

**BOONE COUNTY PLANNING COMMISSION  
BOONE COUNTY ADMINISTRATION BUILDING  
BOONE COUNTY FISCAL COURTROOM  
PUBLIC HEARINGS  
JANUARY 8, 2020  
7:30 P.M.**

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**COMMISSION MEMBERS PRESENT:**

Mr. Randy Bessler  
Mr. Kim Bungler, Secretary/Treasurer  
Ms. Corrin Gulick  
Mr. Steve Harper  
Mrs. Lori Heilman  
Mrs. Janet Kegley  
Mr. Rick Lunnemann  
Mr. Don McMillian  
Mrs. Katie Nolan  
Mr. Kim Patton  
Mr. Charlie Rolfsen, Chairman  
Mr. Bob Schwenke  
Mr. Tom Szurlinski  
Mr. Steve Turner, Temporary Presiding Officer

**COMMISSION MEMBERS NOT PRESENT:**

Mr. Brad Shipe

**LEGAL COUNSEL PRESENT:**

Mr. Dale T. Wilson

**STAFF MEMBERS PRESENT:**

Kevin P. Costello, AICP, Executive Director  
Mr. Todd K. Morgan, AICP, Senior Planner  
Mr. Michael D. Schwartz, Planner

Chairman Rolfsen introduced the first item on the Agenda at 7:46 p.m.

**ZONING MAP AMENDMENT AND VARIANCE - Michael Schwartz, Staff**

1. Request of **Viox & Viox, Inc. (applicant)** for **Akram Othman and Amani Othman (owners)** for a Zoning Map Amendment from Suburban Residential One (SR-1) to Commercial Services (C-3) and a dimensional variance for a 2.62 acre portion of the properties located at 535, 541, and 547 Hunter Drive, and 3067 Hetzel Drive, Boone County, Kentucky. The request is for a zone change to allow a commercial parking facility and a variance to allow a buffer yard reduction along the east boundary.

Staff Member, Michael Schwartz, presented the Staff Report, which included a PowerPoint presentation. The parking lot facility was originally developed between 1981-1985. In 2014, a Major Site Plan was approved for the construction of a gas station, convenience store and a restaurant. The existing site is currently zoned Commercial Services (C-3) and comprises 4.3 acres. A portion of the proposed expansion area is also currently zoned Commercial Services (C-3) and comprises 2.88 acres. The site in question is currently zoned Suburban Residential One (SR-1) and is being requested to be rezoned C-3. This parcel is 2.62 acres in size. The total area of development is 9.8 acres.

Mr. Schwartz showed an aerial map of the site. The existing site consists of 346 commercial parking spaces, a gas station, a convenience store and a restaurant. The second site consists of a vacant commercial structure, paved area and vacant land. The third site, subject to the zone change request, consists of vacant land and a single family dwelling unit. He showed a map of surrounding zoning. Topographically, the elevation along Hunter Road is at 847 MSL, 888 MSL at the center of the site and then falls to 880 along I-275. The Future Land Use Map designates the site as Commercial (C). Pages 4-6 of the Staff Report refer to the pertinent sections of the Comprehensive Plan. The site is located within the 60 Day/Night noise decibel level of the Cincinnati/Northern Kentucky International Airport. Mr. Schwartz showed photographs of the site and adjoining properties.

The proposed Concept Development Plan identifies the construction of a commercial parking facility containing a total of 626 parking spaces with 2 driveway connections to the existing parking lot. Two storm water detention facilities are proposed. One will be located along I-275 and the other located along Hunter Road. The applicant has proposed an emergency access gate along Hunter Road. All traffic will come through their existing entrance and exit from the same area. There is a provision for a 4 foot high decorative fence in the front along Hunter Road and a chain link fence in the side and rear yards in order to secure the property. The requested variance is to reduce the required buffer yard width along the east property line from 60 feet to 10 feet. It is important to note that all of the properties next to the proposed 10 foot buffer are owned by the Airport. There are Staff Comments regarding how the site will be illuminated and the need for additional landscaping to make up for the deficiency of the 5% vehicular use area landscaping requirement. Findings will need to be made for a recommendation of the zone change and the Planning Commission will take final action on the variance request.

