OWENSBORO METROPOLITAN PLANNING COMMISSION

JANUARY 8, 2009

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

MEMBERS PRESENT:  Drew Kirkland, Chairman
                   Judy Dixon, Vice Chairman
                   David Appleby, Secretary
                   Gary Noffsinger, Director
                   Madison Silvert, Attorney
                   Tim Miller
                   Irvin Rogers
                   Keith Evans
                   Rita Moorman

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

(INVOCATION AND PLEDGE OF ALLEGIANCE)

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

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
gavel.

MR. SILVERT: Than you, Mr. Chair.

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

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

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

MR. SILVERT: We need a second.

MR. APPLEBY: Second.

MR. SILVERT: Any other nominations?

(NO RESPONSE)

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

MR. SILVERT: We need a second.

MR. MILLER: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MR. SILVERT: Motion passes.

Congratulations, Mr. Chairman.

Next office is the office of vice chairman.

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

MR. SILVERT: Is there a second?
MR. APPLEBY: Second.

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

(NO RESPONSE)

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

MR. SILVERT: Is there a second?

MR. APPLEBY: Second.

MR. SILVERT: All in favor say aye.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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

Finally the election of secretary.

MS. DIXON: Move to nominate Dave Appleby.

MR. KIRKLAND: Second.

MR. SILVERT: Any other nominations?

(NO RESPONSE)

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

MR. SILVERT: Is there a second?

MR. KIRKLAND: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MR. SILVERT: Congratulations, Mr. Appleby and
the rest of the officers.
I'll turn it back over to our Chairman.

CHAIRMAN: Thank you, Mr. Silvert.

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

(NO RESPONSE)

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

MS. DIXON: Move to approve.

CHAIRMAN: Motion for approval by Ms. Dixon.

MR. MILLER: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, Mr. Noffsinger.

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

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ZONING CHANGES

ITEM 4

1439 Bosley Road, 0.404 acres
Consider zoning change: From B-4 General Business to
I-1 Light Industrial
Applicant: John Maurice; Red Rentals, LLC
MR. SILVERT: State your name, please.

MR. HOWARD: Brian Howard.

(BRIAN HOWARD SWORN BY ATTORNEY.)

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

PLANNING STAFF RECOMMENDATIONS

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

CONDITIONS:

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

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

FINDINGS OF FACT:
1. The subject property is located in a Business Plan Area, where light industrial uses are appropriate in limited locations;

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

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

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

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

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

CHAIRMAN: Do we have anybody representing the applicant?

(No response)

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

(No response)

CHAIRMAN: Anybody on the commission?
NO RESPONSE)

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

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

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

MR. EVANS: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 5

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

PLANNING STAFF RECOMMENDATIONS

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

CONDITIONS:
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
appropriate in limited locations;

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

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

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

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

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

CHAIRMAN: Is anybody here representing the
applicant?

MS. BOARMAN: Yes.

CHAIRMAN: Does anybody have any questions of
the applicant?

Ma'am, would you go to the podium.

MR. SILVERT: State your name, please.

MS. BOARMAN: My name is Linda Boarman.

(LINDA BOARMAN SWORN BY ATTORNEY.)

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

CHAIRMAN: No.
MS. BOARMAN: Do you have any questions?

CHAIRMAN: Does anybody on the commission have any questions?

(NO RESPONSE)

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

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

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

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

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

MS. BOARMAN: At this point?

CHAIRMAN: Correct.

MS. BOARMAN: Yes.

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

MS. BOARMAN: Okay.

MR. NOFFSINGER: You're not losing the opportunity to contest.
MS. BOARMAN: Thank you.

CHAIRMAN: You have no further statement at this time?

MS. BOARMAN: No, I do not.

CHAIRMAN: Does anybody on the commission have a question?

(NO RESPONSE)

CHAIRMAN: Anybody in the audience have a question?

(NO RESPONSE)

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

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

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

MR. APPLEBY: Second.

CHAIRMAN: We've got a second by Mr. Appleby.

All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: The motion carries unanimously.

Next item, please.

