

APPLICATION FOR ZONING ACTION

TO: Boone County Planning Commission City of Union Board of Adjustment
 City of Florence Board of Adjustment City of Walton Board of Adjustment
 Boone County Board of Adjustment Zoning Enforcement Officer

FOR: Zoning Text Amendment Zoning Map Amendment
 Comprehensive Plan Change Preliminary Plat Approval
 Improvement Plat Approval Final Plat or Deed Plat
 Conditional Use Permit Site Plan Review
 Concept Development Plan Historic District Overlay
 Preliminary Development Plan Sign Permit or Zoning Permit
 Change of Non-Conforming Use Appeal or Variance
 Design Review Board Hearing and Certificate of Appropriateness

Applicant: Ray Merkel, First Commercial Realty, Inc. Owner
 Agent
Address: 8172 Mall Road Center, Florence, Kentucky 41042
Telephone: 371-9000

Location: U.S. Route 25 & 42 South of Turfway Road
Name of Owner: Floyd C. Ellis
Address of Owner: Highland Realty Company, P.O. Box 126, Wilder, Kentucky 41072

Zone: Recreation (R) Area in Acres: .550
Deed Book: 210 Page No.: 83 Group No: _____

Description of Request: Zoning Map Amendment for subject property to C-2 per the comprehensive zoning plan for development of a Sherwin Williams Retail Store.

Owner's Signature: [Signature] ^{Agent} Highland Realty Co.
Date: 11/22/83 Applicant's Signature: [Signature]

FOR PLANNING COMMISSION USE: 250.00 per ACRE
50.00
20.00 Adjoining Owner
12.00
Application date and fee of \$ 332.00 Received: December 5, 1983

Referred to: Public Hearing 1-11-84 For Meeting Date: _____
Action: _____ Date: _____

ZONE CHANGE REQUEST BY RAY MERKEL
FOR PROPERTY ON U.S. 25, FLORENCE

This is a zone change request by Ray Merkel acting as agent for the property owner Floyd C. Ellis for a 0.55 acre tract located on the south side of U.S. 25 east of Dortha Avenue and west of the Southern Trails Restaurant. This request is to change the current zoning of Recreation, R, to Commercial Two, C-2, zoning.

Adjoining properties to the north, west, and south are currently zoned Commercial Two, C-2. To the east is current Recreation, R, zoning.

This property along with property directly to the east is currently undeveloped. To the south is residential land use. And to the east and north is current commercial land use.

The Land Use map of the Comprehensive Plan indicates a planned future land use of Commercial for this subject tract along with adjoining tracks to the north, east, and west. To the south is planned High Density Residential. Regarding the planned Commercial use the text states:

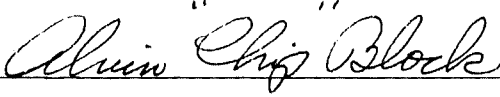
Neighborhood or convenience oriented commercial districts are much more broadly dispersed throughout the County. The older central business areas of several communities will be maintained and expanded as neighborhood or convenience districts, including those in Florence, Burlington, Bullittsville, Taylorsport, Constance, Petersburg, Belleview, Union, and Verona. (on page 3.7)

Regarding the planned High Density Land Use it is stated:

New high density residential development is planned in several locations throughout the County where a high level of urban services exist or are planned to serve such development. In the existing Florence urban service area, new high density development could occur east of I-75 north and south of Turfway Road; on the present site of the Florence Drive-In Theatre. And within the City, future development is planned to include residential infill of existing residential areas, including high density residential at Turfway and I-75, at the site of the Florence Drive-In Theatre, and on Tanner's Lane. Redevelopment of the central area should include high density housing for the elderly. (pg. 3.4 AND 3.12)

A Concept Development Plan was submitted showing a planned development of a Sherwin-Williams retail store. Access for vehicles will be provided by one drive off of U.S. 25. No other access is planned. The proposed building will have a ground coverage of around 4,000 square feet. It should be noted that the billboard on the site would be removed if the zone change is granted, this being stated in their Concept Plan.

Should this request be recommended for approval, due to the Land Use map indicating a planned use of Commercial, there would be no necessary changes in that it does conform to the Comprehensive Plan.

A handwritten signature in cursive script that reads "Alvin 'Chip' Block". The signature is written in black ink and is positioned above a horizontal line.

Alvin "Chip" Block
Zoning Enforcement Officer

ACB/sr

BOONE COUNTY PLANNING COMMISSION

PUBLIC HEARINGS

JANUARY 11, 1984

8:00 P.M.

Chairman Kroger called the Public Hearing to order at 8:05 P.M. for the request of Ray Merkel, Agent for Floyd C. Ellis, owner, of property located at U.S. Route 25 and 42, South of Turfway Road, for a zoning map amendment from its present zone of Recreation (R) to Commercial Two (C-2) on a .550 acre site, for the purpose of the development of a Sherwin Williams Retail Store. Mr. Block read his Enforcement Officer's Report and gave a slide presentation. Chairman Kroger asked Mr. Merkle if he had any comments. Mr. Merkle stated that the Comprehensive Plan calls for the area to be rezoned for retail/commercial use in the future. He stated it is in the central business area of Florence and that it is appropriate for retail store. He stated the retail store is a Sherwin Williams decorating type store, and there will not be a large generation of traffic.

Chairman Kroger asked if there was anyone else in behalf of the request. No one responded. Chairman Kroger asked if there was anyone in opposition. No one responded. In response to Chairman Kroger Mr. Block stated the applicant submitted a complete Concept Development Plan. Hearing no further comments, Chairman Kroger closed the Public Hearing at 8:20 P.M. Chairman Kroger informed the applicant that action would be taken on January 18, 1984, at 8:00 P.M..