At this time, Chairman Rolfsen asked if the applicant was present and wanted to proceed with their presentation?

Mr. Marc Gloyeske, Viox & Viox Engineers, stated that the Planning Commission is only reviewing the parcel to the east that is zoned SR-1. Commercial uses are planned for the site according to the Future Land Use Map. He showed a color version of the Concept Development Plan. The variance buffer request from 60 feet to 10 feet sounds like a lot but the affected lots are owned by the Kenton County Airport Board. The lots were bought at the time the Airport was expanding. Future residential development won't occur on these lots. Either the lots will remain vacant or will be developed for commercial or industrial purposes in the future. The 10 foot buffer is sufficient. Mr. Gloyeske stated that he will ask for a waiver of the landscaping requirements at the Site Plan review stage. They would like to eliminate some of the interior landscaping requirements for the parking lot area. As an alternative, he is proposing a double row of evergreens along I-275. In addition, they would like to remove the shrubs requirement on the east side of the site and replace them with trees. All this would replace the interior trees. The lighting will be similar to the lighting on the existing facility. The lighting will meet all the requirements in order to make sure it is a safe place to park all day and night.

At this time, Chairman Rolfsen asked if there was anyone in the audience who wanted to speak in favor or against the request?

Ms. Kathleen Matchinga is the owner of Zollars, Inc., Val Air and Economy Park parking lots. She stated that it is a great project since the Airport is growing due to low-cost fares. She is happy to see the proposed detention ponds. There is a problem with the culvert underneath Hunter Road. Part of it is blocked. Also, traffic along Hunter Road has increased and pedestrians cross the street. Enterprise will be moving to the Airport in 2021 but people will still be crossing Hunter Road. It has to be safe. The street has many ruts. Are there any plans to upgrade Hunter Road? The road is deteriorating with car and truck traffic. Could signs and speed bumps be installed to slow people down? Mr. Costello asked if the County submitted a letter about the proposed development? Mr. Schwartz responded no. Chairman Rolfsen reminded everyone that the Planning Commission recommendation will go to the Fiscal Court. They will be aware of the situation. The County will have to evaluate the width, depth of pavement, signage, pedestrian access to Hunter Road. It could include some traffic calming features and lighting.

At this time Chairman Rolfsen asked if any Board members had any questions or comments? Mr. Patton asked if the applicant would consider an exit off Hetzel Drive? Mr. Gloyeske replied that a second exit poses some challenges because both exits would involve paying at the exit. Chairman Rolfsen stated it could be used for emergency access. Mr. Patton stated that next door could allow for more expansion or development. Mr. Gloyeske responded that they would have to evaluate the condition of Hetzel Drive. It is in worse shape than Hunter Road. Part of Hetzel Drive is very steep. No one uses Hetzel Drive now.

Mrs. Nolan stated that island areas are used for storm water, lighting, landscaping and pedestrian safety. The long rows don't include pedestrian safe zones. Mr. Gloyeske replied that pedestrians aren't walking far since customers are being told where to park and a van is dispatched to pick up the customer at their vehicle location. Shuttles pick up the customers. No one from the proposed development will be crossing Hunter Road. He agreed to examine the possibility of a pedestrian safe zone.

Mr. Bunger asked if the owner has discussed the use or tie in with the adjoining Airport property?

Mr. Gloyeske responded no. Mr. Patton asked the applicant to contact the Airport about the possibility of extended access through their property. Mr. Gloyeske replied that he would but he believed it was abandoned right-of-way.

