

**FLORENCE BOARD OF ADJUSTMENT
BOONE COUNTY ADMINISTRATION BUILDING
BOONE COUNTY FISCAL COURTROOM
BUSINESS MEETING
JANUARY 13, 2021
7:00 P.M.**

Vice-Chairwoman Evans called the meeting to order at 7:05 P.M.

She stated the meeting was being held via video teleconference pursuant to KRS 61.826, SB 150 and OAG 20-05. The public hearing format has been necessitated due to the state of emergency regarding the threats to public health presented by the novel Coronavirus (COVID-19) pandemic.

Mr. Morgan confirmed that all those in attendance could see and hear the proceedings. All those in attendance stated that they could see and hear the proceedings.

BOARD MEMBERS PRESENT:

Mrs. Dee Begley
Ms. Lois Evans
Mr. Duane Froelicher
Mrs. Linda Schaffer
Mr. Kenneth Vaught

STAFF MEMBERS PRESENT:

Mr. Todd K. Morgan, AICP, Senior Planner

LEGAL COUNSEL PRESENT:

Mr. Dale T. Wilson

Mr. Morgan asked if the Board wanted to elect new officers now or wait until the end of the meeting. Mrs. Belgley indicated they could wait until the end of the meeting. Mr. Vaught made a motion that Ms. Evans serve as the Chair for this meeting and Mrs. Schaffer seconded the motion. Ms. Evans called for the vote and it carried unanimously.

APPROVAL OF MINUTES

Ms. Evans stated the Board received copies of the minutes of the Florence Board of Adjustment meeting of December 9, 2020. She asked if there were any other comments or corrections. Mrs. Begley moved to approve the minutes and Mr. Vaught seconded the motion. Ms. Evans called for the vote and it carried unanimously.

ACTION ON REVIEWS

Request of Houlthaus Sign for a Conditional Use Permit and Variance. The Conditional Use Permit is to allow an electronic message center on a future 10 foot tall monument sign. The

Variance is to reduce the 660 foot spacing requirement between electronic message boards. The approximate 1.02 acre site is located at the northwest corner of the KY 18/Commerce Drive intersection and to the east of the I-71/75 northbound entrance ramp from KY 18, Florence, Kentucky and is zoned Commercial Services/Planned Development/Parkway Corridor Study Overlay District (C-3/PD/PO).

Staff Member, Todd Morgan, presented the Staff Report which included a PowerPoint presentation (see Staff Report). He added that he received a revised sign drawing this afternoon (see Exhibit 1). The drawing is included in the PowerPoint presentation.

Mrs. Begley asked if the slide of the building could be shown again.

Mr. Froelicher asked for confirmation that the sign couldn't be used to advertise the dealership down the road. Mr. Morgan stated that was correct. They would need to apply for a Special Sign District to allow off-premise advertising.

Mr. Foelicher said when City Council approved the use it was described as an internet car sales business where they would recondition the cars, take pictures of them, and post them on the internet. There would be very few customers because they would be directed to the dealership building. He asked what the benefit of this sign would be. Mr. Morgan said that is a question the applicant should address. Mr. Gerry Dusing said he was an attorney and was representing Tom Gill. He was joined by Mark Caudill, with Holthaus Signs, and Gene Weber, with Hub + Weber. Tom Gill is also available on speaker phone. He was unable to log in to meeting through the internet. Mr. Dusing said the use of the building was defined correctly. Cars that are being sold will be detailed on site and sales people will be on their phones and computers chatting with customers. They made the Planning Commission and Council aware that they wanted a digital sign and they were told to go to the Board of Adjustment. As a result, they never considered this as a separate site.

Mr. Tom Gill said they are looking to advertise the website address and the advantages they offer by purchasing on-line. They agreed that there would not be customers walking into this building. These sales would occur on the dealership lot or the vehicles would be delivered to a person's home. He thinks customers will be confused because they will not know if they should pull into the new site or come down to the dealership. They do not want customers at the new location. They have never looked at this site as a separate facility. It's a part of Tom Gill Chevrolet. The 100 yards arrow is to keep customers out of this building. That's the purpose of the sign. The talked about this at the planning and zoning meetings to allow the building.