Related Items:
ITEM 5A

6045, 6071 Highway 54, proposed B-4 and I-1
Consider request for Variances in conjunction with an application for zoning change to eliminate the required screening element around an outdoor storage area; to eliminate the required screening along the south and west sides of an adjoining residence; to allow an existing drive to remain closer than 50' to the intersection within a commercial zone; and to eliminate the required vehicular use area landscape screening requirement along the Highway 54 road frontage.
Reference: Zoning Ordinance, Article 13, Section 13.22; Article 17, Section 17.311, 17.312, 17.3114  
Applicant: Bluegrass Truck, Trailer & Equipment, LLC

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

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

The first one is on Highway 54, 6192, 6200. That rezoning came to the Planning Commission May of 2008. The conditions on that rezoning stated they had
to submit a final development plan. They had to pave
all the vehicular use area and install the appropriate
screening and that the access be in compliance with
the street access standards.

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

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

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

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

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

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

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

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

On the plan that the applicant submitted, they show a buffer area around that lot. If the variance is approved, that area should remain free to any6 type of materials not to be used for storage or outdoor use of any type in order to provide a little bit of a buffer between the residence and the industrial property.

So with that the findings that we would use is that the variance will not adversely affect the public health, safety or welfare; it will not alter the essential character of the general vicinity; it will
not cause a hazard or a nuisance to the public; and it
will not allow an unreasonable circumvention of the
requirements of the zoning regulations.

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

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

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

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

CHAIRMAN: I think possibly going through them
each one individually and voting.
Is our applicant agreeable to that? We'll just go through each one of them?

MS. BOARMAN: Yes.

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

MS. BOARMAN: (APPLICANT RESPONDING YES.)

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

CHAIRMAN: Would the applicant just come to the mike.

MS. BOARMAN: Yes.

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

MS. BOARMAN: Yes.

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

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

CHAIRMAN: Thank you.

First item, does anybody have any questions on
the first item?

(NO RESPONSE)

CHAIRMAN: If not the chair will be ready --

MR. SILVERT: State your name, please.

MS. DOTSON: Susan Dotson.

(SUSAN DOTSON SWORN BY ATTORNEY.)

MS. DOTSON: I am very agreeable with this. I have no problems. I like it the way it is. If I wanted fences, I would have moved into a subdivision.

CHAIRMAN: Thank you very much. That is very clear.

If there are no questions of the applicant or the neighbor, then I think the chair would be ready for a motion.

MR. APPLEBY: Mr. Chairman, I make a motion to grant this Variance based on the Staff's findings that it would not adversely affect the public, health safety or welfare; will not alter the essential character of the general vicinity; will not cause a hazard or a nuisance to the public; and will not allow an unreasonable circumvention of the requirements of the zoning regulations. Also, with the Staff's condition to maintain a buffer.

CHAIRMAN: We've got a motion for -- excuse me.
MR. SILVERT: If I could just for clarification. This variance that you're talking about is to eliminate the required screening along the south and west sides of an adjoining residence.

MR. APPLEBY: Correct.

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

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: This motion carries unanimously.

Next item, please.

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

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

The zoning administrator has decided, based on his review, that this is outdoor storage. The zoning ordinance requires that all outdoor area regardless of zone, regardless of location within the county be
screened by a minimum of six foot tall fence with one
tree every 40 feet.

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

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

The Staff would recommend denial of this
variance request.

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

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

MS. BOARMAN: Yes.
The storage facility, I do not believe it's storage. It's natural stone. It's material that you would compare to if someone were shopping for a car. If someone were shopping for shrubbery. It's not -- there's no other business in Daviess County that would compare to my business.

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

That is my own personal opinion as well as it will adversely affect my business if I have to put all of my inventory that is on display inside of a six foot or eight foot or any type of barrier. It is as if someone had a car lot and you allowed them to put one car on display and everything else in a storage yard. That's how adversely affected I would be.
Secondly, none of my neighbors want the fence. None. One hundred percent. Some of them are here and would like to speak, as well as we have a petition and I have affidavits as well. We feel like as residents in that vicinity what we have is more beautiful than an ugly fence.

