The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, March 1, 2001, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Ward Pedley, Chairman
                    Marty Warren
                    Ruth Ann Mason
                    Tim Miller
                    Judy Dixon
                    Gary Noffsinger,
                    Planning Director
                    Stewart Elliott
                    Attorney

CHAIRMAN: Good evening. The Board of Adjustment will come to order. I would like to welcome everyone. Anyone wishing to speak tonight may do so. We ask that you step up to one of the podiums, state your name and be sworn in.

First item on the agenda is consider the minutes of the February 1, 2001 meeting. They're on file in the planning office.

Chair is ready for a motion to approve.

MS. DIXON: Move to approve.

MS. MASON: Second.

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CHAIRMAN: We have a motion and a second.

All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: It's unanimous.

Second item, please.

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CONDITIONAL USE PERMIT

ITEM 2

1 Executive Boulevard, in a B-4 zone (Map N-4)
Consider request for a Conditional Use Permit for
construction and operation of a marina facility for
docking of pleasure boats.
Reference: Zoning Ordinance, Article 8, Section
8.2K7, Article 18, Section 18-6(b)(2)(f)
Applicant: Executive Marina of Owensboro, Inc., John
V. Bays and David Howerton

MR. NOFFSINGER: Mr. Chairman, this
application has been reviewed by the Planning Staff.
It was advertised for public hearing at this time;
however, this application has not received approval
from the Corp of Engineers and Division of Water,
therefore the applicant is requesting that this item
be postponed until the April meeting of this board.

CHAIRMAN: The Chair is ready for a motion
for postponement.

MS. DIXON: Move to postpone.

MR. MILLER: Second.

CHAIRMAN: We have a motion and a second.
MS. MASON: This gentleman would like to speak.

CHAIRMAN: Would you step up to the podium, please.

MR. ELWOOD: Elwood.

(MR. ELWOOD SWORN BY ATTORNEY.)

MR. ELWOOD: The only question I have -- I have no questions about the marina. I think it's a good thing, but I have a question on will it cause erosion of the banks at the VFW property or if not now can we get some information from the Corp of Engineers showing that it won't or would we have a recourse at a later date if it does cause erosion to our property?

MR. NOFFSINGER: Excuse me, sir. At this time the board is considering whether or not this item should be postponed until the next meeting; therefore, any questions you have they should pertain to whether or not you would like to protest postponing the item until the next meeting. I'm not sure -- I do understand your question. I don't think we're ready to give you an answer tonight and because this has not been approved by the Division of Water or the Corp of Engineers, I don't think that we're going to be able to or the applicant can give you an answer to that question tonight.
MR. ELWOOD: I'm just asking if we can get some information even before the next meeting as to what the Corp of Engineer if they approve it or disapprove or what could happen at that property so we can be prepared at the next meeting. I have no opposition to the marina. Just protection for our property if it should go in. Thank you.

CHAIRMAN: We have a motion and a second for postponement. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: That is unanimous.

ITEM 3

2900 Fairview Drive, in an A-U (Map N-56)
Consider request to amend a Conditional Use Permit for a landscaping business approved on June 22, 1998, in order to approve a revised site plan.
Reference: Zoning Ordinance, Article 8, Section 8.2H8 Applicant: James West

MR. NOFFSINGER: Mr. Chairman, this Conditional Use Permit has been advertised for public hearing at this time. All adjoining property owners were notified. The Planning Staff has reviewed the application and are prepared to comment on the application tonight.

The request is an amended Conditional Use Permit to allow a landscaping service business to operate. The amendment includes a parking area that
will be located between the existing building and Fairview Drive. The applicant is proposing to screen that parking area with some shrubs from Fairview Drive; however, the applicant is proposing that the parking area be graveled and not paved. The applicant is here tonight. Planning Staff is prepared to comment. With that it's ready for your consideration.

CHAIRMAN: Anyone here wishing to speak on behalf the the applicant?

MR. MALONE: Yes.

MR. ELLIOTT: State your name, please.

MR. MALONE: Phil Malone.

(MR. PHIL MALONE SWORN BY ATTORNEY.)

MR. MALONE: Mr. Chairman, Members of the Board, this is an application for an amended Conditional Use Permit and the reason we're here tonight is because of the change in the site plan and the relocation of the parking lot from the rear of the building as originally proposed to the front of the building.