Chairman Kroger opened the Public Hearing at 8:21 P.M. for the request of Betty and John Lucas, for a zoning map amendment for property located at 828 Donaldson Rd. Erlanger, in a Suburban Residential one (RS-1) zone to Commercial One (C-1), for the purpose of a Ceramic Shop and Classes. Mr. Block read his Enforcement Officer's Report and gave a slide presentation. Chairman Kroger asked if there was anyone present in behalf of the request. Mr. Andre' Busald, Attorney representing the applicant stepped forward and stated that the applicants have been long life residents of Boone County, now living in the Cherry Hill Subdivision behind the area requested for a zone change. He continued that Mrs. Lucas has had a Ceramic Shop on Main Street in Florence for 10½ years, called Ceramic Plus located next to Lucas Hardware. He continued that because of the changing structure of Shelby and Girtard they find it difficult to continue the business at this location due to parking difficulties. Mr. Busald stated it is a family owned business. Mr. Busald stated that he recognized that the property is zoned residential from the beginning of Cherry Hill Subdivision, west towards the Airport on both sides, but east you will find relatively high volume commercial. Mr. Busald stated that the type of project proposed has a limited clientele, a selective clientele and limited operating hours. He stated they are open 5 days and 4 nights a week from 10:00 A.M. thru 2:00 P.M. and 6:00 P.M. thru 9:00 P.M..

He continued that this is not the type of business that would contribute to the traffic pattern in the area. Mr. Busald submitted a petition of neighbors who favor the project. Mr. Busald stated there are six (6) houses between Cherry Tree Drive and the last house, stating the sixth house is a Chiropractic service and the first house was a nursery school for a number of years. He pointed out that for a period of time one-third of the six houses were operating in a Commercial setting. Mr. Busald stated the request is for Commercial One (C-1) the most restrictive commercial setting and the only zone appropriate under the circumstances. He continued that he did a mini title search and found no deed restrictions. Mr. Busald stated that although that side of the road is currently zoned on the Comprehensive Plan for medium density residential, that the property in question and possibly the entire side of the road should be reviewed. Mr. Busald stated that if this request is granted, then one-half of the side of the road would be operating as commercial.

Chairman Kroger asked if there was anyone else in behalf of the request. No one responded. Chairman Kroger asked if there was anyone in opposition. Mr. Jack Meder, 844 Donaldson Rd. stepped forward and stated that all the commercial property East is in Kenton County; not Boone County. He continued that his property and the property in question are the only houses that have septic tanks. He pointed out that he lives alone and the septic tank is not adequate and the property in questions septic system is not adequate. He continued that there is a bad traffic situation and when the Race Track is open he cannot get out of his driveway. Mr. Joseph Beckman, 822 Donaldson Rd. stated he was on the other side of the property and that it has a sewage problem. He stated if they build an addition on the rear of the house it will further destroy the sewage drainage area. He stated the patrons would have a problem pulling out on Donaldson Road due to the heavy traffic. Mr. Beckman continued that it was his understanding there are still deed restrictions and are still in effect. He continued that request is approved they will go to Court. He stated they have been fighting this problem for the past 20 years and have been before the Board approximately ten (10) times and the commercial use has been denied on the West side of Cherry Tree Lane. Mr. Beckman stated he would go to Court and felt the Court would uphold the deed restrictions. He stated there is a master plan for the entire County and they are asking for a single resident for rezoning outside of the master plan and if it is granted the deed restrictions will become the focal point of the legal problem. He stated at one time a house was operating as a nursery school, but the people were also living there. He stated the house was ruined by trying to accommodate the laws for a nursery and it is now vacant. Mr. Tom Silvers, 669 Victory Lane stated he lived directly behind the property. He stated he has complained for a number of years of the septic problem. He continued that due to the problem his yard lays in water ten (10) months out of the year and he can not even mow the back of his property. He stated his main concern is the sewer problem. Mr. Virgil Swanner, 671 Maple Tree Lane, stated that he and the residents present are the neighbors and are against the request. Mr. Swanner requested to review the list of neighbors in favor of the request that was submitted by Mr. Busald. Chairman Kroger stated the list was a matter of public record.

In response to Mr. Collins, Mrs. Lucas stated the owner of the property, Mr. Stansel is deceased and that they are the owners by option. At Mr. Viox's request, Mr. Block returned to the slides and stated the property is the fourth parcel, third house from the Sunoco Station. In response to Mr. Viox, Mr. Block stated the applicant submitted a Concept Plan drawn by the applicant. Discussion followed. In response to Mr. Viox, Mr. Block stated if they went out of business and there was no specific indication that the land use would have to be a Ceramic Shop, then it goes to another land use permitted in a Commercial One (C-1) zone, with just approval from the Building Inspector of Boone County. Mr. Viox stated that they are dealing with land use and Commercial One (C-1) and not persay this particular application and that if the request is approved and the use specified it would still be difficult to deny anyone else that would want to use this property for Commercial One (C-1) use. In response to Mr. Neltner, Mr. Busald stated there are no more than ten (10) to twenty (20) people per class, each class lasts three (3) hours, and the parking area would be blacktopped. In response to Mr. McMillian, Mr. Wilson stated if the request is granted with conditions it is on form document and the conditions imposed are put on the document and made of record with the deed in the County Clerk's office. Mr. Meder stated if there is an addition it will change the water drainage in the area. Mr. Silvers stated with the addition it will throw added water onto his property. Mr. Swanner stated they are asking to change a nice area and put a business and a parking lot. Mr. Busald stated the addition is in the future. He continued that they had no knowledge of a septic problem, he stated they would have to tap into the sewer line or replace the septic system. He stated the extension would be in the back and the parking in the front. Mr. Busald stated the operation hours are not during peak traffic hours. He continued that it is possible that they could go out of business, but that they have been in business for (10½) years. He continued that there are deed restrictions, not restrictions against commercial business, but a restriction that states no intoxicating liquor could be made or sold on the lot, so one thing it could not be is a liquor store. Mr. Swanner stated that access to tap into sewage is in the back through the neighbors yards and he didn't feel the neighbors would allow them to go through their yards. Chairman Kroger asked if there were any further comments. Hearing none, Chairman Kroger closed the Public Hearing at 9:00 P.M.. Chairman Kroger informed the audience that action would be taken January 18, 1984, at 8:00 P.M..

