

**FLORENCE BOARD OF ADJUSTMENT  
FLORENCE GOVERNMENT CENTER  
BUSINESS MEETING  
December 9, 2009  
7:00 P.M.**

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Mr. Pieper, Chairman, called the meeting to order at 7:03 P.M.

**BOARD MEMBERS PRESENT:**

Mr. Timothy Pieper - Chairman  
Ms. Lois Evans - Vice-Chairwoman  
Mrs. Linda Schaffer  
Mr. David Schneider, Jr.  
Mr. Ritsel Sparks

**LEGAL COUNSEL PRESENT:**

Mr. Dale Wilson

**Approval of the Minutes:**

Mr. Pieper stated that the Board members received copies of the minutes of the Florence Board of Adjustment Meeting of November 16, 2009. He asked if there were any comments or corrections.

There being no changes, Mr. Sparks moved to approve the minutes as mailed. Mr. Schneider seconded the motion and it carried unanimously.

**Agenda Items:**

- 1. Request of Quality Signs for QuikStop Oil Change for a Conditional Use Permit and a Variance. The Conditional Use Permit is to allow an electronically changeable message board to be added to an existing free-standing sign. The Variance is to reduce the 660 foot spacing requirement between electronic signs. The site is located at 8114 U.S. Hwy. 42, Florence, Kentucky. The site is currently zoned Commercial Services (C-3).**

Staff Member Todd Morgan, AICP, presented the Staff Report which included a PowerPoint presentation (see Staff Report).

Mr. Jeff Simmons indicated that QuikStop Oil Change has been at the subject location since 1990. This store has always been one of their stronger locations. However, business has declined about 18% when analyzing the last 6 months verses the same 6 months in 2008. They had to decide whether to put some money into this location or not renew their lease. The electronic sign is the cornerstone of the remodeling project. Other factors that have hurt the business is Thorntons being demolished and not rebuilt and people bypassing the store by using other routes. The only traffic they get is during peak hour traffic jams. They need something for people to see them and take a little bit more notice.

Mr. Simmons stated that the number of lines shown on the drawing is much more than they need because three lines of copy would be adequate. The store located at Houston Road and Donaldson Highway has an L.E.D. sign which has three lines of copy. He stated that they do not need animation or a lot of different panels. They only need something that lists what they do and to advertise specials. He doesn't want to do a plastic manually changeable message board because there are problems associated with them, such as the letters blowing off. He also doesn't believe that manually changeable message boards are attractive.

Mr. Pieper asked how many times the sign would change in a day. Mr. Simmons indicated that the electronic sign they placed at Houston Road and Donaldson Highway changes once every 5 or 10 seconds. The proposed sign doesn't have to change every day but his desire would be to display 4 or 5 panels and for the change to occur once a minute or once every two minutes. He doesn't need motorists passing by to see three messages, he only needs them to see one. Motorists will not be in the stretch between the Interstate and Mall Road long enough to see 3 messages. He thinks there is a difference between what he is selling and what Walgreen's is selling. He is competing with other automotive services, such as, Car-X, Valvoline, and tire stores. He just needs an attractive, hi-tech looking sign without animation. The existing sign has been located on the property since 1990 and they are also planning on changing out the top panel because it is a little dated.

Mr. Pieper asked the applicant to clarify that they were not wanting a constant change but were wanting to advertise 3 or 4 messages. Mr. Simmons responded that they do oil changes, transmission services, tire rotations, wiper blades, and light bulbs. They are a convenience operation. He doesn't like a lot of flashing lights because it confuses people. He believes they need to be careful how they advertise because auto services receive a lot of negative publicity because people get scammed for services that they do not need. He doesn't want his business to look like a circus. He indicated that he doesn't have a problem agreeing to a reasonable condition that limits the frequency of the change.

Mr. Pieper indicated that he doesn't have any problems with the gas price signs because the message is static. They are electronically changeable but they just display gas price. In this case, the concern is the proximity of the approved Thorntons sign because it is so close to the QuikStop sign.

Mrs. Schaffer said she appreciates Mr. Simmons concerns regarding his business. However, Thorntons being vacant is outside the Board's control. She agrees with Mr. Pieper's comment regarding electronic signs with static messages and feels that maybe the Board should be requiring that they all be static.

Mrs. Schaffer asked Mr. Simmons if he knew how large his electronic sign was near the corner of Houston and Donaldson. Mr. Mark Stottman, with Quality Signs, stated that the sign was approximately 40 inches by 10 feet. Mrs. Schaffer said one of her concerns is the size of the proposed message board when comparing it to other electronic signs the Board has approved. The Super 8 sign on Dream Street is 3'-4" x 12' and seems extremely large. Mr. Stottman replied that it a completely different area because Dream Street is a two-lane road and U.S. 42 is a four-lane road with turn lanes. Mrs. Schaffer replied that QuikStop's sign is located right against U.S. 42.