As members of the board remember, we were here last month in appealing the decision of the building inspector which brought to the attention of the board and the applicant that the parking originally proposed in the rear of the building, which
at that time was to be graveled, had been relocated
and that there had been no approval for an amended
site plan. The board affirmed that decision. In
response to that we have filed this amended
application.

The site plan which is attached to our
application does show where the parking lot is now
presently located, it's been located there for over 18
months and it is graveled. It does show and let it be
proposed it would accommodate approximately ten
vehicles and the applicant's present use which is he
is engaged in a landscaping service which is a
commercial business that's defined in the Ordinance.
The definition of the landscaping business, which is
permitted in an A-U zone with a Conditional Use Permit
was adopted specifically to deal with the situation of
locating this business in this A-U zone. The reason
that the site plan was admitted was because the
applicant when he was constructing the business
incurred some drainage conditions, some sort of
drainage condition, so he moved the building back
further from Fairview Drive and also relocated the
parking lot from the rear to the front because
principally to provide additional security. He
realized that because if the parking were in the rear

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that there would have to be extensive lighting back there because it was very dark and he was concerned about security. So there was some lighting proposed in the front of the building. So it has been located there.

We would submit to the board that, and we assume Mr. Mischel is going to commend and recommend, that the off-street parking area be paved. Essentially I think that's the only question before the board. We believe that there's no other reason not to approve the amended site plan.

We would suggest to the board that it take into consideration the fact that the guideline here should be the ordinance which provides for the paving of off-street parking areas where there's more than five vehicles. That ordinance, which is in Article 13, provides that in all zones except an A-U zone, an A-R zone or an E-X zone they have to be paved. So the ordinance says that in an A-U zone an off-street parking does not have to be paved and that's primarily I believe to control dust.

We would submit that there has been no complaints from any of the neighbors in the area.

Tonight I have to offer into the record an Affidavit of Mr. Simon who does live next-door to the property,
is approximately 100 feet away. He would be the one who would be -- approximately his residence is closest to the parking area. He's been there for a number of months. He states in his Affidavit he has no objection to the way that the applicant has operated the business. He sees that he has not observed any excessive dust.

So we believe that this board should consider that if it's being asked by the staff to require this area to be paved that even though you have that authority as the condition of approving this site plan, it should consider are there any facts that are going to be presented to you here tonight that would require that that area be paved for the public safety or health or welfare. That is your guide and statutory principal.

Secondly, to require this area to be paved is going to create I believe unnecessary and excessive expense for the applicant. We will offer in the record also that he's gotten estimates on having this paved in areas from $7,500 to $9,500 to pave this parking lot.

We'd also call to the board's attention the fact that drainage in this community and county is something of utmost importance. It's a significant
issue. It's now being confronted by this community.

Even though this small area, if it were paved,

probably won't really contribute to any faster

run-off. We would suggest to the board that it should

be aware that it would be we think arbitrary to

require this parking lot to be paved.

So for those reasons we would ask that the

board approve the amended site plan by bringing an

amended Conditional Use Permit, but not require the

parking area to be paved.

Thank you and let me offer these into the

record, if I may.

MR. NOFFSINGER: I have a question of Mr.

Malone.

MR. MALONE: Yes.

MR. NOFFSINGER: Mr. Malone, looking at

the site plan it appears, and I'll clarify this for

the record, that the gravel as originally for the

parking area that was shown on your original site plan

includes a gravel area that exists today to the side

of the buildings and to the rear of the building; is

that correct?

MR. MALONE: That is correct.

MR. NOFFSINGER: So your application, you

are not asking that the parking of this area be moved
from rear to the front. You're in fact asking for an additional graveled area to be approved by this board that's in front of the building between Fairview Drive and the building. So you already had an existing gravel area that you originally designated on your plan to be of vehicular use area, plus you're adding an additional graveled area to the site that this board has not approved.

MR. MALONE: If I understand your question, the additional gravel area is in the front of the building which is shown on the site plan submitted with the application as being a designated to where parking places would be for company vehicles. They would be parked there overnight.

MR. NOFFSINGER: Do these company vehicles use the area to the side of the building and to the rear of the building?