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

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

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

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

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

(CEBERT CARDEN SWORN BY ATTORNEY.)

MR. CARDEN: I live across the street. I live within 200 feet of this rock. I've lived there since 1964. It's been multiple businesses there ever since we've lived there. Some of them didn't look very good. The neighbors have always been unhappy with this property until the Boarmans got it. They filled it in. They've done everything to improve it. The
neighbors are tickled to death with the Boarmans and
the way the property looks now. I don't only live
across the street. I've got two commercial properties
across from them. I don't want, I'm speaking for
myself. I don't want no kind of fence. I love it the
way it is right now. I got a petition and took it
around to all the neighbors that is visible of this
property. None of them want a fence. They don't want
the rocks hid in no way. They have no problem with
it. None of it. I've got their names, telephone
numbers. You can contact any of them.

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

CHAIRMAN: Are you finished with your
statement?

MR. CARDEN: Yes.

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

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

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

MR. CARDEN: Ninety percent of these people
are neighbors that can see that. There's a few on
there that ain't, but most of them are.

CHAIRMAN: Thank you.

Would you remain at the podium there.

Does anybody have any questions?

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

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

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

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

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

MR. HOWARD: It would be along 54. In an
earlier development plan stage, you know, they show
the fence would be further off the road. It would be,
you know, of course, that could change, I guess. It
would be screening that material that you see from 54,
yes.
While I'm up, I'll just note that it would have to be a screened around the entire perimeter of the outdoor storage area.

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

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

MR. APPLEBY: Where does the administrative appeal go?

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

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

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

CHAIRMAN: Mr. Miller.

MR. MILLER: Mr. Chairman, the question I have is probably for Mr. Noffsinger or for legal counsel.
Whatever action we take tonight would follow through with this property in the future? If the Boarmans were to sell this to someone else and they have, let's say they start stacking junk cars there, since we make this, say we allow them not to have the fence there, then in the future can you turn around and change that or does it this follow through and you would not be required to have any type of barrier in the future regardless of who --

MR. APPLEBY: Change the use of the property?

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

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

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

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

MR. ROGERS: Gary, the front of this is zoned business, right?
MR. APPLEBY: Part of it is.

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

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

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

MR. APPLEBY: Yes.

CHAIRMAN: Yes, sir.

MR. POWELL: My name is Freeman Powell.

(FREEMAN POWELL SWORN BY ATTORNEY.)

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

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

To kind of reiterate what Mr. Carden said, they've cleaned up the junk from the property. They
back filled it. Brought it up to level of the road
and now it's rather attractive place of business.
These are people that shop and make their choices.

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

Any questions?

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

MR. NOFFSINGER: That is correct.

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

MR. NOFFSINGER: We address that issue in the
next variance where they're asking not to have the
landscape, vehicular use area, as well as eliminate a
driveway on 54. We address the transportation plan in
the future for improvements. This fence would be
erected on the private property and not on public
right-of-way.

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

CHAIRMAN: Thank you.

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

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

MR. SILVERT: State your name, please.

MR. RICHARDS: Carl Richards.

(CARL RICHARDS SWORN BY ATTORNEY.)
MR. RICHARDS: The neighbors prefer you not to protect them might I say that.

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

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

Also, she's in a business of merchandising this stone. You all are asking, I say you all, the zoning laws are asking that she screens her merchandise from public view. That to me seems unreasonable within itself. She's got something to sell and she can't display it. To me certainly, and I don't disagree with anybody necessarily in principal, but it is a display and not a storage area. I mean she's storing it, sure, but you have to have your merchandise within a display area so the public may view it. I'm sure she gets a lot of walk-in traffic off of 54 as they come by. People in the building business and so forth.
That's the main attitude of the neighbors. There's nothing more unsightly than a privacy fence in my opinion. We don't have very many of them in Philpot and I would hate to see you start a bunch of them. Thank you.

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

(NO RESPONSE)

CHAIRMAN: Anybody from the audience?

(NO RESPONSE)

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

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

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

MR. APPLEBY: May I ask a question before we
second it.