Mr. Dusing asked if the site plan could be shown. He said the site access is on Commerce Drive and is located as far from KY 18 as possible. The sign will be at the corner of KY 18 and Commerce Drive. Customers will come into this site if they don't have the directional arrow. They don't want this occurring. He reviewed the proposed sign drawing and indicated the sign will advertise products and services from this site.

Mr. Morgan said he was not the Staff person that handled the Change in Concept Development Plan application to allow the new building on the site. He was not aware that the sign had off premise advertisement until the day the application was being submitted. He saw the arrow and

made the person submitting the application aware that a Special Sign District needed to be submitted and not a Conditional Use Permit if they wanted to sign to advertise the dealership down the road. Phone calls were made and the applicant decided to submit the Conditional Use Permit application. He was under the impression, the sign would not be advertising the dealership because of the discussion. Mr. Dusing said it is all a matter of how you look at it. Mr. Morgan replied that this site is not attached to the Tom Gill dealership lot. The dealership is two or three lots down the road. The Board of Adjustment cannot act on a Conditional Use Permit to allow off-premise advertisement. Mr. Dusing said they do not consider this off-premise.

Mr. Dusing said they would address the Staff questions found on page 6 of the report.

1. Is the internet used car sales business description that was provided by Mr. Dusing at the 9/4/19 Public Hearing still accurate? Yes.
2. What products or services will be advertised on the sign? Will the EMC only advertise vehicles and services that are being provided on the subject site? Yes. They just went through that and indicated why they feel the 100 yard directional arrow is important.
3. How long will each message be held on the EMC before it changes? The Zoning Regulations require 5 seconds and the Federal standard for billboards is 8 seconds.
4. Will any message have movement or animation (flashing, scrolling, running, moving patterns of light, video, live television, etc.)? No.
5. How does the proposal meet the conditional use criteria found in Section 262 of the Boone County Zoning Regulations? Mr. Dusing said he would come back to this.
6. How does the proposal meet the variance criteria found in Section 251 of the Boone County Zoning Regulations? They agree with the Staff comments because they will not compete with the digital gas prices signs.

Mrs. Begley asked what type of signage is proposed on the building and the larger sign. Mr. Dusing replied these signs will advertise Tom Gill Chevrolet. The Concept Development Plan conditions require the larger freestanding sign to correlate to the dealership sign. She was hoping this building would be significantly different from the dealership so customers knew not to pull into this site.

Mrs. Begley said the sign drawing shows a flag as a background. This gives her the impression the sign could have changing language on it and be distracting. The sign will tell consumers to go to a website and indicate the advantages of buying on-line. She doesn't know how motorists will be able to get this much information from the sign while traveling down KY 18. Mr. Dusing said the sign's primary purpose will be to advertise on KY 18, identify the site, and indicate where to go to do business. There are a lot of backed up motorists on KY 18 that will be able to look at the sign and read it. Many digital signs have been approved on US 42, Mall Road, and KY 18. He added that the flag that is being shown on the sign couldn't move per the regulations. Mr. Caudill said the Federal government has done several studies on the distraction these signs may

cause and they have concluded they aren't distracting. That is why they allow them. They have also allowed billboards to be converted to digital billboards with multiple messages. The goal is to give the customer quick concise messages that aren't distracting. Distracting messages would be ignored. Mrs. Begley asked if they would be advertising the new concept or the Tom Gill dealership down the road. It has been stated they don't want people turning into this building at the corner. She does not see how this one monument sign can convey all this information.

Mr. Caudill said the sign could contain a message like "save money with Tom Gill" and "checkout our daily internet specials". This will get customers to think about Tom Gill and potentially buy from them. Mr. Dusing said the messages will also direct people to the website and provide a phone number.