MR. MALONE: Mr. West can address that, but I believe that they use that only for going in and out of the building. There are three bays on the side of the building which faces I guess to the south. So there would be access to the bays of the building for repair or if they were going to the rear of the building to pick up something, but there's not use for overnight parking area.
MR. NOFFSINGER: I guess the point I'm trying to make is that you are actually expanding the vehicular use area, whether you call it parking area or vehicular use area, storage lot, you're expanding the vehicular use area on this property by adding additional area in front of the building that was not considered by this board with the original Conditional Use Permit.

MR. MALONE: That is correct.

MR. NOFFSINGER: In terms of adding or the parking area of the vehicular use area being graveled, the Planning Staff would recommend that the vehicular use area located between Fairview Drive and at least a minimum the front edge of the building be paved which would be in line with other new businesses and uses within that area. It's not only for dust control reasons, but also it is typical in character to other developments that are required to pave within the area.

Back some time ago the Planning Commission made an amendment to the Zoning Ordinance to allow this type of activity to occur in an agricultural zone to accommodate this particular business, this particular use. The Daviess County Fiscal Court adopted that ordinance and made it official where the
applicant could come before this board to have this Conditional Use Permit heard to have this particular use of this site. This site is in an urban area. It's in an urbanized area and other developments typically enjoy the paved parking.

It is true that the Zoning Ordinance does waive the paving requirement in agricultural zones; however, going back to we are considering a Conditional Use Permit which this board has the right to place conditions upon that Conditional Use Permit. If they grant it, that would be in keeping with other developments and new developments in the area. Thank you.

MR. MALONE: If I may respond very briefly to that.

We recognize as I previously stated this board does have the authority for approving Conditional Use Permits for particular types of land uses which are specified in the ordinance which is in this case land use of landscaping business to add additional conditions that may be greater than what's required in the ordinance which would be the paving, but we would submit this board must have some facts that would support why it's necessary to protect or enhance the public safety health and welfare.
We don't believe that there can be any facts offered here in this case that says this small area where it's located if it's not paved is going to create dust or some other problem. It's going to effect surrounding property owners or the public. So for that reason we believe that even though that the staff may feel like that it should be paved because it may look better or it may be comparable to other areas, there are other areas -- the property directly adjacent to this is an I-2 zone.

The whole reason that we are here and had to go through this long laborious process of getting a Conditional Use Permit was because of the decision initially of this board to approve this as an I-2 zone, but because as a compromise so as not to expand an I-2 zone. It has now been permitted as a Conditional Use Permit.

So we would just submit that this board should waive the economic hardship on the applicant and what need is going to be protected to the public. So we would submit that. You should weigh that very carefully.

MR. NOFFSINGER: In addition to the dust control issue, I would also offer into the record that from the public health, safety and welfare standpoint,
the continuance of this vehicular use area being
graveled does pose a threat to the motoring public in
terms of gravel being scattered along Fairview Drive
from vehicles that are using this facility.

MR. MALONE: Mr. Noffsinger, I assume Mr.
Mischel is going to, he's been out there twice to
inspect this property, is going to testify and that
will be evidence in the record. I believe that those
are the kind of facts this board should rely upon.

Thank you.

MR. NOFFSINGER: Mr. Mischel.

MR. ELLIOTT: State your name for the
record, please.

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I would like to hand out
just a site plan of the original drawing that was
handed in just to give everybody an idea. It's been
awhile since we've visited this situation. I would
like to put one in the record too.

Essentially I think we've been over some
of this. I'm not going to repeat everything. We do
believe that that area in the front if the parking is
located vehicular use area is located in the front
should be paved and landscaped. I also would like to
state that we would like to mention that that private
lane should not be used for any type. His business
should not be using that private lane and that there's
no outdoor storage.

Just to give a little background because
at first it didn't come in front of this board. It
went to the Planning Commission for rezoning and the
Planning Commission did approve a rezoning of this
property and it was sent to Daviess County Fiscal
Court for their consideration. They sent it back.
They turned it down and sent it back to the Planning
Commission.

At that time, that was in August of '97.
In November of '97, the Planning Commission, the
Daviess County Fiscal Court and the City of Owensboro
tried to come up with a solution that would
accommodate his business. They did so to allow
landscaping service business to be located A-U zone
with the Conditional Use Permit.

Now, they have stated that an A-U zone
does allow for gravel parking. That occurred May
1996. The ordinance was changed to allow for graveled
parking in an A-U zone, but I would like to hand out
the recommendation that that was based upon for the
reason I think that will show you that it really
doesn't apply to this situation.