CHAIRMAN: Absolutely.

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

CHAIRMAN: Salvage yard, Mr. Appleby.

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

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

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

The Board of Adjustment considered a similar administrative appeal for Rural King here in Owensboro. They were -- without getting into the
specifics of that case, they were making a similar argument. The Board of Adjustment found that in fact the display areas need to be identified and controlled and then the outdoor storage areas needed to be defined in a different manner. If it were outdoor display, then the area of display would have to be paved and then screened just from the roadway, the pavement, which would be a reduced screening requirement.

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

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

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

MR. APPLEBY: The fence would be.
CHAIRMAN: If it's a display. If it's a display would be paving and a three foot fence.

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

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

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

The adjoining neighbors are not the only parties in my opinion that have an interest here. The general public has an interest here because is a, this roadway, Highway 54, is a gateway through our community. There is an opportunity here to improve this particular site, as the neighbors have said, has been improved over the years. We need to exercise that opportunity.
Just down the road we have a business that we've had many complaints on. It's a tire recycling center. That can happen here. That can happen here without any screening at all. You need to afford some protection not only to the property owners, but to the general public as well.

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

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

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

MR. MILLER: What action or nonaction by this
commission would allow the applicant to appeal to the Board of Adjustment? I guess what I'm asking is if we go ahead and vote for or against the variance.

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

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

MR. NOFFSINGER: That's my opinion.

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

MR. NOFFSINGER: That would be an avenue.

MR. MILLER: What did you say, Madison?

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

MR. MILLER: Okay.

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

MR. NOFFSINGER: The specific use here outdoor storage.

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

MR. NOFFSINGER: Yes.

CHAIRMAN: Ms. Boarman, will you step to the
podium, please.
The conversation that we were having here is
Ms. Dixon had made a motion for denial of your
variance. If we do deny it, you understand what we're
discussing here, is that you could be cite, and in
this case you would want to be cited for noncompliance
so you could appeal to the Board of Adjustments to be
reclassified from, you know, to a display outdoor
display where you could have it reclassified and then
have other criterias where it would be paving and some
type of other screening. It could be bushes. It
could be other types of screening, but it would not be
a fence. I just want to make sure you were following
the discussion where we were headed with this. Do
you?

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

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

CHAIRMAN: We understand. You see, our hands
are pretty much tied by the regulations about what we
can allow by virtue of what your zoning is. You understand that as we discussed, the variance that we grant, we're not granting you. Obviously with the testimony of your neighbors, you're a very upstanding land owner, property owner and business owner and are very well received by your neighbors. The variance goes with the property. Not with you.

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

MS. BOARMAN: Yes.

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

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

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

MS. BOARMAN: No. But I would move -- you would have a storage area. You would have storage
there. Because it's my understanding that anything like industrial has to have a storage area.

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

CHAIRMAN: Is this correct, Mr. Noffsinger:

If she moved it to the back of the property, that part is outdoor storage, it would require fencing?

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

MS. BOARMAN: Okay.

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

MR. MILLER: Mr. Chairman, just one more comment. I want to make sure that Ms. Boarman understands that going to the Board of Adjustment, that is for consideration of. It could go either way.
They may say it's storage and require the fencing. I just want to make sure you understand that. If you do go ahead with an administrative appeal, it could go either way.

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

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

MR. MILLER: Yes.

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

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

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

Mr. Noffsinger, is there any way with a change of zoning or a different classification, you know, we
have a responsible land owner and business person here. We're trying to -- but is there any other avenue that we could go through to change the complexion of this situation?

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

CHAIRMAN: Yes, sir.

MR. CARDEN: I was wanting to ask one thing. Talking about the fence. Does it have to be a fence or could there be some shrubs or something that would
distract it rather than the fence? Are they considered a fence? The kind of shrubs or any kind of thing you could plant along there that would be considered a fence?

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

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

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

CHAIRMAN: Thank you.

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

MR. NOFFSINGER: We can do that. I really
think the appropriate place for this debate is with
the Board of Adjustment.

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

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

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

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

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

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

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

CHAIRMAN: Mr. Noffsinger.