Mrs. Begley said the monument sign is a good idea but this Board does not have the ability to approve the arrow or any off-premise advertisement. Mr. Froelicher said Staff indicated the sign isn't permitted to advertise the dealership down the road. As a result, messages could only be displayed that relate to the subject site. Mr. Morgan said the Zoning Division talked this issue over and agreed the sign would be an off-premise sign if it used to advertise the dealership down the road. The dealership is two or three lots removed from this site. Mr. Dusing said the issue with the sign is the arrow. Mr. Morgan said that it would also depend on the message that is being displayed on the EMC. Mr. Dusing said they understand that the messages have to relate to the products and services being offered on this site. Mr. Morgan agreed that the only issue would be the directional arrow based on that description. Mr. Dusing said the sign could display things like, "Buy Internet", "Tom Gill Advantage", "Tom Gill Price Match Guarantee", etc. because these are things that customers would get from buying from this site.

Mr. Gene Weber said he was the project architect. The Planning Commission seemed to be pleased with the idea that customers would be directed to the dealership when the Concept Development Plan was approved because all transactions are to take place on the dealership lot. This application for the sign is how they plan to accomplish that.

Mr. Froelicher said the Board of Adjustment cannot vote on an off-premise sign. Mr. Dusing said they can defer to Dale Wilson if they like but the Board could certainly eliminate the arrow if they feel that it makes the sign an off-premise sign. The Board can certainly approve the sign without the arrow and 100 yards text.

Mrs. Schaffer said she doesn't believe motorists will see or pay attention to the 100 yards text or the arrow. All they will see is the EMC and Tom Gill. She also has concerns because this is not your average intersection. There is a gas station, truck stop, interstate ramp, and heavy traffic. She believes stopped traffic will read the sign and forget they need to drive. She also believes the sign will be distracting, isn't harmonious with the area, and will have adverse impacts, and that will not remember an email address or phone number and will try to write it down. She doesn't believe the sign is appropriate in this location.

Mr. Dusing said this sign has the same function and characteristics that have been approved for other signs like McDonald's and Culver's. These signs are located at busy intersections. Mrs. Schaffer agreed but indicated that they limited these signs to two lines of text. She feels this area is unique because there is a truck stop, gas station, and interchange and the subject intersection

isn't signalized. She might be able to accept a monochrome sign with a black background, red text, two lines of text, and a 15 to 30 second hold time. She feels the new Boot Country sign on KY 18 is distracting. She also drives on I-75 and finds the billboards to be distracting because she watches them and waits to see the next message. They don't need distracted motorists at KY 18 and I-71/75.

Mr. Dusing said he doesn't feel they are competing with the electronic gas price signs. Mrs. Schaffer said she agrees with that. Her issue with the gas station and truck stop is the amount of traffic coming in and out in this area.

Mr. Vaught said he agrees that they might not be the right body to act on this request. The other signs that are being mentioned are advertising goods and services on the same site. He believes the arrow definitely makes this an off-premise sign. Mr. Dusing said they can remove the arrow and have messages that pertain to the internet sales. Mr. Vaught asked if the EMC would contain any messages for the Tom Gill dealership down the street. He believes Mrs. Begley asked this earlier.

Mrs. Begley said she sees this sign as being different from Culver's or McDonald's. They don't show internet addresses or phone numbers and people generally know what is being provided at these restaurants. The type of messages that Tom Gill will be showing will require people to pay more attention to absorb the message. Mr. Dusing said that is the whole point of the sign. This way of selling cars is a newer concept and is different.

Mr. Dusing said it he would go back to the Staff questions found in the Staff Report to address the criteria.

5. How does the proposal meet the conditional use criteria found in Section 262 of the Boone County Zoning Regulations?

Mr. Dusing said this project has taken a long time to get to this point. They applied for the building back in the summer of 2019 and there were a lot of conditions imposed on the Concept Plan approval. The site is zoned C-3/PD/PO and electronic message signs are permitted as a conditional use in this zone. Everyone concluded the building use was appropriate with the area and they talked about this digital sign throughout the Concept Development Plan process. They have made changes to the bottom of the sign so it will be appropriate in appearance with the building and general area. The sign will not be hazardous to existing or future neighboring uses and they are willing to agree to conditions that deal with potential glare impacts.

