

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 JANUARY 8, 2009

3 The Owensboro Metropolitan Planning Commission  
4 met in regular session at 5:30 p.m. on Thursday,  
5 January 8, 2008, at City Hall, Commission Chambers,  
6 Owensboro, Kentucky, and the proceedings were as  
7 follows:

8 MEMBERS PRESENT: Drew Kirkland, Chairman  
9 Judy Dixon, Vice Chairman  
10 David Appleby, Secretary  
11 Gary Noffsinger, Director  
12 Madison Silvert, Attorney  
13 Tim Miller  
14 Irvin Rogers  
15 Keith Evans  
16 Rita Moorman

17 \* \* \* \* \*

18 CHAIRMAN: I would like to welcome everyone to  
19 the January 8th meeting of the Owensboro Metropolitan  
20 Planning Commission. Please stand for our invocation  
21 and prayer by Ms. Judy Dixon.

22 (INVOCATION AND PLEDGE OF ALLEGIANCE)

23 CHAIRMAN: Mr. Noffsinger, our first order of  
24 business.

25 MR. NOFFSINGER: Will be the election of  
officers. I think you should turn the gavel over to  
legal counsel and let that happen.

CHAIRMAN: Mr. Silvert, would you conduct this  
part of the meeting for us. I will give you the

1 gavel.

2 MR. SILVERT: Than you, Mr. Chair.

3 Every January we elect officers. We have  
4 three officers to elect this evening.

5 First the office of chair. We'll take  
6 nominations for the office of chairman.

7 MS. DIXON: Move to nominate Drew Kirkland as  
8 chairman.

9 MR. SILVERT: We need a second.

10 MR. APPLEBY: Second.

11 MR. SILVERT: Any other nominations?

12 (NO RESPONSE)

13 MS. DIXON: Move that nomination cease and he  
14 be elected by acclamation.

15 MR. SILVERT: We need a second.

16 MR. MILLER: Second.

17 MR. SILVERT: All in favor of the motion say  
18 aye.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 MR. SILVERT: Motion passes.

21 Congratulations, Mr. Chairman.

22 Next office is the office of vice chairman.

23 MR. KIRKLAND: I would like to nominate Judy  
24 Dixon.

25 MR. SILVERT: Is there a second?

1 MR. APPLEBY: Second.

2 MR. SILVERT: Nomination for Ms. Dixon. Any  
3 other nominations?

4 (NO RESPONSE)

5 MR. KIRKLAND: I move that we elect Ms. Dixon  
6 by acclamation.

7 MR. SILVERT: Is there a second?

8 MR. APPLEBY: Second.

9 MR. SILVERT: All in favor say aye.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 MR. SILVERT: Ms. Dixon, you have been elected  
12 vice chair.

13 Finally the election of secretary.

14 MS. DIXON: Move to nominate Dave Appleby.

15 MR. KIRKLAND: Second.

16 MR. SILVERT: Any other nominations?

17 (NO RESPONSE)

18 MS. DIXON: Move that nomination cease and he  
19 be elected by acclamation.

20 MR. SILVERT: Is there a second?

21 MR. KIRKLAND: Second.

22 MR. SILVERT: All in favor of the motion say  
23 aye.

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 MR. SILVERT: Congratulations, Mr. Appleby and

1 the rest of the officers.

2 I'll turn it back over to our Chairman.

3 CHAIRMAN: Thank you, Mr. Silvert.

4 Our next order of business is to consider the  
5 minutes of our December 11th meeting. Are there any  
6 additions or corrections?

7 (NO RESPONSE)

8 CHAIRMAN: If not the chair is ready for a  
9 motion.

10 MS. DIXON: Move to approve.

11 CHAIRMAN: Motion for approval by Ms. Dixon.

12 MR. MILLER: Second.

13 CHAIRMAN: Second by Mr. Miller. All in favor  
14 raise your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries unanimously.

17 Next item, Mr. Noffsinger.

18 MR. NOFFSINGER: Mr. Chairman, Item 3 has been  
19 withdrawn.

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21 ZONING CHANGES

22 ITEM 4

23 1439 Bosley Road, 0.404 acres  
24 Consider zoning change: From B-4 General Business to  
25 I-1 Light Industrial  
Applicant: John Maurice; Red Rentals, LLC

1 MR. SILVERT: State your name, please.

2 MR. HOWARD: Brian Howard.

3 (BRIAN HOWARD SWORN BY ATTORNEY.)

4 MR. HOWARD: As a note of reminder, all the  
5 rezonings that are heard here tonight will be final 21  
6 days after the meeting, unless a person or the  
7 applicant files a petition or the local jurisdiction  
8 as well, file a petition and that go to the  
9 legislative body for option. If that appeal is not  
10 done within 21 days, then the result of the Planning  
11 Commission will become final.

12 PLANNING STAFF RECOMMENDATIONS

13 Staff recommends approval because the proposal  
14 is in compliance with the community's adopted  
15 Comprehensive Plan. The conditions and findings of  
16 fact that support this recommendation include the  
17 following:

18 CONDITIONS:

19 1. Access to Bosley Road shall be limited to  
20 the existing access point. No additional access to  
21 Bosley Road shall be permitted; and,

22 2. The access point to James David Court  
23 shall be reconstructed to meet the minimum 50' spacing  
24 for the right-of-way or eliminated.

25 FINDINGS OF FACT:

1           1. The subject property is located in a  
2 Business Plan Area, where light industrial uses are  
3 appropriate in limited locations;

4           2. The use of the property for pool and spa  
5 warehouse storage is consistent with nonresidential  
6 uses;

7           3. The proposal is a logical expansion of  
8 existing I-1 Light Industrial zoning located across  
9 Bosley Road to the west;

10          4. The expansion should not significantly  
11 increase the extent of industrial uses that are  
12 located in the vicinity and outside of Industrial  
13 Parks; and,

14          5. The expansion should not overburden the  
15 capacity of roadways and other necessary urban  
16 services that are available in the affected area.

17          MR. HOWARD: We would like to enter the Staff  
18 Report into the record as Exhibit A.

19          CHAIRMAN: Do we have anybody representing the  
20 applicant?

21                 (NO RESPONSE)

22          CHAIRMAN: Do we have any questions by anybody  
23 in the audience?

24                 (NO RESPONSE)

25          CHAIRMAN: Anybody on the commission?

1 (NO RESPONSE)

2 CHAIRMAN: If not the chair is ready for a  
3 motion.

4 MS. DIXON: Move to approve based upon  
5 Planning Staff Recommendations and Conditions 1 and 2  
6 and Findings of Fact 1, 2, 3, 4 and 5.

7 CHAIRMAN: We have a motion for approval by  
8 Ms. Dixon.

9 MR. EVANS: Second.

10 CHAIRMAN: Second by Mr. Evans. All in favor  
11 raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimously.

14 Next item, please.

15 ITEM 5

16 6045, 6071 Highway 54, 3.41 acres (Postponed at  
17 December 11, 2008 meeting)  
18 Consider zoning change: From B-4 General Business and  
19 A-U Urban Agriculture to I-1 Light Industrial  
20 Applicant: Bluegrass Truck, Trailer & Equipment, LLC

21 PLANNING STAFF RECOMMENDATIONS

22 Staff recommends approval because the proposal  
23 is in compliance with the community's adopted  
24 Comprehensive Plan. The conditions and findings of  
25 fact that support this recommendation include the  
following:

CONDITIONS:

1           1. Approval of a final development plan for  
2 the subject property;

3           2. All outdoor storage areas shall be  
4 screened with a six foot solid wall or fence unless a  
5 variance is approved;

6           3. Material within the outdoor storage area  
7 shall not be stacked higher than the screening fence  
8 unless a variance is approved;

9           4. All vehicular use areas shall be paved  
10 with appropriate vehicular use area screening  
11 installed where required unless a variance is  
12 approved;

13           5. Appropriate screening shall be installed  
14 where the subject property adjoins residential or  
15 agricultural property under 10 acres with a residence  
16 unless a variance is approved;

17           6. The southern drive on Winkler Road shall  
18 be closed due to proximity to the intersection as  
19 shown on the development plan; and,

20           7. The western drive on Highway 54 shall be  
21 closed due to proximity to the intersection as shown  
22 on the development plan unless a variance is approved.

23 FINDINGS OF FACT:

24           1. The subject property is located in a Rural  
25 Community Plan Area where light industrial uses are



1 appropriate in limited locations;

2 2. The commercial and industrial uses on the  
3 subject property are non-residential in nature and  
4 use;

5 3. All outdoor storage areas are shown to be  
6 screened appropriately;

7 4. The subject is major street oriented on  
8 Highway 54; and,

9 5. The subject property is located at the  
10 corner of intersecting streets at Highway 54 and  
11 Winkler Road.

12 MR. HOWARD: We would like to enter the Staff  
13 Report into the record as Exhibit B.

14 CHAIRMAN: Is anybody here representing the  
15 applicant?

16 MS. BOARMAN: Yes.

17 CHAIRMAN: Does anybody have any questions of  
18 the applicant?

19 Ma'am, would you go to the podium.

20 MR. SILVERT: State your name, please.

21 MS. BOARMAN: My name is Linda Boarman.

22 (LINDA BOARMAN SWORN BY ATTORNEY.)

23 MS. BOARMAN: I'm sorry, is this the point in  
24 which I ask for the variance?

25 CHAIRMAN: No.

1 MS. BOARMAN: Do you have any questions?

2 CHAIRMAN: Does anybody on the commission have  
3 any questions?

4 (NO RESPONSE)

5 CHAIRMAN: You understand what the criteria  
6 was that was required by the reading?

7 MS. BOARMAN: Yes, but that does not include  
8 the variances that I requested?

9 CHAIRMAN: No, ma'am. Those would be the  
10 requirements without the variance.

11 MS. BOARMAN: Yes, I do understand those.  
12 Yes, I do.

13 CHAIRMAN: So if we pass this part of it, then  
14 those criterias will be part of what your agreement  
15 will be at this point.

16 MS. BOARMAN: At this point?

17 CHAIRMAN: Correct.

18 MS. BOARMAN: Yes.

19 MR. NOFFSINGER: Then you will have the  
20 opportunity to have your variance heard after this.  
21 Each of the conditions that you will be contesting are  
22 conditions, but they may be waived with a variance.

23 MS. BOARMAN: Okay.

24 MR. NOFFSINGER: You're not losing the  
25 opportunity to contest.

1 MS. BOARMAN: Thank you.

2 CHAIRMAN: You have no further statement at  
3 this time?

4 MS. BOARMAN: No, I do not.

5 CHAIRMAN: Does anybody on the commission have  
6 a question?

7 (NO RESPONSE)

8 CHAIRMAN: Anybody in the audience have a  
9 question?

10 (NO RESPONSE)

11 CHAIRMAN: If not the chair is ready for a  
12 motion.

13 MR. ROGERS: Motion for approval based on  
14 Planning Staff Recommendations with Conditions 1, 2,  
15 3, 4, 5, 6 and 7 and Findings of Fact 1 through 5.