Like I said that was approved. In May of '96 it was brought up. I would like to read part of that. There was a Staff Recommendation. This states, "The proposed text amendments concerning off-street parking, building setbacks, and other provisions are attached hereto (Page A-1 through A-17). Staff recommends their approval based on the following findings." I would refer to Number 2 Findings of Fact. "Large parking areas are not typically associated with uses permitted in agricultural zones. Where large parking areas do exist in agricultural zones, they are not likely to be paved due to lack of enforcement. The Board of Adjustment, in approving any conditional uses that are permitted in agricultural zones, has the authority to require paved parking if deemed warranted."

Go to Page 2. I have highlighted there, "Paving of parking areas in agricultural zones. During the Daviess County Fiscal Court's review and adoption of the bed-and-breakfast zoning regulations, the Court expressed its desire that B&Bs with parking areas serving five (5) or more vehicles not be required to pave those areas, as is currently required by regulation. Planning Staff pointed out that the
current paving requirement was not routinely enforced in rural areas for any parking area. With that in mind, staff proposes that paving not be required for any parking areas in agricultural zones, finding that the large parking areas are not typically associated with uses permitted in agricultural zones; where large parking areas do exist in agricultural zones, they are not likely to be paved due to lack of enforcement; and, the Board of Adjustment, in approving any conditional uses that are permitted in agricultural zones, has the authority to require paved parking if deemed warranted."

I think at the time everybody was concerned with the bed-and-breakfast, that they keep their setting, rural setting on paving. Their idea was not for commercial businesses not to pave. If that was the case, I think they would have just allowed landscaping services to be approved in an A-U zone period, but they did so with Conditional Use Permit require.

In that last sentence it says to require paved if deemed warranted. I think that's why it was put in there so if these businesses did go in A-U zone it would be some form to pave and landscape outdoor storage, answer all those questions.
Also in 1996 the street classification, Fairview Drive it was updated in the Zoning Ordinance that shows Fairview Drive being updated from a major collector to a minor arterial street.

Basically a collector, definition of a collector is it's mainly serving a traffic generated in that general vicinity, for those neighborhoods in that vicinity. When they updated it to a minor arterial, basically that says that it serves as a traffic connection for the whole community and it's no longer just for that vicinity. It's for the whole community and it has upgraded. There's a lot of traffic on the road. There's been a lot of development and there will continue to be a lot of development on that road. We feel like to keep more in an urban setting, not the rural setting, as important to proper paving these areas and landscape at this time.

I think in closing basically we believe, the staff believes that in this urban area with the street classification being updated to a minor arterial. I believe that it's important to go ahead and pave these areas and to landscape it. The area that is paved should drain properly if it's done according to, you know, if it's engineered properly it
will drain.

I also have concerns about this area not being used for outdoor storage and that private lane. That's part of it. I've had some neighbors to call me to say that this private lane has been used for leaves to be taken up through the private lane onto an applicant's property. I have not seen it myself, but I think they might be here to discuss that problem. That's all I have right now.

CHAIRMAN: Jim, I have a question of you. Our original granting of the Conditional Use Permit was that in there that the private lane would not be used to serve that area.

MR. MISCHEL: Yes.

CHAIRMAN: That was in the original.

MR. MISCHEL: The private lane and the outdoor storage. I handed out that site plan that showed the parking in the rear. During the minutes or during the meeting it was stated that the parking is there in the rear. It didn't show it out front. That was brought to our attention in the past. We went out to check it to make sure it did and gravel parking is there.

I don't think this board, I don't think the staff, if the staff had known parking was going to
be in the front, we wouldn't have raised objections then. We would have asked, you know, this type of setting it's just not that rural. I think when this law was changed in '96, it was more for like the rural type setting, bed-and-breakfast, things of that nature.

I would like to put this handout of the Staff Recommendations into the record.

MR. MALONE: Mr. Chairman, may I make just a brief rebuttal on that?

CHAIRMAN: Sure.

MR. MALONE: We would point out that on the site plan attached to the application the parking area is shown from the center or the edge of Fairview Drive to the building is 110 feet and there is a buffer between where the landscaping easement would go and the highway. We would resubmit that there's been no evidence to offer this evening to show that there's any threat to the traveling public on Fairview Drive from any gravel that may be scattered out on the highway.