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

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

MR. NOFFSINGER: Yes. It's very clear. The ordinance is very clear. It's to be an eight foot
high screening fence. That's very clear.

The staff cannot negotiate down from that.

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

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

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

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

CHAIRMAN: Certainly.

MR. EVANS: What is the stipulations for
outdoor storage? Is it because it's on pallets? Is it because of the way it's displayed in the yard?

CHAIRMAN: In Mr. Noffsinger.

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

Now, if it were display, you would have a paved display surface that may or may not have screening attached to it. A display is typically something you might see out on the sidewalk of the store. I know when you get into like Lowe's or Home Depot, they're home and garden center areas, those areas are screened. They're outdoor storage yards or they're display, whatever they are, they are screened from the public right-of-way. Now, they still have some things sitting out and the zoning ordinance would acknowledge that you can have display areas out on the sidewalk in certain defined areas. Typically the display area is not the entire site with materials on pallets such as this. I do think it is an area that there may be some room for compromise, but I do think
that it needs to be screened from the public right-of-way and those adjoining properties in some fashion. Eight foot may not be appropriate, if you're not going to stack that high. I do think there needs to be some screening there. Even a car lot has some screening associated with it. Three foot high bushes. Just every so often a tree. Here's a situation where the variance says, we don't want screening at all. We don't want to do anything.

CHAIRMAN: Mr. Evans.

MR. EVANS: I'm done.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: The motion carries unanimously.

Next item, please.

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

As we mentioned earlier, one of the things that was brought up in the applicant's information is
a proposed project to widen Highway 54.

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

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

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

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

CHAIRMAN: Anybody here want to address the commission? Are there any questions?
Yes, ma'am.

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

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

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

The other is that, yes, this highway is put on the books to be initiated in 2010. What I'm asked to
do is to dig up a perfectly good driveway.

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

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

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

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

MS. BOARMAN: It could possibly take out my
front row of my stone possibly.
CHAIRMAN: That is leaving the road as it is.
Leaving the blacktop.

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

CHAIRMAN: Does anybody else have any questions?

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

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

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

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

MS. BOARMAN: Yes.

MR. APPLEBY: If you put it on your property,
it's not going to be torn up when they do the road.

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

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

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

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

MR. NOFFSINGER: Yes, sir.

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

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

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

CHAIRMAN: Did you all plant the landscaping?

MS. BOARMAN: Yes. It looks like it's in the right spot. We planted the landscaping around the edges of the existing lot.
CHAIRMAN: Mr. Howard, does the landscaping, even though it's on the right-of-way; is that correct?

MR. HOWARD: That's correct.

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

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

CHAIRMAN: Mr. Mischel.

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

CHAIRMAN: Mr. Mischel.

MR. SILVERT: State your name, please.

MR. MISCHEL: Jim Mischel.

(JIM MISCHEL SWORN BY ATTORNEY.)

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

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

I'd have to go back out there to see what they have, to see if it meets if it was just moved back. I
MR. NOFFSINGER: Mr. Mischel, I don't think knocking out roses will meet it.

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

CHAIRMAN: Thank you Mr. Mischel.

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

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

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

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

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

MR. NOFFSINGER: Yes, we have.

MS. DIXON: Why is this different?

MR. NOFFSINGER: Back about four years or so when we were going through the zoning ordinance review we changed it to allow in conjunction with the rezoning.
MS. DIXON: Okay.

CHAIRMAN: Yes, ma'am.

MS. DOTSON: I have like a question/comment.

I know right now -- I don't want to lose the Boarmans as a neighbor. I know the people before them, unofficially, there was a meth lab there beside me. I don't want to go through that again. I work in a job that just laid off ten people this week. I really don't see why there's something we can't do to say, okay, yes, you're not in compliance, but due to the times could we not say in two years we'll relook at this? Is there nothing that we can do?

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

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

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

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

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

MS. DOTSON: I understand that.

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

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

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

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

CHAIRMAN: Yes, ma'am.

