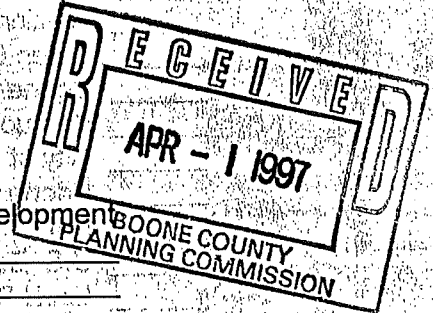


APPLICATION FORM

CHANGE IN CONCEPT DEVELOPMENT PLAN
OR
UTILIZATION OF AN UNDERLYING ZONE IN PLANNED DEVELOPMENT
(CONCEPT DEVELOPMENT PLAN)
BOONE COUNTY PLANNING COMMISSION

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



1. Check One

- Change in Concept Development Plan
 - Utilization of An Underlying Zone in Planned Development
 - a) Public Hearing Submittal (Concept Dev. Plan)
 - b) Long Range Planning Committee Review
- (As stated in the Houston-Donaldson Study)

2. Name of Project B. P. FOOD MART

3. Location of Project LOT #1 of DANIELS BUSINESS PARK

4. Total Acreage of Site 1.00 ACRES

5. Current Zoning C-4

6. Date of Previous Zoning Map Amendment or Approved Concept Development Plan (if applicable) 5-1-96

7. Is the site subject to a specialized Land Use Study approved by the Boone County Planning Commission? (If so, indicate the name of the Study) NO

8. Proposed Uses (please specify each use)

9. Proposed Building Intensities (please specify)

10. Have you submitted a Concept Development Plan? YES

11. Are you also applying for
 Conditional Use Permit
 Dimensional Variance

12. Name of Applicant(s) BAYER BECKER ENGINEERS ATTN: SEAN FOLEY

Phone Number (606) 261-1113 Fax No. (606) 261-1710

13. Address of Applicant(s) 14 EAST 8th STREET

COVINGTON KY 4011

City State Zip

14. Name of Property Owner(s) A. WILLIAM ERPENBECK JR. & GLENN D. FEASAN (B19 HOLDING)

Phone Number 331-8090 Fax No.

15. Address of Property Owner(s) 3215 MT. ZION ROAD

BOONE COUNTY KY 41042

City State Zip

16. Are there any existing buildings on the site? YES

How many? ONE (1)

17. Deed Book 631 Page No. 115 Group No. 205B

18. Have you had a pre-application meeting with BCPC Staff?

(over)

EXHIBIT "A"

STAFF REPORT

Request of Bayer Becker Engineers (applicant) for A. William Erpenbeck, Jr. and Glenn D. Feagan (owner) to consider a Change in Concept Development Plan and a variance for an approximate 1 acre site known as Lot 1, Daniels Business Park, located at the intersection of Mt. Zion Road and Demia Way, Boone County, Kentucky. The request is for a change in the approved Concept Development Plan relative to access and signage conditions and a variance for the size and height of a freestanding sign.

April 30, 1997

Location

The site is located approximately three-fourths of a mile east of the Mt. Zion Road/I-71/75 Interchange on the southwest corner of Demia Way and Mt. Zion Road (1005 Demia Way). This is Lot #1 of Daniels Business Park located in unincorporated Boone County, Kentucky (see Location Map and Aerial Photo).

History

On February 21, 1996, the Boone County Planning Commission heard a Zoning Map Amendment request of W&D Investments for Helen Scott. The request was to rezone a 10.75 acre site, now known as the Daniels Business Park, from Suburban Residential One (SR-1) to Commercial Four (C-4). The Boone County Planning Commission recommended approval with conditions and the Boone County Fiscal Court approved the zone change with the following conditions.

1. There shall be only one access point along Mt. Zion Road for the applicant's site.

This one access point is now a public street called Demia Way.

2. All signs permitted within the site shall be of monument design and shall not exceed 13 feet in height. Features such as landscaping and stone bases shall be encouraged for each monument sign proposed.

Three other conditions were stated in the Committee Report but they do not pertain to the applicant's request (see Exhibit One - February 21, 1996, Committee Report).

On October 2, 1996, a Site Plan for the B.P. Food Mart was approved by the Boone County Planning Commission for the site in question. Before the Site Plan was approved, a letter was sent out to the applicant (Robert Sherry) advising him that four items needed to be addressed on the Site Plan. Included with the letter was a copy of the February 21, 1996, Zone Change Committee Report stating the conditions that were agreed to during the Zone Change process as stated above. The B.P. Food Mart is now constructed and open for business.

The Site Plan was approved indicating one curb cut onto Demia Way. During the Site Plan review process, the applicant did not proceed in getting signage approved for the site. All signs are approved through the sign permit process.

Request/Concept Development Plan (see Concept Development Plan)

The applicant is proposing a change in Concept Development Plan to allow a free standing pole sign similar in height and size for what was previously permitted in the Commercial Four (C-4) Zone prior to the August 21, 1996, Zoning Update. The applicant has not requested a specific size or height for the proposed sign. Included in this request, the applicant proposes a variance in the height and size limitation to permitted signage in the current Commercial Four (C-4) Zone.

In addition to the sign request, the applicant is proposing a change in Concept Development Plan to allow a right-turn in and right-turn out curb cut onto Mt. Zion Road.

Zoning

The Commercial Four (C-4) Zone principally permits a variety of commercial and office uses including convenient stores, gasoline filling stations, and eating and drinking places. The purpose of the Commercial Four (C-4) Zone 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 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.

The Commercial Four (C-4) Zone permits monument style freestanding signs. The maximum size of a monument style sign in the Commercial Four (C-4) Zone shall not exceed one (1) square foot of sign area per linear foot of road frontage along the street frontage where the sign is to be located. The maximum size shall not exceed one-hundred and fifty (150) square feet. The maximum height of a monument style sign in a Commercial Four (C-4) Zone shall not exceed fifteen (15) feet from the grade to the top of the sign structure.

Surrounding Zoning and Land Uses (see Zoning Map)

- North: North of the site is land that is currently being developed for commercial uses. This development is known as Mt. Zion Crossing which includes the Thriftway Marketplace. This area is zoned Commercial Four (C-4). Further north along Sam Neace Boulevard is land zoned Industrial Two (I-2).
- South: South of the site is the multi-family development known as Sherwood Lakes Condominiums. This area is zoned Urban Residential One (UR-1).

East: East of the site is the Greenlawn Mobile Home Park. This land is zoned Mobile Home Park (MHP).

West: West of the site is the Grace Baptist Church. This area and land along Mt. Zion Road extending west to the I-71/75 Interchange are zoned Commercial Services (C-3).

Site Characteristics

The site in question is located on Lot #1 of the Daniels Business Park. The site contains the B.P. Gas Station/Food Mart with a Rally's Restaurant which is currently open for business. The site is accessed by one curb cut onto Demia Way.

Relationship to the Comprehensive Plan

The Boone County Comprehensive Plan's Future Land Use Map indicates the parcel of land as Commercial which is defined as "Retail, corporate and professional office, interchange commercial, indoor commercial recreation, restaurants, services, etc."

The 1995 Boone County Comprehensive Plan identifies the site as part of the Mt. Zion Area and states the following regarding future development in the area:

The Mt. Zion interchange will have the single largest impact on this area. Both sides of the interchange should develop rapidly with the new accessibility, but this development should be planned in such a way as to not greatly impact the existing and planned Suburban Density Residential uses in the area.

Low density, neighborhood-scale office and commercial uses can occur on the southwest quadrant; this development should be carefully planned to minimize the impacts on neighboring residential uses and on area traffic patterns. . . . All commercial development should be planned with attention to possible traffic impacts, because this interchange will serve a high volume of residential, commercial, and industrial traffic.

Page 211 in the Future Land Use Development Guidelines of the 1995 Boone County Comprehensive Plan states the following regarding access management:

Developments in Boone County must recognize the potential impacts of associated traffic on adjoining properties and transportation systems. The need exists to protect the capacity of the existing roadway network, and to plan improvements to accommodate new development and travel patterns. Access management provisions include the coordination of curb cuts, adequate corner clearance and site distance for access points, adequate

space between access points, shared access points and parking facilities, and provisions for access connections to adjoining properties, and the dedication of public right-of-way. In subdividing property, arterials or collectors should not be used for direct access to lots, rather a system of local streets should feed into the collector and arterial system.

Page 211 in the Future Land Use Development Guidelines of the 1995 Boone County Comprehensive Plan states the following regarding signs:

Developments in Boone County should give consideration to the overall design of the project. Design should be a primary concern at the early stages of the development, with an emphasis on the aesthetic impact of the proposed use. The minimal use of signs is encouraged; signage should be adequate to identify a specific development, but should not be used as a means to compete for motorist attention. The objective is to avoid the confusion and/or distraction of motorists, and to avoid the potential negative impacts of signs on the visual appearance of the corridor.

Staff Concerns and Comments

1. The proposed Change in Concept Development Plan is not in agreement with the Boone County Comprehensive Plan identifying the site as part of the Mt. Zion Area because it states the following: All commercial development should be planned with attention to possible traffic impacts, because this interchange will serve a high volume of residential, commercial, and industrial traffic.
2. The Boone County Planning Commission Staff is concerned about a thirty (30) to forty (40) foot high sign having a negative impact on the neighboring residential uses and the general character of the developing community area. The intent of a Commercial Four (C-4) Zone is to serve the local population or community rather than regional interests. Therefore, regional visibility is not appropriate nor intended for the area. Monument style signs are permitted in the Commercial Four (C-4) Zone at a maximum height of fifteen (15) feet to allow visibility at a neighborhood scale and to avoid sign clutter.

The Commercial Four (C-4) Zone permits monument style signs only. Freestanding pole/pylon signs are not permitted in the Commercial Four (C-4) Zone and a variance to change the style of the sign to a pole/pylon sign cannot be granted as it is a change in a use standard rather than a dimensional standard.