Chairman Kroger opened the Public Hearing at 9:05 P.M. from the request of Bobby Franks for a zoning map amendment from its present zone of Suburban Residential One (SR-1) to Commercial Three (C-3) for property located at the NW Quadrant of U.S. 25 and Ky. 536, Boone County Kentucky on a 15.6538 acre site. In response to Chairman Kroger, Mr. Franks stated that Mr. Dillingham was the owner and that he was owner by option. In response to Chairman Kroger, Mr. Wilson stated that was sufficient legal interest for someone to apply for a zone change, but for the record normally the owner signs the application. Mr. Block presented the Enforcement Officer's Report and a slide presentation. Chairman Kroger asked if Mr. Franks had any

Mr. Franks stated he intended to construct a 40 ft. X 60 ft. metal building for the purpose of selling new and used farm machinery. Mr. Franks pointed out that at one time the property was half zoned commercial two (C-2). Mr. Block stated the zoning of the property was changed May 5, 1981, since that time it has been Suburban Residential One (SR-1). Mr. Lee Lanter, Attorney for Mr. Franks stated that most of the buildings and businesses surrounding this property are commercial. He continued that the business proposed would be better than the present conditions the property is now in. He stated that the 15 acres backs up to the rest area of &-75 and possibly someday they may want to expand. Mr. Lanter felt that this type of business would not be a detriment to the community. Chairman Kroger asked if there was anyone else that wished to make comments. Mr. Kells stated that he had no objections to the request, but expressed concern of the property being used for salvage materials. Mr. Franks stated he would possibly paint tractors, but would not be used for salvage. Mr. Franks stated that he intended to improve the property, not hurt it. Chairman Kroger stated his concern of utilizing a large 15 acre tract for constructing a 40 ft. X 60 ft. building for the purpose of buying and selling agriculture equipment. Chairman Kroger expressed concern of envisioning driving down the interstate and seeing farm equipment from one end of the property to the other. He continued that the Commercial Three (C-3) zone is a rather broad zone with many activities that may not be suitable for that particular site. Mr. Franks stated that was not his intention and that he only needed seven acres but the owner wanted to sell the entire tract. He also stated by purchasing the entire tract he can now put a sign closer to the interstate. Mr. Viox expressed concern of dealing with Commercial Three (C-3) zoning and stated if the entire 15.6 acres is zoned Commercial Three (C-3), it would be next to (SR-1) and there would be concern of the screening for the entire site; whereas, if he was asking for something less than the entire site it would only need to be buffered from himself. Mr. Viox pointed out that Mr. Franks could sell after the zone change is granted and the next owner comes in under C-3 and could put implements all over the site. In response to Mr. Viox, Mr. Block stated it depends on where it is approved on the Concept Development Plan. He continued now they show only the front part to be used for farm implements. He continued if the Concept Development Plan is included as part of the zone change approval with conditions approved in Fiscal Court, then if he wanted to have farm implements back up against the interstate that might involve a change of concept plan, and would have to reappear before the Commission. In response to Mr. Viox, Mr. Block stated it was a used car lot when he came to the Commission in 1979 and has been used off and on by different people up until approximately 1½ years ago. Mr. Block stated the previous zone would have been commercial frontage for approximately the first 500 ft. and then beyond probably A-3. In response to Mr. Neltner, Mr. Block stated they were going to utilize the existing parking area, take out the existing building, bring the parking area up to that building, which would involve approximately four (4) acres. Mr. Neltner asked where the equipment is parked be gravel or paved. Mr. Franks stated it would be gravel. In response to Chairman Kroger, Mr. Block stated the Concept Development Plan did not address the type of surfacing to be used for the traffic pattern. Mr. Block stated surfacing is addressed in the zoning regulations and indicate that any parking areas to be

provided have to be of a surfaced paved area either asphalt concrete or portland cement concrete. In response to Mr. Franks, Mr. Block stated according to the zoning regulation those areas that are called parking or storage spaces for the commercial business has to be a hard surface paved area. Discussion followed pertaining to the types of surfacing. Chairman Kroger stated it is the function of the whole commission to see the request before them is treated fairly, and that all the requirements of that particular zone are brought to the attention of the applicant. Chairman Kroger stated it is simply a matter of the applicant knowing what he is faced with. Mr. Franks stated he appreciates that. Mr. Burney Brown, Walton, stated he owned lots 5,6,7,8 and 9 on Frogtown Road. He stated when he bought these lots there was restrictions against agriculture and livestock and assumed that applied to the adjoining 15 acres. In response to Chairman Kroger, Mr. Brown stated it was subdivided at that time as the Carpenter Estate Subdivision. Mr. Frank Reffitt, Box 271, Frogtown Rd, stated his land was part of the subdivision, and for 450 feet joins the property Mr. Franks has proposed to buy. Mr. Lanter stated the Dillingham property does not have anything to do with this subdivision. Mr. Brown expressed concern of the drainage situation and stated that his lot 9, gets drainage from this property and hoped it does not get worse. In response to Mr. Brown, Mr. Franks stated it was a natural drain, it is there now, of course when blacktopped, it might cause more drainage. Mr. Lanter stated the drainage problem was caused from a natural water flow. Chairman Kroger asked Mr. Viox's opinion. Mr. Viox stated if something is blacktopped or put under roof obviously it is going to be 100 % runoff, verses 30% run off if it is grass, or if partially paved you might have 50% run off. There is going to be more water and it is going to get there faster. Mr. Viox stated it is natural drainage way and all the water is going to go there, and it would be conceivable that someone could take legal action for adding to the problem. He continued that it would be a concern of this Commission and the County to try to retain the excess water created by paving or putting under rooftop areas of land. Chairman Kroger stated that one of the things the Commission makes the attempt to see that the water shed areas are protected and also that maybe if a holding pond is necessary, it is provided. Mr. Brown stated it could be piped because it goes underneath the road. Chairman Kroger stated they are dealing with an unknown so there are a lot of possibilities and generally the Commission leaves it to the engineering group to come up with their recommendations when a situation like this develops. Chairman Kroger asked if member of the Commission has further questions. Mr. McMillian expressed concern as to the up keep of the property. Chairman Kroger asked Mr. Collins if he felt he had enough information. Mr. Collins stated he had a lot of questions to be directed to the engineer concerning runoff.

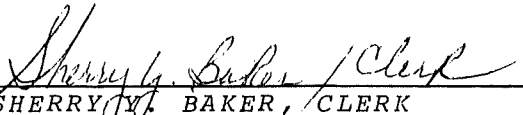
Members of the Commission reviewed a drawing of the property prepared by Walton & Walton Engineering. Discussion followed.

Mr. Neltner asked Mr. Franks if his property would be fenced. Mr. Franks stated the property is fenced, the interstate fence on the west side, Mr. Kells fence on the other side and chain link fence from the highway to I-75.

Chairman Kroger asked for further comments. No one responded. Chairman Kroger informed the applicant that action would be taken January 18, 1984, at 8:00 P.M..

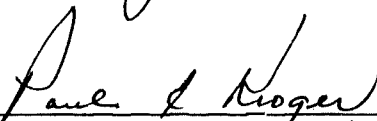
Chairman Kroger closed the Public Hearing at 10:00 P.M.

RESPECTFULLY SUBMITTED:



SHERRY G. BAKER, CLERK

APPROVED: January 18, 1984



PAUL E. KROGER, Chairman

BOONE COUNTY PLANNING COMMISSION

BUSINESS MEETING

JANUARY 18, 1984

8:00 P.M.

Chairman Kroger called the meeting to order at 8:00 P.M.. Eleven (11) members were present. Mr. Godsey, Mrs. Smith and Mr. Hasselbring were absent. Staff members present were Mr. Lynn, Mr. Block, Mr. Jenkins and Mr. Vincent represented the Commission as legal counsel until Mr. Wilson's arrival at 9:25 P.M.. Mrs. Baker was absent.

Mr. McMillian moved to approve the minutes of January 4, 1984 and the Public Hearing of January 11, 1984. Mr. Buse seconded; the vote carried unanimously.

Mr. Barnett moved to pay staff salaries and benefits. Mr. Neltner seconded; the vote carried unanimously.

Chairman Kroger reviewed communications received: Correspondence from OKI; OKI A-95 Review; Dennis Helmer; Busald, Funk, Zeverly and Kathman.

The Commission reviewed the Enforcement Officer's Report. Mr. Block commented that staff has looked at the site on Pleasant Valley Road and reviewed the records of the Sheriff's office which revealed that of the seven (7) vehicles on the property, only two (2) were owned by the property owners, the Kriedlers. The remaining vehicles have since been removed from the site, except for one truck and that is within the building and owned by inlaws. Mr. Block noted during inspection of the site the garage contained a number of tools that appeared to be owned by the property owners and not used in a business of a home occupation. Mr. Block stated the property owner does race cars and there was one race car within the building itself and he indicated he owns a couple of cars another of which is stored at a different site. Mr. Block stated he has received a letter from the owners indicating that their land use is private usage of the garage and is not of a home occupation nature, but the letter is not notarized. Mr. Block commented that there were two violations on the site; storage of a two ton truck and disabled vehicle, which have both been removed from the site. Mr. Block stated he has found no violations on the site at the present, but has informed the owners that he will make periodic inspections of the site to insure compliance with the zoning regulations. Chairman Kroger asked if there were any questions. No one responded.

Chairman Kroger proceeded to the first item on the Agenda, the request of Elmo Greer and Sons, Inc., Agent for Site Plan Review

for property located approximately .3 miles East of I-75 and Ky 16 intersection intersection and 1/8 mile south of Ky. 16 on a 6.40 acre site, zoned Industrial One (I-1) for the proposed asphalt plant construction. Mr. Block presented his site plan review report. In response to Chairman Kroger, Mr. Jenkins stated that he had no particular problem with the site plan, but commented it was indicated that the bag house meets all EPA, Federal and State regulations and he assumed they will have to have a permit for operation. Chairman Kroger asked if there was any comments from the Commission. No one responded. At Chairman Kroger's request, Mr. Lynn read the Committee report, which recommended approval. Chairman Kroger noted that due to Mr. Godsey's absence he did not sign the report and that Mr. McMillian chose not to sign. Mr. Collins moved to approve the request. Mr. Davis seconded. Chairman Kroger recognized Mr. Tom Caudil, engineer for the company. Mr. Caudil stated they have applied for the appropriate permits from the legislative agencies. In response to Mr. McMillian, Mr. Block stated the main circulation areas and parking would be hard surfaced and the only area that would be left gravel would be the driveway circulation area back to the stock pile and the stock pile area itself. Mr. Block stated the applicant as part of their application has the dimensions of the area and delineation as to where they would start the surface and where they would stop. A roll call vote was taken, the motion carried nine (9) yes; two (2) no. Mr. McMillian and Mr. Mitchell voted no. Chairman Kroger informed the applicant that one of the expectations of the Commission is that the firm complies with all the rules and regulations set forth in the County.

Chairman Kroger proceeded to the request of Ray Merkel, Agent for Floyd C. Ellis, owner of property located at U.S. 25 and 42, South of Turfway Road, for a zoning map amendment from its present zone of Recreation (R) to Commercial Two (C-2) on a .550 acre site, for the purpose of the development of a Sherwin Williams Retail Store. Mr. Block pointed out the location of the property on the map and gave a summary of the Enforcement Officer's Report. At Chairman Kroger request, Mr. Block read the Committee Report which recommended approval. Chairman Kroger asked if the applicant had any comments. Mr. Merkle stated that he concurred with the Committee's report and that the requested zone is called for by the Comprehensive Plan. He continued that it is in the downtown business area of Florence and will be a quality retail use. Chairman Kroger asked if there was anyone else in behalf of the request. No one responded. Chairman Kroger asked if there was anyone in opposition. No one responded. Mr. Neltner moved by Resolution to recommend approval based on the findings of fact in the Committee Report and forward the recommendation to the City of Florence. Mr. Collins seconded. Mr. Barnett abstained due to owning the adjoining property. Mr. Viox abstained due to doing engineer work on the project. The motion passed.

Chairman Kroger proceeded to the request of Bobby Franks for a zoning map amendment from its present zone of Suburban Residential One (SR-1) to Commercial Three (C-3) for property located at the NW Quadrant of U.S. 25 and Ky. 536, Boone County, Kentucky on a 15.6538 acre site.

Mr. Block presented the Enforcement Officer's Report. Mr. Lynn read the Committee report which recommended approval with conditions. Mr. Block stated he felt it would be in the best interest of the Commission to review the adjoining land uses to insure the adjoining land would not be detrimentally affected by the change, if it should occur. Chairman Kroger asked Mr. Franks if he had any comments. Mr. Franks pointed out that none of his neighbors appeared against him and that they were for the change. He continued that he could not understand how he could be asked to set machinery down on blacktop when it's against the law on State and County roads, and you can not sit a set of plows down on blacktop in 75° to 100° weather because it will cut through it. He stated there is not place in Kenton, Boone or the Stat of Kentucky where farm machinery is set on blacktop. Chairman Kroger stated the regulations call for hard surface for areas that are going to be used for storage. Mr. Franks stated asphalt won't work, but concrete could. Chairman Kroger asked Mr. Franks if he would use concrete. Mr. Franks stated "no". Chairman Kroger stated he could not change the rules and regulations. Chariman Kroger asked Mr. Franks if he had any further comments. Mr. Franks responded no. Chairman Kroger asked if there was anyone in opposition. No one responded. Chairman Kroger asked if the members of the Commission had any comments. Mr. Viox stated that he found it hard to approve the request if the applicant is not agreeable to the conditions. Mr. Collins stated he agreed with Mr. Viox. Mr. McMillian stated the applicant know the regulations and he did apply for a request which has to be acted upon. Mr. McMillian moved by Resolution that the request be granted based on the findings of fact contained in the Committee report and the recommendation be forwarded to Fiscal Court. Mr. Greene seconded. Chairman Kroger asked for further discussion. Mr. Buse stated the voting included the conditions of hard surfacing but the applicant refuses to put in a hard surface. Mr. Franks stated there is a difference in hard surfaces and concrete. Mr. Buse stated hard surface as defined in the regulations approve two (2) types; portland cement and bituminous asphalt. Mr. Buse pointed out the applicant has stated publically that he will not adhere to the condition in the report and if that conditions is part of the motion he would have to vote no. Mr. McMillian stated whether the conditon is in the motion or not, it is a regulations and everyone has to comply. Chairman Kroger stated the conditions are nothing more than the rules of the land and if a business is conducted it will have certain regulations to guide it, those regulations set by the Fiscal Court of Boone County, by the Florence City Council, Walton and Union. Chairman Kroger stated he would hesitate sending to Fiscal Court a statement of recommending approval, for a known violation of the rules and regulations that those bodies set forth. Mr. Franks stated he would withdraw his application because he would not put down concrete nor asphalt for machinery. At Mr. Gary Reedy's request Mr. Block read Section 1812 pertaining to surfacing. Discussion followed pertaining to the interpretation of Section 1812. Mr. Warren Hopkins, attorney for the applicant asked if the storage area and circulation area has been defined. He continued it is significant as to whether they will withdraw their application. Chairman Kroger stated that these issues

were brought up as to where the problems lie at the Public Hearing, and now all of a sudden there is some discussion. Chairman Kroger stated the applicant should have had contact with the Commission office. Mr. Franks stated after talking with Mr. Collins he sent his partner to the Commission office to talk to Mr. Block. Mr. Block stated that he had no contact with any representatives regarding the rezoning. Mr. Lynn stated he talked with Mr. Yelton, which was taken under consideration when drawing up the report. Mr. Franks stated Mr. Collins asked him to make a better Concept Development Plan. Mr. Buse stated this is a matter that is basically unclear as to perhaps the legal requirements and interpretations of the regulations and as to the applicants usage. Mr. Buse stated that he personally would like to see the matter deferred for a two (2) week period and for the applicant to waive the time requirements until necessary and asked that they and the staff of the Commission get together and try to come back with an interpretation that is reasonable and fair under the circumstances. Mr. Greene withdrew his second to the motion for approval. Mr. McMillian withdrew his motion for approval. Mr. McMillian moved to defer the request until February 1, 1984. Mr. Buse seconded. The motion carried unanimously.

Chairman Kroger proceeded to the request of Betty and John Lucas, for a zoning map amendment for property located at 828 Donaldson Rd., Erlanger, in a Suburban Residential One (RS-1) zone to Commercial One (C-1), for the purpose of a Ceramic Shop and Classes. Chairman Kroger read a letter from Busald, Funk and Zeverly in which they requested withdrawal of the request for a zoning map amendment for Betty and John Lucas.

Chairman Kroger proceeded to new business items. Chairman Kroger referred the following new business items to Committee:

The request of Phillip R. Duke & Associates for Site Plan Review for property located on Mall Road, Florence, Kentucky, zoned Commercial Two (C-2) on 25 acres, for the purpose of a commercial shopping center.

The request of Wajih A. Safi for Site Plan Review on property located at U.S. 42 and Village Drive zoned Commercial Two (C-2) on a 33988.75 sq. ft. site for the purpose of constructing a two story building containing a total of 9300 sq. ft.

The request of John R. Kirby for Preliminary Plat Review on property located at the corner of Ky. 14, 16 and Stephenson Mill Road, Walton, zoned Commercial Three (C-3) and Industrial One (I-1) on a 15.3 acre site.

Chairman Kroger read a letter which he received from Dennis Helmer in which Mr. Helmer requested to address the Commission concerning a zoning map amendment for William C. Anderson, Inc.

Chairman Kroger recognized Mr. Helmer. Mr. Helmer stated that his request dealt with the Anderson tract that has been approved for rezoning to Industrial One (I-1). Mr. Helmer stated in reviewing

the minutes he felt there was some issues that were not discussed in any of the previous meetings. Mr. Helmer stated he talked to various members of the commission and they were under the impression there was not much opposition and he himself knew that not to be the case. He stated he had acquired twenty seven (27) signatures in opposition in a couple of days and was sure he could probably double that list given another week. He continued that he was asking for a rehearing to present new evidence. Mr. Helmer stated one issue not addressed was there was no comparison of the findings made in a previous request on a contiguous tract of which he felt there were some inconsistencies that the Commission should be aware. Secondly, there were a few inconsistencies in the Comprehensive Plan that were pointed out in prior meetings, but several others that were not brought to the attention of the Planning Commission. Thirdly there was no comment whatsoever of the long term effects a five acre industrial zone totally surrounded by residential. He continued that short term effects were discussed, but long term effects 20, 30 or 40 years from now he could find no discussion. He stated another valuable evidentiary matter that should be considered is the detrimental effect to the Andersons. He stated that the Anderson's evidently doesn't believe there is anything detrimental to them, because they requested the change and felt it was in their best interest. Mr. Helmer stated there are a number of issues in the long run that could hurt them financially to have an isolated five (5) acre industrial tract. He pointed out in some cases there was no direct rebuttal to some of the assertive arguments in favor of the request and felt that the opposition was not well organized, perhaps as a product of the time of the year. Mr. Helmer stated another factor that was discussed very briefly was waste. He stated he would like the opportunity to present some evidence that in fact there may be a greater waste problem than the Planning Commission had anticipated. Mr. Helmer stated another factor which was not at all addressed, was a 9000 sq. ft. building on a five acre zone change which at most they will use one acre of this parcel. He continued the proposed zone change has which is going to restrict the number of buildings, future buildings and restrict in essence the use of this property to a tool and die business. He stated there is four acres of ground which is setting in prime residential area, and will be unable to build a residence because it's industrial ground and due to restrictions no other industrial use. He stated in essence what's happened is four acres has been zoned into oblivion, which he felt would be important for the commission consider. Mr. Helmer pointed out a number of people from the audience that protested the rezoning to industrial. Mr. Helmer stated it was important to bring forth all the issues so that the most intelligent informed decision on the issues can be made. Mr. Helmer requested the opportunity to present that evidence in the future. Mr. Viox asked Mr. Helmer, why he didn't go to Fiscal Court, since it is the recommending body where they will have the next hearing on this request. Mr. Helmer stated he didn't think that he should go to Fiscal Court with a recommendation from the Commission that he felt they wouldn't have made if they had all the facts and evidence. Mr. Viox stated that at both the Public Hearing and the action meeting there were several residents of the area that appeared, perhaps even some of the people present tonight, and the zone change was publicized in the paper and a sign on the property. He continued he was sure the neighbors in the immediate

knew about the request since the adjoining property owners were notified by mail. Mr. Viox wondered why there was a different turn out tonight. Mr. Helmer stated one of the problems with the letter of notice was that only two of the contiguous owners were not family members of the Andersons. He continued that the family members would not notify other people of the request. He stated in this case one of the two was representing her father's interest, who had a zone change turned down. Mr. Helmer stated there was also a report that the sign that was on the property at some point after the Public Hearing was knocked down and the people probably in the area were not aware of it. He continued that he frequently reviews the recorder and did not see the Public Notice. Mr. Jerkins stated he didn't get a letter about the zone change and he borders the property. In response to Mr. Viox, Mr. Jerkins stated that there was about six at the hearing and were the only ones that new it. Mr. Helmer, stated if Mr. Jerkins is an adjoining property owner and has not been notified by mail, that is an additional requirement that has not been met. Mr. Helmer stated it would be in order, just from a technical standpoint to give these prople an opportunity to be heard. Mr. Jerkins stated the Dixon's didn't get a letter and they also border the property. Mr. Viox stated for purposes of discussion, he moved that the commission reconsider this application for discussion. Mr. Greene seconded. Chairman Kroger stated there is a motion and second for discussion for reconsidering. Chairman Kroger stated that the questions before the Commission is that when a decision is made and a recommendation is reached by the commission and forwarded to the legislative bodies sometimes those parties who have not been basically in the majority come back before the commission and ask for reconsideration and rehearing. He continued in this instance the applicant is not present and has no say so in the proceedings tonight. Mr. Helmer stated that he personally delivered the same letter he had given to the Chairman to Mr. McNeeley. Mr. Helmer stated he put the letter in Mr. McNeeley's hand and talked to him for 15 minutes about 4:00 P.M. yesterday. Chairman Kroger pointed out that Mr. Anderson nor Mr. McNeeley were present. Mr. Helmer stated he didn't know what kind of schedule the Anderson's would hope to keep, but due to the weather it will be a while before they can begin construction. Mr. Helmer stated the gravity of the situation would at least give them the opportunity to be heard. Chairman Kroger stated that one of the considerations is the applicant has rights before this commission the same as the individuals before the commission this evening, and the applicant and Commission are bound by a procedure set forth by KRS and various codes. He continued the applicant has to move forward in Fiscal Court. Chairman Kroger stated if they do not move in due course then the application becomes an approved application under the 90 days rule. Chairman Kroger stated the things that have to be considered when making any considerations are the fact as presented, the rights of the individuals to make those facts known, the opportunity that they were given to make those know and the rights of the applicant as he proceeded before the Commission. In response to Mr. McMillian,