Mrs. Schaffer said she is concerned about the proximity of the sign to the Thorntons sign and the possibility of it being distracting to motorists. She is also concerned about the number of lines of text and the overall size of the sign. Two lines of text should be plenty because the sign needs to be legible. Five lines of text are way too much because people will be distracted when they are trying to read the sign. Mr. Simmons stated that the rule for billboards is a twelve word maximum.

Mr. Simmons stated that the sign is the largest they could possibly consider. There is a budgetary issue because the larger the sign the more expensive it is. He stated that he could achieve his purpose if the sign was limited to two lines. Mrs. Schaffer asked how large the letters would be if the sign was limited to two lines. Mr. Simmons said that the sign is limited because as the letters get taller they also get wider.

Mr. Morgan asked Mr. Stottman for some clarification on the letter heights.

Mr. Stottman indicated that he did not believe that the Thorntons sign was going to be rebuilt in the same location because he was the sign contractor that removed the previous sign. Mr. Morgan said he believes his information is correct because Thorntons simulations show the sign in the same location and with the same poles. Mr. Stottman said the poles are gone. Mr. Morgan agreed but indicated that the Board approved Thorntons sign in the same location as their previous sign.

Mr. Stottman indicated that the letters would be five inches tall if the message board displayed a five line message and the letters would be thirty-six inches tall if the message board displayed a one line message. However, the letters can pretty much be made any size between the minimum and maximum heights. There are also different letter fonts that can also alter the height and widths of the letters.

Ms. Evans asked if Thorntons approval stays with the property. Mr. Morgan replied that the approval stays with the property unless they come back before the Board and ask for some modification. She expressed concerns because Mr. Stottman was the sign contractor and he was under the impression that the new sign was going to be constructed in a different location. Mr. Morgan replied that the sign location would be verified when the sign permit was submitted for review. Mr. Morgan said Staff can approve minor changes to an approval as long as a Variance is not being enlarged.

Mr. Sparks said he thought that Thorntons was going to reuse the same poles. He questioned if the new sign would be limited to twenty feet. Mr. Morgan responded that the sign was grand-fathered and the Board approved the reuse of it. The sign can be reconstructed. Mr. Wilson clarified that just because the structure has been temporarily removed doesn't mean that it has been abandoned. Ms. Evans asked how long the sign would have to be removed before it would be considered abandoned. Mr. Wilson said our regulations indicate that a presumption arises after twelve months but even that is just a presumption. For example, there have been cases in Covington where buildings have been used by a pre-existing non-conforming use and then the use goes away. Years later the property owner has triggered the grand-fathered status by saying they were attempting to get a new user in the building during the time of non-use. The burden is the property owner to prove that they have not abandoned the use.

Mr. Wilson informed the Board that the applicant has the right to place the same size manually changeable message board on the sign as a matter of right. Mrs. Schaffer agreed but said electronically changeable signs have lighting impacts and that this sign appears to be too large. Mr. Stottman stated that any proposed manually changeable reader board would be internally illuminated. Mrs. Schaffer replied "not with L.E.D."

Mr. Morgan asked Mr. Simmons to address his earlier comments. Is there a possibility the sign could have one message all day long? Mr. Simmons replied they could do that but it seems excessive. The sign changing once an hour or in the morning and the evening would allow them to get different messages across to differing traffic. Mr. Stottman added that you wouldn't want to advertise windshield wipers all day long if it were sunny. Mr. Simmons stated that he would be agreeable to a reasonable condition because he would rather have electronic copy than manually changeable copy. It has a high tech look.

Mr. Pieper asked Mrs. Schaffer to further explain her concern about the size of the sign. She explained that the proposed sign is 10 feet wide and is in very close proximity to the sidewalk and road. She stated that some of the other electronic signs on Dream Street look extremely large because they are in close proximity to the road. Mr. Stottman explained that the proposed sign is 10 feet wide because the existing sign panel is 10' wide. He believes the sign would look odd if the two panels were different sizes. Mr. Schneider indicated that the Super 8 electronic sign that was approved in 2006 was 3'-4" x 12'.