**Seeing no further questions or comments, Chairman Rolfsen announced that the Committee Meeting for this item will be on January 22, 2020 at 5:00 P.M. in the Fiscal Courtroom. This item will be on the Agenda for the Business Meeting on February 5, 2020 at 7:00 P.M. Chairman Rolfsen closed the Public Hearing at 8:10 P.M.**

**APPROVED:**

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**Charlie Rolfsen**  
**Chairman**

**Attest:**

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**Kevin P. Costello, AICP**  
**Executive Director**

**COMMISSION MEMBERS PRESENT:**

Mr. Randy Bessler  
Mr. Kim Bungler, Secretary/Treasurer  
Ms. Corrin Gulick  
Mr. Steve Harper  
Mrs. Lori Heilman  
Mrs. Janet Kegley  
Mr. Rick Lunnemann  
Mr. Don McMillian  
Mrs. Katie Nolan  
Mr. Kim Patton  
Mr. Charlie Rolfsen, Chairman  
Mr. Bob Schwenke  
Mr. Tom Szurlinski  
Mr. Steve Turner, Temporary Presiding Officer

**COMMISSION MEMBERS NOT PRESENT:**

Mr. Brad Shipe

**LEGAL COUNSEL PRESENT:**

Mr. Dale T. Wilson

**STAFF MEMBERS PRESENT:**

Kevin P. Costello, AICP, Executive Director  
Mr. Todd K. Morgan, AICP, Senior Planner

Chairman Rolfsen introduced the second item on the Agenda at 8:11 p.m.

**CHANGE IN CONCEPT DEVELOPMENT PLAN AND VARIANCES - Todd Morgan, Staff**

2. Request of Jim Thomas (applicant) for The Harper Company (owner) for a Change in Concept Development Plan in a Industrial One (I-1) zone and two dimensional variances for an approximate 5.39 acre site located to the immediate east of the property at 1648 Petersburg Road, Boone County, Kentucky. The request is for a Change in Concept Development Plan to allow contractor equipment and materials staging and variances to reduce the perimeter landscaping buffer yard requirements and 50 foot fence setback from the Petersburg Road right-of-way.

Staff Member, Todd Morgan, presented the Staff Report, which included a PowerPoint presentation. The site is located off Petersburg Road across from Conner Road. The Concept Development Plan area is 5.39 acres in size. The request is a Change in Concept Development Plan that was originally approved in 2008. The applicant is requesting a Change in Concept Development Plan that would allow additional contractor equipment and materials staging on the site. The first Variance request is to reduce the KY 20 street frontage buffer Yard requirement from 10 feet (Buffer Yard A) to 0 feet. The Kentucky Transportation Cabinet has provided an email indicating that they would allow plantings in the KY 20 right-of-way. A second variance is being requested to reduce the perimeter landscape buffer yard requirement along the southern property line from 10 feet (Buffer Yard A) to 0 feet. The pie shaped lot is owned by the Airport Board and the Harper Company has been discussing the possibility of buying the property from the Airport Board. Another Variance request by the applicant is to reduce the perimeter landscape buffer yard requirement along a portion of the northeast property line from Buffer Yard D (80 feet or 40 feet with fence, wall or berm) to 0 feet. The adjoining property is also owned by the Airport Board. It is zoned residential now and that is why the large buffer yard is required. The last Variance request is to reduce the fence setback requirement from the Petersburg Road right-of-way from 50 feet to 0 feet. If this application is approved, the applicant will be asking the Zoning Administrator for a fence type waiver. Normally, chain link or barbed wire fencing is not permitted in the front yard. Usually, it is a decorative style fence. The Zoning Administrator would like input from the Planning Commission and the Fiscal Court on that issue.

Mr. Morgan showed a copy of the approved 2008 Concept Development Plan. It was referred to as the Vines property. It was 7.9 acres in area and was rezoned from Suburban Residential One (SR-1) to Industrial One (I-1) to allow additional contractor storage in the back of the site. In addition, there were 2 future I-1 buildings (16,000 and 20,000 square feet) containing I-1 uses. No outside storage was permitted other than behind the buildings. Also, no fencing was shown. There was also another request in 2017 in order to increase storage on-site and also to have an asphalt/concrete plant. That application was later withdrawn. In February, 2019, the Staff made the applicant aware that they were doing work without permits. The applicant increased storage up to the right-of-way line and fenced the property without approval. No grading plan was submitted. Pages 2 & 3 of the Staff Report reviews the applicable regulations. Mr. Morgan referred to Variance criteria, final action of the Variance requests, and the parking and loading space requirements, including paving, buffer yard requirements, storage areas visible from the road and finally, the fencing and landscaping requirements. Mr. Morgan reviewed the topography of the site including a creek in the back of the property. The site is located in the 55 DNL contour from the Airport. He also referred to the zoning map of the area. He showed photographs of the site and adjoining properties. The Future Land Use Map designates the site as Industrial (I) and the

back end as Suburban Density Residential (SD). Pages 5-7 of the Staff Report refer to the Boone County Comprehensive Plan.

In terms of Staff Comments, there is a need for the applicant to address the following:

- A. When will the Site Plan for Grading be submitted for the work that has already occurred?
- B. Has the creek or area to the north of the creek been disturbed?
- C. Have any further discussions taken place with Kenton County Airport Board about acquiring the pie shaped lot that has been fenced in?
- D. Did Kentucky Transportation Cabinet grant an Encroachment Permit to allow the new access point and evergreen trees in the KY 20 right-of-way?

Staff has concerns about the appearance of the contractor storage/staging yard from KY 20 and adjoining single-family residential properties. The 2008 approved Concept Development Plan contained the following elements and conditions to mitigate impacts:

- 1. Two buildings in close proximity to KY 20,
- 2. Storage and staging behind these buildings,
- 3. Room to plant perimeter landscaping buffers,
- 4. No fencing along the KY 20 right-of-way line, and
- 5. Conditions dealing with disturbed limits, landscaping, lighting, noise, permitted storage areas, and architecture.

Staff would like the applicant and Zone Change Committee to review the 2008 conditions of approval and determine which ones are still appropriate if the Change in Approved Concept Development Plan application is approved.

Staff has the following comments regarding the Variance applications:

- A. The Planning Commission will take final action of the Variances. The Planning Commission needs to review the applications in terms of the standards and criteria that are listed in Section 251 of the Boone County Zoning Regulations (see page 2 of the Staff Report).
- B. The impacts of the KY 20 street frontage landscaping buffer Variance could be negated if Kentucky Transportation Cabinet allows evergreen plantings in the right-of-way. Staff would like the applicant to address if the evergreen landscaping that has been installed in the right-of-way has been approved through the Encroachment Permit process and if the dead plant materials will be replaced and maintained.
- C. Staff believes the 40' or 80' buffer yard requirements along the northeast property

line would create an unnecessary hardship on the applicant. The adjoining properties are owned by Kenton County Airport Board and are heavily wooded with deciduous trees. Staff recommends that a minimum 10' buffer should be required between the fence and property line and that any required plantings should be evergreens that will grow taller than the fence.

- D. Staff believes the chainlink fence, with slats and barbed wire, that has been placed along the KY 20 right-of-way line is contrary to the objectives of Section 3655 of the Boone County Zoning Regulations. Moving the fence further back from the right-of-way line would create the opportunity to add more evergreen landscaping and fully buffer the storage/staging lot and fencing from public view.

As mentioned earlier, the applicant will be seeking Waivers from the Zoning Administrator to allow gravel surfacing and chainlink fencing in the front yard if the applications are approved. The Zoning Administrator would like input from the Planning Commission and Boone County Fiscal Court through this public hearing process for the chainlink fence Waiver.

Staff would like to note that the applicant has also installed new chainlink fencing near their Ariens Drive access point without approval from the Planning Commission. This part of the Harper Company property is not part of this application. The fencing that was installed does not comply with decorative fence type standard and possibly the 25' corner side yard setback requirement from Ariens Drive. The applicant and Planning Commission should discuss alternatives to bring this section of fence into compliance with code. The Zoning Administrator could consider a fence type Waiver but the setback requirement will need to met or reduced through a separate Variance application.

Staff sent out an agency email and received comments back from Kenton County Airport Board. These comments are attached to the Staff Report. Staff also received comments back from Kentucky Transportation Cabinet after the report was finalized (see Exhibit A).

At this time, Chairman Rolfsen asked if the applicant was present and wanted to proceed with their presentation?

Mr. Stan Lee, Palmer Engineering, stated that his client will work with the Boone County Planning Commission to meet the recommendations on the Variance requests. He is in agreement with the 10 foot buffer width and the decorative fence along KY 20. The owner is considering purchasing the Airport property adjacent to the site. It will be included in the street frontage buffer.

Ms. Sherri Edmondson, 2704 Berwood Lane, asked how much buffer would be required next to the residential zone if the plan was approved? Mr. Morgan replied that originally it was a 75 foot buffer with Buffer Yard C plantings. It is uncertain how much of the existing trees have remained since the 2008 zone change request. He asked the applicant to clarify it.

Chairman Rolfsen asked if the chainlink fence with the barbed wire is a violation? Mr. Morgan responded yes.

Mr. Costello noted that the original plan was a good plan. Why didn't the applicant follow it?

The work conducted on the site to date was not approved by the Planning Commission.

Mr. Morgan explained that Staff was aware of this in February, 2019. Ms. Stephanie Blain, Palmer Engineering, replied that her firm was not involved in improvements or work on the site. Her firm has been in contact with the Planning Commission, U.S. Army Corp of Engineers, Division of Water and SD1 about the existing stream. Palmer Engineering is trying to get the applicant into compliance. Mr. Costello asked if the owner has been cited by SD1 or the Division of Water? Mr. Lee responded that the stream has not been disturbed. Part of the plan is to disturb the stream and obtain a permit. Mr. Patton noted that the applicant is here because he got caught. Mr. Costello suggested that a representative from the Harper Company attend the Committee Meeting in order to answer questions. He noted that the applicant agreed to the original conditions and agreed to follow the original plan. The property owner signed an agreement to follow the regulations and conditions for approval. Mr. Morgan explained that when he met with the applicant, the applicant thought that the original zone change was no longer valid after 2 years. He mistakenly interpreted the 2 year site plan approval period. There is no time limit on a zone change approval.

Mr. Bunger suggested having the applicant correct everything first and then consider the zone change request. Why consider more of something not done appropriately. The variances requested have to seriously be considered because buffering did not occur with what is out there.

Mr. Morgan replied that the only way storage could be in compliance with the 2008 approval is if the 2 storage buildings are built. Mr. Wilson stated that an application has been filed and the Planning Commission has an obligation to process it. One cannot hold up or refuse an application. During the course of reviewing and taking action on the current application, conditions can be considered for the violations. Some of the items can be addressed through the Change in Concept Development Plan application and others through enforcement.

At this time, Chairman Rolfsen asked if there was anyone in the audience who wanted to speak in favor or against the request?

Ms. Edmondson noted that the 75 foot buffer area seems really shallow. On Saturday morning, aircraft noise seems to echo through it. It seems like there are fewer trees.

Mr. Harper noted that his former company, Harper Oil Products, is not The Harper Company. There is no connection other than they were a customer of his company in the past. There is no conflict of interest.

Mrs. Kegley asked the applicant's engineer to give the Committee information about the trees in the back and how much of the area has been disturbed. Mr. Lee, Palmer Engineering, showed what areas have been disturbed. The storage will not be located in the back where the trees are located because one would have to cross the creek. Mr. Costello asked if the trees have thinned out. Mr. Lee replied that he didn't know.

Mr. Lunnemann agreed with Mr. Bunger's previous comments. There is a high level of frustration with this site. There is a lack of respect and compliance of what is required. He asked the engineer to bring a representative from the Harper Company to the Committee Meeting in order to respond to all of the questions.

**Seeing no further questions or comments, Chairman Rolfsen announced that the Committee Meeting for this item will be on January 22, 2020 at 5:00 P.M. in the Fiscal Courtroom. This item will be on the Agenda for the Business Meeting on February 5, 2020 at 7:00 P.M. Chairman Rolfsen closed the Public Hearing at 8:42 P.M.**

**APPROVED:**

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**Charlie Rolfsen**  
**Chairman**

**Attest:**

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**Kevin P. Costello, AICP**  
**Executive Director**

Exhibit A - Comments from Kentucky Transportation Cabinet