3. Staff is concerned about a curb cut onto Mt. Zion Road. The 1995 Boone County Comprehensive Plan recognizes the potential negative impact of numerous curb cuts on an arterial road such as Mt. Zion Road. The applicant proposes a second curb cut into the site located approximately 190 feet west of the Sam Neace Boulevard/Mt. Zion Road intersection and approximately 180 feet east of the Demia Way/Mt. Zion Road intersection.

The Kentucky Department of Transportation has reviewed the applicant's proposal for a right-turn in and right-turn out curb cut and would approve such a curb cut with minor changes including a barrier median instead of a mountable median and the addition of a safe recover area. Although the applicant is requesting a right-turn in and right-turn out curb cut, the Boone County Planning Commission Staff recognizes that these types of curb cuts are not always used this way and commonly lead to dangerous left-hand turns.

Conclusion

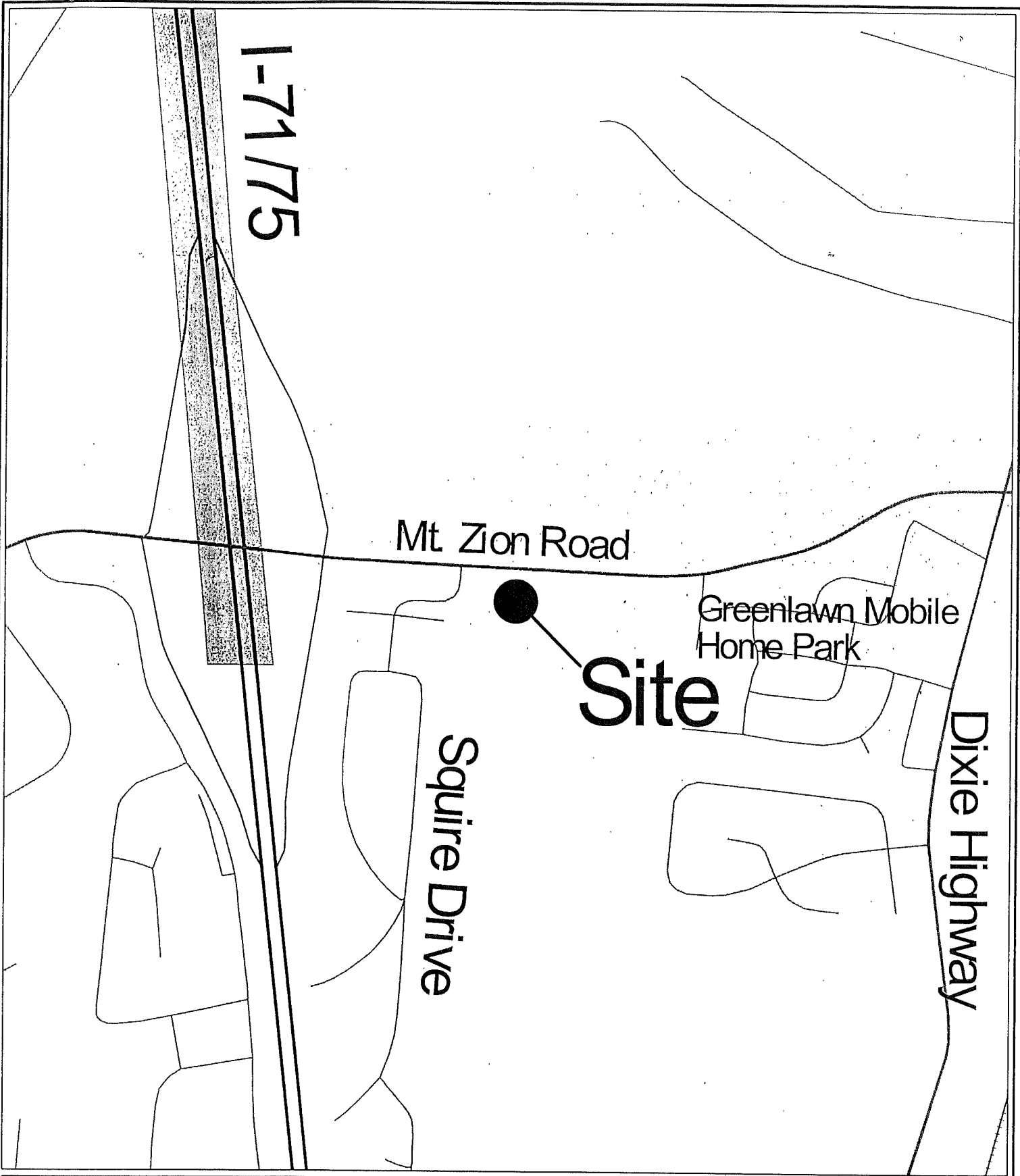
This request needs to be evaluated by the Boone County Planning Commission in terms of the criteria necessary for approving a Change in Concept Development Plan as stated in Article 3, "Amendment," of the Boone County Zoning Regulations and the intent of the Commercial Four (C-4) Zone as stated in Article 10, "Commercial Districts," of the Boone County Zoning Regulations. Should the Planning Commission recommend, and the Boone County Fiscal Court approve this request for a Change in Concept Development Plan, the Boone County Comprehensive Plan's Future Land Use Map will not need to be changed.

Respectfully Submitted,



John Huth
Planner

JH\par

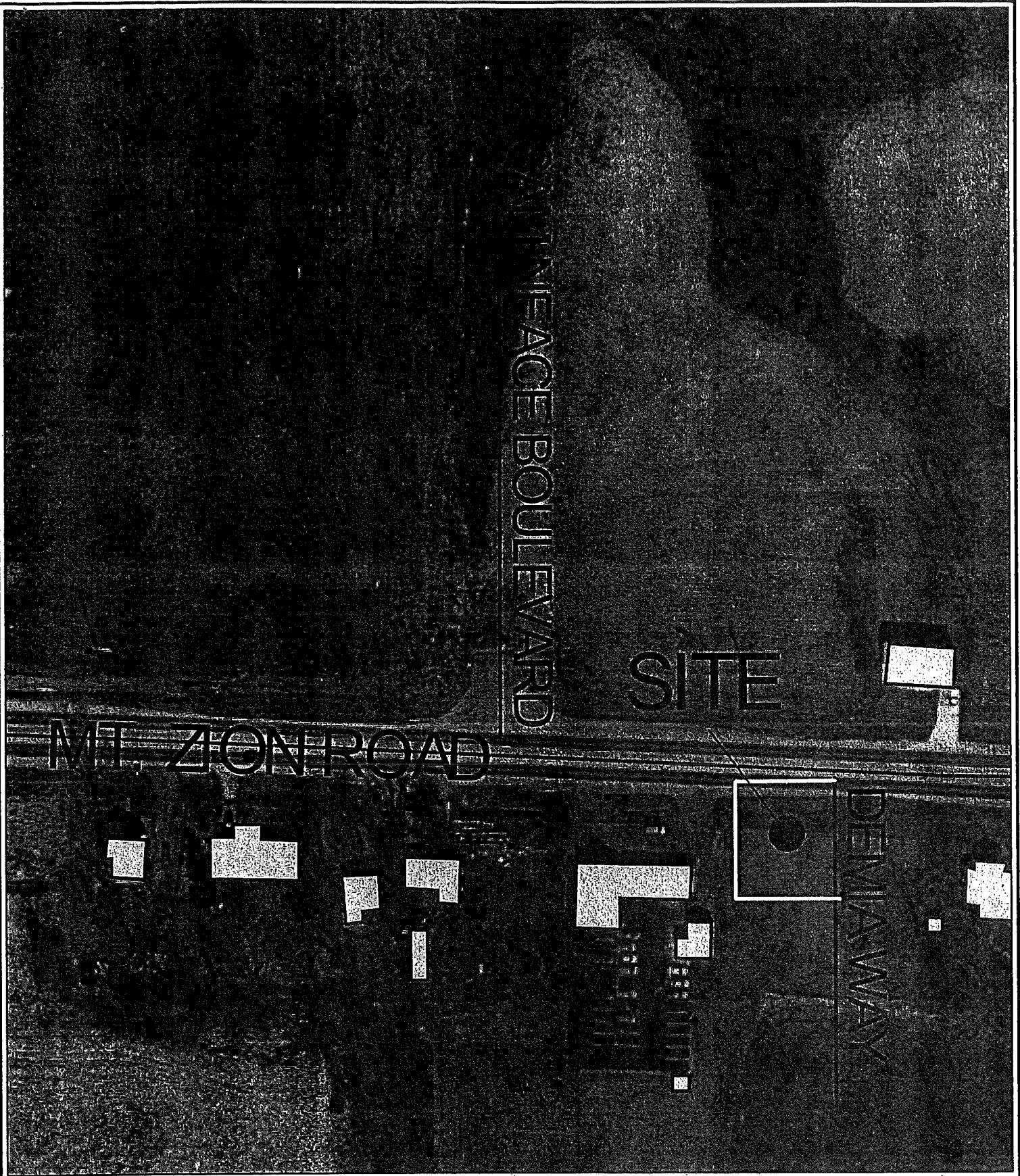


Location Map
B.P. FoodMart



1 inch equals 700 feet
Produced by the
Boone County Planning Commission
GIS Services Division
April 15, 1997





Aerial Photo B.P. FoodMart

100 0 100 Feet

1 inch equals 100 feet
Produced by the
Boone County Planning Commission
GIS Services Division
April 28, 1997