Mr. Vaught said he does not dispute the Conditional Use Permit criteria. His issue remains what is being advertised on the sign. He asked if this sign would only advertise products or services being offered at this building or if it will also advertise for Tom Gill down the road. Mr. Dusing said they are limited by code to only using the sign for products and services that are being offered on the subject site. This site will sell cars and Tom Gill offers a program when you buy a car from them. They will not advertise things like oil changes because this service is not provided on this site.

Ms. Evans asked how many vehicles Tom Gill anticipates to sell from this site. Mr. Gill said he doesn't know but would like to point out that Carvana sold 100,000 cars nationwide this way last year. About 15% of cars are currently bought this way and the number continues to grow. Ms. Evans asked if the transactions for the vehicles that are being sold on this lot could take place on this lot. Mr. Dusing said the building was not designed this way. People buying cars will mail in the paperwork to Tom Gill or come to the finance department located in the dealership building. They don't want customers at this location.

Mr. Vaught said one of the draft conditions would prohibit them from advertising off premise businesses, products, or services. They could impose this condition and require the arrow to be removed from the sign.

Mr. Froelicher made a motion to approve the applications with the conditions as they are drafted in the Staff Report. Mr. Vaught seconded the motion but said he would like more discussion to take place before the vote.

Mrs. Schaffer said she does not feel the Conditional Use Permit application complies with the passage from the Comprehensive Plan because this sign will be distracting. She would recommend the following for the sign: (1) The EMC shall be a monochrome sign (red text on a black background only); (2) The EMC shall be limited to two lines of text; (3) The EMC shall be limited to 32 square feet; (4) The EMC shall contain no message with apparent motion; (5) The overall sign shall contain no off-premise advertisement; (6) The message hold time shall be 30 seconds because of the proximity of the site to the Interstate; and (7) A photocell shall be required.

Mr. Caudill said the Federal Government has done lots of studies regarding the hold time on these signs and has concluded the hold time should be 8 seconds with a 65 mph speed limit. Mrs. Schaffer replied that people are not driving 65 mph on this section of road. Mr. Caudill said the effectiveness of the sign will be based on the color contrast. Street signs for example are black and white or red and white to help disseminate messages. Mr. Dusing said he and Mr. Morgan discussed the black background language found in the draft conditions this morning and Mr. Morgan's intent was to prevent glare impacts on roadways. They would be okay if they could change that condition to allow black, dark blue, or dark grey backgrounds. Mrs. Schaffer asked if they would rotate these 3 colors or use the same one all the time. Mr. Dusing said the dark backgrounds and text colors would change with each message. The text would need to contrast with the dark background.

Mrs. Begley asked Mr. Morgan if there was a way they could keep customers from driving into this site. Mr. Morgan said one possibility would be to put up a 5' tall, 6 square foot directional sign at the access point. This sign would have to have an arrow pointing into the subject site but could also say "employees only".

Mr. Dusing reviewed the draft conditions and made some suggested edits. He suggested the following: condition #2 be revised to remove the requirement of the masonry sides, condition #3 be removed, the EMC sign area in condition # 4 be increased to 44.625 square feet, the EMC hold time in condition #5 should be close to 8 seconds, and condition #7 be changed to allow dark backgrounds.

Mrs. Schaffer said this would allow the background to change with each new message. Mr. Morgan said that was correct. Any contrasting text could be used. Mr. Dusing said they can discuss draft condition #7 if needed.

Ms. Evans asked about the removal of condition #3. Mr. Morgan said he believes EMC's are more aesthetically pleasing when they are located underneath the fixed copy sign panel. He knows the applicant disagrees with this condition and the Board needs to determine if it should remain or be eliminated. Mr. Dusing said the removal of that condition is very important to them because the sign needs to be at eye level. Mr. Dusing said all of the other electronic signs are located on top of the sign. Mr. Morgan said there is a mix. Some are on top of the sign and others are on the bottom of the sign. Ms. Evans asked for the proposed sign drawings to be shown on screen again. Mr. Dusing said the EMC will not be at eye level if it's at the bottom of the sign.

Mrs. Schaffer asked if they would be okay with changing draft condition #6. Would they accept removing the still photo and reducing the number of lines of text from 3 lines to 2 lines? Mr. Dusing said they are willing to accept the condition as it currently written. The purpose of these signs is to allow some flexibility. Tom Gill plans on using the American flag in some of their messages.

Mr. Caudill said studies have found that clear and concise electronic signs do not cause accidents. Mrs. Begley indicated that they do not have any of these studies in the record. She asked if they could review the conditions.

Ms. Evans asked for a clarification. She asked if the American flag that is shown on the EMC would be there constantly. Mr. Dusing said it would not be there constantly. They could use the flag as a still photo in some messages. Mr. Morgan agreed. He said the draft conditions would allow a still photo flag and three lines of text on it. The next message could contain a new still photo and three lines of text. Mr. Caudill agreed he said they would not use a still photo American flag in every message. The new message might simply be Tom Gill's internet address.

Ms. Evans asked for confirmation that the 100 yards arrow was no longer part of the proposal. Mr. Dusing said that was correct.

Mr. Morgan reviewed the draft conditions and the different modifications that were discussed. After some discussion the draft conditions were revised as follows:

1. The overall sign height shall be limited to 10'.
2. The base of the monument sign shall be constructed with the same textured split face block that is being used in the building. The split face block base shall be a minimum of 2' tall.
3. The electronic message center shall be limited to 44.625 square feet in area.
4. Each electronic message that is displayed must be held on screen for a minimum of 15 seconds.
5. No message on the electronic message center shall contain more than one (1) still photo

and/or three (3) lines of text.

6. Any portion of an alphanumeric message that is not displayed on a still photo/image shall use a dark background.
7. The electronic message center shall be equipped with a photocell and messages shall dim as the sky darkens.
8. The electronic message center shall have a 16 mm pixel pitch or better resolution.
9. The sign shall not be used to advertise off premise businesses/products/services. This includes the use of directional arrows directing traffic to the Tom Gill dealership lot at the end of Commerce Drive.
10. The property owner agrees to work with the Planning Commission and/or City of Florence to resolve any lighting or glare impacts that are caused by the sign on KY 18 or Commerce Drive.
11. The electronic message center shall not display any messages with movement or animation. This includes but is not limited to running messages, scrolling messages, moving patterns of light, expanding, contracting, or rotating shapes, television or video.

Mr. Froelicher amended his motion to include the revised conditions that were just discussed. Mr. Vaught seconded the motion. Ms. Evans called for a roll call vote. Mrs. Begley – “yes”, Ms. Evans – “yes”, Mr. Froelicher – “yes”, Mrs. Schaffer – “no”, and Mr. Vaught – “yes”. The motion carried by a 4-1 vote.

OTHER

Mr. Morgan said the Board needs to elect new officers since Chairman Pieper was not reappointed and this is the first meeting of 2021. Mr. Wilson said the Board could also think about it and do it at the next meeting. Mrs. Begley recommended they do it now. Mr. Morgan asked if anybody was interested in serving as Chair, Vice-Chair, and Secretary. Mrs. Begley said she was interested in serving as Chair, Mr. Vaught said he was interested in serving as Vice-Chair, and Mr. Froelicher said he was interested in serving as Secretary. Mr. Froelicher made a motion to accept that slate of officers and Mr. Vaught seconded the motion. Ms. Evans called for the vote and it carried unanimously.

ADJOURNMENT

Ms. Evans made a motion to adjourn the meeting and Mr. Vaught seconded the motion. Ms. Evans called for the vote and the meeting was adjourned by unanimous consent at 9:05 P.M.

APPROVED

Ms. Lois Evans

ATTEST:

Todd K. Morgan, AICP
Senior Planner

Exhibit 1 - Revised Sign Drawing Received on 1/13/21