16 CHAIRMAN: We've got a motion for approval by  
17 Mr. Rogers based on the conditions and the  
18 recommendations of the Planning Staff.

19 MR. APPLEBY: Second.

20 CHAIRMAN: We've got a second by Mr. Appleby.  
21 All in favor raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: The motion carries unanimously.

24 Next item, please.

25 Related Items:

1       ITEM 5A

2       6045, 6071 Highway 54, proposed B-4 and I-1  
3       Consider request for Variances in conjunction with an  
4       application for zoning change to eliminate the  
5       required screening element around an outdoor storage  
6       area; to eliminate the required screening along the  
7       south and west sides of an adjoining residence; to  
8       allow an existing drive to remain closer than 50' to  
9       the intersection within a commercial zone; and to  
10      eliminate the required vehicular use area landscape  
11      screening requirement along the Highway 54 road  
12      frontage.

13      Reference: Zoning Ordinance, Article 13, Section  
14      13.22; Article 17, Section 17.311, 17.312, 17.3114  
15      Applicant: Bluegrass Truck, Trailer & Equipment, LLC

16                   MR. HOWARD: As Mr. Noffsinger just stated,  
17                   the applicant has requested several variances. So  
18                   what Staff has done we've gone through and split those  
19                   into four separate Staff Reports that you can take  
20                   action on individually. Basically all the variances  
21                   pertain to site development requirements.

22                   Before I get into the Staff Reports, I'll just  
23                   note that several examples of similar type instances  
24                   in the vicinity where properties that were rezoned or  
25                   whatever has taken place on the property. The  
26                   conditions that were placed on it at the time of  
27                   rezoning required that that site be brought into  
28                   compliance. Just going to go over those briefly..

29                   The first one is on Highway 54, 6192, 6200.  
30                   That rezoning came to the Planning Commission May of  
31                   2008. The conditions on that rezoning stated they had

1 to submit a final development plan. They had to pave  
2 all the vehicular use area and install the appropriate  
3 screening and that the access be in compliance with  
4 the street access standards.

5 The second one is at 6028 Highway 54. That  
6 was in July of 2001. Conditions on that were no  
7 access be allowed to Kentucky 54 and that landscaping  
8 and the land use buffers be provided in accordance  
9 with the zoning ordinance.

10 The next one is 6235 Highway 54, from December  
11 1999. The condition on that was that occupancy of the  
12 building, all vehicular use area shall be paved,  
13 outdoor storage shall be enclosed on all sides by a  
14 minimum of 6 foot high solid wall or fence.

15 The last was in the 5500 block of Highway 54  
16 from February 1997. The condition on that was that  
17 there be no direct access to Kentucky 54 or Old  
18 Kentucky 54.

19 So with that I just wanted to provide some  
20 examples of sites that were required to be brought  
21 into compliance in the same general vicinity on  
22 Highway 54.

23 The first variance that I'll talk about is the  
24 description of: To eliminate the required screening  
25 along the south and west sides of an adjoining

1 residence.

2 This variance the applicant states that due to  
3 the topography and the situation on the site that they  
4 would like to not be required to install the six foot  
5 fence and a tree every 40 feet.

6 Based on our field inspection of the property,  
7 there are some topographic reasons that we think the  
8 variance could be applicable.

9 There is a large hill along the side of the  
10 property, and they also have a large building that has  
11 a blank wall that faces this residential property. On  
12 the other side there's a ditch that would make it  
13 impossible for any type of activity to take place on  
14 that side.

15 On the plan that the applicant submitted, they  
16 show a buffer area around that lot. If the variance  
17 is approved, that area should remain free to any<sup>6</sup> type  
18 of materials not to be used for storage or outdoor use  
19 of any type in order to provide a little bit of a  
20 buffer between the residence and the industrial  
21 property.

22 So with that the findings that we would use is  
23 that the variance will not adversely affect the public  
24 health, safety or welfare; it will not alter the  
25 essential character of the general vicinity; it will

1 not cause a hazard or a nuisance to the public; and it  
2 will not allow an unreasonable circumvention of the  
3 requirements of the zoning regulations.

4 Staff would recommend approval of that  
5 variance with the condition that they maintain a  
6 buffer from the street along the back of the  
7 applicant's building to the top of the hill, to the  
8 small shed or metal building, and then along the  
9 common boundary with the residential property and  
10 should be shown on the proposed development plan.

11 So with that I'll enter the Staff Report into  
12 the record as Exhibit C with the Staff's  
13 recommendation for approval.

14 CHAIRMAN: Are we going to pass each one of  
15 these individually?

16 MR. NOFFSINGER: Ask legal counsel. You know,  
17 may want to consider doing them individually and  
18 taking a vote separately. You have the findings. We  
19 will not be recommending approval of all of them. You  
20 may pick and choose how you want to approve these.  
21 It's one application. You can consider them, I guess,  
22 all with the same application and grant some but not  
23 others or grant them all, whatever you choose.

24 CHAIRMAN: I think possibly going through them  
25 each one individually and voting.

1           Is our applicant agreeable to that? We'll  
2 just go through each one of them?

3           MS. BOARMAN: Yes.

4           CHAIRMAN: That way this one Staff  
5 recommendations. If we approve this, then fine. The  
6 next one we'll take action then. Then do the next  
7 one.

8           MS. BOARMAN: (APPLICANT RESPONDING YES.)

9           MR. SILVERT: Let the record reflect that the  
10 applicant is nodding her head yes.

11          CHAIRMAN: Would the applicant just come to  
12 the mike.

13          MS. BOARMAN: Yes.

14          CHAIRMAN: Just state that you agree to us  
15 going through each, deciding each one of these  
16 individually?

17          MS. BOARMAN: Yes.

18          CHAIRMAN: Then you can address any one of  
19 them that you want to. I assume this first one you  
20 have no comment.

21          MS. BOARMAN: No. I have no comment. Our  
22 neighborhood who is the resident is here, if you have  
23 any questions from her.

24          CHAIRMAN: Thank you.

25          First item, does anybody have any questions on



1 the first item?

2 (NO RESPONSE)

3 CHAIRMAN: If not the chair will be ready --

4 MR. SILVERT: State your name, please.

5 MS. DOTSON: Susan Dotson.

6 (SUSAN DOTSON SWORN BY ATTORNEY.)

7 MS. DOTSON: I am very agreeable with this. I

8 have no problems. I like it the way it is. If I

9 wanted fences, I would have moved into a subdivision.

10 CHAIRMAN: Thank you very much. That is very

11 clear.

12 If there are no questions of the applicant or

13 the neighbor, then I think the chair would be ready

14 for a motion.

15 MR. APPLEBY: Mr. Chairman, I make a motion to

16 grant this Variance based on the Staff's findings that

17 it would not adversely affect the public, health

18 safety or welfare; will not alter the essential

19 character of the general vicinity; will not cause a

20 hazard or a nuisance to the public; and will not allow

21 an unreasonable circumvention of the requirements of

22 the zoning regulations. Also, with the Staff's

23 condition to maintain a buffer.

24 CHAIRMAN: We've got a motion for -- excuse

25 me.

1 MR. SILVERT: If I could just for  
2 clarification. This variance that you're talking  
3 about is to eliminate the required screening along the  
4 south and west sides of an adjoining residence.

5 MR. APPLEBY: Correct.

6 CHAIRMAN: Mr. Appleby's motion is for  
7 approval of this variance.

8 MS. DIXON: Second.

9 CHAIRMAN: We've got a second by Ms. Dixon.  
10 All in favor raise your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: This motion carries unanimously.  
13 Next item, please.

14 MR. HOWARD: The next one is the variance to  
15 eliminate the required screening element around an  
16 outdoor storage area.

17 Basically this will one is before you because  
18 at present the site has some pallets or stacked stone  
19 and materials that are visible from the roadway. We  
20 sent a notice violation. Then the rezoning came about  
21 for the variance at this point.

22 The zoning administrator has decided, based on  
23 his review, that this is outdoor storage. The zoning  
24 ordinance requires that all outdoor area regardless of  
25 zone, regardless of location within the county be

1 screened by a minimum of six foot tall fence with one  
2 tree every 40 feet.

3 The applicant is asking that screening element  
4 be eliminated. The Staff's take on that would be that  
5 the elimination of that screening requirement is a  
6 circumvention of the zoning ordinance. Could  
7 potentially affect the public health, safety or  
8 welfare of the area; could alter the essential  
9 character of the general vicinity. There are no other  
10 outdoor storage areas in the vicinity that we're aware  
11 of that do not have the screening.

12 So with that the Staff's findings would be  
13 that it will adversely affect the public health,  
14 safety or welfare; it will alter the essential  
15 character of the general vicinity; it may cause a  
16 hazard or nuisance to the public; and it will allow an  
17 unreasonable circumvention of the requirements of the  
18 zoning regulations.

19 The Staff would recommend denial of this  
20 variance request.

21 I would like to enter the Staff Report into  
22 the record as Exhibit D.

23 CHAIRMAN: Yes, ma'am. Would you like to make  
24 a comment?

25 MS. BOARMAN: Yes.

1           The storage facility, I do not believe it's  
2 storage. It's natural stone. It's material that you  
3 would compare to if someone were shopping for a car.  
4 If someone were shopping for shrubbery. It's not --  
5 there's no other business in Daviess County that would  
6 compare to my business.

7           If, for example, a customer is coming in my  
8 stone yard to maybe build a fireplace, they don't come  
9 in and ask for, I want 200 square feet of brown rock.  
10 They walk up and down the aisles. They're stacked  
11 neatly. Yes, they were on pallets because that's how  
12 we load them, but they're stacked neatly in rows.  
13 That person, even if I have stone from one particular  
14 quarry, they may pick this particular pallet, this  
15 pallet. They might pick stone from several pallets.  
16 It's not a storage yard. It's my display. It's  
17 display for sale. Every bit of it is for sale. Every  
18 pallet is different.

19           That is my own personal opinion as well as it  
20 will adversely affect my business if I have to put all  
21 of my inventory that is on display inside of a six  
22 foot or eight foot or any type of barrier. It is as  
23 if someone had a car lot and you allowed them to put  
24 one car on display and everything else in a storage  
25 yard. That's how adversely affected I would be.

1           Secondly, none of my neighbors want the fence.  
2           None. One hundred percent. Some of them are here and  
3           would like to speak, as well as we have a petition and  
4           I have affidavits as well. We feel like as residents  
5           in that vicinity what we have is more beautiful than  
6           an ugly fence.

7           Anyway, I have neighbors who would like to  
8           speak to that.

9           CHAIRMAN: Why don't we bring some of your  
10          neighbors up, Ms. Boarman. Thank you.

11          Ms. Boarman, after you speak would you please  
12          be seated. We don't want to intimidate your  
13          neighbors.

14          MR. CARDEN: I'm Cebert Carden. I live across  
15          the street.

16          MR. SILVERT: I need to swear you in, Mr.  
17          Carden.

18          (CEBERT CARDEN SWORN BY ATTORNEY.)

19          MR. CARDEN: I live across the street. I live  
20          within 200 feet of this rock. I've lived there since  
21          1964. It's been multiple businesses there ever since  
22          we've lived there. Some of them didn't look very  
23          good. The neighbors have always been unhappy with  
24          this property until the Boarmans got it. They filled  
25          it in. They've done everything to improve it. The

1 neighbors are tickled to death with the Boarmans and  
2 the way the property looks now. I don't only live  
3 across the street. I've got two commercial properties  
4 across from them. I don't want, I'm speaking for  
5 myself. I don't want no kind of fence. I love it the  
6 way it is right now. I got a petition and took it  
7 around to all the neighbors that is visible of this  
8 property. None of them want a fence. They don't want  
9 the rocks hid in no way. They have no problem with  
10 it. None of it. I've got their names, telephone  
11 numbers. You can contact any of them.

12 So that's the way all the neighbors feel about  
13 the place right now. I just feel like it would really  
14 hurt my property if they put up a fence along there.

15 CHAIRMAN: Are you finished with your  
16 statement?

17 MR. CARDEN: Yes.

18 CHAIRMAN: If you would, why don't you start  
19 down here with Ms. Moorman and give her your petition  
20 and we'll just pass it right down the line.

21 MR. CARDEN: Yes. Ninety percent of them is  
22 neighbors.

23 CHAIRMAN: Excuse me. Return to the  
24 microphone so we'll have it on record.

25 MR. CARDEN: Ninety percent of these people

1 are neighbors that can see that. There's a few on  
2 there that ain't, but most of them are.

3 CHAIRMAN: Thank you.

4 Would you remain at the podium there.

5 Does anybody have any questions?

6 MR. ROGERS: Mr. Chairman, this outdoor  
7 storage area, all these pictures we have are from 54.  
8 Is this right down by the Daviess County Fairgrounds,  
9 that road there?

10 MR. HOWARD: Yes. I believe that's right.

11 MR. ROGERS: What we're talking about now is  
12 the one going to, the road where you turn to go down  
13 to the Daviess County Fairgrounds?

14 MR. HOWARD: Right. The rock as it stands  
15 right now on the pallets is basically on road frontage  
16 between the driveway on, the second driveway on 54 and  
17 the road that goes back to the fairgrounds.

18 MR. APPLEBY: The screening, the fence you're  
19 requiring would be along 54?

20 MR. HOWARD: It would be along 54. In an  
21 earlier development plan stage, you know, they show  
22 the fence would be further off the road. It would be,  
23 you know, of course, that could change, I guess. It  
24 would be screening that material that you see from 54,  
25 yes.

1           While I'm up, I'll just note that it would  
2           have to be a screened around the entire perimeter of  
3           the outdoor storage area.

4           The other thing I'll note is, you know, as I  
5           said earlier, the zoning administrator said that that  
6           is outdoor storage. It's his interpretation that it's  
7           not outdoor display. Outdoor display would be subject  
8           to not being screened.

9           If there's contingent as far as whether or not  
10          it's outdoor storage or outdoor display, the avenue  
11          for that would be to file an Administrative Appeal  
12          appealing the zoning administration interpretation of  
13          the zoning ordinance, interpretation of the definition  
14          of outdoor storage or outdoor screening.

15          MR. APPLEBY: Where does the administrative  
16          appeal go?

17          MR. HOWARD: That would go to the Board of  
18          Adjustments for review.

19          CHAIRMAN: Mr. Appleby, did you have a  
20          question in regards to what classification?

21          MR. APPLEBY: No. I just wanted to be clear  
22          on that, as to where that would be dealt with.

23          CHAIRMAN: Mr. Miller.

24          MR. MILLER: Mr. Chairman, the question I have  
25          is probably for Mr. Noffsinger or for legal counsel.



1           Whatever action we take tonight would follow  
2 through with this property in the future? If the  
3 Boarmans were to sell this to someone else and they  
4 have, let's say they start stacking junk cars there,  
5 since we make this, say we allow them not to have the  
6 fence there, then in the future can you turn around  
7 and change that or does it this follow through and you  
8 would not be required to have any type of barrier in  
9 the future regardless of who --

10           MR. APPLEBY: Change the use of the property?

11           MR. NOFFSINGER: I think I can clear that up.

12           A variance runs with the land. Therefore once  
13 it's granted, it's not to the business. It's not to  
14 an individual. A variance runs with the land.

15           MR. MILLER: So if it did change types of use  
16 and the zoning stayed the same, then any type of items  
17 could be stored out there?

18           MR. NOFFSINGER: That's right. That are  
19 allowed in that zone. As long as the use is -- a use  
20 that locates there would have to be located in the  
21 appropriate zone. If that zoning is appropriate, then  
22 the variance runs with the land. They could operate  
23 under that variance.

24           MR. ROGERS: Gary, the front of this is zoned  
25 business, right?

1 MR. APPLEBY: Part of it is.

2 MR. NOFFSINGER: Part of the frontage would be  
3 zoned business. What this variance covers would be  
4 zoned I-1 Light Industrial.

5 MR. HOWARD: The business portion is right on  
6 the corner of Winkler Road and Highway 54. They have  
7 a sales lot and office that would remain within the  
8 business zoning. The remaining of the property would  
9 be zoned Light Industrial.

10 CHAIRMAN: Mr. Appleby, I think there's a  
11 petition. Would you pass it down so Lynnette can have  
12 it in the record?

13 MR. APPLEBY: Yes.

14 CHAIRMAN: Yes, sir.

15 MR. POWELL: My name is Freeman Powell.

16 (FREEMAN POWELL SWORN BY ATTORNEY.)

17 MR. POWELL: First of all, I want to say I am  
18 not related by blood or marriage to the owner of this  
19 property or anybody in this room. I have no financial  
20 interest to gain whatsoever.

21 I too have lived in this community for the  
22 better part of 50 years. I knew this property when it  
23 was like a junk yard, a cow pasture. Very unsightly.

24 To kind of reiterate what Mr. Carden said,  
25 they've cleaned up the junk from the property. They

1 back filled it. Brought it up to level of the road  
2 and now it's rather attractive place of business.  
3 These are people that shop and make their choices.

4 There's another reason why that I'm opposed to  
5 the erection of this fence. Our knowledge says that  
6 Highway 54 is scheduled to be widened from the point  
7 where it ends four lane at Dermont all the way out to  
8 Jack Hinton Road. This would make the erection of  
9 that fence a rather mute point because it's going to  
10 move all of this over. That would certainly be a  
11 waste of their money to put this up and have the road  
12 move over and add encroachment upon that fence.

13 Any questions?

14 MR. APPLEBY: I don't think, if the fence were  
15 erected, the road widening would take place on the  
16 right-of-way and that fence won't be on the  
17 right-of-way.

18 MR. NOFFSINGER: That is correct.

19 MR. APPLEBY: If the fence were required and  
20 it was put up, the fence wouldn't be affected by the  
21 road widening. That's not to say that that's what is  
22 going to happen.

23 MR. NOFFSINGER: We address that issue in the  
24 next variance where they're asking not to have the  
25 landscape, vehicular use area, as well as eliminate a

1 driveway on 54. We address the transportation plan in  
2 the future for improvements. This fence would be  
3 erected on the private property and not on public  
4 right-of-way.

5 MR. POWELL: Well, the point I was trying to  
6 make was the erection of the fence would not create  
7 anything esthetically to the value of the property and  
8 certainly will make a contribution of the owners  
9 financially. It will be a detriment to their  
10 business.

11 CHAIRMAN: Thank you.

12 To the neighbors and the applicant. The fence  
13 ordinance regulation is actually in place to protect  
14 the neighbors. This is not something that Planning &  
15 Zoning is trying to put down. That is the reason for  
16 the fence regulation. But I understand, you know,  
17 there's several neighbors here that are looking out  
18 their window to this property. So we definitely  
19 appreciate your input, but I wanted to explain to the  
20 neighbors why there is this ordinance.

21 Yes, sir. Would you like to address this  
22 commission?

23 MR. SILVERT: State your name, please.

24 MR. RICHARDS: Carl Richards.

25 (CARL RICHARDS SWORN BY ATTORNEY.)

1           MR. RICHARDS: The neighbors prefer you not to  
2 protect them might I say that.

3           I live at 6178 Old Kentucky 54. That is on  
4 the south side of Old Kentucky 54. I can sit in my  
5 living room in my recliner and look out my window,  
6 which I do a lot of any more, and I can see across  
7 this lot to Winkler Road. I can see to the  
8 fairgrounds, a great portion of the fairgrounds.

9           Now, when you require Mrs. Boarman to say put  
10 this fence up, you're going to destroy about 80  
11 percent of my view there. That's the reason why the  
12 neighbors don't want the fence.

13           Also, she's in a business of merchandising  
14 this stone. You all are asking, I say you all, the  
15 zoning laws are asking that she screens her  
16 merchandise from public view. That to me seems  
17 unreasonable within itself. She's got something to  
18 sell and she can't display it. To me certainly, and I  
19 don't disagree with anybody necessarily in principal,  
20 but it is a display and not a storage area. I mean  
21 she's storing it, sure, but you have to have your  
22 merchandise within a display area so the public may  
23 view it. I'm sure she gets a lot of walk-in traffic  
24 off of 54 as they come by. People in the building  
25 business and so forth.

1           That's the main attitude of the neighbors.  
2           There's nothing more unsightly than a privacy fence in  
3           my opinion. We don't have very many of them in  
4           Philpot and I would hate to see you start a bunch of  
5           them. Thank you.

6           CHAIRMAN: Does anybody else on the commission  
7           have a question?

8           (NO RESPONSE)

9           CHAIRMAN: Anybody from the audience?

10          (NO RESPONSE)

11          CHAIRMAN: If not I think the chair is ready  
12          for a motion.

13          MS. DIXON: Mr. Chairman, I move to deny the  
14          variance based upon the definition provided to us by  
15          Staff that this does constitute an outdoor storage  
16          area and therefore must be screened others in the area  
17          of similar screening. That granting this variance  
18          would adversely affect the public health, safety and  
19          welfare; would alter the essential character of the  
20          general vicinity; and may cause a hazard or a nuisance  
21          to the public; and will allow an unreasonable  
22          circumvention of the requirements of the zoning  
23          regulations.

24          CHAIRMAN: We have a motion by Ms. Dixon to --

25          MR. APPLEBY: May I ask a question before we

1 second it.

2 CHAIRMAN: Absolutely.

3 MR. APPLEBY: I tend to agree that it's  
4 display rather than outdoor storage, if that's my  
5 position. This board doesn't have the ability to make  
6 that distinction. That would be a decision -- I would  
7 have a problem with a light industrial zoning not  
8 being required to have screening based on future uses.  
9 It could be anything. It could be a junk yard, an  
10 industrial zone.

11 CHAIRMAN: Salvage yard, Mr. Appleby.

12 MR. APPLEBY: Salvage yard. I think the  
13 neighbors might feel differently if it were something  
14 like that over there. So I would think in that case  
15 that they would want to see a fence there.

16 But in the case of whether or not this is a  
17 display, outdoor display or a storage yard, we can't  
18 make that distinction, if I'm understanding you  
19 correctly. This is an administrative appeal that  
20 would have to go to the board?

21 MR. NOFFSINGER: Mr. Appleby, that is correct.  
22 The applicant has been advised of that issue.

23 The Board of Adjustment considered a similar  
24 administrative appeal for Rural King here in  
25 Owensboro. They were -- without getting into the

1       specifics of that case, they were making a similar  
2       argument. The Board of Adjustment found that in fact  
3       the display areas need to be identified and controlled  
4       and then the outdoor storage areas needed to be  
5       defined in a different manner. If it were outdoor  
6       display, then the area of display would have to be  
7       paved and then screened just from the roadway, the  
8       pavement, which would be a reduced screening  
9       requirement.

10               MR. APPLEBY: You're talking about a three  
11       foot landscaping?

12               MR. NOFFSINGER: Three foot. That's not your  
13       determination. That's the determination to be made by  
14       the Board of Adjustment, which they've handled those  
15       cases in the past. That's not what you're here to do.  
16       You're to consider this to be an outdoor storage yard.  
17       They're asking for a waive from the screening  
18       requirements for the outdoor storage yard.

19               CHAIRMAN: Mr. Noffsinger, as I understand  
20       what you're saying, if we deny this and send them or  
21       advise her to go to the Board of Adjustment for an  
22       outdoor display versus a storage, then the  
23       requirements for the storage yard would be paving and  
24       --

25               MR. APPLEBY: The fence would be.



1           CHAIRMAN:  If it's a display.  If it's a  
2 display would be paving and a three foot fence.

3           MR. APPLEBY:  No.  No fence.  There's not a  
4 fence required.

5           MR. NOFFSINGER:  It could be perhaps shrubs.  
6 There would be some screening requirement there.  
7 We've heard tonight an ugly fence.  It doesn't have to  
8 be an ugly fence.  It can be an attractive fence or it  
9 could be an attractive wall that can be used.

10           Your position in terms of a variance, you can  
11 look at either requiring the full eight foot  
12 screening.  You can look at saying, no, the screening  
13 is not going to be required in this instance for the  
14 storage yard, or you can sit somewhere between there  
15 and say, it's to be a three foot high fence or a four  
16 foot high fence because we've heard a few issues, but  
17 the materials are not to be stacked above that.

18           The adjoining neighbors are not the only  
19 parties in my opinion that have an interest here.  The  
20 general public has an interest here because is a, this  
21 roadway, Highway 54, is a gateway through our  
22 community.  There is an opportunity here to improve  
23 this particular site, as the neighbors have said, has  
24 been improved over the years.  We need to exercise  
25 that opportunity.

1           Just down the road we have a business that  
2 we've had many complaints on. It's a tire recycling  
3 center. That can happen here. That can happen here  
4 without any screening at all. You need to afford some  
5 protection not only to the property owners, but to the  
6 general public as well.

7           That's the Staff's concern. That's the intent  
8 of the zoning ordinance. It may be this today, but it  
9 could be something else tomorrow. We look for  
10 opportunities to improve those gateways through our  
11 community.

12           MR. ROGERS: Gary, if they took that to the  
13 Board of Adjustments and had the variance, that would  
14 not stay with the place if it changed hands again,  
15 would it?

16           MR. NOFFSINGER: A variance always runs with  
17 the land. An administrative appeal to appeal the  
18 interpretation of the zoning enforcement officer would  
19 apply only to that specific case. In other words, is  
20 this use on this property, that's proposed on this  
21 property at this time, is it an outdoor display area  
22 or is it an outdoor storage yard. That would be for  
23 the Board of Adjustment and would apply only to the  
24 specific case.

25           MR. MILLER: What action or nonaction by this

1 commission would allow the applicant to appeal to the  
2 Board of Adjustment? I guess what I'm asking is if we  
3 go ahead and vote for or against the variance.

4 MS. DIXON: Aren't you saying that if we deny  
5 this then they may apply for an administrative appeal  
6 to the board of adjustment,

7 MR. MILLER: That is what I'm asking.

8 MR. NOFFSINGER: That's my opinion.

9 MR. SILVERT: Assume that they've been cited  
10 for noncompliance.

11 MR. NOFFSINGER: That would be an avenue.

12 MR. MILLER: What did you say, Madison?

13 MR. SILVERT: Assuming that the site remains  
14 in noncompliance and that's the reason why, then they  
15 would appeal that interpretation.

16 MR. MILLER: Okay.

17 MS. MOORMAN: So all light industrial has to  
18 have a fence around it, to go around it to keep the  
19 site from the people?

20 MR. NOFFSINGER: The specific use here outdoor  
21 storage.

22 MS. MOORMAN: So any outdoor storage light  
23 industrial has to be fenced?

24 MR. NOFFSINGER: Yes.

25 CHAIRMAN: Ms. Boorman, will you step to the

1 podium, please.

2 The conversation that we were having here is  
3 Ms. Dixon had made a motion for denial of your  
4 variance. If we do deny it, you understand what we're  
5 discussing here, is that you could be cite, and in  
6 this case you would want to be cited for noncompliance  
7 so you could appeal to the Board of Adjustments to be  
8 reclassified from, you know, to a display outdoor  
9 display where you could have it reclassified and then  
10 have other criterias where it would be paving and some  
11 type of other screening. It could be bushes. It  
12 could be other types of screening, but it would not be  
13 a fence. I just want to make sure you were following  
14 the discussion where we were headed with this. Do  
15 you?

16 MS. BOARMAN: Yes, I am following your  
17 discussion, yes. I will definitely try. I'll try to  
18 come before the -- I mean it's worth the effort, I  
19 guess. It's an addition on expense, but if you do  
20 deny, that's my only option.

21 As far as the paving, I would have to also ask  
22 for a variance for that as well because it's a stone  
23 yard.

24 CHAIRMAN: We understand. You see, our hands  
25 are pretty much tied by the regulations about what we

1 can allow by virtue of what your zoning is. You  
2 understand that as we discussed, the variance that we  
3 grant, we're not granting you. Obviously with the  
4 testimony of your neighbors, you're a very upstanding  
5 land owner, property owner and business owner and are  
6 very well received by your neighbors. The variance  
7 goes with the property. Not with you.

8 So we as a board have to pretty much fall  
9 within the lines of the regulations that are handed to  
10 us by the comprehensive plan to make sure that that  
11 property is protected during the future.

12 MS. BOARMAN: Yes.

13 CHAIRMAN: What could happen is we still have  
14 her motion on the floor. You could receive a denial,  
15 depending on how the vote goes. But yet you have an  
16 avenue of appeal. Then you could seek other variances  
17 under a different, completely different set of rules.

18 MS. BOARMAN: The only other option I would  
19 like for you to consider would be that the outdoor  
20 storage be moved back to the back of the property  
21 where to me that is really storage. Not right on 54.

22 CHAIRMAN: In other words, you would move all  
23 of your stone?

24 MS. BOARMAN: No. But I would move -- you  
25 would have a storage area. You would have storage

1       there.  Because it's my understanding that anything  
2       like industrial has to have a storage area.

3               MR. NOFFSINGER:  Only if you have outdoor  
4       storage.  You don't have to have a storage area or  
5       outdoor storage area.  It could be completely inside  
6       the building, but if you do have outdoor storage, it's  
7       to be screened.

8               CHAIRMAN:  Is this correct, Mr. Noffsinger:  
9       If she moved it to the back of the property, that part  
10       is outdoor storage, it would require fencing?

11              MR. NOFFSINGER:  Any outdoor storage would  
12       require fencing.  We can't -- I don't think we can say  
13       that what's out front is display and then the rest is  
14       storage and we cut it off here.  It's either an  
15       outdoor storage yard or it's a display area.

16              MS. BOARMAN:  Okay.

17              CHAIRMAN:  Right now we have a motion for  
18       denial by Ms. Dixon.  We had a discussion and the  
19       chair is ready for a second.  I just wanted to bring  
20       the commission back up to where we stand at this  
21       point.

22              MR. MILLER:  Mr. Chairman, just one more  
23       comment.  I want to make sure that Ms. Boarman  
24       understands that going to the Board of Adjustment,  
25       that is for consideration of.  It could go either way.

1 They may say it's storage and require the fencing. I  
2 just want to make sure you understand that. If you do  
3 go ahead with an administrative appeal, it could go  
4 either way.

5 MS. BOARMAN: Yes, I do understand that. I've  
6 been dealing with this for several months. Yes, I  
7 fully understand that.

8 I want you to understand that that might be  
9 the closing of my business. I want you to know  
10 that.

11 MR. MILLER: Yes.

12 CHAIRMAN: At this point we're at the point  
13 where we have a motion for denial. The chair is  
14 either waiting for a second or --

15 MR. APPLEBY: Mr. Chairman, in light of the  
16 fact that this property is going to be light  
17 industrial, I tend to agree with the applicant that it  
18 is outdoor display, but that's not necessarily always  
19 going to be the case. That's my concern. So I would  
20 have to second the motion for denial and hope she can  
21 win on an administrative appeal.

22 CHAIRMAN: Before I recognize your second, I  
23 have one question to Mr. Noffsinger.

24 Mr. Noffsinger, is there any way with a change  
25 of zoning or a different classification, you know, we

1 have a responsible land owner and business person  
2 here. We're trying to -- but is there any other  
3 avenue that we could go through to change the  
4 complexion of this situation?

5 MR. NOFFSINGER: I think that by going to the  
6 Board of Adjustment and asking for consideration, I  
7 think that's certainly legitimate. Don't know the  
8 outcome, but it is one possible route. There may be  
9 some other opportunities with the Board of Adjustment,  
10 variance with the Board of Adjustment. I am not  
11 suggesting you go back with the same variance. What  
12 I'm suggesting that there may be room for some  
13 compromise there rather than an eight foot fence is  
14 required by the zoning ordinance. Maybe it could be a  
15 shorter fence that would screen to its proper  
16 screening from the public right-of-way. They're not  
17 stacked above that. There may be. Right now it's all  
18 or nothing that is proposed. There may be some  
19 opportunities there if the applicant is willing to  
20 compromise and do some screening, and maybe it's not a  
21 fence. I don't know the outcome.

22 CHAIRMAN: Yes, sir.

23 MR. CARDEN: I was wanting to ask one thing.  
24 Talking about the fence. Does it have to be a fence  
25 or could there be some shrubs or something that would



1       distract it rather than the fence? Are they  
2       considered a fence? The kind of shrubs or any kind of  
3       thing you could plant along there that would be  
4       considered a fence?

5               MR. NOFFSINGER: I hate to complicate this  
6       more, but that's what I've been hinting for some time  
7       now. In terms of it doesn't have to be an ugly fence.  
8       You may consider a variance that would affective  
9       screen what I believe is an outdoor storage area from  
10      the public right-of-way. Still allow the applicant to  
11      achieve what they're trying to do plus achieve the  
12      aesthetic appearance that is somewhat more pleasing.

13              I mean we have pallets stacked up with  
14      materials on them. That looks like a storage yard.  
15      So if you could do it with a shorter fence, if you  
16      could do it with screening of evergreens, bushes, but  
17      that's not what's being proposed. I haven't heard  
18      anyone other than myself really --

19              MR. CARDEN: I wanted to bring that to your  
20      attention is all.

21              CHAIRMAN: Thank you.

22              MS. DIXON: Could Staff work with the  
23      applicant to explore some of the other options as far  
24      as screening?

25              MR. NOFFSINGER: We can do that. I really

1 think the appropriate place for this debate is with  
2 the Board of Adjustment.

3 Number one, you've got an issue of the use.  
4 There's a disagreement on the use. Then the Board of  
5 Adjustment handle variances as they routinely do.  
6 This commission, this is really a first for them. I  
7 can't remember too many variances they've considered.  
8 It's not that they're not qualified to. They  
9 certainly can.

10 There may be room for a compromise there if  
11 the Board of Adjustment is willing to go along with  
12 it. At this point I don't know what it would be, but  
13 we'd certainly be willing to look at it. The Staff is  
14 trying to achieve an affective screening of what we  
15 believe is an outdoor storage area. In our opinion to  
16 do nothing, is not the best for the community.

17 CHAIRMAN: Ms. Boarman, one more time to the  
18 podium, please.

19 Mr. Noffsinger was giving and one of your  
20 neighbors very kindly recommended the possibility  
21 screening with bushes or shrubs or something else,  
22 which I think would be appealing to the neighbors  
23 which would take care of your screening requirement  
24 and would allow you, as far as change the paving and  
25 other criterias.

1 Correct, Mr. Noffsinger?

2 MR. NOFFSINGER: It may. It's still in my  
3 opinion an outdoor storage yard, unless the Board of  
4 Adjustment tells me it's not. The Board of  
5 Adjustments might consider other opportunities and  
6 other options for the screening on the property.

7 MS. BOARMAN: Excuse me. It was my  
8 understanding that we have -- like I said I've been  
9 working in the office quite a bit.

10 This being outdoor storage there is no --  
11 believe me I've tried. Can we plant pretty shrubs?  
12 Can we do this, do that? Anything pretty. There is  
13 no option except it has to be a solid fence. We have  
14 explored those avenues and I've been unsuccessful at  
15 this point.

16 CHAIRMAN: Mr. Noffsinger.

17 MR. NOFFSINGER: I have talked with Ms.  
18 Boarman. Perhaps the Staff has. The zoning ordinance  
19 is very clear.

20 MS. BOARMAN: It's what the ordinance. I'm  
21 not talking about your staff. I'm not referring to  
22 your staff. I'm referring to the ordinance, the  
23 rules.

24 MR. NOFFSINGER: Yes. It's very clear. The  
25 ordinance is very clear. It's to be an eight foot

1 high screening fence. That's very clear.

2 The staff cannot negotiate down from that.  
3 However, we are in a hearing on a variance request.  
4 Part of that discussion is to deny the variance or to  
5 approve the variance. There may be room to work from  
6 eight to zero. It's very difficult in terms of what  
7 my knowledge is of this particular case to really get  
8 a feel for what Ms. Boarman could live with and even  
9 what this board may consider is appropriate. Because  
10 what I think might be appropriate this board may not  
11 agree to.

12 CHAIRMAN: I think at this time this board is  
13 really in a position where what we need to decide  
14 based on the ordinance that we're faced with is before  
15 us. I think at this time, unless there is any further  
16 suggestions, I think Ms. Boarman has gotten the idea  
17 that your avenue to the Board of Adjustments might be  
18 a better avenue where they're better able to deal with  
19 variances and change.

20 I think at this time I will recognize  
21 Mr. Appleby's second.

22 MR. EVANS: Mr. Kirkland, before you do that,  
23 could I ask one thing?

24 CHAIRMAN: Certainly.

25 MR. EVANS: What is the stipulations for

1 outdoor storage? Is it because it's on pallets? Is  
2 it because of the way it's displayed in the yard?

3 CHAIRMAN: In Mr. Noffsinger.

4 MR. NOFFSINGER: Those go into that  
5 consideration. It's based upon, it's not going to be  
6 paved. It's proposed to be gravel. It's an  
7 industrial zone. It's an industrial use. It's going  
8 to be gravel. It's on pallets. It has the flavor of  
9 an industrial type use, storage use, especially with  
10 that type of volume.

11 Now, if it were display, you would have a  
12 paved display surface that may or may not have  
13 screening attached to it. A display is typically  
14 something you might see out on the sidewalk of the  
15 store. I know when you get into like Lowe's or Home  
16 Depot, they' are home and garden center areas, those  
17 areas are screened. They're outdoor storage yards or  
18 they're display, whatever they are, they are screened  
19 from the public right-of-way. Now, they still have  
20 some things sitting out and the zoning ordinance would  
21 acknowledge that you can have display areas out on the  
22 sidewalk in certain defined areas. Typically the  
23 display area is not the entire site with materials on  
24 pallets such as this. I do think it is an area that  
25 there may be some room for compromise, but I do think

1       that it needs to be screened from the public  
2       right-of-way and those adjoining properties in some  
3       fashion. Eight foot may not be appropriate, if you're  
4       not going to stack that high. I do think there needs  
5       to be some screening there. Even a car lot has some  
6       screening associated with it. Three foot high bushes.  
7       Just every so often a tree. Here's a situation where  
8       the variance says, we don't want screening at all. We  
9       don't want to do anything.

10               CHAIRMAN: Mr. Evans.

11               MR. EVANS: I'm done.

12               CHAIRMAN: Mr. Appleby, at this time I'll  
13       recognize your second of Ms. Dixon's motion for  
14       denial. At this time I'll call for a vote. All in  
15       favor of Ms. Dixon's motion for denial please raise  
16       your right hand.

17               (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18               CHAIRMAN: The motion carries unanimously.

19               Next item, please.

20               MR. HOWARD: The next one that I'll talk about  
21       is to eliminate the request of vehicular use area  
22       landscape screening requirement along Highway 54 road  
23       frontage.

24               As we mentioned earlier, one of the things  
25       that was brought up in the applicant's information is

1 a proposed project to widen Highway 54.

2 Based on my conversation with the state, the  
3 design for that project is to begin in 2010, and that  
4 will be followed with right-of-way acquisition,  
5 utility relocation, and then ultimately construction.  
6 So we're looking at, you know, maybe 2012, 2013 before  
7 construction might begin. That would be dependent  
8 upon funding.

9 Currently there's landscaping that's been  
10 placed within road right-of-way. What the Staff is  
11 saying is that landscaping can remain, but what they  
12 need to do is on their site they need to put in the  
13 required 3 foot tall element and one tree every 40  
14 linear feet as part of vehicular use area screening.

15 So with that we're going to recommend denial  
16 of this variance as well with findings that it will  
17 adversely affect the public health, safety or welfare;  
18 will not alter the essential character of the general  
19 vicinity; will cause a hazard or a nuisance to the  
20 public; and will allow an unreasonable circumvention  
21 of the requirements of the zoning regulations.

22 I'll enter that Staff Report into the record  
23 as Exhibit E.

24 CHAIRMAN: Anybody here want to address the  
25 commission? Are there any questions?

1           Yes, ma'am.

2           MS. BOARMAN: Another comment. I guess I  
3 would also like for all of you on the board to be  
4 aware that this particular property was built in  
5 1970's. I tried my best to try to grandfather this  
6 property in. Was unsuccessful because was asked to  
7 provide proof that there were multiple business names.  
8 Although I can prove there was similar activities  
9 going on, I couldn't prove there were multiple  
10 business names.

11           I've lived there my entire life. A lot of  
12 people have been there for years. I'm not putting up  
13 a new building. Yes, we are, we've come to this point  
14 where we're asking for a zoning change. It's not like  
15 I put a McDonald's and have to do zoning. The hoops  
16 I've had to jump through to get to this point to get  
17 within compliance and try to get permits for  
18 electrical, to put in a painting booth, these type of  
19 things.

20           These two driveways in the front have been  
21 there since the existing, you know, initial  
22 construction of the building. That's one, although I  
23 know you probably can't that. That's my opinion.

24           The other is that, yes, this highway is put on  
25 the books to be initiated in 2010. What I'm asked to



1 do is to dig up a perfectly good driveway.

2 We understand the regulations, but we're  
3 talking about in addition to all the other thousands  
4 of dollars worth of, close to \$50,000 worth of things  
5 that we're having to do to get into compliance. This  
6 is another close to \$10,000 that we'll have to do to  
7 dig up perfectly good blacktop, move our -- dig up  
8 blacktop so we can get shrubs within our right-of-way.  
9 If you're familiar with the property, that will place  
10 us back.

11 Aldridge's Car Lot is right beside us. We'll  
12 be back further back than his whole front row of cars.

13 It puts us at a disadvantage, but mainly it's  
14 unnecessary work. It's very unnecessary work and  
15 unnecessary money that will be just destroyed in a  
16 year, two, three, four years, whatever. It's a lot of  
17 money for us, in addition to all the other things that  
18 we're being asked to do.

19 CHAIRMAN: How will this variance affect  
20 assuming, you go before the Board of Adjustments and  
21 are able to plant bushes, trees, etcetera, for other  
22 screening, will this road impede any of those  
23 possibilities?

24 MS. BOARMAN: It could possibly take out my  
25 front row of my stone possibly.

1           CHAIRMAN: That is leaving the road as it is.  
2           Leaving the blacktop.

3           MS. BOARMAN: Leaving the blacktop, leaving  
4           everything as it is, no. Nothing else will be  
5           affected.

6           CHAIRMAN: Does anybody else have any  
7           questions?

8           MS. BOARMAN: So the variance we just want  
9           some time. That's what we're asking for. We're  
10          asking for time and get the other things that I think  
11          so we need to do and just some time.

12          CHAIRMAN: Now, wait a minute. What do you  
13          mean in the way of time? What kind of time?

14          MS. BOARMAN: This highway, you're talking  
15          2010. If you're saying it could be 2015, it could  
16          never be. Put a time frame on it. Until after the  
17          highway comes through or four years, whichever comes  
18          first. That's what I'm asking for.

19          MR. APPLEBY: I think this landscape  
20          requirement, the screening requirement that applies in  
21          all commercial applications. What they're asking is  
22          that you put landscaping on your property rather than  
23          on the right-of-way.

24          MS. BOARMAN: Yes.

25          MR. APPLEBY: If you put it on your property,

1       it's not going to be torn up when they do the road.

2               MS. BOARMAN: But the driveways will. The  
3 driveways will.

4               MR. APPLEBY: Well, the driveway, that's  
5 another variance. That's not what we're dealing with  
6 at this point. That's the next variance. We're just  
7 talking about the landscaping at this point.

8               MS. BOARMAN: The landscaping will require us  
9 to dig into our property, several feet into our  
10 property.

11              MR. APPLEBY: Three feet I think, isn't it?

12              MR. NOFFSINGER: Yes, sir.

13              MS. BOARMAN: Three feet plus I believe it's  
14 another, I'd have to look on the development plan,  
15 plus another 14, I believe. It's 17 feet total  
16 concrete that we'll have to dig up.

17              MR. ROGERS: Which they have already  
18 landscaping on this property, but it's on the highway  
19 right-of-way.

20              MS. BOARMAN: Which we did not realize that  
21 until going through all of this.

22              CHAIRMAN: Did you all plant the landscaping?

23              MS. BOARMAN: Yes. It looks like it's in the  
24 right spot. We planted the landscaping around the  
25 edges of the existing lot.

1           CHAIRMAN: Mr. Howard, does the landscaping,  
2 even though it's on the right-of-way; is that correct?

3           MR. HOWARD: That's correct.

4           CHAIRMAN: Does the landscaping that is on the  
5 right-of-way, does that meet our criteria?

6           MR. HOWARD: I don't have the pictures with  
7 me.

8           CHAIRMAN: Mr. Mischel.

9           MS. BOARMAN: We have two magnolia trees and I  
10 don't know how many rows of rose bushes of what we  
11 have. I've got rose bushes.

12          CHAIRMAN: Mr. Mischel.

13          MR. SILVERT: State your name, please.

14          MR. MISCHEL: Jim Mischel.

15          (JIM MISCHEL SWORN BY ATTORNEY.)

16          MR. MISCHEL: I will see the shrubs are over  
17 here going off memory. I will give you a short thing  
18 on the landscaping.

19                 Typically shrubs planted should be 18 to 24  
20 inches tall. They should be been 3 foot spacing. So  
21 you plant your first one, go three foot and put  
22 another one, and three foot, three foot, and have a  
23 tree per 40 feet.

24                 I'd have to go back out there to see what they  
25 have, to see if it meets if it was just moved back. I

1 don't know.

2 MR. NOFFSINGER: Mr. Mischel, I don't think  
3 knocking out roses will meet it.

4 MS. MISCHEL: If it's roses, then no, it  
5 wouldn't meet.

6 CHAIRMAN: Thank you Mr. Mischel.

7 MS. DIXON: Mr. Noffsinger, do we not  
8 traditionally when we rezone a property at that time  
9 do everything possible to bring it into compliance  
10 with the zoning ordinance?

11 MS. NOFFSINGER: Yes, that is correct. Mr.  
12 Howard gave you four examples in this area.

13 CHAIRMAN: We're faced with another variance  
14 situation, another request. Are there any questions?

15 MS. DIXON: I have another question. This  
16 might be procedural.

17 Have we not before approved a zoning  
18 ordinance, I mean a rezoning and then the variance be  
19 brought to the Board of Adjustments at a later date?

20 MR. NOFFSINGER: Yes, we have.

21 MS. DIXON: Why is this different?

22 MR. NOFFSINGER: Back about four years or so  
23 when we were going through the zoning ordinance  
24 review we changed it to allow in conjunction with the  
25 rezoning.

1 MS. DIXON: Okay.

2 CHAIRMAN: Yes, ma'am.

3 MS. DOTSON: I have like a question/comment.  
4 I know right now -- I don't want to lose the Boarmans  
5 as a neighbor. I know the people before them,  
6 unofficially, there was a meth lab there beside me. I  
7 don't want to go through that again. I work in a job  
8 that just laid off ten people this week. I really  
9 don't see why there's something we can't do to say,  
10 okay, yes, you're not in compliance, but due to the  
11 times could we not say in two years we'll relook at  
12 this? Is there nothing that we can do?

13 CHAIRMAN: We are trying our best within the  
14 rules and regulations to try to put Ms. Boarman in the  
15 best light that we possibly can.

16 MS. DOTSON: It's just, you know, they've been  
17 operating for years and now all of a sudden they have  
18 to come in compliance.

19 CHAIRMAN: Well, I think they've changed their  
20 footprint. I think they're trying to build buildings  
21 and get permits.

22 MS. DOTSON: There's a rats nest on the back  
23 side of my property. The carnival people own that.  
24 You can't tell me that was in compliance, but now  
25 someone noticed and we're having to go through all of

1       this.

2                   CHAIRMAN:  It is the fact that someone notice.  
3       With her updating and think Ms. Boarman was probably  
4       getting the building and maybe an electrical permits  
5       also in conjunction with what she's doing.  I know we  
6       don't want to try to penalize a good citizen.  She's  
7       trying very diligently to be a good citizen.  Within  
8       the rules and regulations that we're strapped with, we  
9       also have to try to negotiate staying within those  
10      lines also.

11                  MS. DOTSON:  I understand that.

12                  CHAIRMAN:  I understand.  The showing of the  
13      neighbors and everything else is amongst us.  We are  
14      trying to work with her.  We're doing everything we  
15      possibly can do, but there's certain situations.

16                  MS. DOTSON:  I bring up that maybe someone had  
17      forgotten about there's a time thing.  There's some  
18      loophole in there somewhere.

19                  CHAIRMAN:  We want to encourage Ms. Boarman to  
20      expand, spend money, pay taxes, and hire people.  
21      That's our number one goal.  So we are trying  
22      diligently to do that.  Any solution or any idea that  
23      you might have to what we're -- there are certain  
24      parameters of the rules and regulations which we must  
25      follow due to the type of zoning that she is

1       requesting and must have to operate this business.

2               MS. DOTSON: I believe the zoning was  
3 suggested for her. It's just because of the business  
4 she has that's the zoning?

5               CHAIRMAN: Yes, ma'am.

6               MS. DOTSON: I just want to make sure there's  
7 no loophole because like I said I don't want a meth  
8 lab next to me again.

9               CHAIRMAN: We're not trying to create a  
10 loophole. We're trying to create an avenue of  
11 compliance that she can go across and cover all the  
12 basis. That's what we're trying to do.

13              MS. DIXON: That will benefit her, your  
14 neighbors and our community.

15              MS. DOTSON: I understand that. I'm just  
16 saying the time now. Maybe this needs to be tabled  
17 for a month or something. The timing now in this  
18 economy, spending money on shrubbery is pretty low  
19 priority when you've got ten people laid off at my  
20 work this week.

21              CHAIRMAN: We're very much aware of that, but  
22 what our board is faced with is we have required  
23 everybody else before her to do these things. That's  
24 in some form or another. That's what we're trying to  
25 do. Somehow allow this to move forward, but somehow



1       there's certain situations that we cannot deny that  
2       are within our regulations. I understand what you all  
3       are doing and I understand the support of the  
4       neighbors is what continues to let us to try to  
5       discuss through this and reach some sort of  
6       agreement.

7               Mr. Mischel, solution?

8               MR. MISCHEL: I'm not sure. I would like to  
9       make a little explanation here.

10              They had a statement on why we were out there.  
11      Like to clear some of that up.

12              We had received a couple of complaints. One  
13      of them was on the fill. About this property is being  
14      improperly fill. Were there permits on it. We looked  
15      it up and said, no, there were no permits. I told  
16      them we would check into it.

17              Another complaint was on the body shop.  
18      Wanted to know if they were proper. I think the  
19      complaint went something like, well, we've put in a  
20      body shop and we had to do it proper. We had to pave.  
21      We had to landscape. Had the fence and stuff like  
22      that. We don't see this occurring here. Best we  
23      could tell them we would check into it and that's what  
24      we did.

25              We went out on those two issues and while we

1       were out there, you know, the screening popped up and  
2       other things, paving, landscaping and stuff.

3               MR. ROGERS: Gary, if we allowed this variance  
4       with this screening like it is, when the highway came  
5       through, could we put a stipulation that she would  
6       then have to do her outdoor screening?

7               MR. NOFFSINGER: That's certainly something  
8       that you could consider. You make it very clear that  
9       you're not permitting any type of screening on the  
10       right-of-way and it would be at the applicant's  
11       expense. What you don't want to do is get into a  
12       situation where the right-of-way is being negotiated  
13       or improved and these need to be considered to be uses  
14       that you approve. A driveway too close to the  
15       intersection and landscaping not installed or  
16       installed improperly. We don't know when that roadway  
17       is going to be widen. 2014, that would be very  
18       optimistic.

19              CHAIRMAN: Mr. Rogers, are you referring to  
20       like say put a two year criteria on that and if the  
21       road is there, fine. If not --

22              Vehicle Code there I fine F not.

23              MR. ROGERS: When and if the road comes  
24       through that she would have to do her outdoor  
25       screening.

1           MR. APPLEBY: Because they are going to take  
2 this out.

3           MR. ROGERS: Take that out.

4           MR. APPLEBY: That's on the right-of-way.

5           CHAIRMAN: What if the road does not come  
6 through?

7           MR. ROGERS: She has outdoor screening now on  
8 that piece of property.

9           CHAIRMAN: If mr. Noffsinger answered the  
10 question earlier correctly, I don't think the outdoor  
11 screening that we have right now is adequate outdoor  
12 screening.

13          MR. NOFFSINGER: It appears that it's not and  
14 I'm not sure that it goes full distance. It may, but  
15 I don't think it meets the requirements.

16          CHAIRMAN: Mr. Rogers, there could be a way  
17 where if she did the bushes within her criteria,  
18 sought a variance from the Board of Adjustment and put  
19 a bush line screening within her property according to  
20 the ordinance then she --

21          MR. APPLEBY: That's what we're requiring.  
22 That's what this one is about right now. Is we're  
23 requiring that she meet that minimal. That she's  
24 asking for a variance from that. I think what you're  
25 saying is could we stipulate that if and when this

1 road is widen and they remove that she wouldn't put  
2 the landscaping in compliance with the zoning  
3 ordinance. That's what you were saying?

4 MR. ROGERS: That's what I'm saying. If  
5 Ms. Boarman would agree to that.

6 CHAIRMAN: I think, Irvin, going to the extent  
7 of allowing her to complete the variance to the length  
8 of when and if a road is put in, gives the unfortunate  
9 possibility that the road may not be put in or may be  
10 eight or ten years where if we put sunset on it where  
11 it's a two year and give her some time, then it might  
12 work in everybody's advantage where we won't have  
13 something facing us in six years, eight years, ten  
14 years down the road. This board will change  
15 dramatically. I mean somebody else would inherit the  
16 situation. Well, it hadn't been done.

17 MR. ROGERS: But there is some screening  
18 there. Maybe she could just fill in to get it --

19 MR. APPLEBY: We don't want to be telling her  
20 to put more stuff on the right-of-way.

21 CHAIRMAN: Any improvement should be back on  
22 her property. I mean where we had a sunset where two  
23 years regardless of road conditions that it would be  
24 done, which would give her adequate time and will  
25 allow some leeway.

1           MR. MILLER: But denial also means that she  
2 would have to remove the pavement.

3           MR. APPLEBY: That's on the next.

4           MR. MILLER: No. That's on this one.

5           CHAIRMAN: It's on this one.

6           MR. APPLEBY: Oh, it is on this one, isn't  
7 it?

8           MR. MILLER: Yes. With bad eyes and glasses I  
9 still can't make this out. I've looked at it all day.  
10 That is the cross area on this final development plan.  
11 Am I right?

12           MR. NOFFSINGER: This area just eliminates the  
13 screening requirement. This is a variance to  
14 eliminate the screening requirement. Not the  
15 pavement. Does not get into the pavement. The  
16 pavement will be on the next one, I believe. But it  
17 would be along Highway 54.

18           MS. BOARMAN: I'm sorry, that's incorrect.  
19 The pavement would have to be removed to plant the  
20 shrubs within our, on the inside right-of-way. So  
21 there is pavement that would be removed, but it does  
22 not involve the pavement that's the driveway, the  
23 entry into the facility. That is where it would  
24 require, I believe, 17 feet from the highway into our  
25 property to be removed.

1           MR. APPLEBY: You're talking about on the  
2 driveway?

3           MS. BOARMAN: I'm not repaving the driveway.  
4 I'm only referring to the screening.

5           MR. APPLEBY: You're saying that 17 feet of  
6 the right-of-way is paved now?

7           MS. BOARMAN: Fourteen feet. Another three  
8 feet to allow for the shrubs to be planted. Fourteen  
9 feet since 1073.

10          MR. APPLEBY: That's on the road right-of-way?  
11 Your property lot is on the road right-of-way?

12          MS. BOARMAN: Right. We discovered that  
13 through all of this process, yes. It doesn't appear,  
14 it doesn't look that way. It's only in that little  
15 section that's remaining B-4. That's not changing.  
16 When you go to our stone lot, a right-of-way moves in.  
17 There's less state right-of-way there. It would be a  
18 rectangular-shaped area that would require pavement to  
19 be removed.

20          CHAIRMAN: The pavement that's required to be  
21 removed, is that the pavement of the drive coming  
22 in?

23          MS. BOARMAN: No.

24          MR. APPLEBY: No. It's right there.

25          MS. BOARMAN: It's in the middle between the

1 two front driveways. That area that you see that has  
2 the grass already. It would require where I have  
3 landscaping now to -- as a matter of fact, the  
4 ordinance does not require that I dig up my own  
5 landscaping. That's not really your concern. It's  
6 the state, but it requires me to dig up the pavement  
7 that's has been there since 1973, to dig that up 17  
8 feet. Fifteen feet to get it within my property or  
9 out of the right-of-way. Then another 3 feet to allow  
10 for shrubs. So 17 feet in.

11 CHAIRMAN: Mr. Howard.

12 MR. HOWARD: Just as a note. I was going to  
13 point out that as Ms. Boarman said, if you look on  
14 your development plan between the two driveways that  
15 hatched area was an area that was shown for pavement  
16 to be removed. That was the pavement that is within  
17 road right-of-way. That she's talking about be the 14  
18 feet or whatever to remove that. That's the hatched  
19 area on the plan that you all have.

20 I just wanted to state that the way the Staff  
21 Report was written for this variance, it does include  
22 that pavement that's within the right-of-way have  
23 vehicular use screening. The first statement that  
24 pavement and landscaping has been installed within the  
25 road right-of-way. Talked about the applicant's

1       action. The pavement and landscaping within  
2       right-of-way were installed after the zoning ordinance  
3       regulations. However the improvements were likely  
4       done with the lead that they were on private property.  
5       We don't think the applicant purposely went out and  
6       installed the stuff on the right-of-way, but it is  
7       there. I just want to make the clarification.

8               The next variance is applicable to that  
9       driveway closer to Winkler Road on 54 only.

10              MR. NOFFSINGER: I have a question. Then the  
11       next variance is for a driveway. Which driveway is  
12       that?

13              MR. HOWARD: It's the driveway on Highway 54  
14       that is closest to Winkler Road. It basically begins  
15       at their property line.

16              MR. NOFFSINGER: The current variance is I  
17       understand along 54.

18              MR. HOWARD: Right.

19              MR. NOFFSINGER: And some additional pavement  
20       other than the 14 feet that runs parallel?

21              MR. HOWARD: No. The next one is for that  
22       driveway only. The variance that's under discussion  
23       right now would include any of that other pavement  
24       that is within the right-of-way and the vehicular use  
25       area screening.



1           MR. NOFFSINGER: What about the other drive on  
2 Winkler Road near the intersection?

3           MR. HOWARD: There was not a variance applied  
4 for to have that drive remain. I think based on our  
5 discussion, the applicant was agreeable to closing  
6 that, but they wanted to keep the access on 54 as is.

7           CHAIRMAN: Mr. Noffsinger, the pavement is  
8 asphalt I assume?

9           MR. NOFFSINGER: Correct.

10          CHAIRMAN: The screening, couldn't they just  
11 excavate into the asphalt and put their screening  
12 along like that? They wouldn't necessarily have to  
13 remove all the asphalt, would they?

14          MR. APPLEBY: Well, if they're going to do  
15 that, it's of no use to them.

16          MR. NOFFSINGER: Then you have a potential  
17 conflict there if you leave that drive in the  
18 right-of-way for vehicles to turn. You don't want  
19 them turning into that.

20          CHAIRMAN: Okay.

21                Unless there are any more discussion or  
22 solutions, I think the chair and the board is where  
23 I'm going to ask for a motion.

24          MR. EVANS: Mr. Chairman, when looking at this  
25 picture, does this also get into her sign?

1           CHAIRMAN: Mr. Evans has a question regarding  
2 the sign.

3           MR. NOFFSINGER: I can't answer that  
4 question.

5           CHAIRMAN: Mr. Noffsinger, is this possibly --  
6 I know this is being put on the Planning Commission,  
7 but are these issues that could possibly be better  
8 dealt with the Board of Adjustments? I know the  
9 reason why the ordinance was written like this, is to  
10 streamline these type of situations, but I don't think  
11 we've ever run into anything quite this unique in  
12 variances.

13          MR. NOFFSINGER: You haven't, but certainly I  
14 think you're equipped to make that decision. I don't  
15 think it has to go to the Board of Adjustment. I  
16 think if you're going to consider the use of the  
17 property, it has to go before the board of adjustment  
18 and have an administrative appeal. Here's a situation  
19 where you do have the authority and can make a  
20 determination in terms of whether or not to allow or  
21 not to require the screening. Not to require the  
22 driveway be closed or to look at some time. Doesn't  
23 happen immediately. It has to happen within a certain  
24 period of time. It's a judgment call by this board  
25 just like it would be the Board of Adjustment.

1 MR. APPLEBY: Can I attempt to make a motion?

2 CHAIRMAN: Pardon me?

3 MR. APPLEBY: Can I attempt to make a  
4 motion?

5 CHAIRMAN: Can you take a time out for just  
6 about 30 seconds?

7 MR. APPLEBY: Sure.

8 CHAIRMAN: Ms. Boarman, you've received enough  
9 time at the mike and I think we're going to award you  
10 a letter.

11 Is timing an issue where if this board gave  
12 you more time with a sunset, in other words, these  
13 things absolutely, positively would have to be done,  
14 but we gave --

15 MS. BOARMAN: Five years would be wonderful.

16 CHAIRMAN: Wait a minute. This board in five  
17 years would be a tough time frame. We've got the  
18 latitude to do some of that. It would not ease your  
19 burden. Would not change your burden. It would not  
20 change the requirements. Due to your unique  
21 situation, that we would give you a span of time of  
22 say a of couple years where one year you would have a  
23 certain plan and by the second year you would be able  
24 to complete these criterias. Is that something that  
25 you could live with?

1 MS. BOARMAN: I'm pretty well at your mercy, I  
2 guess. I'm not --

3 CHAIRMAN: You've got a lot of support and  
4 we're trying to help you. You have improved your  
5 property in certain areas and certain things you  
6 inherited where it made it much more difficult for  
7 you. If you had a grassy field there and you could  
8 grow up a couple of bushes and plant and trees and you  
9 got your screening and you're done, it would be very  
10 easy. But you've had to do fills and other things to  
11 bring your property up. This board appreciates that.  
12 I don't want you to think that we haven't, but I hope  
13 you understand what we're faced with. Trying to just  
14 administer the rules and regulations that we have in  
15 our comprehensive plan.

16 MS. BOARMAN: I certainly understand that in  
17 having dealt with this for several months. I would  
18 also ask that, I know you talking about maybe this is  
19 a little bit more than you're wanting to handle.  
20 Maybe going to another meeting. It's just the fact  
21 that this has gone on for several months. Been trying  
22 to try to jump through hoops. The planning office has  
23 been, we've been trying to do all these different  
24 things to try to get this to work, but I'm at a point  
25 I have got to get permits. We have to get this done.

1 I need to go get permits to get some electrical going.

2 CHAIRMAN: We can direct you in those areas.

3 MS. BOARMAN: My husband, I'm sorry he can't  
4 be here. He would love to be here, but he cannot be  
5 here.

6 CHAIRMAN: I'm sure he's very unhappy that he  
7 missed this event.

8 MS. BOARMAN: Yes, as I am. He did just come  
9 home from the hospital. He was going to be here.

10 CHAIRMAN: I hope he's doing well.

11 MS. BOARMAN: Yes, he is. Thank you.

12 His request was he's a common sense. He's a  
13 farmer. It's common sense. Yes, he understands you  
14 have regulations, but he said, why would I spend all  
15 of this money, even if you take out the fact that  
16 we're looking at thousands and thousands of dollars  
17 that every time, as Mr. Mischel said. What started  
18 out as a small problem, the more you talk the bigger  
19 it gets. Trying to get a property that was built in,  
20 you know, established in 1973 that we can't  
21 grandfather it in, up to the Wal-Mart that was built  
22 last year.

23 Anyway, his request was that we wait until the  
24 highway comes in because he has been communicating  
25 with the state highway in regard to the fill. He's

1       been communicating with the engineer. Talking to them  
2       on their opinions. He's ask that he not have to do  
3       anything on the 54 property as far as digging up  
4       things until the highway comes in. Understanding that  
5       that might not be 2010. We're hoping in Philpot that  
6       it will be pretty soon. We can live with the time.  
7       Your question was, would time help? Yes, it would.

8               CHAIRMAN: We would have a sunset where  
9       regardless of whether the highway is there or not,  
10      that these must be done.

11             MS. BOARMAN: Yes, that's right.

12             CHAIRMAN: The reason we would possibly  
13      consider that is the extreme circumstances that your  
14      property is under in trying to, you know, you are an  
15      up and going business and hopefully generating revenue  
16      and moving in the right direction. Tremendous support  
17      of your neighbors and your community weighs heavily  
18      with the commission.

19             MS. BOARMAN: As I said, I know you said five  
20      years would be a long time, but if you look at this  
21      development plan, it's a lot of money. It's a lot of  
22      work. Lots.

23             CHAIRMAN: The reason five years, five years  
24      would be outside of anybody's time that is sitting on  
25      this board. The reason we would look at something

1       like two years is that's the way the board turns. In  
2       two years we would have the same group of people would  
3       be administering it and we wouldn't just back away  
4       from it and turn it over to somebody else.

5                 Thank you very much.

6                 Mr. Appleby, sorry to have interrupted your  
7       thought and your idea.

8                 MR. APPLEBY: I would make recommendations  
9       that we grant the variance with the findings that it  
10       will not adversely affect the public health, safety or  
11       welfare; that it will not alter the essential  
12       character of the general vicinity, as it's been this  
13       way since 1973; and it will not cause a hazard or a  
14       nuisance to the public, as it has not up to this  
15       point; and that it will not allow an unreasonable  
16       circumvention of the requirements of the zoning  
17       regulations, if there were further condition that this  
18       landscaping be installed in accordance with the  
19       ordinance zoning within a particular time frame. I  
20       would make that condition that that landscaping would  
21       have to be brought into compliance within a two year  
22       period. I think that's my motion.

23                 CHAIRMAN: Mr. Appleby, not to interrupt your  
24       thought pattern any more than I have to.

25                 Ms. Boarman, would you come the mike. Do you

1 understand what his motion is?

2 MS. BOARMAN: Yes, I understand it.

3 CHAIRMAN: It is a sunset. Within two years  
4 all of these criterias must be met.

5 MS. BOARMAN: Yes.

6 CHAIRMAN: Okay.

7 MS. BOARMAN: We are referring to the  
8 landscaping. I guess you all will address the  
9 driveway next?

10 CHAIRMAN: The driveway is another issues.  
11 We've still got more to come.

12 MS. MOORMAN: Would that be satisfactory to  
13 you, the two years?

14 MS. BOARMAN: Yes.

15 CHAIRMAN: Mr. Appleby has a motion. Ms.  
16 Moorman, I think you were getting ready to make the  
17 second down there.

18 MS. MOORMAN: Yes, second.

19 CHAIRMAN: Ms. Moorman has a second. All in  
20 favor of Mr. Appleby's motion raise your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 MR. NOFFSINGER: Mr. Chairman, to save some  
24 time we would recommend the same motion and conditions  
25 be placed on the next variance, to allow the existing



1 drive to remain closer to 50 feet to the intersection  
2 of a commercial zone.

3 CHAIRMAN: In other words, the driveway would  
4 have to be --

5 MR. NOFFSINGER: Two years.

6 CHAIRMAN: Two years.

7 Ms. Boarman, would you please come to the  
8 mike. Do you understand?

9 MS. BOARMAN: Yes, I understand that.

10 CHAIRMAN: In other words, we're granting you  
11 a variance today, but within two years it does have to  
12 be removed.

13 MS. BOARMAN: Yes.

14 CHAIRMAN: Thank you very much.

15 MR. MILLER: Mr. Chairman.

16 Ms. Boarman, I only say this to protect us and  
17 the community. I wish you no ill-will whatsoever.

18 Should there be something added that this  
19 pertains to whoever owns the property? Once again,  
20 does whatever we say pertain to this property and  
21 carries?

22 MR. APPLEBY: Follows the land.

23 CHAIRMAN: It follows the land.

24 MR. MILLER: I hope you understand where I was  
25 coming from.

1           CHAIRMAN: The sunset also follows the  
2 property. I mean if she sells it to somebody else,  
3 you know, on January 5, 2011 --

4           MR. MILLER: That's the clarification I wanted  
5 to make.

6           CHAIRMAN: -- they've got three days to get  
7 ready the things she has not done.

8           All right. I think we still need a motion.

9           Mr. Appleby, would you restate your motion for  
10 the next item, please.

11          MR. APPLEBY: Would move that we grant the  
12 variance based on the finding that it will not  
13 adversely affect the public health, safety or welfare,  
14 as it has not up to this point; will not alter the  
15 essential character of the general vicinity since it's  
16 been this way since 1973; it will not cause a hazard  
17 or a nuisance to the public, as it has not in the  
18 past; and it will not allow an unreasonable  
19 circumvention of the requirements of the zoning  
20 regulations as there is a time frame that will require  
21 compliance. I would make the condition that this  
22 roadway must be removed in compliance with the zoning  
23 requirements within a period of two years from the  
24 date of the action.

25          CHAIRMAN: Thank you, Mr. Appleby.

1 MS. MOORMAN: I second.

2 CHAIRMAN: We've got a second by Ms. Moorman.  
3 All in favor raise your right hand.

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion carries unanimously.

6 Thank you all very much for your working on  
7 this. Everybody on the Staff, thank you all.

8 Next item.

9 ITEM 5B

10 6045, 6071 Highway 54, 3.41 acres  
11 Consider approval of final development plan.  
12 Applicant: Bluegrass Truck, Trailer & Equipment, LLC

13 MR. NOFFSINGER: Mr. Chairman, this plan is  
14 not in order. It's related to the items we just  
15 discussed. There will be have to be some changes to  
16 that development plan. Staff would recommend that you  
17 not take action to approve or to deny, but that you  
18 simply direct the director to sign the development  
19 plan once the development plan is brought into  
20 compliance with the variances that have been approved  
21 here tonight or not approved. That way to save you  
22 some time to having to come back to the next meeting.  
23 We can do that in-house.

24 CHAIRMAN: Ms. Boarman, step back to the mike  
25 just very briefly for us.

26 You understand what he's saying? The board is

1 releasing Mr. Noffsinger to sign off on your  
2 development plan. Your development plan will have to  
3 be the criterias that you understand?

4 MS. BOARMAN: Yes.

5 CHAIRMAN: Does she understand what is out of  
6 compliance with her building?

7 MR. NOFFSINGER: Exactly what was discussed  
8 here tonight.

9 MS. BOARMAN: Yes.

10 MR. NOFFSINGER: And approved by you or not  
11 approved by you.

12 MS. BOARMAN: I think we understand, yes.

13 CHAIRMAN: Please be seated for the final  
14 time.

15 So, Mr. Noffsinger, your proposal is that we  
16 make a motion to deny?

17 MR. NOFFSINGER: No. Authorize the director  
18 to sign when this development plan is in order.

19 MR. APPLEBY: Mr. Chairman, I make a motion to  
20 authorize the director to sign this plat.

21 CHAIRMAN: We've got a motion by Mr. Appleby.

22 MS. DIXON: Second.

23 CHAIRMAN: Second by Ms. Dixon. All in favor  
24 raise your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries unanimously.

2 Next item, please.

3 ITEM 6

4 325 Salem Drive, 0.44+/- acres  
5 Consider zoning change: From B-4 General Business to  
6 B-5 Business/Industrial  
7 Applicant: ABBS Partnership

8 PLANNING STAFF RECOMMENDATIONS

9 Staff recommends approval because the proposal  
10 is in compliance with the community's adopted  
11 Comprehensive Plan. The condition and findings of  
12 fact that support this recommendation include the  
13 following:

14 CONDITIONS:

15 Access to Salem Drive shall be limited to the  
16 existing access point. No additional access to Salem  
17 Drive shall be permitted.

18 FINDINGS OF FACT:

19 1. The subject property is located within a  
20 Business/Industrial Plan Area, where general business  
21 and light industrial uses are appropriate in general  
22 locations;

23 2. The subject property lies within an  
24 existing area of mixed industrial and commercial land  
25 uses;

3. The Comprehensive Plan provides for the

1 continuation of mixed use areas; and,

2 4. The proposed land use for the subject  
3 property is in compliance with the criteria for a  
4 Business/Industrial Plan Area and a B-5  
5 Business/Industrial zoning classification.

6 MR. HOWARD: We would like to enter the Staff  
7 Report into the record as Exhibit G.

8 CHAIRMAN: Do we have anybody representing the  
9 applicant?

10 APPLICANT REP: Yes.

11 CHAIRMAN: Does anybody here have any  
12 comments?

13 (NO RESPONSE)

14 CHAIRMAN: If not the chair is ready for a  
15 motion.

16 MS. DIXON: Move to approve based upon  
17 Planning Staff Recommendations, the Condition and  
18 Findings of Fact 1 through 4.

19 CHAIRMAN: Motion for approval by Ms. Dixon.

20 MR. EVANS: Second.

21 CHAIRMAN: Second by Mr. Evans. All in favor  
22 raise your right hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries unanimously.

25 Next item, please.

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2 MAJOR SUBDIVISIONS

3 ITEM 7

4 Discovery Corner, Lots 1-4, 10.141 acres  
5 Consider approval of major subdivision final plat.  
6 Surety (Performance Bond) posted: \$212,732.40  
7 Applicant: Frederica Family, LLC c/o J.D. Meyer,  
8 Attorney

9 MR. NOFFSINGER: Mr. Chairman, this plat has  
10 been reviewed by the Planning Staff and Engineering  
11 Staff. It's found to be in order. It's use is found  
12 to be in compliance with the underlying zoning, as  
13 well as the adopted comprehensive plan.

14 CHAIRMAN: Are there any questions or  
15 comments?

16 (NO RESPONSE)

17 MR. APPLEBY: Motion for approval.

18 CHAIRMAN: Motion for approval by Mr. Appleby.

19 MS. DIXON: Second.

20 CHAIRMAN: Second by Ms. Dixon. All in favor  
21 raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item, please.

25 ITEM 8

26 Lake Forest, Phase IV, 15.251 acres  
27 Consider approval of major subdivision preliminary  
28 plat.  
29 Applicant: Lake Forest Community, LLC

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2 MR. NOFFSINGER: Mr. Chairman, this plat has  
3 been reviewed by the Planning Staff and Engineering  
4 Staff. It's found to be order. It's used is found to  
5 be consistent with the underlying zoning, as well as  
6 the adopted comprehensive plan and is ready for your  
7 consideration.

8 CHAIRMAN: Questions or comments?

9 (NO RESPONSE)

10 CHAIRMAN: If not the chair is ready for a  
11 motion.

12 MR. MILLER: Motion for approval.

13 CHAIRMAN: Motion for approval by Mr. Miller

14 MR. ROGERS: Second.

15 CHAIRMAN: Second by Mr. Rogers. All in favor  
16 raise your right hand.

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: Motion carries unanimously.

19 Next item, please.

20 MS. DIXON: Move to adjourn.

21 CHAIRMAN: Motion for adjournment by Ms.  
22 Dixon.

23 MS. MOORMAN: Second.

24 CHAIRMAN: Second by Ms. Moorman. All in  
25 favor raise your right hand.



1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: We are adjourned.

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1 STATE OF KENTUCKY )  
 )SS: REPORTER'S CERTIFICATE  
2 COUNTY OF DAVIESS )

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and  
4 for the State of Kentucky at Large, do hereby certify  
5 that the foregoing Owensboro Metropolitan Planning  
6 Commission meeting was held at the time and place as  
7 stated in the caption to the foregoing proceedings;  
8 that each person commenting on issues under discussion  
9 were duly sworn before testifying; that the Board  
10 members present were as stated in the caption; that  
11 said proceedings were taken by me in stenotype and  
12 electronically recorded and was thereafter, by me,  
13 accurately and correctly transcribed into the  
14 foregoing 81 typewritten pages; and that no signature  
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the  
17 31st day of January, 2009.

18

19

\_\_\_\_\_  
LYNNETTE KOLLER FUCHS  
OHIO VALLEY REPORTING SERVICES  
202 WEST THIRD STREET, SUITE 12  
21 OWENSBORO, KENTUCKY 42303

22

COMMISSION EXPIRES: DECEMBER 19, 2010

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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