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

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

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

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

CHAIRMAN: We're very much aware of that, but what our board is faced with is we have required everybody else before her to do these things. That's in some form or another. That's what we're trying to do. Somehow allow this to move forward, but somehow
there's certain situations that we cannot deny that
are within our regulations. I understand what you all
are doing and I understand the support of the
neighbors is what continues to let us to try to
discuss through this and reach some sort of
agreement.

Mr. Mischel, solution?

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

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

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

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

We went out on those two issues and while we
were out there, you know, the screening popped up and other things, paving, landscaping and stuff.

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

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

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

MR. ROGERS: When and if the road comes through that she would have to do her outdoor screening.
MR. APPLEBY: Because they are going to take this out.

MR. ROGERS: Take that out.

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

CHAIRMAN: What if the road does not come through?

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

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

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

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

MR. APPLEBY: That's what we're requiring. That's what this one is about right now. Is we're requiring that she meet that minimal. That she's asking for a variance from that. I think what you're saying is could we stipulate that if and when this
road is widen and they remove that she wouldn't put
the landscaping in compliance with the zoning
ordinance. That's what you were saying?

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

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

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

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

CHAIRMAN: Any improvement should be back on
her property. I mean where we had a sunset where two
years regardless of road conditions that it would be
done, which would give her adequate time and will
allow some leeway.
MR. MILLER: But denial also means that she would have to remove the pavement.

MR. APPLEBY: That's on the next.

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

CHAIRMAN: It's on this one.

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

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

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

MS. BOARMAN: I'm sorry, that's incorrect. The pavement would have to be removed to plant the shrubs within our, on the inside right-of-way. So there is pavement that would be removed, but it does not involve the pavement that's the driveway, the entry into the facility. That is where it would require, I believe, 17 feet from the highway into our property to be removed.
MR. APPLEBY: You're talking about on the driveway?

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

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

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

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

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

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

MS. BOARMAN: No.

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

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

CHAIRMAN: Mr. Howard.

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

I just wanted to state that the way the Staff
Report was written for this variance, it does include
that pavement that's within the right-of-way have
vehicular use screening. The first statement that
pavement and landscaping has been installed within the
road right-of-way. Talked about the applicant's
action. The pavement and landscaping within right-of-way were installed after the zoning ordinance regulations. However the improvements were likely done with the lead that they were on private property. We don't think the applicant purposely went out and installed the stuff on the right-of-way, but it is there. I just want to make the clarification. The next variance is applicable to that driveway closer to Winkler Road on 54 only.

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

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

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

MR. HOWARD: Right.

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

MR. HOWARD: No. The next one is for that driveway only. The variance that's under discussion right now would include any of that other pavement that is within the right-of-way and the vehicular use area screening.
MR. NOFFSINGER: What about the other drive on Winkler Road near the intersection?

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

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

MR. NOFFSINGER: Correct.

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

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

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

CHAIRMAN: Okay.

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

MR. EVANS: Mr. Chairman, when looking at this picture, does this also get into her sign?
CHAIRMAN: Mr. Evans has a question regarding the sign.

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

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

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

CHAIRMAN: Pardon me?

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

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

MR. APPLEBY: Sure.

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

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

MS. BOARMAN: Five years would be wonderful.

CHAIRMAN: Wait a minute. This board in five years would be a tough time frame. We've got the latitude to do some of that. It would not ease your burden. Would not change your burden. It would not change the requirements. Due to your unique situation, that we would give you a span of time of say a of couple years where one year you would have a certain plan and by the second year you would be able to complete these criterias. Is that something that you could live with?
MS. BOARMAN: I'm pretty well at your mercy, I guess. I'm not --

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

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

CHAIRMAN: We can direct you in those areas.

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

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

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

CHAIRMAN: I hope he's doing well.

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

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

Anyway, his request was that we wait until the highway comes in because he has been communicating with the state highway in regard to the fill. He's
been communicating with the engineer. Talking to them on their opinions. He's ask that he not have to do anything on the 54 property as far as digging up things until the highway comes in. Understanding that that might not be 2010. We're hoping in Philpot that it will be pretty soon. We can live with the time. Your question was, would time help? Yes, it would.