Mr. Wilson stated that it is the applicant's responsibility to provide the names of the adjoining property owners to the Commission. In response to Mr. Buse, Mr. Wilson stated if there has been a defect in a respect from the applicant's standpoint in not giving the Commission all the names, the people who were not notified certainly have the right to go and present their case to Fiscal Court. Mr. Robert Dickman 3292 Petersburg Road, stated if they had known about the request they could have attend the Public Hearing and made their opinions known. Chairman Kroger stated the planning commission has acted duly and properly on the information that was presented and presented in a legitimate manner and legitimate process. He continued if there are deficiencies in that process we are unaware of, that the Commission itself did not act properly, I think that we would have some time for reconsideration. If the commission acted properly the Commission has no responsibility to rehear and would proceed in a normal course to those legislative bodies. Mr. Helmer stated there is information tonight which would lead you to believe there are contiguous property owners that have not been notified. He continued that perhaps all the property parties weren't notified, and now having information to believe perhaps there were some deficiencies on the part of the commission, he felt that it would only be proper for the commission to keep that in mind besides the obvious evidentiary deficiencies in the decision. Mr. Buse stated that in listening to the various arguments in Mr. Helmers presentation he had not heard anything that leads him to believe that the Commission did not act in accordance with the rules and regulations. He continued if in fact someone has not been notified it is not the Commission's duty to check the adjoining property owners, it is the applicants. He continued that if Mr. Helmer came in tonight with the evidence, that someone was not notified, of course his position would change, there is a statement, but no evidence. Mr. Buse stated they couldn't act on basis of statements, because they may find out that statement is incorrect. Sharon Dickman, 3292 Petersburg Rd., expressed concern if the Commission was aware of the fact that there was Anderson's all around the property. Mr. Wilson stated other than the notice to the property owners there is a notice of a sign on the property plus a newspaper notice of the change. He continued the notice that goes out is not limited to the adjoining property owners. He stated the sign has to be on the property for 14 days plus the newspaper publication that goes out. Mrs. Dickman said she never saw the sign and she and her husband go past the property every morning and every evening. Chairman Kroger stated that what the Commission and staff has done, in the instance of notification has been all that it could possibly do. He stated he understood things can happen to the sign after it's posted and he is sympathetic. Mrs. Dickman stated the sign was sitting right on a bend and you can't take your eye off that road. She stated she had to pull off of the side of the road and stop to read the sign. Chairman Kroger stated that during the slide presentation at the public hearing the sign was in evidence on the property. Mr. Block stated there was a weeks difference between when the sign was posted and the slide was taken. Mr. Smith stated what the people are saying is that the sign was up but not for very long and you couldn't read it where it was located.

In response to Mr. Smith, Chairman Kroger stated they are not required to have a quorum at a Public Hearing, in meeting its requirement the Commission really only needs to hve one person present for a Public Hearing, a quorum is need to take action. Chairman Kroger informed the audience of the procedures followed by the Planning Commission for a zone change request. Mr. Davis stated that he felt that their decision based, on the findings of facts available to them at the time of the meetings. He stated that if the people honestly felt they were not notified that they could bring the same information to Fiscal Court. He continued that the didn't felt that that many things have changed. Mr. Davis moved not to reconsider the request. Mr. Buse seconded. Chairman Kroger asked if there was any discussion. Mr. Greene commented that he agreed with Mr. Davis and that they acted upon the evidence they had at that time. Mr. Jones abstained due to not attending the Public Hearing. The motion carried unanimously.

Chairman Kroger informed Mr. Helmer that the next step is Fiscal Court. Chairman Kroger asked if there was any further business. No one responded.

Chairman Kroger informed the Commisson of the Public Hearing, February 8, 1984 at 8:00 P.M. for GBBN Study of Turfway Interchange area, at the Florence City Council room.

Mr. Neltner moved to adjourn. Mr. Greene seconded. The vote carried unanimously.

The meeting adjourned at 10:00 P.M..

RESPECTFULLY SUBMITTED:

Sherry Z. Baker
CLERK

APPROVED: February 1, 1984

Paul E. Kroger
Paul E. Kroger, Chairman

COMMITTEE REPORT

TO: BOONE COUNTY PLANNING COMMISSION

DATE: JANUARY 18, 1984

FROM: BARRY NELTNER, Chairman

IN RE: The request of Ray Merkel, Agent for Floyd C. Ellis owner, of property located at U.S. Rouse 25 and 42, South of Turfway Road, for a zoning map amendment from its present zone of Recreation (R) to Commercial Two (C-2) on a .550 acre site, for the purpose of the development of a Sherwin Williams Retail Store.

The Committee recommends approval of this request based on the following findings of fact:

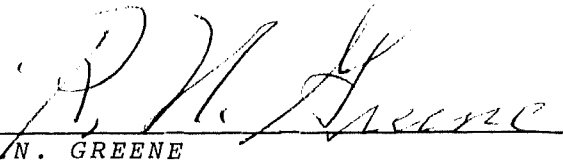
- (1). That this change would be in agreement with the comprehensive plan and text.
- (2). That this is a continuation of the downtown commercial area as identified in the text of the comprehensive plan.
- (3). That contiguous properties to the East, West, and South are currently zoned C-2.
- (4). That it would not differ significantly from existing or allowed uses in the area.