Mrs. Schaffer recommended that the sign should be limited to two lines of text, a photocell, and a static message if the request is approved. She believes there will be an enforcement issue if the sign is allowed to change once every 10 seconds or once an hour. Mr. Pieper asked if they needed to define static. Mr. Morgan stated static could mean one message a day or one message in a 12 hour window. Mr. Simmons said a static message to him is one that is not always changing. He said most motorists would probably never see the sign change if it were limited to one change a minute. Mrs. Schaffer said she would prefer something more like the electronic fuel price signs. Mr. Morgan responded that if the Board limited the sign to one change every 12 hours he would recommend a condition stating that the sign could change at certain times like 12:00 a.m. and 12:00 p.m. so it would be easy to enforce. Mr. Schneider said the gas signs are not limited to how many times they can change in a day. Ms. Evans said if the sign is going to be a marketing tool it needs to change more often because automotive businesses sell different products as the weather changes. Mr. Sparks believes that limiting the sign to one change every 12 hours is excessive and that one change an hour is more reasonable.

Mrs. Schaffer asked Mr. Wilson if he had any recommendations. Mr. Wilson said the Board should define how often the sign can change because that will make it easier to enforce.

Mr. Simmons said he does not want the perception of a rotating sign and believes that can be accomplished by setting a short time interval between changes. The enforcement officers could easily monitor the sign if it were limited to three minutes between changes.

Mr. Pieper said his problem is the Thorntons sign next door because it was limited to 10 seconds between changes. He believes the proposed sign has to have a static appearance or it will be distracting to motorists. His suggestion would be to limit the time between changes to half an hour. Mr. Sparks said he thinks anything over a minute will be fine because it doesn't take that long to drive between the Interstate and Mall Road.

Mr. Morgan added that there have been numerous electronic sign requests since 2003 and he believes there will be more requests in this corridor over time. Ms. Evans said her biggest concern about the request is the proximity of the sign to other electronic signs. This request would allow two electronic signs within 244 feet of one another. She believes the Board will continue to be confronted with this issue. Mr. Simmons indicated that Thorntons may not build their sign. Ms. Evan replied that Thorntons approval rides with the property and any future user could construct the sign.

Mr. Pieper stated that the 660' spacing requirement came from the Lady Bird Johnson Highway Beautification Act. He believes that the spacing requirement was put in for aesthetic purposes. Mr. Wilson said the 660' spacing requirement was put in the Zoning Regulations because it was envisioned that these types of signs would be rapidly changing. He said it is up to the Board to determine if a longer delay between messages or making the sign smaller justifies granting the Variance.

Mr. Schneider said the applicant indicated that they were looking at this type of sign because of the decline in sales. He said that denying the request could cause them to seek another location and the City would end up with two vacant properties side by side. He said they need to be able to allow the applicant to advertise on a message board but also need to draft conditions that will make both sides happy.

Mr. Sparks asked Mr. Simmons what he would be happy with. Mr. Simmons replied that he understands that the City doesn't want the motoring public to notice the changing nature of the sign. He doesn't believe the motoring public will notice the sign change if they are traveling at normal speeds and the sign changes once every 10 seconds. However, there are cases where traffic is backed up and motorists are backed up for a minute. These motorists would not notice the sign change if a one minute or two minute limitation was placed on the sign.

Mr. Schneider asked Mr. Morgan if would be easier to enforce a sign condition with a shorter time frame between message changes. Mr. Morgan replied that he believes a shorter time frame would be easier to enforce, but he would hate to see the Board make a decision on that basis.

Mr. Simmons stated that he hardly notices the message change at his Erlanger store and the sign is set to change once every 6 to 10 seconds. He doesn't believe people see the message change when there is a 6 to 10 second delay, so a 1 to 2 minute delay should achieve what the Board is trying to accomplish. Mrs. Schaeffer said she appreciates that but the Board will be seeing more of these requests in the future. Even if the Board imposes a 1 minute delay on this sign, other signs will be changing in the 1 minute time frame. She stated that an electronic billboard is viewable from the expressway in Covington. She reads the multiple messages that are displayed and finds herself distracted. She indicated that whatever the Board does now will impact the future.

Mr. Simmons indicated that he could live with one message every 10 minutes. Mr. Stottman said once change every 10 minutes should be more than adequate because a person could walk by the store in that length of time.

Ms. Evans said Staff's recommendations are pretty much what the Board has allowed with past requests, with the exemption of the Variance. Mrs. Schaffer said the Board should consider limiting the sign to two lines of text to make it legible. Mrs. Schaffer asked Ms. Evans if she liked a 10 second limitation between messages. Ms. Evans replied that the whole point of an electronic message board is to allow some sort of flexibility. Mrs. Schaffer said she believes people will be distracted if the Thorntons and QuikStop signs are both changing once every 10 seconds.

Mr. Sparks questioned who was going to keep up with the required time between changes on all these signs. Mr. Stottman suggested the Board should stick with a standard guideline so everybody is on the same page. Mr. Morgan agreed that a standard guideline would be easiest to enforce but there is no issue with researching any Board approval and finding out what the conditions of approval are.

Ms. Schaffer said the Board needs to come up with a definition of static and stick with it because 10 second delays between messages will be distracting and will create a Las Vegas type appearance if more electronic signs are approved.

Mr. Simmons indicated that one change every 10 seconds would amount to 360 changes per hour, while 5 minutes between changes would amount to 12 changes per hour. This is dramatically different. He has 5 basic products to sell.

Mr. Pieper said he was going to recommend one change every five minutes. Mr. Schneider said that they imposed a 15 second rule on Culver's earlier this year. Ms. Evans replied that the Thorntons on Industrial Road has a 5 second rule. Mr. Morgan replied that all the sites have history to them. For example, the Thorntons on Industrial Road had an electronic message board which had been erroneously approved. The sign did not adhere to the 5 second rule and the Board imposed a condition when Thorntons sought changes to the overall sign.

Mr. Schneider asked the rest of the Board members if they thought one minute between changes was too quick. Mr. Pieper responded no. Mrs. Schaffer said she would rather have a 5 minute limitation. Mr. Sparks asked if they would restrict future requests to a five minute rule. Mr. Pieper said he did not think one change once every one or two minutes would be bad because they regulations do not allow flashing or scrolling and the change occurs instantaneously.

**Mr. Pieper moved to approve the request (Conditional Use Permit and Variance) with the following conditions:**

1. **The electronic message board shall be limited to two lines of text;**
2. **Messages shall be displayed in red;**
3. **Messages shall be displayed for a minimum of 1 minute.**
4. **Messages shall not run, flash, or scroll.**
5. **The sign shall be equipped with a photocell and the messages shall dim as the sky gets darker.**

**Mr. Schneider seconded the motion. Mr. Pieper asked for a roll call vote.**

**Mr. Pieper - "yes"; Ms. Evans - "no"; Mrs. Schaffer - "no"; Mr. Schneider - "yes"; and Mr. Sparks - "yes".**

**The motion carried 3-2.**

### **Other**

Mr. Pieper asked if the Board could get some help with this issue. Mr. Morgan replied that he can see what information is out there. He researched the issue when they were drafting the 2006/2008 Boone County Zoning Regulations and found that experts have differing opinions.

Mr. Pieper said that they need to define a proper distance when two electronically changeable message boards are proposed that close to one another. Mr. Morgan replied that the 660' spacing requirement is the criteria in the Zoning Regulations and the Board needs to analyze the Variance criteria. Mrs. Schaffer said that topography can also play a factor. Ms. Evans expressed concern that there will be a lot of businesses that want to utilize this technology. Mr. Wilson said many of the applicants have informed the Board that they do not need to have the message change all that frequently. Mr. Wilson said that the Board can impose a longer delay between messages in these cases. There may be other cases where Variances are needed to reduce the 660 foot spacing requirement. In these instances, the Board should analyze if the messages should be displayed longer because of the Variance request.

Mr. Pieper said he considers the electronic gas prices to be static signs. Mrs. Schaffer agreed. In this case, he had a problem because Thorntons and QuikStop will have electronically changeable reader boards that can display multiple messages in short periods of time. Ms. Evans said she was also concerned that the applicant was only leasing the property. When he leaves the sign will stay with the property. Mr. Morgan commented that some of his questions were aimed at getting the applicant to explain how long of a delay he could live with. Mrs. Schaffer said he was agreeable to a 5 minute limitation. Mr. Sparks said at some point there will be so many signs that nobody will pay attention to any of them. Ms. Evans agreed.

Mrs. Schaffer asked if there was a way to define static. Mr. Morgan responded that in some ways the sign code already defines static messages. Unincorporated Boone County, Union, and Walton allow infrequently changing electronic signs (gas prices, hotel room rates, etc.) as a matter of right in some instances. In the City of Florence all electronic signs must come before the Board unless the property is located in a Special Sign District or Planned Development that says otherwise.

### **Adjournment**

Mr. Pieper asked for a motion to adjourn. Ms. Evans so moved and Mrs. Schaffer seconded the motion. The motion carried by unanimous consent and the meeting adjourned at 8:15 p.m.

**APPROVED**

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**Timothy L. Pieper, Chairman**

**Attest:**

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**Todd K. Morgan, AICP**  
**Senior Planner, Zoning Services**