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

MS. BOARMAN: Yes, that's right.

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

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

CHAIRMAN: The reason five years, five years would be outside of anybody's time that is sitting on this board. The reason we would look at something
like two years is that's the way the board turns. In
two years we would have the same group of people would
be administering it and we wouldn't just back away
from it and turn it over to somebody else.

Thank you very much.

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

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

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

Ms. Boarman, would you come the mike. Do you
understand what his motion is?

MS. BOARMAN: Yes, I understand it.

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

MS. BOARMAN: Yes.

CHAIRMAN: Okay.

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

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

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

MS. BOARMAN: Yes.

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

MS. MOORMAN: Yes, second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

MR. NOFFSINGER: Mr. Chairman, to save some time we would recommend the same motion and conditions be placed on the next variance, to allow the existing
drive to remain closer to 50 feet to the intersection of a commercial zone.

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

MR. NOFFSINGER: Two years.

CHAIRMAN: Two years.

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

MS. BOARMAN: Yes, I understand that.

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

MS. BOARMAN: Yes.

CHAIRMAN: Thank you very much.

MR. MILLER: Mr. Chairman.

Ms. Boarman, I only say this to protect us and the community. I wish you no ill-will whatsoever. Should there be something added that this pertains to whoever owns the property? Once again, does whatever we say pertain to this property and carries?

MR. APPLEBY: Follows the land.

CHAIRMAN: It follows the land.

MR. MILLER: I hope you understand where I was coming from.
CHAIRMAN: The sunset also follows the property. I mean if she sells it to somebody else, you know, on January 5, 2011 --

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

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

All right. I think we still need a motion. Mr. Appleby, would you restate your motion for the next item, please.

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

CHAIRMAN: Thank you, Mr. Appleby.
MS. MOORMAN: I second.

CHAIRMAN: We've got a second by Ms. Moorman.

All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

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

Next item.

ITEM 5B

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

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

We can do that in-house.

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

You understand what he's saying? The board is
releasing Mr. Noffsinger to sign off on your
development plan. Your development plan will have to
be the criterias that you understand?

MS. BOARMAN: Yes.

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

MR. NOFFSINGER: Exactly what was discussed
here tonight.

MS. BOARMAN: Yes.

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

MS. BOARMAN: I think we understand, yes.

CHAIRMAN: Please be seated for the final
time.

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

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

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

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

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 6

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

PLANNING STAFF RECOMMENDATIONS

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

CONDITIONS:

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

FINDINGS OF FACT:

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

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

3. The Comprehensive Plan provides for the
continuation of mixed use areas; and,

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

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

CHAIRMAN: Do we have anybody representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anybody here have any comments?

(NO RESPONSE)

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

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

CHAIRMAN: Motion for approval by Ms. Dixon.

MR. EVANS: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.
MAJOR SUBDIVISIONS

ITEM 7

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

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

CHAIRMAN: Are there any questions or
comments?

(NO RESPONSE)

MR. APPLEBY: Motion for approval.
CHAIRMAN: Motion for approval by Mr. Appleby.
MS. DIXON: Second.
CHAIRMAN: Second by Ms. Dixon. All in favor
raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 8

Lake Forest, Phase IV, 15.251 acres
Consider approval of major subdivision preliminary
plat.
Applicant: Lake Forest Community, LLC
MR. NOFFSINGER: Mr. Chairman, this plat has been reviewed by the Planning Staff and Engineering Staff. It's found to be order. It's used is found to be consistent with the underlying zoning, as well as the adopted comprehensive plan and is ready for your consideration.

CHAIRMAN: Questions or comments?

(NO RESPONSE)

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

MR. MILLER: Motion for approval.

CHAIRMAN: Motion for approval by Mr. Miller

MR. ROGERS: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

MS. DIXON: Move to adjourn.

CHAIRMAN: Motion for adjournment by Ms. Dixon.

MS. MOORMAN: Second.

CHAIRMAN: Second by Ms. Moorman. All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

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

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

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

COMMISSION EXPIRES: DECEMBER 19, 2010

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY