display and storage areas. In particular Staff believes that the construction material, number of boats, and overall area of these outdoor display and storage areas needs to be addressed.

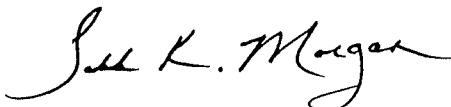
4. Staff is concerned about the location of the display and storage area that is shown along Mall Road. While Article 31, Section 3153 of the *Boone County Zoning Regulations* allows storage and display in the front yard of properties that are zoned Commercial Services, Staff has been unable to identify any other businesses that have a permanent display area which fronts Mall Road. Past experience indicates that permanent and/or temporary displays can be very unsightly when they are located in the front yard.

CONCLUSION

This request needs to be evaluated by the Boone County Planning Commission and the Florence City Council in terms of the three criteria necessary for approving a Zoning Map Amendment as stated in Article 3, "Amendment" of the *Boone County Zoning Regulations*.

The Future Land Use Map will need to be amended if the Planning Commission and Boone County Fiscal Court approve the Zoning Map amendment request.

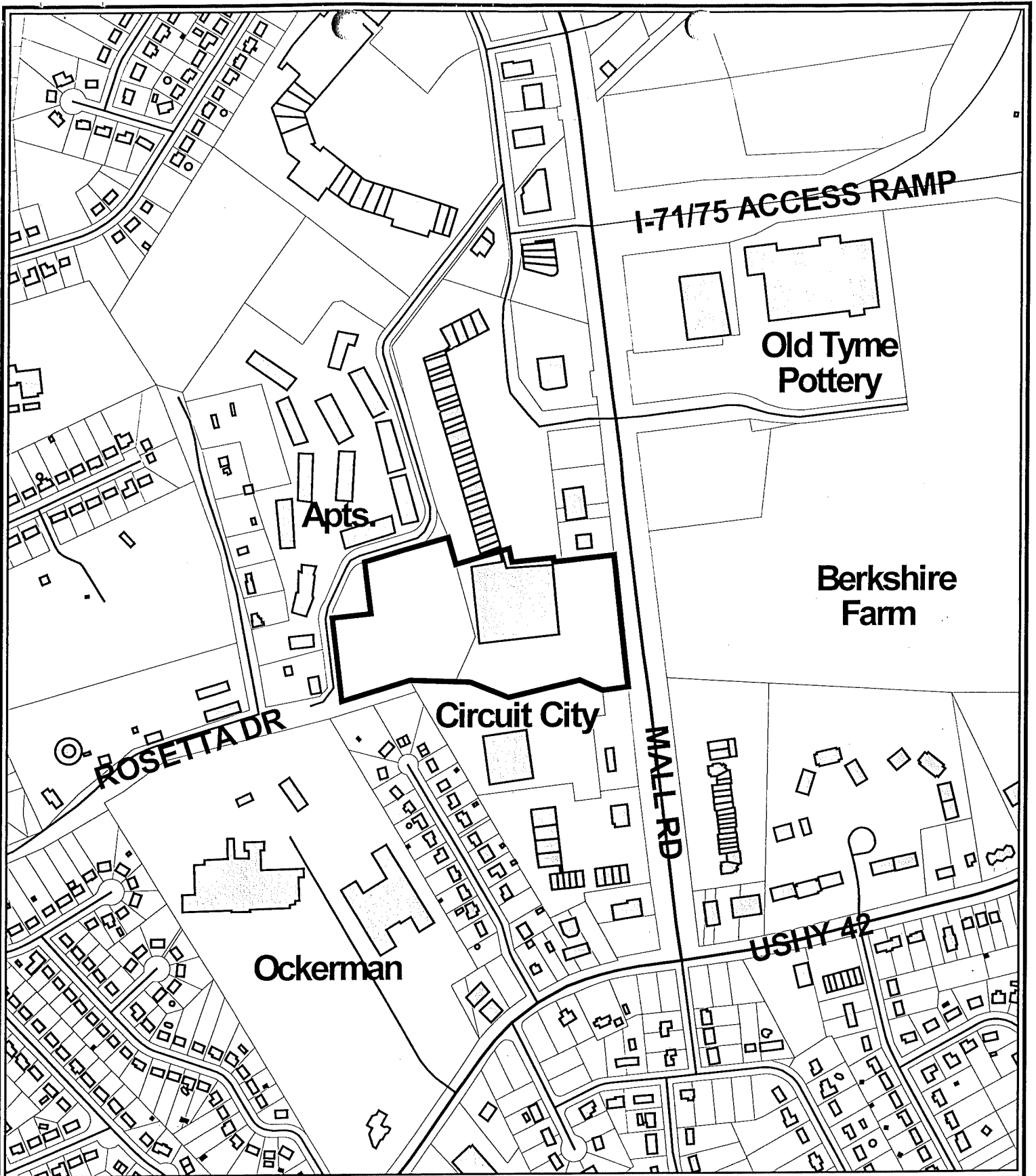
Respectfully submitted,



Todd K. Morgan
Planner

Attachments:

- *Site Vicinity Map
- *Concept Development Plan
- *Zoning Map
- *Future Land Use Map
- *C-2 Zoning Regulations
- *Letter from Applicant
- *C-3 Zoning Regulations

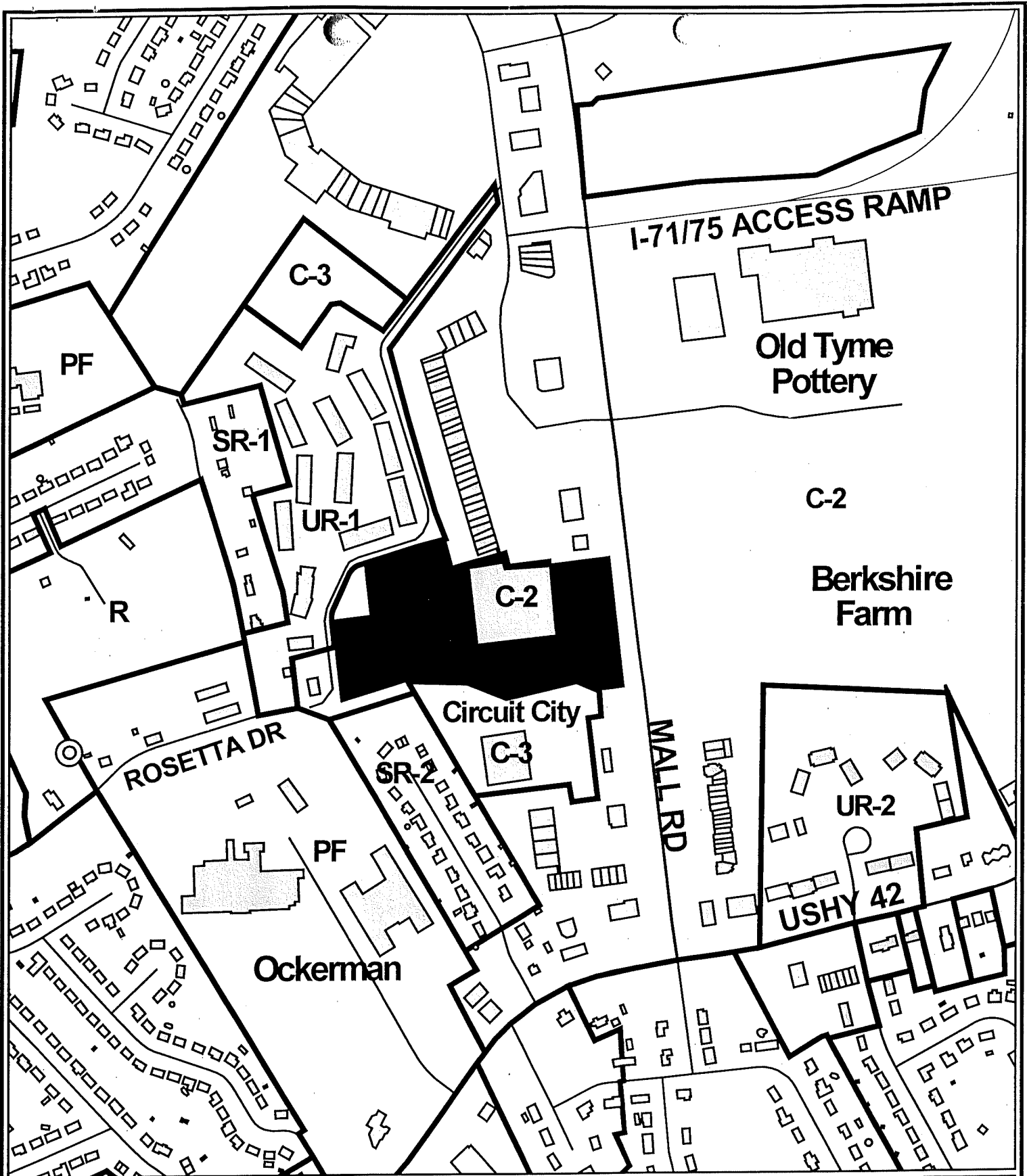


Future Properties Vicinity Map

500 0 500 Feet

1 inch equals 500 feet
 Produced by the
 Boone County Planning Commission
 GIS Services Division
 August 24, 2000



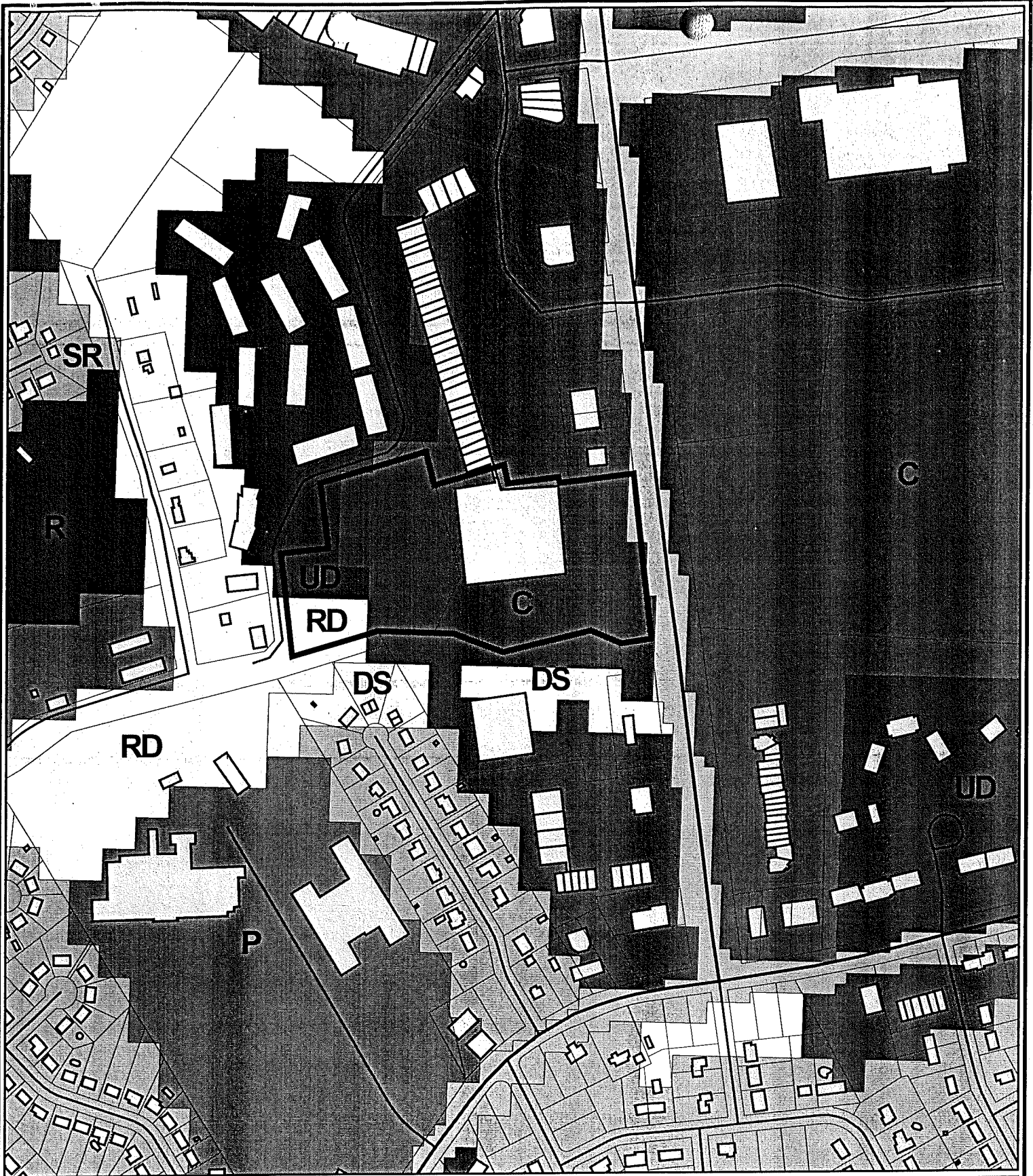


Future Properties Zoning Map

500 0 500 Feet

1 inch equals 500 feet
 Produced by the
 Boone County Planning Commission
 GIS Services Division
 August 24, 2000





Future Properties Future Land Use Map

400 0 400 Feet

1 inch equals 400 feet
 Produced by the
 Boone County Planning Commission
 GIS Services Division
 August 24, 2000



SECTION 1013

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 compatible with the organization of permitted and accessory uses to be protected in the district:

1. Gasoline filling stations and automotive repair facilities;
2. Churches, synagogues, temples and other places of religious assembly for worship;
3. Franchise style fast food establishments and drive thru eating and drinking establishments (CITY OF FLORENCE ONLY).

SECTION 1014

Intensity

The intensity of use in a Commercial One district of under two (2) acres shall not exceed 8,000 square feet of gross floor area per acre of land.

The intensity of use in a Commercial One district larger than two (2) acres shall not exceed 11,000 square feet of gross floor area per acres of land.

SECTION 1015

Minimum Size

There is no minimum size or extent required of a Commercial One district.

SECTION 1016

Minimum Standards

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

SECTION 1020

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 primarily central to regional trade areas and to some extent the community as a whole and such districts have access from expressways or arterial roads. District facilities and plans will be organized to provide central and convenient collection of vehicles, pedestrians and multi-modal forms of transportation within the district's facilities and major shopping spaces.

SECTION 1021

Principally Permitted Uses

The following uses are permitted:

1. All principally permitted uses of a Commercial One (C-1) district;
2. All the principally permitted uses in an Office One (O-1) district;
3. Eating and drinking establishments including alcoholic beverages and with drive-thru facilities; Eating and drinking establishments including alcoholic beverages and entertainment, but excluding drive thru and franchise style fast food establishment (CITY OF FLORENCE ONLY);
4. Department stores, mail order houses, direct retail selling organizations of general merchandise;
5. Furniture, home furnishings including specialty and floor coverings;
6. Specialized upholstery and furniture repair or refinishing services;
7. Apparel stores;
8. Household appliances, china, glassware and metal ware;
9. Radio, t.v., watch, clock, and jewelry repair;
10. Drive-thru photographic, stenographic and other duplicating and mailing services;
11. Legal services, engineering and architectural services;
12. Security brokers, dealers and flotation services;
13. Title abstracting services; holding and investment services;
14. Advertising services including direct mail;
15. Business and management consulting services;
16. Employment services;
17. Consumer and mercantile credit reporting, adjustment and collection services;
18. Travel arranging, transportation ticket and public event or promotional booking agencies;
19. Radio and television broadcasting studios excluding transmitting stations and towers;
20. Art, music and dancing schools, libraries and museums;
21. Medical and dental laboratory services;
22. Medical clinics - out - patient services;
23. Welfare and charitable services;
24. Business associations and professional membership organizations including civic, social and fraternal organizations;

25. Art and craft galleries and similar exhibit space;
26. Aquariums, botanical gardens and other natural exhibitions;
27. Arcades and other amusement centers;
28. Motion picture theaters (indoor);
29. Bowling alley, skating rinks, roller skating rinks, miniature golf courses golf driving ranges, and skateboard facilities;
30. Recreation centers, gymnasiums, clubs and similar athletic uses;
31. Motorcycles sales or bike shops excluding outside storage;
32. Churches, synagogues, temples and other places or religious assembly for worship;
33. Hotels and motels including convention facilities;
34. Pawn shops;
35. Auto parts and accessories stores;
36. Gasoline filling station;

SECTION 1022

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. A dwelling unit of the property owner, or owner-operator, manager, or employee of the business 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. Signage (See Article 34);
4. Parking (See Article 33);
5. Temporary buildings incidental to construction ;
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. Indoor target ranges and similar athletic uses;
9. Recycling collection points (See Article 31);
10. Garment and Furniture centers (See Article 31);
11. The rental of trucks and trailers, (only permitted to be displayed in the side or rear of the property).

SECTION 1023

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. Franchise style fast food establishments and drive thru eating and drinking establishments (CITY OF FLORENCE ONLY).
2. Garden and landscape sales including florist greenhouses, lawn furniture and the like;
3. Automotive repair facility and wash services for vehicles;
4. Small scale sales or leasing of new and used motor vehicles requiring the storage of no more than fifty (50) vehicles on the premises;
5. Sale of satellite dishes;

6. Small scale sales or leasing of new and used recreational vehicles requiring the storage of no more than fifty (50) vehicles on the premises;

7. Mini-warehouses or storage facilities;

SECTION 1024

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 12,000 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 15,000 square feet of gross floor area per acre of land.

SECTION 1025

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 1026

Minimum Standards

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

SECTION 1030

COMMERCIAL SERVICES (C-3)

The purpose of the Commercial Services district is to provide, control and centralize those types of commercial activities which; a) depend on and generate high vehicular accessibility, visibility and traffic; and/or b) large outdoor single-purpose storage, display and parking areas and c) which do not fit the scale, character, trade area and general objectives of the other commercial districts in this article or the employment districts defined in Article 11. Such districts will generally be organized about regional or major community trade areas. Sites will be of suitable lands which can be appropriately buffered from surrounding urban uses. Districts will be located to have direct visibility from major arterials. District facilities and plans should be organized to accomplish as much clustering of compatible uses, sharing of parking and access, signage, lighting and other spaces and improvements as possible.

SECTION 1031

Principally Permitted Uses

The following uses are permitted:

1. Commercial parking facilities;
2. Sales of lumber, building materials, heating and plumbing equipment, electrical supplies, hardware and farm equipment;
3. Sales, automotive repair, or lease of new and used motor vehicles including tires, batteries and accessories;

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A Legal Professional Association

Founded in 1953

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CHARLES H. MELVILLE
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*Also Admitted in Kentucky
**Also Admitted in Florida

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WILLIAM V. STRAUSS
LARRY A. NEUMAN*
WILLIAM S. ABERNETHY, JR.
ALAN C. ROSSER
THOMAS C. RINK
FRANKLIN A. KLAINÉ, JR.*
WILLIAM R. JACOBS
DANIEL H. DEMMERLE, II*
JAMES G. HELDMAN
CHARLES J. POSTOW**
STUART C. BRINN*

MARTIN C. BUTLER*
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TbTheissen@Strauss-Troy.com

Writer's Direct Dial No. (513) 768-9711

August 23, 2000

VIA FAX and U.S. MAIL:

Mr. Kevin P. Costello, AICP, Executive Director
Boone County Planning Commission
995 Washington Street
Burlington, Kentucky 41005

Re: Request of Timothy B. Theissen, Strauss & Troy (Applicant) for Future Properties, LLC (Owner) to Consider a Zoning Map Amendment from Commercial 2 (C-2) to Commercial 3 (C-3) for an Approximate 12-Acre Tract Located at 8145 Mall Road, Florence, Kentucky

Dear Kevin:

After consultation with representatives of the City of Florence, the owner and applicant in the above-referenced Zoning Map Amendment agree to eliminate from the list of permitted uses in the C-3 Zone applicable to this particular site, the following uses: numbers 1, 2, 3, 7, 8, 9, 10, 11 and 28, and to eliminate both conditional uses, numbers 1 and 2.

If you have any questions or comments with regard to this matter, please do not hesitate to call.

Very truly yours,

STRAUSS & TROY, L.P.A.



Timothy B. Theissen

TBT:srw

cc: Richard Crist (via fax/mail)
Todd Morgan (via fax/mail)
Jim Stewart (via fax/mail)
Daniel H. Demmerle, II, Esq. (via fax/mail)

6. Small scale sales or leasing of new and used recreational vehicles requiring the storage of no more than fifty (50) vehicles on the premises;
7. Mini-warehouses or storage facilities;

SECTION 1024

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 12,000 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 15,000 square feet of gross floor area per acre of land.

SECTION 1025

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 1026

Minimum Standards

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

SECTION 1030

COMMERCIAL SERVICES (C-3)

The purpose of the Commercial Services district is to provide, control and centralize those types of commercial activities which; a) depend on and generate high vehicular accessibility, visibility and traffic; and/or b) large outdoor single-purpose storage, display and parking areas and c) which do not fit the scale, character, trade area and general objectives of the other commercial districts in this article or the employment districts defined in Article 11. Such districts will generally be organized about regional or major community trade areas. Sites will be of suitable lands which can be appropriately buffered from surrounding urban uses. Districts will be located to have direct visibility from major arterials. District facilities and plans should be organized to accomplish as much clustering of compatible uses, sharing of parking and access, signage, lighting and other spaces and improvements as possible.

SECTION 1031

Principally Permitted Uses

The following uses are permitted:

- ① Commercial parking facilities;
- ② Sales of lumber, building materials, heating and plumbing equipment, electrical supplies, hardware and farm equipment;
- ③ Sales, automotive repair, or lease of new and used motor vehicles including tires, batteries and accessories;

4. Major furniture, floor coverings, household appliances and home furnishing outlets;
5. Eating and drinking establishments including alcoholic beverages and with drive-thru franchise style fast food facilities;
6. Sporting goods and accessories including the sales and service of new and used marine craft, recreational vehicles, camping trailers and motorcycles and other sporting equipment and sales;
7. Sale of mobile homes, sheds, car ports and other pre-fabricated buildings;
8. Garden and landscape sales, lawn furniture and the like, farm and garden supply outlets including equipment and vehicles;
9. Food lockers including preparation facilities and individualized household goods storage lockers (mini warehouses);
10. Equipment, automobile, truck rental and leasing services;
11. Gasoline filling stations, automobile repair facilities but excluding junk yards, wrecking or other storage;
12. Liquor and beverage sales;
13. Sale of satellite dishes;
14. Grocery stores and supermarkets;
15. Convenience stores;
16. Banking services (including drive-thru facilities), savings and loan associations, credit unions and other credit services;
17. Postal services and packaging services provided the use is essential for pick-up and delivery convenience and not storage or transfer activities more appropriate to an employment district;
18. Florists including greenhouses;
19. General dry goods and merchandise stores;
20. Department stores, mail order houses, direct retail selling organizations of general merchandise;
21. Recreation centers, gymnasiums, clubs and similar athletic uses;
22. Nursery and day care centers;
23. Household appliances, china, glassware and metal ware;
24. Medical and dental laboratory services;
25. Travel arranging, transportation ticket and public event or promotional booking agencies;
26. Hotels and motels including convention facilities;

27. Auto parts and accessories stores;

28. Flea markets;

29. Churches, synagogues, temples and other places or religious assembly for worship;

30. Funeral homes and crematoriums excluding cemeteries or mausoleums.

SECTION 1032

Accessory Uses

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

1. Recreation uses, buildings and structures customarily incidental and subordinate to any of the permitted uses and defined to be:
 - a. Stages and similar assembly areas;
 - b. Auditoriums, exhibition halls and other public assembly spaces;
 - c. Amusement centers;
 - d. Tennis courts and billiards;
 - e. Play lots, tot lots, recreation centers and similar athletic uses;
 - f. Swimming beaches and swimming pools;
 - g. General, leisure, ornamental and other park spaces;
2. Dwelling units including:
 - a. Private garage and parking;
 - b. Structures such as fences and walls;
 - c. Buildings such as storage sheds;
 - d. Appropriate storage of a recreation vehicle or unit;
 - e. The keeping and use of appropriate household pets;
3. Signage (See Article 34);
4. Parking (See Article 33);
5. Temporary buildings incidental to construction;
6. Storage, uncrating or unpacking areas provided such activities are an integral function of the permitted use;
7. The rental of trucks and trailers.

SECTION 1033

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 or service; or b) the arrangement of use, building or structure will be compatible with the organization of permitted and accessory uses to be protected in the district;

1. Welding or limited fabrication of metal products provided the use is of office or service contract and not storage or manufacturing which is more appropriate to an industrial district;
2. Truck stops.

SECTION 1034

Intensity

The intensity of use in a Commercial Services (C-3) district shall not exceed 18,000 square feet of gross floor area per acre of land.

SECTION 1035

Minimum Size

The minimum size and extent of a Commercial Services district, including all the contiguous private property so designated, shall not be less than three (3) acres.

SECTION 1036

Minimum Standards

See Article 31 for dimensional standards. (Site plan review required for all permitted uses, See Article 30)

SECTION 1040

COMMERCIAL FOUR (C-4)

The purpose of the Commercial Four district is to provide locally oriented commercial services, either retail, recreational or office uses, in areas located near or adjacent to interstate highways and arterial roads. These areas are either currently or expected to experience rapid growth due to the population projections and recommended land uses in the Boone County Comprehensive Plan and in other land use studies. Such uses would serve to accommodate the service demands of an expanding local population that normally can't be met because of the limited type and scale of office, recreational or retail use in the immediate area. These types of uses are intended to serve the local population or community rather than regional interests. Such districts shall be located near or adjacent to interstate highways and along arterial roads whereby access and visibility are required to serve local residents. These districts shall be limited in size in order to provide maximum egress and ingress for the local population.

SECTION 1041

Principally Permitted Uses

The following uses are permitted, subject to the minimum and maximum size, standards and intensity provisions of this zoning district:

1. Grocery stores and supermarkets;

Public Hearing Item No. 3:

Commission Members Present: Mr. Barlow, Mr. Caddell – Chairman, Mr. Chaney - Vice Chairman, Mr. McMillian, Mrs. Poston, and Mr. White.

Staff Members Present: Mr. Kevin Costello, AICP, Executive Director; Ms. Jan Hancock, Secretary; Mr. Mitch Light, Assistant Zoning Administrator/ZEO; Mr. Todd Morgan, Planner; and Mr. Kevin Wall, AICP, CDT – Director, Zoning Services.

Legal Counsel Present: Mr. Dale Wilson

The Chairman introduced the third item on the Agenda:

1. **Applicant:** **Timothy B. Theissen, Strauss & Troy for Future Properties, LLC (owner)**

Request: **Zoning Map Amendment**

The request of Timothy B. Theissen, Strauss & Troy (applicant) for Future Properties, LLC (owner) to consider a Zoning Map Amendment from Commercial Two (C-2) to Commercial Services (C-3) for an approximate 12 acre tract at 8145 Mall Road, Florence, Kentucky. The request is for a zone change to allow sales and service of new and used marine craft and related accessories and sporting equipment, in addition to existing antique mall and cabinet shop.

Staff Member Todd Morgan presented the Staff Report which included a slide presentation (see Staff Report).

The Chairman asked for the applicant's presentation.

Attorney Tim Theissen with Strauss & Troy in Covington stated that he is representing Future Properties and Hern Marine, the proposed tenant of the space, whose principals were present to answer any questions. Representatives present from Future Properties were Mr. R. C. Dirr, Mr. Richard Crist, and Mr. Giles Conrad's sons Jay, Mark and Craig Conrad. Mr. Theissen stated that Hern Marine is one of the largest boat retail sales operations in the greater Cincinnati area and was founded in 1947. Their current facility is in Fairfield, Ohio. That facility is about ten acres in size and displays 250 boats, has 41 employees, and a 30,000 square foot showroom. The boats they sell are recreational boats from 16 feet to 27 feet -- they do not sell large houseboats. They are interested in selling recreational boats on the subject site. He stated that Swallen's leased the site several years ago and it will work well for Hern Marine. The Comprehensive Plan and Zoning Code indicate that this site near the I-75 ramp

is intended for a regional draw. He stated that the issue in the Staff report is the rear parking area. He stated that the rear parking area is not visible from Mall Road. It is to some degree visible from the Paddock Club apartments, but there is a significant grade difference. It may be impossible to screen the parking area from the apartments. He stated that the area was intended as a parking lot, but instead of parking cars there they will park boats. Because of the elevation, a fence to screen it would have to be so high that it would be impractical. He stated that significant tree preservation occurred on the site and there is a green area along Mall Road, along the side of the site, and in the rear in the section designated for urban density type uses. He stated that the site is currently fully developed and they do not intend to build any new buildings. His client has been in the boat business for many years and would be concerned about using a stockade fence for the area in the back due to security concerns. The boats are valuable and often contain equipment that could be stolen. People can see through a chainlink fence, which would more make it more difficult for an unauthorized person not to be seen. They hope Florence police will patrol and it would be important for them to be able to cruise slowly and see between the boats. He stated that they are not in the boat storage business. The boats are not stored, they are new boats displayed for sale. He stated that the use limitations proposed and included in the Staff Report are from his letter (attached to the Staff Report), which was based on his discussion with the City of Florence. The owners have agreed to eliminate the uses indicated in his letter.

Mr. Theissen read and submitted a letter from Thomas H. Green with Florence Center Associates (see Exhibit 1). He stated that the boundary line between the strip center and the old Swallen's building is in the breezeway and the two developments have a reciprocal easement for the parking. Hern Marine customers would be able to parking in the strip center and those customers would be able to use the parking on this property.

Mr. Theissen stated that the proposal fits within the Comprehensive Plan and the intent of the Zoning Ordinance. It is a regional draw type of business, which is intended by the Comprehensive Plan. It would be a quality development.

The Chairman asked if there was anyone else present who wished to speak in favor of the request. There was no response.

The Chairman asked if there was anyone present who wished to speak in opposition or to ask questions. There being no response, he asked if there were any comments or questions from the Commissioners.

Mr. McMillian stated that on the Concept Plan the building looks like it has been located outside the walls. Mr. Theissen responded that the area Mr. McMillian is referring to is the chainlink fenced area which was Swallen's outdoor display area. That area is intended to be used by Hern Marine. He reviewed the slide of the Concept Plan.

Chairman Caddell asked the applicant to address Staff Concern #4 regarding the display and storage area shown along Mall Road. Mr. Theissen responded that it is a 25' x 100' area that would park four boats. He stated that it will not be a display or advertising area. They will park four boats on trailers there for people to see when they drive by. Chairman Caddell stated that that would be a display. Mr. White stated that when Swallen's was in operation they sold boats from that area and the only difference would be the number of boats. Mr. Theissen responded that they did not anticipate having to do a zone change until they realized the limitation on the number of boats. There is a limitation of fifty boats stored. They disputed what Mr. Wall was saying as to what is display and what is inventory, so Staff and the city suggested a zone change to C-3 to address the issue.

Mr. Costello referred to the letter from Mr. Green. He stated that he spent about a year getting Mr. Green to allow the antique store to advertise on the sign. He asked if the applicant is aware of the sign situation. Mr. Theissen responded that their understanding is that they will not be able to put a sign on the large pole sign -- which enhances the need for the four boats parked in the front. People getting off the interstate will not be able to see a big sign that says HERN. They can put a sign on the façade of the building and that will be the only signage available to them. Mr. Costello stated that the intent when Swallen's was advertised was that whatever use went in that building would go on the sign. He stated that he assumes the antique store will stay. Mr. Theissen responded "as far as we know". Mr. Costello asked if Hern Marine would take over the whole building and store the boats inside if for some reason the antique store left. Mr. Theissen responded that they have not discussed that possibility.

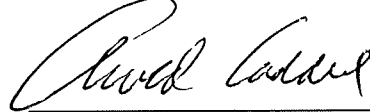
Mr. McMillian stated that the Planning Commission frowns on outside storage.

Mr. Barlow stated that one of the proposed uses is to service boats as well as sell them. He asked if the numbers of boats being discussed only pertains to new boats. He questioned additional boats coming in at the end of the season for service. Would those boats be stored outside in the fenced area? Mr. Theissen responded that they would not service used boats. The only service they would do is prep work to get a new boat ready to go. Mr. Barlow stated that the application says "to allow sales and service of new and used marine crafts". Mr. Theissen responded that that is the language from the C-3 code. He stated that retrofitting is the only service they do -- if someone ordered a stereo or some other equipment on a boat, they would do that. They do not do maintenance and repairs. He stated that if the question is whether they would be storing boats out in the remaining parking lot, the answer is "no". Mr. Barlow questioned if someone were to bring a boat in whether it would be normal to tell them to just park it and they will get it tomorrow. Mr. Theissen stated that they would not want to leave a boat unattended or unlocked and would pull it into the gated area. Mr. Jim Stewart with Hern Marine stated that their main service facility

will remain in Fairfield, Ohio. Mr. Theissen stated that they will not be doing traditional boat services on this site. It will be a sales facility.

There being no further comments, the Chairman stated that the Committee Meeting for this item will be on October 4, 2000 at 4:30 P.M. in the Fiscal Courtroom in the Administration Building.. This item will be on the Agenda for the Business Meeting on October 18, 2000 at 7:30 P.M.. The Chairman closed this Public Hearing.

APPROVED:



Arnold Caddell, Chairman

Attest:



Jan Hancock, Recording Secretary

Exhibit:

- 1 Letter from Thomas H. Green, Florence Center Associates, dated September 26, 2000

**BOONE COUNTY PLANNING COMMISSION
BOONE COUNTY ADMINISTRATION BUILDING
COURTROOM 3A
BUSINESS MEETING
October 18, 2000
7:30 P.M.**

Mr. Arnold Caddell, Chairman, called the meeting to order at 7:30 P.M.

COMMISSION MEMBERS PRESENT:

Mr. Randy Barlow
Mr. Arnold Caddell, Chairman
Mr. W. Thomas Chaney, Vice Chairman
Mr. Mark Hicks
Mr. Don McMillian
Mr. Robert Newman
Mrs. Susan Poston
Mr. Charlie Reynolds
Mr. Robert Ries, Temporary Presiding Officer
Mr. Earl White
Mrs. Lisa Wilson
Mr. David Zimmer

COMMISSION MEMBERS NOT PRESENT:

Mr. Richard Knock
Mr. Bob Schwenke
Mrs. Judy Arnett, Secretary/Treasurer

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

STAFF MEMBERS PRESENT:

Mr. Kevin Costello, AICP, Executive Director
Ms. Jan Hancock, Secretary
Mr. Mitch Light, Assistant Zoning Administrator/ZEO
Mr. Todd Morgan, Planner
Mr. Kevin Wall, AICP, CDT – Director, Zoning Services

(see Committee Report). The applicant has signed the letter agreeing to the conditions.

Mr. Zimmer moved by resolution to Boone County Fiscal Court to approve the request based on the Committee Report. Mr. White seconded the motion.

Mr. Zimmer stated that he did not attend the Committee Meeting. In regard to the previous zone change (the parcel that is now the tire store), he is concerned about promises made and promises kept. The privacy fence is up, but he did not see the landscaping as conditioned. Mr. Wall explained that there is landscaping along the Hebron Park frontage. He stated that the issue may be that there were very different landscaping regulations in 1993-94 when this was done and what was considered "substantial" then would probably not be considered substantial now.

There being no further comments, the Chairman asked for a vote on the motion made by Mr. Zimmer and it carried unanimously.

4. Zoning Map Amendment

The request of Timothy B. Theissen, Strauss & Troy (applicant) for Future Properties, LLC (owner) to consider a Zoning Map Amendment from Commercial Two (C-2) to Commercial Services (C-3) for an approximate 12 acre tract at 8145 Mall Road, Florence, Kentucky. The request is for a zone change to allow sales and service of new and used marine craft and related accessories and sporting equipment, in addition to existing antique mall and cabinet shop.

Staff Member Todd Morgan presented the Committee Report which recommended approval of the request based on the findings of fact, but subject to conditions (see Committee Report). The property owner has signed the letter agreeing to the conditions.

Mr. White moved by resolution to the City of Florence to grant the Zoning Map Amendment request based on the Committee Report. Mrs. Wilson seconded the motion.

Mr. Ries referred to Condition #2 regarding the display of boats in the front parking lot. He questioned the size of the boats and how close they would be to Mall Road. Mr. Morgan reviewed the information in the Staff Report with Mr. Ries. Mr. Costello asked for clarification of "permanent display".

Attorney Tim Theissen stated that the boats are 16 feet to 27 feet – they do not sell houseboats. They intend to park four boats out in this display area. He stated that the Committee preferred that the boats not be on trailers and they will build a structure to put them on. Mr. Ries asked "how high will that be?" He also asked for more definitive information about the size of the boats. Mr.

Theissen responded that the boats will be up to 27 feet and will be high up enough to get them off the ground.

Mr. Ries questioned there being no restrictions on having boats similar to a sign on Mall Road. Mr. Light responded that display is allowed in the front yard in the C-3 zoning district. Mr. Ries stated that four boats on pedestals is a good size sign and commented that a used car lot could do something similar with cars. Mr. Costello stated that there are car dealers who put cars up on ramps and that is allowed. Mr. Wall stated that the C-3 zone allows displays in the front yard area, which is the area between the front building line up to the required landscaping area.

Chairman Caddell stated that Staff is talking about display and Mr. Ries is talking about storage. Mr. Wall responded that if you are displaying, you are also storing. Chairman Caddell stated that storing four boats along Mall Road sets a dangerous precedent. He commented about how many places there are where people have a retail product they could put out next to a road. He stated that he is not opposed to this use in this location, but he is opposed to allowing them to use this display as the sign that they were not able to get. For that reason, he will vote against it. Mr. Morgan noted that this was a Staff Concern.

Mr. Ries stated that he is not against the use. He is opposed to allowing four boats on the road without strict requirements on how high they can be, how big, etc.. He stated that four 27-foot boats is a heck of a sign.

Mr. Theissen responded that they were going to put them on trailers, but the Committee recommended that they not be on trailers. There would be no need for them to be any more than three feet off the ground. It is not their intent to put them up high.

Chairman Caddell stated that his concern would be future issues with people who want to put their product out on the main road – boats may not be offensive, but there are other items that we do not want to see.

Mr. McMillian stated that he brought up at the Public Hearing that outside storage is outside storage – and he will vote against outside storage.

Mr. Newman stated that the Committee went back and forth on this issue. He brought up the permanent displays because it would help visually if the boats were on something permanent. He stated the boats would not be right on Mall Road and there is a 20 - 30 foot drop there. Someone parked on Mall Road might not even see them. From the road, you can look almost across the top of the building.

Chairman Caddell stated that he is concerned about when the next guy comes in and he is level with the road. Will it be a valid excuse that the Planning Commission allowed this because it was twenty feet below grade? He is opposed to it.

Mr. Zimmer noted that there were comments that they want to put the four boats out there because of the non-conforming sign. Mr. Costello responded that there is a long history to the sign. In the mid 1980's, there was a different sign code. The developer went before the Board of Adjustment for a Variance, and there was agreement between the developer and the Board of Adjustment that he be allowed only one free-standing sign advertising everything on the site. Swallen's went in there, but there was no written agreement to advertise Swallen's on the sign. When the antique mall went in there, it was questioned as to whether Mr. Green was living up to what he agreed to by not allowing them to advertise on the sign. They subsequently worked out an agreement between themselves. It could happen that Hern Marine will work something out to advertise on the sign. There is room on the sign, but they would have to reconfigure the space. The sign is non-conforming to the current code.

Mr. Zimmer asked if the current code allows boats to be used as signs. Mr. Wall responded that the code allows display of merchandise in the front yard area in C-3. He referenced Article 31 under Accessory Uses and Structures.

Mr. Zimmer stated that in his opinion, the display is a sign advertising the goods they are selling and he has a difficult time with the precedent it will set. He has seen houseboats being used as signs and they look terrible. He noted the comments that it is below grade and stated that there is no restriction to prevent them putting the four boats up on a pole above the line of sight.

At this time, Mr. Theissen withdrew the part of the Concept Plan regarding the four boats stored out front. He stated that the only sign they will have is a small sign on the corner of the building. The size of the sign is determined by the lineal feet of building frontage and they only have one hundred feet of building frontage. The sign will be extremely small despite the size of the development. He does not think they can get on the larger sign. Mr. Costello advised that they can seek a Variance for the building-mounted sign from the Board of Adjustment. Mr. Theissen stated that if it is a significant problem, his client is prepared to withdraw the display area.

Mr. White withdrew his motion. Mrs. Wilson withdrew the second to the motion. Mr. White moved by resolution to the City of Florence to grant the request based on the Committee Report, but eliminating Condition #2 as written and replacing it with "no storage or display of boats in the front yard". Mrs. Wilson seconded the motion.

Mr. Ries stated that the use would be a good addition to the City of Florence and he hopes that Florence City Council and Florence Board of Adjustment will work with the applicant on the signage issues.

There being no further discussion, the Chairman asked for a vote on the motion made by Mr. White and it carried unanimously.

EXHIBIT
“B”

COMMITTEE REPORT

TO: Boone County Planning Commission

FROM: Earl White, Chairman

DATE: October 18, 2000

RE: Request of Timothy B Theissen, Strauss & Troy (applicant) for Future Properties, LLC (owner) to consider a Zoning Map Amendment from Commercial Two (C-2) to Commercial Services (C-3) for an approximate 12 acre tract located at 8145 Mall Road, Florence, Kentucky. The request is for a zone change to allow sales and service of new and used marine crafts and related accessories and sporting equipment, in addition to existing antique mall and cabinet shop.

REMARKS:

We, the Committee, recommend approval of the above referenced Zoning Map Amendment application based on the following findings of fact and with the following conditions.

FINDINGS OF FACT:

1. The Committee has concluded that the request is in general agreement with the 1995 Boone County Comprehensive Plan for the following reasons:
 - A. The Land Use Element (Area C-4: Camp Ernst Area, pp. 222-223) states that the Mall Road area should continue to develop as a regionally-oriented commercial district. This regionally-oriented growth should be confined to Mall Road and Houston Road, and should not expand onto U.S. 42, KY 18 or Hopeful Road. However, the highway-scaled, automobile oriented appearance of this growth should be minimized through the provision of pedestrian improvements, smaller facilities within outlots in conjunction with larger strip-style centers, multiple, scattered parking areas in lieu of large central parking areas, and street trees along Mall Road.”
 - B. Although the 1995 Boone County Comprehensive Plan's “2020 Land Use Plan” designates the site in question as a mixture of “Commercial”, “Urban Density Residential”, and “Rural Density Residential”, the Committee concluded that the entire parcel needs to be shown as “Commercial”. The determination was based on the fact the entire building and parking areas are currently within the “Commercial” designation.

2. The Committee has concluded that the attached conditions are necessary to achieve consistency with the specific goals, objectives, and policies of the 1995 Boone County Comprehensive Plan. The Committee has also concluded that the attached conditions are necessary to mitigate any foreseeable community impacts that may be created by the development. The property owner has signed a letter demonstrating agreement with these conditions.

CONDITIONS:

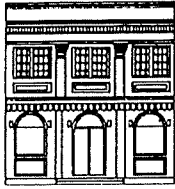
1. Future tenants in any building will be prohibited from operating a business which performs any of the following Commercial Services (C-3) uses:
 - a. Commercial parking facilities;
 - b. Sales of lumber, building materials, heating and plumbing equipment, electrical supplies, hardware and farm equipment;
 - c. Sales, automotive repair, or lease of new and used motor vehicles including tires, batteries and accessories;
 - d. Eating and drinking establishments including alcoholic beverages and with drive-thru franchise style fast food facilities;
 - e. Sales of mobile homes, sheds, car ports and other pre-fabricated buildings;
 - f. Garden and landscape sales, lawn furniture and the like, farm and garden supply outlots including equipment and vehicles;
 - g. Food lockers including preparation facilities and individualized household goods storage lockers (mini warehouses);
 - h. Equipment, automobile, truck rental and leasing services;
 - i. Gasoline filling stations, automobile repair facilities, junk yards, wrecking or other storage;
 - j. Convenience stores;
 - k. Nursery and day care centers;
 - l. Hotels and motels including convention facilities;
 - m. Flea markets;
 - n. Funeral homes, crematoriums, cemeteries or mausoleums;
 - o. Welding or limited fabrication of metal products;
 - p. Truck stops.

2. There will be no storage or display of boats in the front yard.
3. The outside storage and display areas which are shown on the Concept Development Plan are limited to boats.
4. Stockade fencing must be used the in the north and western elevations of the 40,000 square foot display and storage area which is located in the rear parking lot. This stockade fencing will screen the view of this storage area from Paddock Club Apartments.
5. No major boats repairs can be made on site. This definition includes overhauling motors, fiberglass repair, painting, and structural repairs.

A copy of the Public Hearing minutes accompanies the findings and recommendation serving as a summary of the evidence and testimony presented by the proponents and opponents of this request. Attached is the signature page for the Zone Change Committee Vote.

SUPPORTING INFORMATION

BOONE COUNTY PLANNING COMMISSION



2995 Washington Street • Burlington, KY 41005

www.boonecountyky.org

Phone: (859) 334-2196

Fax: (859) 334-2264

E-mail: plancom@boonecountyky.org

October 18, 2000

Future Properties, LLC
c/o Timothy B. Theissen
Strauss & Troy
50 East RiverCenter Blvd., Suite 1400
Covington, KY 41011

RE: Request of **Timothy B Theissen, Strauss & Troy (applicant) for Future Properties, LLC (owner)** to consider a Zoning Map Amendment from Commercial Two (C-2) to Commercial Services (C-3) for an approximate 12 acre tract located at 8145 Mall Road, Florence, Kentucky. The request is for a zone change to allow sales and service of new and used marine crafts and related accessories and sporting equipment, in addition to existing antique mall and cabinet shop.

Dear Mr. Theissen:

The following represents the conditions of approval as agreed to by the Boone County Planning Commission's Zone Change Committee. Please have an officer of Future Properties, LLC sign the space provided on the following page if they are in agreement with the following conditions. Please return this signed letter to the Boone County Planning Commission office as soon as possible.

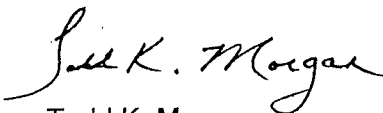
Conditions

1. Future tenants in any building will be prohibited from operating a business which performs any of the following Commercial Services (C-3) uses:
 - a. Commercial parking facilities;
 - b. Sales of lumber, building materials, heating and plumbing equipment, electrical supplies, hardware and farm equipment;
 - c. Sales, automotive repair, or lease of new and used motor vehicles including tires, batteries and accessories;
 - d. Eating and drinking establishments including alcoholic beverages and with drive-thru franchise style fast food facilities;
 - e. Sales of mobile homes, sheds, car ports and other pre-fabricated buildings;
 - f. Garden and landscape sales, lawn furniture and the like, farm and garden supply outlots including equipment and vehicles;

Mr. Timothy B. Theissen
October 18, 2000
Page 2

- g. Food lockers including preparation facilities and individualized household goods storage lockers (mini warehouses);
 - h. Equipment, automobile, truck rental and leasing services;
 - i. Gasoline filling stations, automobile repair facilities, junk yards, wrecking or other storage;
 - j. Convenience stores;
 - k. Nursery and day care centers;
 - l. Hotels and motels including convention facilities;
 - m. Flea markets;
 - n. Funeral homes, crematoriums, cemeteries or mausoleums;
 - o. Welding or limited fabrication of metal products;
 - p. Truck stops.
2. There will be no storage or display of boats in the front yard.
 3. The outside storage and display areas which are shown on the Concept Development Plan are limited to boats.
 4. Stockade fencing must be used the in the north and western elevations of the 40,000 square foot display and storage area which is located in the rear parking lot. This stockade fencing will screen the view of this storage area from Paddock Club Apartments.
 5. No major boats repairs can be made on site. This definition includes overhauling motors, fiberglass repair, painting, and structural repairs.

Sincerely,



Todd K. Morgan
Planner

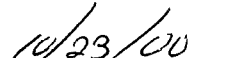
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Mr. Timothy B. Theissen
October 18, 2000
Page 3

I hereby certify that I am an officer of Future Properties, LLC. My signature indicates that I am in agreement with the listed conditions of approval for a Zoning Map Amendment from Commercial Two (C-2) to Commercial Services (C-3) for an approximate 12 acre tract located at 8145 Mall Road, Florence, Kentucky. The request is for a zone change to allow sales and service of new and used marine crafts and related accessories and sporting equipment, in addition to existing antique mall and cabinet shop.



Name & Title



Date

PROPERTY TRANSFER TAX PAID \$1864.50
JERRY W. ROUSE, CLERK

BOOK 023 PAGE 232

May 16 42 - 2040A

QUIT CLAIM DEED

Swallen's, Inc., an Ohio corporation, whose address is P.O. Box 27146, Cincinnati, Ohio 45227, for and in consideration of the sum of \$1,864,300.00 paid, the receipt of which is acknowledged hereby, grants and quitclaims to Future Properties, LLC, a Kentucky limited liability company, whose mailing address is P.O. Box 708, Independence, Kentucky 41051, any and all interest in the real property described as follows:

PARCEL I

Being all of Lot #1 of a plat of survey as recorded in Plat Book 20, Page 7, of the Boone County Records at Burlington, Kentucky; and being more particularly described as follows:

BEGINNING at a point in the Westerly right-of-way line of Mall Road, said point being located 75.00 feet left of centerline Station 20 + 65.00 for Mall, and also being Lot #1 Southeast property;

THENCE S. 82° 29' 30" W. along the Westerly right-of-way line of Mall Road, 100.00 feet to an angle point in said right-of-way line;

THENCE S. 7° 30' 30" E. continuing along said right-of-way line, 1.50 feet to a point in said right of way line, said point being George Whitton's northeast property corner;

THENCE, N. 67° 09' 53" W. along the common property line between Lot #1 and George Whitton, 94.50 feet to an angle point;

THENCE S. 75° 15' 07" W. continuing along said common property line 279.90 feet to an angle point;

THENCE N. 69° 09' 53" W. continuing along said common property line 160.40 feet to an angle point;

THENCE N. 89° 16' 53" W. continuing along said common property line 59.11 feet to a point in said common property line, said point being a common corner with Adele Caldon and being her Southeast property corner;

THENCE N. 23° 17' 35" E. along the common property line between Lot #1 and Adele Caldon, 189.25 feet to an angle point;

THENCE N. 16° 42' 25" W. continuing along said common property line, 293.40 feet to a point in the Northwest corner of Lot #1;

THENCE N. 73° 17' 35" E. along the Northerly line of Lot #1, 216.00 feet to an angle point;

RECORDED
MAY 17 1942
BOONE COUNTY CLERK
J.W.R.

RETURN TO: J & S

2/16

THENCE S. 16° 42' 25" E. continuing along said Northerly line of Lot #1, 55.00 feet to an angle point;

THENCE N. 82° 29' 30" E. continuing along said Northerly property line, 156.88 feet to an angle point;

THENCE S. 7° 30' 30" E. continuing along said Northerly line of Lot #1 18.00 feet to an angle point;

THENCE N. 82° 29' 30" E. continuing along said Northerly line of Lot #1 230.00 feet to a point in the Westerly right-of-way line of Mall Road, said point being the Northeast corner of Lot #1 said point also being located 75.00 feet left of centerline station 25 + 75.00 for Mall Road.

THENCE S. 7° 30' 30" E. along the Westerly right-of-way line of Mall Road, 510.00 feet to the Point of Beginning.

CONTAINING 6.9259 Acres.

Being subject to a natural drainage easement running along Utterback Creek.

Also subject to all sanitary easement and water line easement of record.

Prior Deed Reference: Book 332, page 228

PARCEL II

Being located at the Easterly terminus of Rosetta Drive in the city of Florence, Kentucky, approximately 2000 feet Est of Ky. Rte. 1018, being the same property as conveyed to the Grantors by deeds as recorded in Deed Book 174, page 395, and Deed Book 179, Page 92, of the records of the Boone County Clerk at Burlington, Kentucky, and being more particularly described as follows:

BEGINNING at a point in the Utterback Creek in the line of Whitton and corner of Berkshire, said point being marked by an iron pin;

THENCE, with the line of Whitton and generally following Utterback Creek, N. 89° 16' 53" W. for a distance of 175.89 feet to a point, said point being marked by an iron pin;

THENCE, continuing generally with the Utterback Creek, S. 72° 02' 12" W. for a distance of 275.34 feet to a point in the Utterback Creek and in the Easterly line of a 50 foot wide right-of-way;

THENCE, with the line of said right-of-way, N. 7° 39' 16" W. for a distance of 324.00 feet to a point, said point being marked by an iron pin;

THENCE, N. 82° 20' 43" E. for a distance of 149.66 feet to a point, said point being marked by an iron pin;

THENCE, N. 7° 49' 17" W. for a distance of 209.30 feet to a point, said point being corner to Chelsea Development Corporation and being marked by an iron pin;

THENCE with the line of Chelsea Development Corporation, N. 74° 07' 43" E. for a distance of 333.67 feet to a point in the line of Berkshire, said point being marked by an iron pin;

THENCE, with the line of Berkshire, S. 16° 42' 25" E. for a distance of 400.00 feet to a point, said point being marked by an iron pin;

THENCE, continuing with the line of Berkshire, S. 23° 17' 35" W. for a distance of 189.25 feet to the Place of Beginning.

CONTAINING 5.352075 Acres and being subject to utility easements of record.

SAVE AND EXCEPT the following 0.0742 Acres:

Situated in the City of Florence, County of Boone, State of Kentucky and being a 10 feet wide strip of land more particularly described as follows:

Beginning at a point found by measuring from the Southwest corner of Lot 1, Y'All Mall Subdivision, Plat book 20, Page 7, Boone County Clerk's records at Burlington, thence North 89° 16' 53" West, 175.89 feet along Swallens (D.B. 332, Page 262) South line, thence continuing along said line South 72° 02' 12" West, 265.18 feet to the True Point of Beginning;

THENCE from the True Point of Beginning and with said South line South 72° 02' 12" West, 10.16 feet;

THENCE along Swallens West line North 07° 39' 16" West, 324.00 feet;

THENCE along Swallens North line North 82° 20' 43" East, 10.00 feet;

THENCE South 07° 39' 16" East, 322.18 feet to the point of beginning.

Containing 0.0742 acres of land and being subject to all easements and rights-of-way of record.

Prior Deed Reference: Book 332, page 262, recorded at
Deed Book 333, page 170

All references are to the Boone County Clerk's records at Burlington, Kentucky. Swallen's, Inc. filed its petition for relief under Chapter 11 of the Bankruptcy Code on October 31, 1995, Case No. 95-14476 in the United States Bankruptcy Court for the Southern District of Ohio, Western Division. Swallen's, Inc., as debtor in possession, moved the Court to confirm the sale of the above referenced property, a hearing was conducted on August 26, 1996, and at the conclusion of that hearing, the bankruptcy Court approved the sale of the subject property to the Grantee as is evidenced by the attached Order dated August 28, 1996. A copy of the bankruptcy Court's Order Granting Motion of Debtor for Confirmation of Sale of Real Property Located at 8145 Mall Road, Florence, Kentucky is attached hereto and incorporated herein by reference. This conveyance is made pursuant to said Order.

Together with all the privileges and appurtenances to the same belonging. To have and to hold forever the same to Grantee in the fashion and manner stated above in the conveying clause.

WITNESS the hand of the grantor, pursuant to duly authorized resolution and pursuant to the attached Court order, this 16th day of September, 1996.

Signed in the presence of:

SWALLEN'S, INC.

James J. Carroll
[Signature]

By: *Steven Victor*
Steven Victor
Its: President

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this 16 day of September, 1996 by Steven Victor, President of Swallen's, Inc., the grantor in the foregoing deed, who acknowledged the signing thereof to be his voluntary act and deed.



James J. Carroll
Notary Public
JAMES J. CARROLL, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has an unexpired
date through 1-01-98 O.S.O.

CERTIFICATE OF CONSIDERATION

The undersigned hereby swears and affirms, under penalty of perjury, that the consideration recited in the foregoing instrument is the full actual consideration paid or to be paid for the property transferred hereby.

Steven Victor
Swallen's, Inc., Grantor
By: Steven Victor, its President

Reuben D. Case
Future Properties, LLC, Grantee
By: Reuben D. Case, Member
President of DMC Trucking, Inc.

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing certificate of consideration instrument was acknowledged before me this 16 day of September, 1996 by Steven Victor, President of Swallen's, Inc., the grantor in the foregoing deed, who acknowledged the signing thereof to be his voluntary act and deed.



James A. Carroll
Notary Public
JAMES A. CARROLL, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My Commission has no expiration
Date Expires 10/01/01

STATE OF KENTUCKY)
) SS:
COUNTY OF BOONE)

The foregoing instrument was acknowledged before me this 17th day of September, 1996 by Richard D. Crist, *as President of DMC Trucking, Inc.* member of Future Properties, LLC, the grantee in the foregoing deed, who acknowledged the signing thereof to be his voluntary act and deed.

Sharon S. Ellett
Notary Public
my commission expires: 2/5/00
my jurisdiction is: state at large

This instrument was prepared by:
Kevin R. Feazell, Esq.
CORS & BASSETT
1200 Carew Tower
Cincinnati, Ohio 45202
(513) 532-8200

Kevin R. Feazell
Kevin R. Feazell, Esq.

Inc., 788 F.2d 143 (3d Cir. 1986). Further, the Successful Bidder shall be afforded all protections and benefits of an entity purchasing assets in good faith within the meaning of 11 U.S.C. § 363(m);

4. The Property shall be sold to the Successful Bidder free and clear of any claim, interest, lien, or security interest of any party, pursuant to 11 U.S.C. § 363;

5. Any interest, lien, or security interest encumbering or relating to the Property shall attach to the proceeds of the sale with the same priority, validity, force and effect as previously existed with respect to the Property, with all such interests, liens, or security interests to be subject to all rights of the Debtor and other parties in interest pursuant to applicable law, including state law and the Bankruptcy Code. The proceeds shall be distributed by the Debtor in accordance with the foregoing interests, liens, or security interests without further order of this Court. At closing, all proceeds net of commissions, pro-rated real estate taxes, and any required, non-exempt conveyance fees, shall be paid to Star Bank, N.A. ("Star Bank"), until all of the Debtor's obligations to Star Bank are paid in full;

6. The Successful Bidder shall pay to the relevant state and local authorities any and all transfer taxes with respect to this sale of the Property, including those required by Kentucky Revised Statute § 142.050, and such payments shall be deducted from the amount of the purchase price as provided in paragraph 1 herein;

7. The unpaid real estate taxes and assessments related to the Property shall be prorated as of the earlier of either September 17, 1996, or the date of closing provided for in paragraph 2 herein ("the Proration Date"), and shall be based on the most recent available tax bills. The prorated amount of any taxes or assessments arising or accruing before the Proration

Date shall be deducted from the purchase price as provided in paragraph 1 herein. Except for the deduction from the amount of the purchase price as provided for herein, the Debtor shall not be responsible for the payment of any unpaid real estate taxes and assessments to the Property;

8. Neither the Debtor, the Successful Bidder, nor any other party asserting any interest in the Property, without exception, shall be required to execute or file releases, termination statements, assignment, waiver or consent documents or instruments as a condition to the effective consummation or implementation of the sale pursuant to this Order, provided, however, that neither party to the Real Estate Purchase and Sale Agreement ("Agreement"), which Agreement sets forth the terms of this sale, is hereby excused from performing any obligation required under the Agreement;

9. Each and every federal, state and local government agency or department is hereby directed to accept for filing any or all documents or instruments necessary or appropriate to consummate the sale of the Property pursuant to this Order;

10. The Debtor and the Successful Bidder are hereby authorized and directed to promptly execute and deliver the Agreement any documents contemplated thereby and to do all other things and take all further actions necessary or appropriate to consummate the sale of the Property; and

11. This is a final and appealable order.

So ordered.

Handwritten notes:
Sept 17/96
11:30 AM
11/17/96

Signature of Burton Perlman
Burton Perlman
U.S. Bankruptcy Judge

ENTERED
U. S. BANKRUPTCY COURT
AUG 28 1996
SOUTHERN DISTRICT OF OHIO
BY *[Signature]*
CLERK

State of Kentucky, County of Boone
JERRY W. ROUSE, Clerk of the Boone County
Court, do certify that the foregoing
Order was, on the 17 day of
Sept.
1996 at 3:18 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 17 day of Sept.
19 96
JERRY W. ROUSE, CLERK
By *[Signature]* D.C.



Concept Plan
APPROVED with Conditions
 Staff *J. L. K. McGeary*
 Date *10-18-00*
 Boone County
 Planning Commission

- Buildings
- Roads
- Paved Road
- Bridge
- Edge of Pavement
- Invisibile
- Unpaved
- Shoulder
- Fences
- Fence
- Paved Parking
- Unpaved Parking
- Cul-de-sac
- Index
- Index Questionable
- Index Depression
- Intermediate Depression
- Intermediate Depression Questionable
- Intermediate Depression Questionable
- Inset wall
- Cretes
- Paved Driveway
- Parcel Polygons



Produced by the
 Boone County Planning Commission
 GIS Services Section
 August 10, 2000

100 0 100 200 Feet
 1 inch equals 100 feet

AUG 10 2000
 CONCEPT DEVELOPMENT PLAN
 FUTURE PROPERTIES, LLC
 8145 Mall Road, Florence, Kentucky

ORDINANCE NO. D-23-00

AN ORDINANCE ADOPTING AND APPROVING A ZONING MAP AMENDMENT FOR AN APPROXIMATE 12 ACRE SITE LOCATED AT 8145 MALL ROAD IN THE CITY OF FLORENCE, KENTUCKY, FROM ITS CURRENT ZONING OF COMMERCIAL TWO (C-2) TO COMMERCIAL SERVICES (C-3), THIS REZONING BEING TO ALLOW SALES AND SERVICE OF NEW AND USED MARINE CRAFT AND RELATED ACCESSORIES AND SPORTING EQUIPMENT, WHICH ARE IN ADDITION TO THE EXISTING ANTIQUE MALL AND CABINET SHOP, SUBJECT TO A CONCEPT DEVELOPMENT PLAN AND AGREED CONDITIONS. (FUTURE PROPERTIES, LLC PROPERTY)

WHEREAS, the City of Florence, Kentucky, is a member of the county-wide planning unit with a county-wide planning commission known as the Boone County Planning Commission, and

WHEREAS, the Boone County Planning Commission has recommended approval, subject to a development plan and agreed conditions, of a zoning map amendment for an approximate 12 acre site located at 8145 Mall Road in the City of Florence, Kentucky, to rezone this property from its current zoning of Commercial Two (C-2) to Commercial Services (C-3), to allow sales and service of new and used marine craft and related accessories and sporting equipment, subject to a Concept Development Plan and agreed conditions, these uses being in addition to the existing antique mall and cabinet shop, and

WHEREAS, the Boone County Planning Commission recommendation for approval is based upon certain findings and conditions attached to its Resolution of Recommendation, all of which have been reviewed by the City Council for the City of Florence, Kentucky.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF FLORENCE, KENTUCKY, AS FOLLOWS:

SECTION I

That the zoning map amendment for the approximate 12 acre site located at 8145 Mall Road in the City of Florence, Kentucky, to rezone the subject property from its current zoning of Commercial Two (C-2) to Commercial Services (C-3), to allow sales and service of new and used marine craft and related accessories and sporting equipment, subject to agreed conditions and a Concept Development Plan, shall be and is hereby approved, these uses being in addition to the existing antique mall and cabinet shop. The real estate which is the subject of this Ordinance is more particularly described in Exhibit "A", attached hereto and incorporated herein by reference. The zoning map of Boone County, Kentucky, as it applies to the City of Florence,

Kentucky, shall be designated to reflect the approval of this zoning map amendment for this subject property.

SECTION II

Approval of this zoning map amendment is granted subject to the conditions, terms and provisions of the Boone County Planning Commission recommendation, including the Committee Report made a part of that recommendation, and all provisions comprising the development plan herein, a copy of that recommendation and Committee Report of the Boone County Planning Commission being attached, marked Exhibit "B" and incorporated herein by reference as if fully set out, this recommendation being in the form of Resolution No. R-00026-A of the Boone County Planning Commission along with the referenced exhibits to that Resolution.

SECTION III

In addition to those conditions set forth in the recommendation of the Boone County Planning Commission, this approval of the City of Florence, Kentucky, through its City Council, shall be and is hereby subject to additional conditions that have been agreed to in writing by the property owner/applicant as shown on Exhibit "C", a copy of which is attached and incorporated herein by reference.

SECTION IV

This approval is granted based on findings of fact made by the Boone County Planning Commission and contained within its recommendation, including the Committee Report of that Commission, which is attached and part of the Commission's Resolution No. R-00-026-A, marked Exhibit "B" hereto.

SECTION V

If this approval for this zoning map amendment shall be held invalid in whole or in part, by any court of proper jurisdiction, such invalidity shall not affect the validity of any of the other zoning regulations, zoning map or comprehensive plan provisions as they are severable from this Ordinance and they are intended to have effect regardless of any invalidity relating to this particular Ordinance.

SECTION VI

Publication of this Ordinance is hereby authorized to be by summary publication
in accordance with Kentucky law.

PASSED AND APPROVED ON FIRST READING THIS 28th DAY OF November,
2000.

PASSED AND APPROVED ON SECOND READING AND PUBLICATION ORDERED THIS
5th DAY OF December, 2000.

APPROVED:

Dean E. Whalen
MAYOR

ATTEST:

Betsy R. Conrad
CITY CLERK

**ADDITIONAL CONDITIONS
TO**

Request of **Timothy B. Theissen, Strauss & Troy (applicant) for Future Properties, LLC (owner)** to consider a zoning map amendment from Commercial 2 (C-2) to Commercial Services (C-3) for an approximate 12-acre tract located at 8145 Mall Road, Florence, Kentucky. The request is for a zone change to allow sales and service of new and used marine crafts and related accessories and sporting equipment, in addition to existing antique mall and cabinet shop.

1. Add to Condition #1 the following prohibited uses:

R. Dwelling Units

S. Rental of Trucks or Trailers

2. Amend Condition #2 to read as follows:

"There will be no storage or display in the front yard or anywhere else other than in the designated fenced areas."

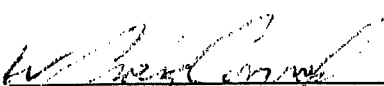
3. Amend Condition #3 to read as follows:

"The outside display areas which are shown on the Concept Development Plan are limited to boats and boat trailers."

4. Add a new Condition #6 as follows:

"The forty thousand square foot (40,000 sq.ft.) boat and boat trailer display area shall conform to the size and location as shown on the Concept Development Plan."

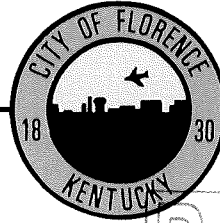
I hereby certify that I am an officer of Future Properties, LLC. My signature indicates that I am in agreement with the above listed conditions of approval for a zoning map amendment from Commercial 2 (C-2) to Commercial Services (C-3) for an approximate 12-acre tract located at 8145 Mall Road, Florence, Kentucky. The request is for a zone change to allow sales and service of new and used marine crafts and related accessories and sporting equipment in addition to existing antique mall and cabinet shop.



Name and Title

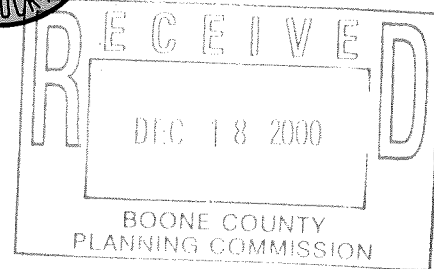
Owner

11-23-00
Date



December 15, 2000

Mr. Kevin P. Costello, AICP, Executive Director
Boone County Planning Commission
2995 Washington Street
Burlington, KY 41005



Re: Request of **Timothy B. Theissen, Strauss & Troy (applicant)** for **Future Properties, LLC (owner)** for a Zoning Map Amendment on an approximate 12-acre site located at 8145 Mall Road, Florence, Kentucky. The request is to rezone the site from Commercial Two (C-2) to Commercial Services (C-3) in order to allow sales and service of new and used marine craft and related accessories and sporting equipment, in addition to the existing antique mall and cabinet shop. (R-00-026-A)

Dear Mr. Costello:

At the December 5, 2000 meeting of Florence City Council, the above referenced recommendation from the Boone County Planning Commission was approved with the second reading of Ordinance No. O-23-00.

The recommendation received by this legislative body from the Boone County Planning Commission included certain conditions that were incorporated into City Council's Ordinance of approval. Florence City Council also imposed **certain additional conditions** agreed to by the applicant. A copy of a letter setting out these additional conditions (Exhibit "C") is attached and incorporated into Ordinance No. O-23-00.

Please contact me if you have any further questions regarding this Ordinance.

Sincerely,



Betsy R. Conrad

Encs.

Copies: Hugh O. Skees, Esq.
William Viox, City Engineer
Public Services Director