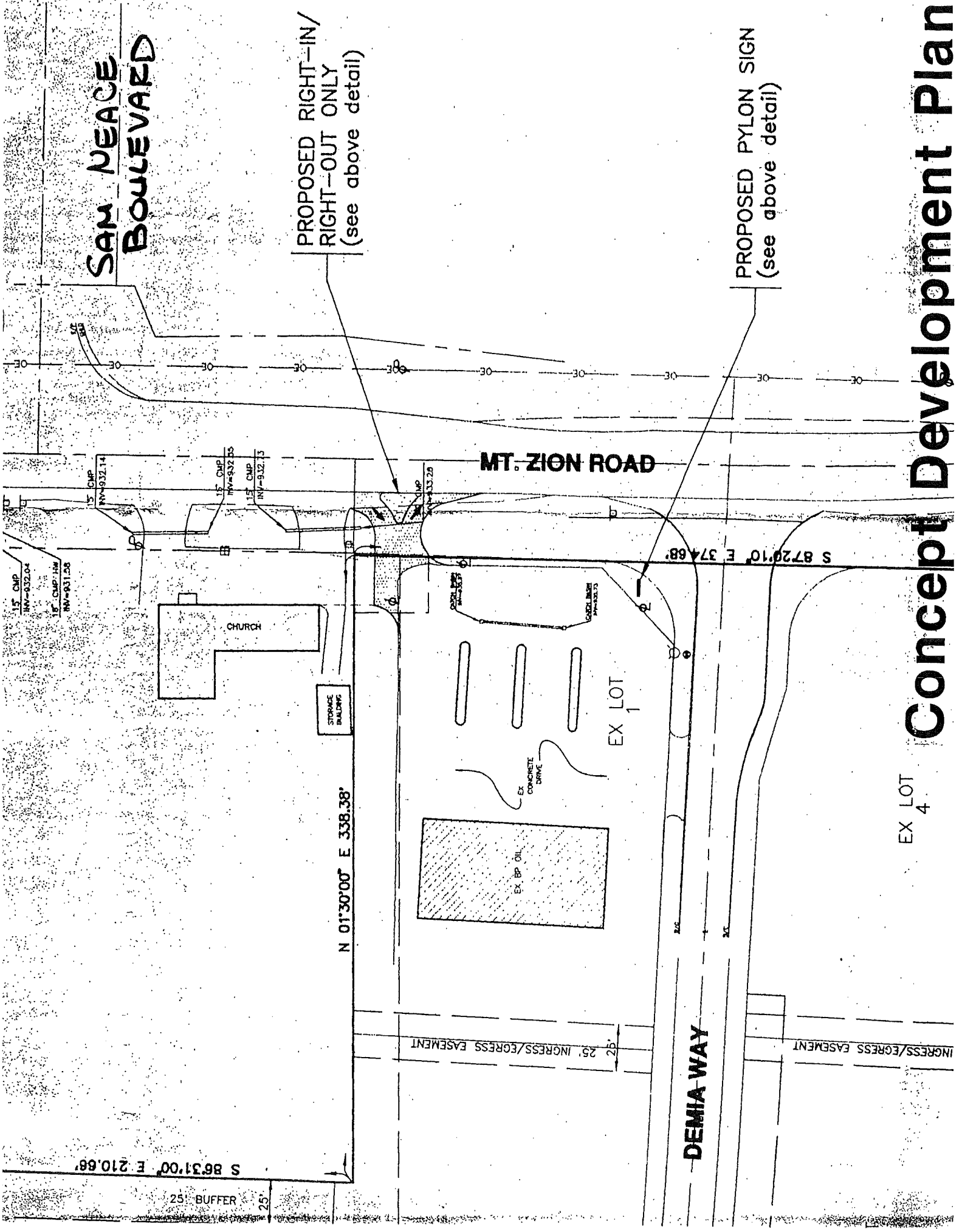


SAM NEACE BOULEVARD

PROPOSED RIGHT-IN/
RIGHT-OUT ONLY
(see above detail)

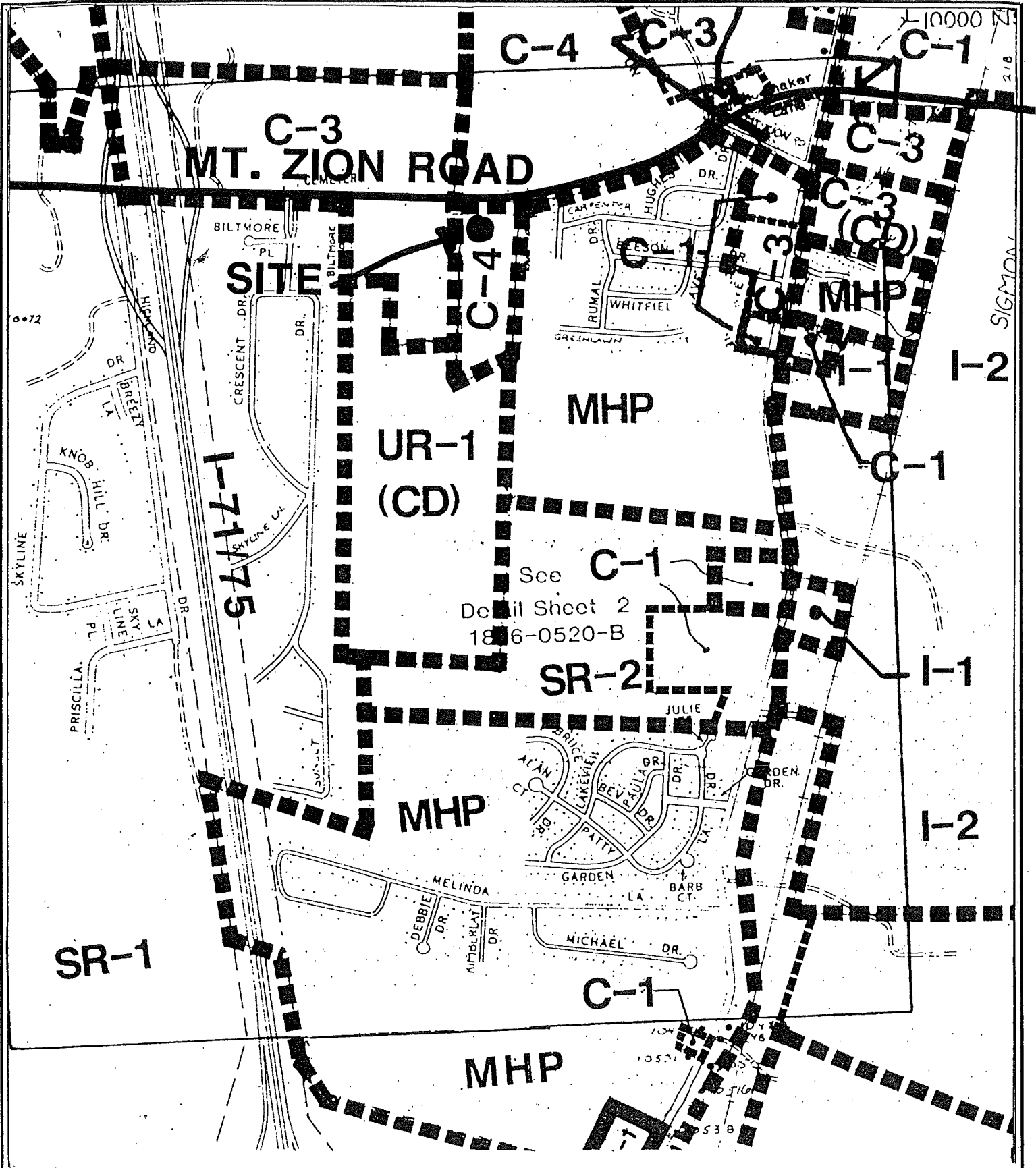
PROPOSED PYLON SIGN
(see above detail)

MT. ZION ROAD



Concept Development Plan

EX LOT 4



Zoning Map
 B.P. FoodMart

COMMITTEE REPORT

TO: Boone County Planning Commission

FROM: Fred Burch, Chairman

DATE: February 21, 1996

RE: Request of W & D Investments (applicants) for Helen Scott (owner) for a Zoning Map Amendment for a 10.75 acre tract located at 305 Mt. Zion Road, Boone County, Kentucky. The request is for a zone change from Suburban Residential One (SR-1) to Commercial Four (C-4).

REMARKS:

We, the Committee, recommend approval of the request based upon the following findings of fact and the following conditions:

Findings of Fact

1. The Committee recognizes that the Future Land Use Map of the 1995 Boone County Comprehensive Plan indicates that less than half of the applicant's site is shown as Commercial. However, the Committee believes that this map is intended to be a general, rather than specific guide for where a future land use designation should be located. Therefore, the Committee believes that the proposed zone change is appropriate because it conforms with the existing commercial district to the west. In addition, the Committee believes that the buffer area which will be retained along with the other conditions will ensure an appropriate development for the area as well as provide needed services for the growing residential population within the area.
2. The Committee believes that the existing zoning classification given to the property is inappropriate and that the proposed zoning classification is appropriate.

Conditions

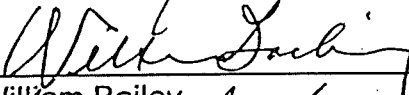
The applicant and owner are being asked to agree to and include these items as part of the Zoning Map Amendment and to address questions and comments at the Public Hearing:

1. There shall be only one access point along Mt. Zion Road for the applicant's site. In addition, a frontage road shall be developed to connect with the property to the west and east of the applicant's site. The location of this frontage road shall be determined at the Preliminary Plat Review stage. A connection shall also be made to the Commercial Services (C-3) property to the west or Sherwood Lakes property to the south. Again this shall be reviewed at the Preliminary Plat stage to determine the best location for the connection. The property to the south and west was rezoned in June of 1988 and was required to provide a connection to the applicant's property.
2. All signs permitted within the site shall be of a monument design and shall not exceed 13 feet in height. Features such as landscaping and stone bases shall be encouraged for each monument sign proposed.
3. Article 10, Section 1041, Item 10 which principally permits recreation centers, gymnasiums, clubs and similar athletic uses shall be permitted as indoor uses only. Outdoor facilities will not be permitted.
4. The existing tree line along the perimeter of the property shall be retained and supplemented with evergreen trees within the areas where a 25 feet buffer is required. The southern end of the applicant's site shall be retained as an undeveloped buffer (See Attached Map). A road connection to the Sherwood Lakes property to the south shall be permitted within the buffer area.
5. All lighting for the applicant's site shall not exceed twenty (20) feet in height and shall be directed straight down with shields to prevent spill over lighting into the adjoining residential properties.

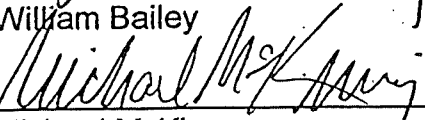
A copy of the Public Hearing minutes accompanies the findings and recommendation serving as a summary of the evidence and testimony presented by the proponents and opponents of this request.



Fred Burch, Chairman



William Bailey



Michael McKinney
Did not Agree



Phil Damstrom



Barry Neltner

Arnold Caddell

PUBLIC HEARING ITEM NO. 2:

Commission members present: Mr. Brown, Mr. Caddell, Mr. McKinney - Chairman, Mr. Millay, Mr. Neltner, Mr. Ries - Vice Chairman, Mr. White, and Mr. Viox.

The Chairman introduced the last item on the Agenda:

1. Applicant: Bayer Becker Engineers for
A. William Erpenbeck, Jr. and
Glenn D. Feagan (owners)

Request: Change in Concept Development Plan

The request of Bayer Becker Engineers (applicant) for A. William Erpenbeck, Jr. and Glenn D. Feagan (owners) to consider a Change in Concept Development Plan and a Variance for an approximate one-acre site known as Lot 1, Daniels Business Park, located at the intersection of Mt. Zion Road and Demia Way, Boone County, Kentucky. The request is for a change in the approved Concept Development Plan relative to access and signage conditions and a Variance for the size and height of a freestanding sign.

Staff Member John Huth presented the Staff Report which included a slide presentation (see Staff Report).

The Chairman asked for the applicant's presentation.

Mr. Bill Erpenbeck, one of the owners of the property, stated that they purchased this property in June, 1996 and at that time, Gene Daniels had already been through a site approval process. Mr. Erpenbeck stated that they did not know the sign ordinance had changed. He stated the Shell station next door has a 35-foot sign, and they had a 35-foot sign on their plan for site approval. Shell is right next door and they have to be able to compete with Shell. They should do \$10,000 - \$15,000 a day and they are only doing \$3,000 a day. Shell is getting business off the expressway. He stated that they have a real problem -- they cannot live with a 13-foot sign -- they are not getting business and are begging the Planning Commission for relief. Shell next door has a 35-foot sign. He emphasized that they are in a bad way and they need a larger sign. He stated that they did not do their homework, but they had no way of knowing -- other than to call -- that the sign ordinance had changed. They are literally right next door to the Shell station and they have the same situation.

Mr. Erpenbeck stated that they are getting a lot of heat from their suppliers because they have to come onto Demia Way and either back into their site or back out -- they cannot circle around to get out. He stated that they are asking for right in/right out. Shell has left-in/left-out/right-in/right-out, which is not a good situation. He stated that they want right-in/right-out which is not a safety hazard. These issues

are big to them -- the signage is a huge issue. They could not have presumed that the sign ordinance had changed. The sign ordinance was not changed until after they purchased the property. He asked for help in regard to these two issues -- the signage and the access.

Mr. Jay Bayer, Bayer Becker Engineers, submitted a handout showing a chronology of events: On 6/7/96 W & D Investments sold the property to Erpenbeck and Feagan; on 8/25/96 Site Plan for Lot 1 was submitted; on 10/2/96 Site Plan for Lot 1 was approved; and on 10/8/96 Boone County Fiscal Court approved new C-4 text. Mr. Bayer stated that W & D Investments committed to a condition exceeding the C-4 Zone at that time when they agreed to a condition that would only allow a monument sign. The Site Plan was submitted in August, 1996 and approved in October, 1996 -- and a letter was sent to the applicant in September, 1996 advising that they would not be allowed to have a sign that is allowed in the C-4 Zone because the previous subdivider agreed to the condition. Mr. Erpenbeck found this out in September, after purchasing the property in June. He thought he was purchasing a C-4 zoned lot -- but it had a condition -- and then Boone County Fiscal Court changed the sign code six days after the Site Plan was approved. He stated that their Site Plan came in under the old text and there was a condition that they could not have the sign. He agreed that they did not do their homework, and they are asking for relief. They want the type of sign they would have had in that zone at the time their Site Plan was approved.

Mr. Bayer stated that the other item is the issue of ingress/egress. The previous developer agreed to only one access point, but the people who deliver gas to the site have stated that their movements in and out of the site are backing movements -- which is a dangerous situation. The drivers do not like backing the tankers in to deliver gas. They want the tankers to be able to drive forward all the time, which is the basis for their request for right-in/right-out egress. He stated that having a gas station with only one entrance creates a dangerous movement situation.

Mr. McKinney asked if the applicant had any further comments.

Mr. Bill Erpenbeck stated that they are in a tough situation and really need help. The signage is a severe problem and they have no other avenue but to come to the Planning Commission.

Mr. McKinney asked if there was anyone else present who wished to speak in favor of the request.

Mr. Roger Embry who lives in the house across the street from BP, stated that the BP driveway faces his mother's driveway. He questioned if there is a regulation against a sign being next to a house across the street.

Mr. Huth advised that signs are based on the zoning, and the house across the street is also zoned Commercial. There is nothing in the regulations that would further stipulate this sign here because there is a house across the street. The C-4 Zone is intended for neighborhood scale, which is the reason for the monument sign with a maximum height of 15 feet.

Mr. McKinney asked if there was anyone else present who wished to speak in favor of the request. There being no response, he asked if there was anyone present who wished to speak in opposition or to ask questions.

Ms. Jane Hembrey, a resident of Mt. Zion Road, stated that the traffic is wall-to-wall cars, concrete trucks, and huge semis. She does not know how the trucks get in to get gasoline. She questioned where the entrance would be. Would it be near the church?

Mr. Erpenbeck responded "yes".

Ms. Hembrey stated that she can hardly get in and out of her driveway. She stated that she is not opposed to the sign, but she is concerned about the traffic. She feels that someone is going to get killed.

Mr. McKinney stated that traffic is a problem all over the county.

Ms. Hembrey stated that she is not opposed to the business, but it is a dangerous situation. It is also dangerous at Shell.

Mr. Glenn Feagan stated that they are trying to alleviate the problem by asking for a right-in/right-out turn lane. He stated that it is a dangerous situation for the tankers to back out onto Mt. Zion Road. The traffic is bad and they need this relief in order not to create extra hazard.

Mr. McKinney asked if there was anyone else 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. Viox agreed with Ms. Hembrey that there is a lot of traffic on Mt. Zion Road. He stated that the neighborhood has changed to a commercial area. He stated that he drives that road a lot and the right-in/right-out access into BP would improve the situation. What is happening now is that people come down there and, because they do not realize BP is there and that Demia Way is there, they come to a stop and turn into Demia Way. He stated that there is already an entrance into the church and there is a decel lane at the church. There is a curb cut in that location. He stated that allowing the traffic to swing into BP rather than clogging the intersection is an improvement -- particularly with the trucks and other activity coming out of Demia Way. There are nine commercial lots on Demia Way and there will be a lot of activity coming out of there causing a traffic snarl. There would be a little relief with the right-in/right-out access. In regard to the sign, he stated that on a road like Mt. Zion, which has commercial activity, there needs to be a sign at least high enough to recognize where the use is -- rather than coming up on a monument sign and having to make a last minute decision.

Mr. Ries stated that W & D Investments sold the property to Mr. Erpenbeck, but nothing was planned at the time -- he asked if they knew there was going to be a gas station there.

Mr. Bayer advised that they proposed the gas station. W & D Investments subdivided and created the nine lots and had agreed to a condition on the signage. W & D Investments purchased the 10+ acre tract and subdivided it into nine lots. When they purchased Lot #1, they proposed the gas station.

Mr. Ries questioned that they did not know there were restrictions on the lot.

Mr. Bayer stated that they purchased the property knowing that it was a C-4 lot and thinking that they could have a full size sign. They were not aware of the previous conditions. They did not do their homework and were not aware of the conditions. The Site Plan was submitted, and then Fiscal Court changed the C-4 text relative to signs. He stated that without the previously approved condition, they would have been okay with the signage.

Mr. Erpenbeck stated that they did not know about the conditions when they purchased the lot. By the time they found out that they could not have the right-in/right-out access, they had invested \$600,000. They felt that they would go ahead and built it and throw themselves on the Planning Commission. He stated that he sold the lot to Shell down the street and was familiar with what was allowed in C-4 -- and he had no reason to believe that something had changed in that short period of time. There was no way to know -- other than to call and ask if anything had changed.

Mr. McKinney stated that the signage requirement for this lot has nothing to do with the signage requirement for the other C-4 Zone. He stated that they were aware there was a condition on Lot #1 in regard to the signage. Mr. Erpenbeck responded, "No, I was not aware of that." Mr. McKinney stated that they submitted a Site Plan and they knew at that time. Mr. Erpenbeck stated that he did not know about the signage at that point, and that is when he found out about the right-in/right-out. He then found out that he had to have a different permit for the signage and when he found out about the signage he already had a 35-foot sign on the site. The sign is sitting out there now. He did not know about the signage until he went for the sign permit.

Mr. McKinney asked if there was any discussion with Staff about the signage when they submitted their Site Plan in August, 1996. Mr. Erpenbeck stated that the Site Plan was approved. Mr. Costello stated that when an attorney does a title search, the conditions are recorded through a Certificate of Land Use Restriction. He stated that the Planning Commission denied the Shell station several years ago, and that decision was overturned by Fiscal Court. One of the critical reasons for the Planning Commission's denial was the access on Mt. Zion Road. He stated that by state law, the Planning Commission is obligated to record a Land Use Restriction on the application for a Zoning Map Amendment. It is recorded in Jerry Rouse's office and provides notice that there is something attached to the property.

Mr. Bayer stated that they looked at the Land Use Restrictions and the only one they found was on Lot #5 and it was recorded on April 17, 1997. Mr. Erpenbeck stated that they did a title search and the restriction was

not recorded until recently. Mr. Costello stated that by law, we have to file for the original zone change application. He stated that he will look this information up and submit it to the Committee.

Mr. McKinney stated that when they submitted their Site Plan, they submitted egress/ingress off Demia Way and now they are saying that it is dangerous. He stated that they knew at that time that they would have trailer trucks coming in and out of the property. He asked why this was not considered at that time.

Mr. Erpenbeck stated that it was considered. He stated that he had \$600,000 invested and came with the presumption that they could get it approved. He felt that the same people who thought Shell was a good thing would have the same opinion about this. He stated that the approved plan from the Planning Commission has the 35-foot sign on it. He stated that when they went for the sign permit, they were not aware that they could not have a 35-foot sign or he would not have the sign setting out there now.

Mr. McKinney stated that the BP proposal on KY 18 was seeking a larger sign and there was a lot of concern about it, and it was not possible to get a larger sign. It was indicated in the Staff Report that regional visibility is not intended for the area. He asked if the applicant believes the Staff Report is wrong.

Mr. Erpenbeck stated that they are in direct competition with Shell and they are not doing 30% of the business they should be doing, which is a severe problem.

Mr. McKinney stated that it is inappropriate and a bad situation to have ingress/egress that touches ingress/egress for the church next door. He stated that when you turn from KY 18 onto Camp Ernst Road there is an entrance there for the Soil Conservation District and there is nearly a rear-ended accident everyday. It is poor planning and this is too. He stated that these things should have been known to the applicant at the time the Site Plan was submitted and the applicant chose to do it anyway believing he could come back later and get a change.

Mr. Erpenbeck responded that that is not correct in regard to the signage.

The Chairman asked if there were any further comments or questions.

Mr. Bayer submitted a letter from the Transportation Cabinet stating that they would be in agreement with the right-in/right-out curb cut.

Mr. Erpenbeck stated that they had a stamped plan with a 35-foot sign on it so, obviously, they did not know about the sign.

Mr. Caddell stated that he was on the Committee that looked at the original zone change request for the approximate 10-acre site and one of the issues at that time was that the applicant had no uses to show the Committee as far as what might potentially happen there. He stated that

it was the intent to make it as restrictive as the conditions indicate because they did not have any idea of what was coming in there. He added that he does not think there is a decel lane to Demia Way.

Mr. Bayer advised that there is a shoulder.

Mr. Caddell stated that they considered a decel lane to this property at the Committee level and he believes that they were told at that time that 8 or 9 uses would not qualify and the applicant did not feel a decel lane was needed.

Mr. McKinney stated that he was also on the Zone Change Committee and remembers expressing surprise that a zone change was allowed without the plan being submitted with it.

Mr. Brown questioned the location of the access to the Thriftway property directly across the street. Mr. Huth advised that the access is on a new street that connects Mt. Zion Road with Sam Neace. He does not believe there is access to Thriftway from Mt. Zion Road, but he can look at the Site Plan in this regard.

In regard to the right-in/right-out access, Mr. Erpenbeck stated that they would have no problem in giving an easement to the church. He stated that the church is for sale. They would be agreeable to putting this easement in the deed. They are willing to put it in the corner of their property and let them come in and out. He stated that a curb cut will occur there and possibly we could kill two birds with one stone because it could then connect all the way out to Demia Way.

Mr. Brown questioned if the curb cut could be right-in only and barrier style as opposed to right-in/right-out. Mr. Erpenbeck stated that that would be fine. Mr. Brown stated that there would be a barrier so that no one could make a left turn out. Mr. Costello stated that the curb cut could be designed for right-turn-in only and vehicles would not be able to pull out there. It is designed to be extremely difficult to pull out. He noted that this has been done before.

Mr. Viox suggested that the Committee go out to the site and look at Mt. Zion Road again and view the property coming from I-75 in terms of getting into the site and identification of the site. He believes the site does have an identification problem. He does not want a traffic snarl because we have not reviewed the site well enough to see that they need a sign higher than 13 feet.

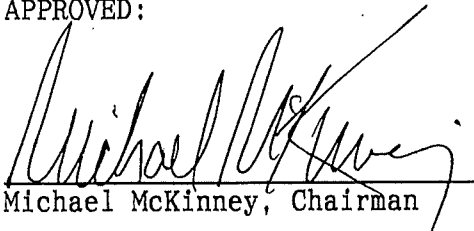
Mr. Neltner questioned the width of the lot. Mr. Erpenbeck advised that it is 180' wide by about 210'. Mr. Neltner stated that a tractor trailer is 60 feet long. He questioned why a tractor trailer could not pull in and go around the front and pull out when the site is three times the length of the tractor trailer. Mr. Erpenbeck stated that with the building and the pumps, that is literally impossible. Mr. Bayer reviewed the plan with Mr. Neltner in regard to the restrictions on the movements of tractor trailers. Mr. Feagan advised that they spent half a day out

there with a truck trying to figure out how they could pull in and pull out, but they could not make the turn.

There being no further comments, Mr. McKinney stated that the Committee Meeting for this item will be on May 12, 1997 at 5:30 P.M. in the second floor conference room. This item will be on the Agenda for the Business Meeting on May 21, 1997 at 7:30 P.M..

The Chairman closed this Public Hearing.

APPROVED:


Michael McKinney, Chairman

Attest:


Jan Hancock, Recording Secretary

BOONE COUNTY PLANNING COMMISSION
BOONE COUNTY ADMINISTRATION BUILDING
COURTROOM 3A
BUSINESS MEETING
May 21, 1997
7:30 P.M.

Mr. Michael McKinney, Chairman, called the meeting to order at 7:44 P.M..

COMMISSION MEMBERS PRESENT:

Mrs. Judy Arnett, Secretary/Treasurer
Mr. Larry Brown
Mr. Fred Burch
Mr. Arnold Caddell
Mr. Mike McKinney, Chairman
Mr. Don McMillian
Mr. Bob Millay
Mr. Robert Ries, Vice Chairman
Mr. Ralph Rush
Mrs. Linda Schaffer
Mrs. Carol Smith
Mr. William Viox
Mr. Earl White, Temporary Presiding Officer

COMMISSION MEMBERS NOT PRESENT:

Mr. Phil Damstrom
Mr. Barry Neltner

LEGAL COUNSEL PRESENT:

Mr. Dale Wilson

STAFF MEMBERS PRESENT:

Mr. Kevin Costello, AICP, Executive Director
Mr. Ed Coleman
Ms. Jan Hancock, Secretary
Mr. John Huth
Mr. Mitch Light
Mr. Kevin Wall, AICP

5. Change in Concept Development Plan

The request of Bayer Becker Engineers (applicant) for A. William Erpenbeck, Jr. and Glenn D. Feagan (owners) to consider a Change in Concept Development Plan and a Variance for an approximate one-acre site known as Lot 1, Daniels Business Park, at the intersection of Mt. Zion Road and Demia Way, Boone County, Kentucky. The request is for a change in the approved Concept Development Plan relative to access and signage conditions and a Variance for the size and height of a freestanding sign.

Staff Member John Huth presented the Committee Report which recommended denial of the request based on the findings of fact (see Committee Report).

Mr. McMillian moved by resolution to the Boone County Fiscal Court to deny the request based on the Committee Report. Mrs. Schaffer seconded the motion.

Mr. Viox questioned asking the applicant a direct question. Mr. McKinney stated that his answer would be "no". Mr. Viox asked if legal counsel agreed. Counselor Wilson stated that the concern is not to open the matter up for another Public Hearing. If there is a pointed question, the Planning Commission could discuss it and turn it over to the applicant to answer just that question.

Mr. Viox stated that he was shocked by the Committee Report. He stated that several things were discussed at the Public Hearing and the applicant presented the approved Site Plan -- which he was unable to see because it was too far away -- but he believes it had the sign location and information about the sign. Mr. Huth advised that signs are requested to be on the Site Plan for location purposes, but not to identify height or size -- which is reviewed during the sign permit application procedure.

Mr. Viox stated that there was some discussion at the Public Hearing about dates and he does not believe there was an answer in this regard. He noted that there was a statement that the applicant should have picked up about the restriction when he did the title search and someone was going to check on those dates.

Mr. Costello stated that a Land Use Restriction was recorded. He believes that the current property owner closed on the property six days before the Land Use Restriction was recorded. He noted that there is no time frame to record the Land Use Restriction, but we try to do it as soon as we can. He stated that it is "buyer beware". He stated that there were conditions agreed to by Mr. Daniels and he should have passed that information on to the property owner.

Counselor Wilson stated that when the Site Plan was submitted, or shortly before, the conditions of the prior zone change were sent in writing to the Site Plan applicant. Mr. Huth agreed. Mr. Viox asked if the applicant agreed. Mr. McKinney did not allow the applicant to respond and stated that only a few moments ago he did not allow Mr. Miller to further his position.

Mr. Viox requested an answer to his question. Mr. Costello responded "yes, that information was provided". Mr. Huth stated that when the applicant went through Site Plan Review, Mitch Light was the Staff person and he gave a copy of the signed condition letter regarding the 13-foot high monument sign to the applicant. Mr. Bayer gave what he referred to as "a list of dates" to Mr. Huth.

Mr. Viox asked if the applicant agrees that he received the condition letter as indicated by Mr. Huth. Mr. McKinney stated that the Public Hearing has already been held and Mr. Viox is seeking to offer indirectly something that he could not do directly, and the Chair will not recognize it.

Mr. Burch commented that for the last approval, Mrs. Schaffer brought up Site Plan approval to use as a condition for approving what was approved in the last request. He questioned why the Site Plan approval give to this applicant does not count. He stated that he did not know that there was a new rule that the applicant could not speak at the Business Meeting.

Mr. McKinney asked Mrs. Schaffer to comment regarding the difference between her comments on the prior request and this request. Mrs. Schaffer stated that it was a condition to which the applicant had agreed.

Mr. Viox stated that the proposed sign is shorter than everything else in the neighborhood. He stated that it seems that we are being restrictive with this applicant. He quoted from the Committee Report in regard to the curb cuts (Finding of Fact #2, paragraph 2) and stated that in his opinion, it would be safer with the curb cut. He stated that having the tankers back out on the highway is not a safe condition. He does not know that he wants to be party to adopting something that is not as safe as we could possibly make it. He does not know why we are not using common sense. He asked if it is possible to approve this curb cut with our regulations, or would approving it violate our regulations.

Mr. Costello stated that he could answer in terms of access management. He stated that there is a normal distance required between curb cuts and, if they cannot meet that, there is a waiver procedure. He stated that the Committee felt the curb cut should not be granted.

Mr. Viox stated that the applicant took this method to ask for the Waiver. He stated that he cannot see the objection to the sign. He stated that there is confusion over whether the applicant knew -- or should have known -- and maybe we should have told him that what was marked on the Site Plan was incorrect. He stated that he does not see why we cannot come to a middle ground. He does not want to be party to not approving the curb cut. He stated that we need to take a common sense approach and he believes this is a safer way to do things.

Mr. McKinney stated that common sense was abandoned when we granted a change here without a Concept Development Plan. He stated that he was on the Zone Change Committee at that time and several people expressed a problem with granting the change without a Concept Development Plan.

Mrs. Schaffer stated that his was part of a larger approval of a zone without a Concept Plan and part of the conditions were that there would only be monument signs of 13 feet and this property only had the one access on Demia Way. It was one big development with separate lots. She stated that the Committee disagreed with right-turn only and felt that it is too close to the church ingress/egress. There is a 25-foot access to the back of this lot that can be utilized. She stated that she went out to the property and there is a Shell sign larger than 13 feet. That was the only sign she saw that was taller and not a monument sign. When she got off the expressway going northbound, she saw the Shell sign and feels that she would see this sign just as well. She stated that we have to consider what we did when we approved the larger tract.

Mr. McMillian stated that he feels common sense was used.

Mr. Brown questioned what information regarding the monument signs and the curb cut was in the letter sent to the applicant. Mr. Costello advised that Mr. Daniels was the applicant at that time and the owner, Mrs. Scott, signed off on the conditions. She was the owner prior to the sale of the lot. Mr. Brown stated that the letter was sent to this applicant prior to him building on the site. Mr. Costello responded "no, it was agreed to by the property owner that was the owner when it was approved.". Mrs. Schaffer stated that Mr. Brown is referring to the Site Plan.

Staff Member Mitch Light stated that the applicant on the Site Plan was Bob Sherry of Sherry & Associates, Planners. The Site Plan came in with right-in/right-out and the first thing he saw was that it was not part of the conditions of approval for the site. In his deficiency letter to Mr. Sherry, he stated those conditions and the conditions from the zoning map amendment. Mr. Brown asked if this included the monument sign. Mr. Light advised that he does not recall. He stated that he is not concerned with size and height of signs at Site Plan approval.

Mr. Brown asked if, prior to this, Mr. Light communicated to them about the curb cut and that there was only one egress and it was not off Mt. Zion Road, but did not address the signage because it was a different issue. Mr. Light responded "yes".

Mr. Viox stated that at the Public Hearing the applicant admitted that he was aware from the start that he did not have permission for the right-in/right-out and the extra curb cut and he knew he would have to come before the Planning Commission regarding the curb cut. He stated that the question to which he never got an answer is -- Did he ever find out that he could not put that sign up? Mr. McKinney stated that that is not an issue here. Mr. Viox stated that it is an issue to him as he is trying to decide how to vote.

Mr. Huth stated that the condition letter during the Site Plan Review process stated that they could not get the curb cut and that the maximum height of the sign would be 13 feet and it would be monument style. It was in one condition letter and a copy of that letter was sent to the applicant for the Site Plan for the BP Food Mart when Mr. Light gave them the other deficiencies. He stated that they were on the same condition letter, which the applicant did receive.

Mr. Burch stated that he is concerned about the dates of the letters and the date of the closing of the property. He advised that he was also on the Committee when the original zone change request came through. He stated that possibly these purchasers bought the property before the restrictions were recorded. Mr. McKinney stated that that issue is not before the Planning Commission. He stated that there is a Committee Report, a motion on the floor, and a second. He stated that he is not going to revisit elements from the Public Hearing. He asked for a vote on the motion.

The vote on the motion to deny the request found Mrs. Arnett, Mr. Brown, Mr. Caddell, Mr. McKinney, Mr. McMillian, Mr. Millay, Mr. Ries, Mr. Rush, and Mrs. Schaffer in favor. Mr. Burch, Mrs. Smith, Mr. Viox, and Mr. White were opposed. The motion carried by a vote of 9 to 4.

NEW BUSINESS: None.

EXECUTIVE DIRECTOR'S REPORT:

Mr. Kevin Costello, AICP, Executive Director, discussed the following items in his report to the Planning Commission:

1. There were two meetings last week in regard to the Western Boone County Study -- one at Kelly Elementary and one at Hamilton Fire Station. There was a meeting last night in Petersburg and there will be a meeting tomorrow evening in Hebron. We hope to come back to those areas in early Fall as we proceed with the study.
2. Mr. Costello met with David Morgan, the state Historic Preservation Officer, on Friday to give him an update on our Preservation Work. Mr. Costello has been invited to be a speaker at their annual conference in September in Bowling Green to talk about the preservation efforts in Boone County.
3. The Budget for Fiscal 1997 - 1998 will be adopted in June. It is scheduled for the June 18, 1997 Business Meeting, and packets of information will be sent to the Commissioners by June 6, 1997.
4. We received a Special Merit Award for a specialized project for The Boone County Transportation Plan from The Kentucky Chapter of the American Planning Association. This is the second award we have won statewide -- we also received an award for the Houston-Donaldson Study in 1989. He noted that Staff Members Bob Jonas and Dave Geohegan worked on this project with the Corradino Group -- with financial support from the Fiscal Court and the City of Florence.
5. The Staff evaluations have all been completed. The last recommendation is in regard to Dan Richards (see memorandum). Mr. Richards has been the Director of GIS Services for approximately a year and been on the Staff for about two years.

EXHIBIT "B"

COMMITTEE REPORT

To: Boone County Planning Commission

From: Don McMillian, Chairman

Date: May 21, 1997

Re: Request of Bayer Becker Engineers (applicant) for A. William Erpenbeck, Jr. and Glenn D. Feagan (owner) to consider a Change in Concept Development Plan and a variance for an approximate 1 acre site known as Lot 1, Daniels Business Park, located at the intersection of Mt. Zion Road and Demia Way, Boone County, Kentucky. The request is for a change in the approved Concept Development Plan relative to access and signage conditions and a variance for the size and height of a freestanding sign.

Remarks:

We, the Committee, recommend denial of the above referenced request based upon the following findings of fact:

Findings of Fact:

1. The Committee has concluded that the proposed Change of Concept Development Plan to allow a freestanding pole sign for the BP Food Mart located on lot #1 of the Daniels Business Park is not in agreement with the 1995 Boone County Comprehensive Plan because it states the following:

The Mt. Zion interchange will have the single largest impact on this area. Both sides of the interchange should develop rapidly with the new accessibility, but this development should be planned in such a way as to not greatly impact the existing and planned Suburban Density Residential uses in the area.

Specifically, the 1995 Boone County Comprehensive Plan states the following regarding signage:

Developments in Boone County should give consideration to the overall design of the project. Design should be a primary concern at the early stages of the development, with an emphasis on the aesthetic impact of the proposed use. The minimal use of signs is encouraged; signage should be adequate to identify a specific development, but should not be used as a means to compete for motorist attention. The objective is to avoid the confusion and/or distraction of motorists, and to avoid the potential negative impacts of signs on the visual appearance of the corridor.

The Zone Change Committee finds that the requested thirty-five (35) foot high sign would have negative impact on the general character of the developing community area including the existing residential uses across Mt. Zion Road and on the neighboring mobile home park. The intent of a Commercial Four (C-4) Zone is to serve the local population or community rather than regional interests. Therefore, regional visibility is not appropriate nor intended for the area. In addition, the site is not located immediately within an interchange area which could demand greater visibility for signage.

The purpose of a monument style sign at a maximum height of thirteen (13) feet, which was a condition agreed to through the original zone change approval, is to allow visibility at a neighborhood or local scale and to avoid sign clutter. The Zone Change Committee finds that the permitted monument style sign at thirteen (13) feet high is adequate in identifying the site at this location for the intended commercial use.

Furthermore, the Zone Change Committee finds that the requested variance does not meet any of three findings necessary for the granting of a variance as listed in Section 251 - Application and Standards for Variances - of the Boone County Zoning Regulations.

2. The Committee has concluded that the proposed Change of Concept Development Plan to allow a right-turn in and right-turn out curb cut onto Mt. Zion Road for the BP Food Mart located on lot #1 of the Daniels Business Park is not in agreement with the 1995 Boone County Comprehensive Plan because it states the following:

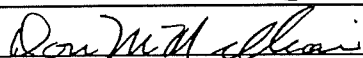
This development (Mt. Zion interchange) should be carefully planned to minimize the impacts on neighboring residential uses and on area traffic patterns. . . . All commercial development should be planned with attention to possible traffic impacts, because this interchange will serve a high volume of residential, commercial, and industrial traffic.

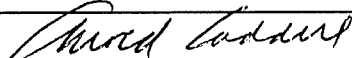
Developments in Boone County must recognize the potential impacts of associated traffic on adjoining properties and transportation systems. The need exists to protect the capacity of the existing roadway network, and to plan improvements to accommodate new development and travel patterns. Access management provisions include the coordination of curb cuts, adequate corner clearance and site distance for access points, adequate space between access points, shared access points and parking facilities, and provisions for access connections to adjoining properties, and the dedication of public right-of-way.


The Zone Change Committee finds that the requested curb cut onto Mt. Zion Road, which is an arterial road, could create a potentially dangerous traffic situation. The proposed curb cut would be located 190 feet west of the Sam Neace Boulevard/Mt. Zion Road intersection and approximately 180 feet east of the Demia Way/Mt. Zion Road intersection. The Zone Change Committee finds that the proposed curb cut does not appropriately relate to the adjoining road system or properties in the immediate area. An additional curb cut onto Mt. Zion Road creates inadequate space between access points and does not consider the coordination of curb cuts nor shared access points.

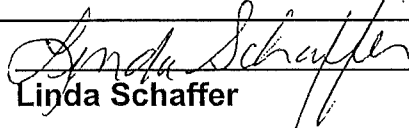
In addition, the Zone Change Committee is concerned about the church property located to the west of the site. The Zone Change Committee finds that an additional curb would negatively impact the property by causing a potential traffic hazard since there is an existing curb cut located within a few feet of the proposed curb cut.

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.

			
Don McMillian, Chairman			
For	<input checked="" type="checkbox"/>	Against	<input type="checkbox"/>
Abstain	<input type="checkbox"/>	Absent	<input type="checkbox"/>

			
Arnold Caddell			
For	<input checked="" type="checkbox"/>	Against	<input type="checkbox"/>
Abstain	<input type="checkbox"/>	Absent	<input type="checkbox"/>

			
Robert Ries			
For	<input checked="" type="checkbox"/>	Against	<input type="checkbox"/>
Abstain	<input type="checkbox"/>	Absent	<input type="checkbox"/>

			
Linda Schaffer			
For	<input checked="" type="checkbox"/>	Against	<input type="checkbox"/>
Abstain	<input type="checkbox"/>	Absent	<input type="checkbox"/>

TOTAL:	<u>4</u>	FOR	<u>0</u>	AGAINST	<u>0</u>	ABSTAIN	<u>0</u>	ABSENT
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PUBLIC HEARING ITEM NO. 2:

Commission members present: Mr. Brown, Mr. Caddell, Mr. McKinney - Chairman, Mr. Millay, Mr. Neltner, Mr. Ries - Vice Chairman, Mr. White, and Mr. Viox.

The Chairman introduced the last item on the Agenda:

1. Applicant: Bayer Becker Engineers for
A. William Erpenbeck, Jr. and
Glenn D. Feagan (owners)

Request: Change in Concept Development Plan

The request of Bayer Becker Engineers (applicant) for A. William Erpenbeck, Jr. and Glenn D. Feagan (owners) to consider a Change in Concept Development Plan and a Variance for an approximate one-acre site known as Lot 1, Daniels Business Park, located at the intersection of Mt. Zion Road and Demia Way, Boone County, Kentucky. The request is for a change in the approved Concept Development Plan relative to access and signage conditions and a Variance for the size and height of a freestanding sign.

Staff Member John Huth presented the Staff Report which included a slide presentation (see Staff Report).

The Chairman asked for the applicant's presentation.

Mr. Bill Erpenbeck, one of the owners of the property, stated that they purchased this property in June, 1996 and at that time, Gene Daniels had already been through a site approval process. Mr. Erpenbeck stated that they did not know the sign ordinance had changed. He stated the Shell station next door has a 35-foot sign, and they had a 35-foot sign on their plan for site approval. Shell is right next door and they have to be able to compete with Shell. They should do \$10,000 - \$15,000 a day and they are only doing \$3,000 a day. Shell is getting business off the expressway. He stated that they have a real problem -- they cannot live with a 13-foot sign -- they are not getting business and are begging the Planning Commission for relief. Shell next door has a 35-foot sign. He emphasized that they are in a bad way and they need a larger sign. He stated that they did not do their homework, but they had no way of knowing -- other than to call -- that the sign ordinance had changed. They are literally right next door to the Shell station and they have the same situation.

Mr. Erpenbeck stated that they are getting a lot of heat from their suppliers because they have to come onto Demia Way and either back into their site or back out -- they cannot circle around to get out. He stated that they are asking for right in/right out. Shell has left-in/left-out/right-in/right-out, which is not a good situation. He stated that they want right-in/right-out which is not a safety hazard. These issues

are big to them -- the signage is a huge issue. They could not have presumed that the sign ordinance had changed. The sign ordinance was not changed until after they purchased the property. He asked for help in regard to these two issues -- the signage and the access.

Mr. Jay Bayer, Bayer Becker Engineers, submitted a handout showing a chronology of events: On 6/7/96 W & D Investments sold the property to Erpenbeck and Feagan; on 8/25/96 Site Plan for Lot 1 was submitted; on 10/2/96 Site Plan for Lot 1 was approved; and on 10/8/96 Boone County Fiscal Court approved new C-4 text. Mr. Bayer stated that W & D Investments committed to a condition exceeding the C-4 Zone at that time when they agreed to a condition that would only allow a monument sign. The Site Plan was submitted in August, 1996 and approved in October, 1996 -- and a letter was sent to the applicant in September, 1996 advising that they would not be allowed to have a sign that is allowed in the C-4 Zone because the previous subdivider agreed to the condition. Mr. Erpenbeck found this out in September, after purchasing the property in June. He thought he was purchasing a C-4 zoned lot -- but it had a condition -- and then Boone County Fiscal Court changed the sign code six days after the Site Plan was approved. He stated that their Site Plan came in under the old text and there was a condition that they could not have the sign. He agreed that they did not do their homework, and they are asking for relief. They want the type of sign they would have had in that zone at the time their Site Plan was approved.

Mr. Bayer stated that the other item is the issue of ingress/egress. The previous developer agreed to only one access point, but the people who deliver gas to the site have stated that their movements in and out of the site are backing movements -- which is a dangerous situation. The drivers do not like backing the tankers in to deliver gas. They want the tankers to be able to drive forward all the time, which is the basis for their request for right-in/right-out egress. He stated that having a gas station with only one entrance creates a dangerous movement situation.

Mr. McKinney asked if the applicant had any further comments.

Mr. Bill Erpenbeck stated that they are in a tough situation and really need help. The signage is a severe problem and they have no other avenue but to come to the Planning Commission.

Mr. McKinney asked if there was anyone else present who wished to speak in favor of the request.

Mr. Roger Embry who lives in the house across the street from BP, stated that the BP driveway faces his mother's driveway. He questioned if there is a regulation against a sign being next to a house across the street.

Mr. Huth advised that signs are based on the zoning, and the house across the street is also zoned Commercial. There is nothing in the regulations that would further stipulate this sign here because there is a house across the street. The C-4 Zone is intended for neighborhood scale, which is the reason for the monument sign with a maximum height of 15 feet.

Mr. McKinney asked if there was anyone else present who wished to speak in favor of the request. There being no response, he asked if there was anyone present who wished to speak in opposition or to ask questions.

Ms. Jane Hembrey, a resident of Mt. Zion Road, stated that the traffic is wall-to-wall cars, concrete trucks, and huge semis. She does not know how the trucks get in to get gasoline. She questioned where the entrance would be. Would it be near the church?

Mr. Erpenbeck responded "yes".

Ms. Hembrey stated that she can hardly get in and out of her driveway. She stated that she is not opposed to the sign, but she is concerned about the traffic. She feels that someone is going to get killed.

Mr. McKinney stated that traffic is a problem all over the county.

Ms. Hembrey stated that she is not opposed to the business, but it is a dangerous situation. It is also dangerous at Shell.

Mr. Glenn Feagan stated that they are trying to alleviate the problem by asking for a right-in/right-out turn lane. He stated that it is a dangerous situation for the tankers to back out onto Mt. Zion Road. The traffic is bad and they need this relief in order not to create extra hazard.

Mr. McKinney asked if there was anyone else 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. Viox agreed with Ms. Hembrey that there is a lot of traffic on Mt. Zion Road. He stated that the neighborhood has changed to a commercial area. He stated that he drives that road a lot and the right-in/right-out access into BP would improve the situation. What is happening now is that people come down there and, because they do not realize BP is there and that Demia Way is there, they come to a stop and turn into Demia Way. He stated that there is already an entrance into the church and there is a decel lane at the church. There is a curb cut in that location. He stated that allowing the traffic to swing into BP rather than clogging the intersection is an improvement -- particularly with the trucks and other activity coming out of Demia Way. There are nine commercial lots on Demia Way and there will be a lot of activity coming out of there causing a traffic snarl. There would be a little relief with the right-in/right-out access. In regard to the sign, he stated that on a road like Mt. Zion, which has commercial activity, there needs to be a sign at least high enough to recognize where the use is -- rather than coming up on a monument sign and having to make a last minute decision.

Mr. Ries stated that W & D Investments sold the property to Mr. Erpenbeck, but nothing was planned at the time -- he asked if they knew there was going to be a gas station there.

Mr. Bayer advised that they proposed the gas station. W & D Investments subdivided and created the nine lots and had agreed to a condition on the signage. W & D Investments purchased the 10+ acre tract and subdivided it into nine lots. When they purchased Lot #1, they proposed the gas station.

Mr. Ries questioned that they did not know there were restrictions on the lot.

Mr. Bayer stated that they purchased the property knowing that it was a C-4 lot and thinking that they could have a full size sign. They were not aware of the previous conditions. They did not do their homework and were not aware of the conditions. The Site Plan was submitted, and then Fiscal Court changed the C-4 text relative to signs. He stated that without the previously approved condition, they would have been okay with the signage.

Mr. Erpenbeck stated that they did not know about the conditions when they purchased the lot. By the time they found out that they could not have the right-in/right-out access, they had invested \$600,000. They felt that they would go ahead and built it and throw themselves on the Planning Commission. He stated that he sold the lot to Shell down the street and was familiar with what was allowed in C-4 -- and he had no reason to believe that something had changed in that short period of time. There was no way to know -- other than to call and ask if anything had changed.

Mr. McKinney stated that the signage requirement for this lot has nothing to do with the signage requirement for the other C-4 Zone. He stated that they were aware there was a condition on Lot #1 in regard to the signage. Mr. Erpenbeck responded, "No, I was not aware of that." Mr. McKinney stated that they submitted a Site Plan and they knew at that time. Mr. Erpenbeck stated that he did not know about the signage at that point, and that is when he found out about the right-in/right-out. He then found out that he had to have a different permit for the signage and when he found out about the signage he already had a 35-foot sign on the site. The sign is sitting out there now. He did not know about the signage until he went for the sign permit.

Mr. McKinney asked if there was any discussion with Staff about the signage when they submitted their Site Plan in August, 1996. Mr. Erpenbeck stated that the Site Plan was approved. Mr. Costello stated that when an attorney does a title search, the conditions are recorded through a Certificate of Land Use Restriction. He stated that the Planning Commission denied the Shell station several years ago, and that decision was overturned by Fiscal Court. One of the critical reasons for the Planning Commission's denial was the access on Mt. Zion Road. He stated that by state law, the Planning Commission is obligated to record a Land Use Restriction on the application for a Zoning Map Amendment. It is recorded in Jerry Rouse's office and provides notice that there is something attached to the property.

Mr. Bayer stated that they looked at the Land Use Restrictions and the only one they found was on Lot #5 and it was recorded on April 17, 1997. Mr. Erpenbeck stated that they did a title search and the restriction was

not recorded until recently. Mr. Costello stated that by law, we have to file for the original zone change application. He stated that he will look this information up and submit it to the Committee.

Mr. McKinney stated that when they submitted their Site Plan, they submitted egress/ingress off Demia Way and now they are saying that it is dangerous. He stated that they knew at that time that they would have trailer trucks coming in and out of the property. He asked why this was not considered at that time.

Mr. Erpenbeck stated that it was considered. He stated that he had \$600,000 invested and came with the presumption that they could get it approved. He felt that the same people who thought Shell was a good thing would have the same opinion about this. He stated that the approved plan from the Planning Commission has the 35-foot sign on it. He stated that when they went for the sign permit, they were not aware that they could not have a 35-foot sign or he would not have the sign setting out there now.

Mr. McKinney stated that the BP proposal on KY 18 was seeking a larger sign and there was a lot of concern about it, and it was not possible to get a larger sign. It was indicated in the Staff Report that regional visibility is not intended for the area. He asked if the applicant believes the Staff Report is wrong.

Mr. Erpenbeck stated that they are in direct competition with Shell and they are not doing 30% of the business they should be doing, which is a severe problem.

Mr. McKinney stated that it is inappropriate and a bad situation to have ingress/egress that touches ingress/egress for the church next door. He stated that when you turn from KY 18 onto Camp Ernst Road there is an entrance there for the Soil Conservation District and there is nearly a rear-ended accident everyday. It is poor planning and this is too. He stated that these things should have been known to the applicant at the time the Site Plan was submitted and the applicant chose to do it anyway believing he could come back later and get a change.

Mr. Erpenbeck responded that that is not correct in regard to the signage.

The Chairman asked if there were any further comments or questions.

Mr. Bayer submitted a letter from the Transportation Cabinet stating that they would be in agreement with the right-in/right-out curb cut.

Mr. Erpenbeck stated that they had a stamped plan with a 35-foot sign on it so, obviously, they did not know about the sign.

Mr. Caddell stated that he was on the Committee that looked at the original zone change request for the approximate 10-acre site and one of the issues at that time was that the applicant had no uses to show the Committee as far as what might potentially happen there. He stated that

it was the intent to make it as restrictive as the conditions indicate because they did not have any idea of what was coming in there. He added that he does not think there is a decel lane to Demia Way.

Mr. Bayer advised that there is a shoulder.

Mr. Caddell stated that they considered a decel lane to this property at the Committee level and he believes that they were told at that time that 8 or 9 uses would not qualify and the applicant did not feel a decel lane was needed.

Mr. McKinney stated that he was also on the Zone Change Committee and remembers expressing surprise that a zone change was allowed without the plan being submitted with it.

Mr. Brown questioned the location of the access to the Thriftway property directly across the street. Mr. Huth advised that the access is on a new street that connects Mt. Zion Road with Sam Neace. He does not believe there is access to Thriftway from Mt. Zion Road, but he can look at the Site Plan in this regard.

In regard to the right-in/right-out access, Mr. Erpenbeck stated that they would have no problem in giving an easement to the church. He stated that the church is for sale. They would be agreeable to putting this easement in the deed. They are willing to put it in the corner of their property and let them come in and out. He stated that a curb cut will occur there and possibly we could kill two birds with one stone because it could then connect all the way out to Demia Way.

Mr. Brown questioned if the curb cut could be right-in only and barrier style as opposed to right-in/right-out. Mr. Erpenbeck stated that that would be fine. Mr. Brown stated that there would be a barrier so that no one could make a left turn out. Mr. Costello stated that the curb cut could be designed for right-turn-in only and vehicles would not be able to pull out there. It is designed to be extremely difficult to pull out. He noted that this has been done before.

Mr. Viox suggested that the Committee go out to the site and look at Mt. Zion Road again and view the property coming from I-75 in terms of getting into the site and identification of the site. He believes the site does have an identification problem. He does not want a traffic snarl because we have not reviewed the site well enough to see that they need a sign higher than 13 feet.

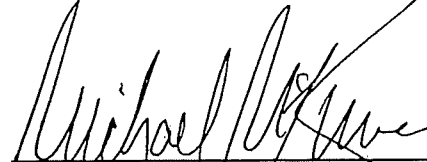
Mr. Neltner questioned the width of the lot. Mr. Erpenbeck advised that it is 180' wide by about 210'. Mr. Neltner stated that a tractor trailer is 60 feet long. He questioned why a tractor trailer could not pull in and go around the front and pull out when the site is three times the length of the tractor trailer. Mr. Erpenbeck stated that with the building and the pumps, that is literally impossible. Mr. Bayer reviewed the plan with Mr. Neltner in regard to the restrictions on the movements of tractor trailers. Mr. Feagan advised that they spent half a day out

there with a truck trying to figure out how they could pull in and pull out, but they could not make the turn.

There being no further comments, Mr. McKinney stated that the Committee Meeting for this item will be on May 12, 1997 at 5:30 P.M. in the second floor conference room. This item will be on the Agenda for the Business Meeting on May 21, 1997 at 7:30 P.M..

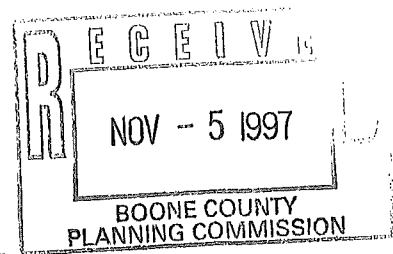
The Chairman closed this Public Hearing.

APPROVED:


Michael McKinney, Chairman

Attest:


Jan Hancock, Recording Secretary



BOONE COUNTY FISCAL COURT
ORDINANCE NO. 920.352
BAYER BECKER ENGINEERING/ERPENBECK/FEAGAN

AN ORDINANCE OF THE BOONE COUNTY FISCAL COURT APPROVING THE REQUEST OF BAYER BECKER ENGINEERS (APPLICANT) FOR A CHANGE IN AN APPROVED CONCEPT DEVELOPMENT PLAN IN A COMMERCIAL FOUR (C-4) ZONE FOR AN APPROXIMATE 1 ACRE SITE KNOWN AS LOT 1, DANIELS BUSINESS PARK, GENERALLY LOCATED AT THE INTERSECTION OF MT. ZION ROAD AND DEMIA WAY, BOONE COUNTY, KENTUCKY, SUCH CHANGE IN THE APPROVED CONCEPT DEVELOPMENT PLAN EFFECTING THE SIGNAGE OF SAID PROPERTY ONLY.

WHEREAS, the Boone County Planning Commission received a request for a change in an approved Concept Development Plan in a Commercial Four (C-4) zone for an approximate 1 acre site known as Lot 1, Daniels Business park, generally located at the intersection of Mt. Zion Road and Demia Way, Boone County, Kentucky, which is more particularly described below; and

WHEREAS, the Boone County Planning Commission as the Planning unit for the unincorporated areas of Boone County, Kentucky conducted a Public Hearing on April 30, 1997 and issued a Committee Report dated May 21, 1997 recommending denying said request; and

WHEREAS, The Fiscal Court of Boone County, Commonwealth of Kentucky, deems that a portion of such request should be approved and a portion of such request be denied; and

WHEREAS, The Fiscal Court of Boone County, Commonwealth of Kentucky, deems it necessary to enact this Ordinance to protect and preserve the health, safety, welfare and convenience of the inhabitants of Boone County pursuant to Fiscal Court authority under K.R.S 67.083.

NOW THEREFORE, BE IT RESOLVED BY THE BOONE COUNTY FISCAL COURT AS FOLLOWS:

SECTION I

That the request for a change in an approved Concept Development Plan in a Commercial Four (C-4) zone for an approximate 1 acre site known as Lot One (1), Daniels Business Park, generally located at the intersection of Mt. Zion Road and Demia Way, Boone County, Kentucky, and more particularly described in Deed Book 631 at page 115 in the records of the Boone County Clerk's Office in Burlington, Kentucky, be hereby amended or changed with regard to signage on said site only, and as follows: Said site may have one (1) free standing pole sign which advertises the businesses on said site, such sign not to exceed thirty-five feet (35') in height and such sign may contain a maximum sign space or advertising space not to exceed two hundred forty-three (243) square feet as shown on the submitted Concept Development Plan.

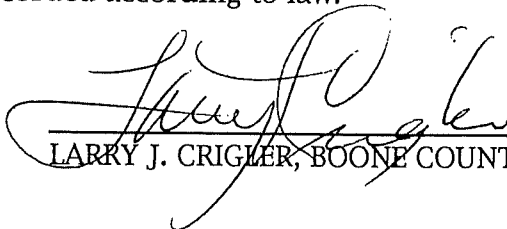
SECTION II

That all other requests for a change in an Approved Concept Development Plan in a Commercial Four (C-4) zone for an approximate one (1) acre site known as Lot One (1), Daniels Business Park, generally located at the intersection of Mt. Zion Road and Demia Way, Boone County, Kentucky, and more particularly described in Deed Book 631 at page 115 in the records of the Boone County Clerk's Office in Burlington, Kentucky, except as expressed and approved in Section I next above, is hereby denied.

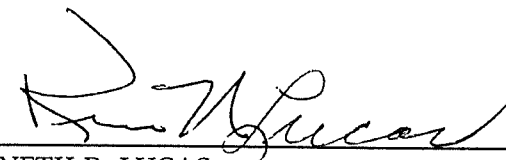
SECTION III

That this Ordinance shall take effect and be in full force when passed, published and recorded according to law.

SUBMITTED BY:


LARRY J. CRIGLER, BOONE COUNTY ATTORNEY

Adopted by the Fiscal Court of Boone County, Commonwealth of Kentucky, after second reading at a regular meeting on the 21 day of October, 1997, and on the same occasion signed in open session by the County Judge/Executive as evidence of his approval, attested under seal by the Boone County Fiscal Court Clerk and declared to be in full force and effect.


KENNETH R. LUCAS
BOONE COUNTY JUDGE/EXECUTIVE

ATTEST:


CAROLYN A. RUDICILL
FISCAL COURT CLERK