BARRY NETTNER, Chairman

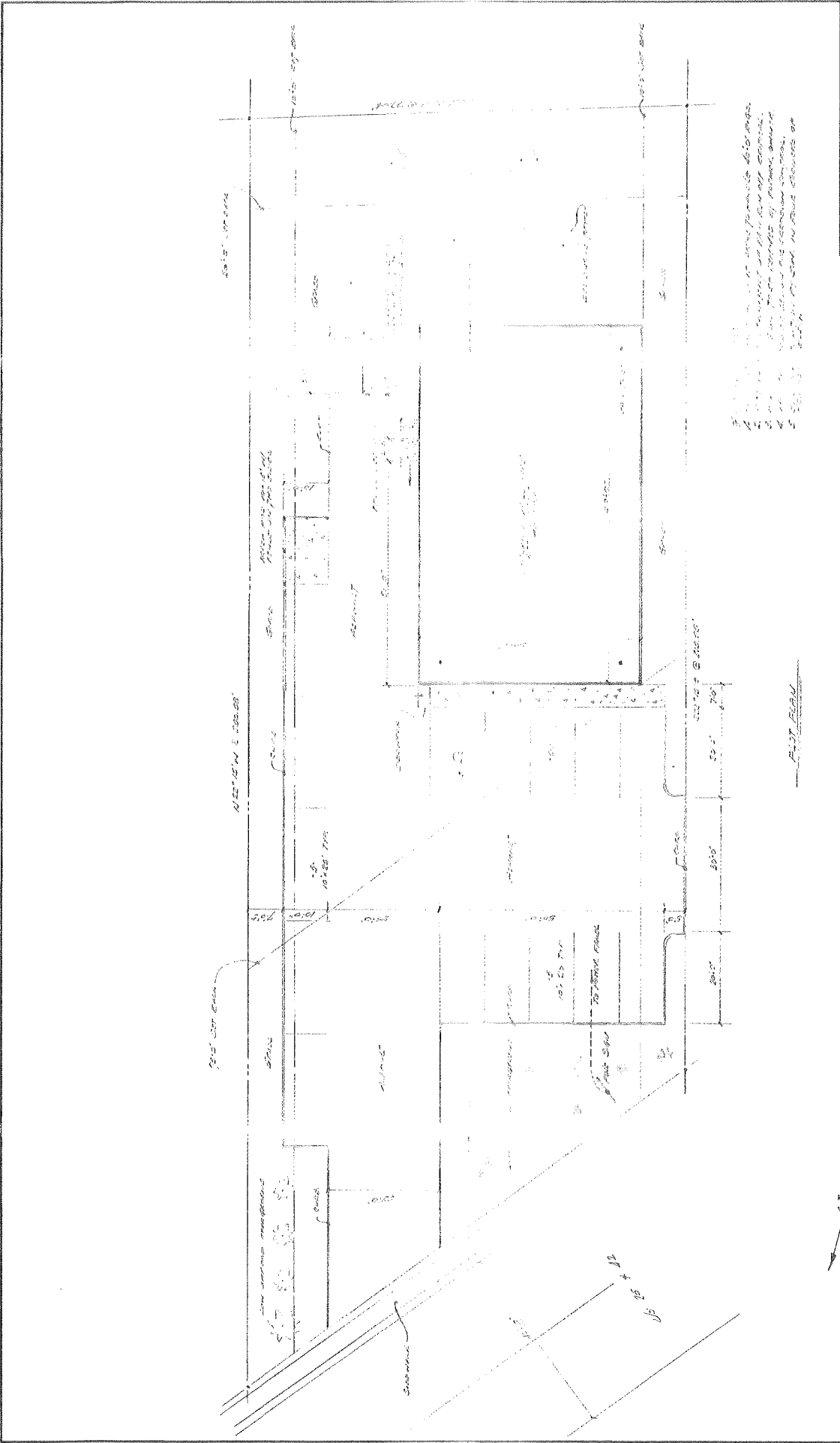

LAWRENCE COLLINS

CAROL SMITH


CHARLIE MITCHELL


R/N. GREENE

SCOTT HASSELBRING



1. This is a preliminary plan.
2. It is subject to change.
3. It is not to be used for construction.
4. It is not to be used for any other purpose.
5. It is not to be used for any other purpose.

— FLOOR PLAN



SHERWIN		DESCRIPTION	
NO. 1000	1000	PROJECT	FLOORING, K.
DATE	1-1-1915	LOCATION	PLAT ROOM
BY		SCALE	1" = 10'-0"
CHECKED BY		DATE	10-27-15
APPROVED BY		PROJECT	

742

ORDINANCE NO. 0-5-84

AN ORDINANCE ADOPTING AND APPROVING A REZONING OF CERTAIN REAL ESTATE LOCATED IN THE CITY OF FLORENCE, KENTUCKY, SUCH ZONE CHANGE BEING FOR PROPERTY LOCATED, GENERALLY, ALONG US ROUTES 25 AND 42, THIS ZONE CHANGE BEING FROM ITS PRESENT ZONE OF RECREATION, R, TO COMMERCIAL TWO, C-2, ZONE. (FLOYD C. ELLIS PROPERTY)

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

WHEREAS, the Boone County Planning Commission has recommended that certain real estate located, generally, along a portion of U.S. Routes 25 and 42, such property being in Florence, Kentucky, should be rezoned from its present Recreation, R, Zone to a Commercial Two, C-2, Zone, and

WHEREAS, this recommendation from the Boone County Planning Commission is based upon certain findings which have been reviewed by the City Council of Florence, Kentucky.

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

SECTION I

That certain real estate located along a portion of U.S. Routes 25 and 42, such property being in Florence, Kentucky, shall be and the same is hereby rezoned from its present Recreation, R, Zone to a Commercial Two, C-2, Zone, such real estate being more particularly described as follows:

Situate in the City of Florence, County of Boone, Commonwealth of Kentucky generally on the South side of U.S. Routes 25 and 42 and directly East of Ridgeview Subdivision and more particularly described as follows:

Beginning at a point, the intersection of the south-east right of way line of U.S. Routes 25 and 42 and the East line of Ridgeview Subdivision; thence with said line of said subdivision South $22^{\circ} 15'$ East 213.55 feet to a point a corner with Lot No. 15 of said subdivision; thence with the projection of the North line of said lot North $66^{\circ} 2'$ East 97.04 feet to a point; thence North $22^{\circ} 15'$ West 280.58 to a point in the South right of way line of U.S. Routes 25 and 42; thence with a chord of a curve of said line South $31^{\circ} 57'$ West 119.59 feet to the place of beginning, containing .550 acre, more or less.

SECTION II

That the zoning map of Boone County, Kentucky as it applies to the City of Florence, Kentucky shall be amended or changed to reflect the rezoning of the real estate set forth in Section I

of this Ordinance.

SECTION III

That the recommendation of the Boone County Planning Commission regarding this zone change matter shall be and is hereby adopted and approved by the City Council of Florence, Kentucky which accepts the findings of the Boone County Planning Commission for this zone change.

SECTION IV

That this rezoning is subject to the conditions and provisions of the zone change request, including its development plan, which are agreed to be applicant/property owner.

SECTION V

That in the event the rezoning of this property would be held invalid by any court of proper jurisdiction, such invalidity shall not affect the validity of any of the other zoning regulations, zoning map and comprehensive plan provisions are severable from this rezoning on this particular piece of property.

PASSED AND APPROVED ON FIRST READING THIS 14th DAY OF February, 1984.

PASSED AND APPROVED ON SECOND READING AND PUBLICATION ORDERED THIS 28th DAY OF FEBRUARY, 1984.

APPROVED:

Boyer R. Wolfe
MAYOR

ATTEST:

Patsy Conrad
CITY CLERK