Secondly, there isn't any question that we are, if I understand, that one of the conditions would be that there will be landscaping as a buffer in the front of the off-street parking area. The two
conditions Mr. Mischel referred to, which is the
restriction on no use of private drive for the access
to the rear of the property was the condition of the
original Conditional Use Permit and we assume that the
board would re-enact that as a part of this amended,
bringing those conditions forward.

We would also point out to the board that
the Staff Recommendations that Mr. Mischel referred to
that was apparently the rationale for changing the
ordinance and waiving the requirement for paving in an
A-U zone where they talk about large parking lot
doesn't usually occur in the agricultural zone. This
again is a good case. This is not a large parking
area, particularly the use of standard of five or more
and they use the example of the bed-and-breakfast.

So we have an unusual anomaly here if Mr. West were operating a bed-and-breakfast at that
location and he had seven parking places for overnight
guests. It wouldn't be required to be paved because
he has a landscaping business where it's primarily his
own vehicles that are parked there overnight.

The staff is not saying, well, it should
be paved because it would be more like the other part
of the area. So that seems to me they're saying the
basis of the recommendation of the staff is that the
paving is for appearance for no other reason. We submit for this board to require that even though it may believe it is exercising good judgment is going to be arbitrary because there's no fact to support that and it's going to require an unjustified economic hardship. We appreciate the board giving that serious consideration. Thank you.

CHAIRMAN: Anyone wishing to speak in opposition of this item?

MR. MISCHEL: I would like to make a statement. I believe that that area is a pretty good size parking area. If you take the front, the side and the rear, I mean right now there exist gravel at the rear, up the side and the front. When we say five or more parking spaces, we're talking about vehicle use area. Not just the parking spaces. We're talking about the drive lanes, parking areas. When you take all that in consideration what they have out there right now, that is a pretty good size area.

Also when we put in there that it's approved A-U zoned Conditional Use Permit, that's to safeguard some of the area that's going into to protect it with buffer, with paving. Like I said there's areas that the area is going to grow and develop more. You'll see these sites being paved and
landscaped. I think it's keeping within the neighborhood.

CHAIRMAN: Yes, sir.

MR. ELLIOTT: State your name, please.

MR. CLARK: James Clark.

(MR. JAMES CLARK SWORN BY ATTORNEY.)

MR. CLARK: I just want to make a comment that the parking out front, and I'm a landowner adjoining Mr. West. I'm at 2868 Fairview Drive. My property and his property adjoin down on the frontage there on Fairview. My home is offset by I'm saying approximately 800 feet off of Fairview Drive. As far as seeing that it needed to be paved, I have no, you know, advice on that. He's been a good neighbor.

Now, as far as, like I am saying, as far as paving the front there I don't know see what the purpose of that would help. Like I say I'm back and there's no dust. Then Mr. Simon like he said is the closest home to the property, the West property, he had an Affidavit that said that he had no complaints. I'm just saying as a neighbor and he's been a good neighbor to us.

The usage of the road now, I mean if he drove a vehicle back that road my only request was, you know, drive slow. As far as anything else, I have
no complaints if they did use that road for any
reason. I have no complaints other than slowly drive
because of grandchildren and stuff playing on the road
and to hold down the dust on the private road.

That's all I can say. He's been a good
neighbor. He's made a ditch down through there. As
far as drainage between his property and mine right on
the line, it's helped significantly. It's done real
good on the drainage of that land in there. A lot of
times before and after, that property before was
really just swampy, but now that he's done what he's
done to revise the drainage and everything I think
he's done a darn good job.

On our behalf, my wife Nancy and I, I
don't think she -- I don't know if she's got anything
further to say than what I've said. We both voice our
own opinions, you know. With that I want to thank you
for your time.

CHAIRMAN: Thank you.

MR. ELLIOTT: State your name, please.

MRS. CLARK: Nancy Clark.

(MRS. NANCY CLARK SWORN BY ATTORNEY.)

MRS. CLARK: As far as Mr. West, he keeps
his trucks nice and neat, parked at an angle. They're
always clean and appropriate. They're never running
up and down the road. Usually in the summertime we've been watching them, they go out early in the mornings and they're gone. They're not running in and out of there constantly. They come in early, leave out early and come in late.

As far as the gravel on them, there's no sense of paving. As far as you could see, there's gravel on the highway. You go down any county road, you're going to see that. It's going to come out. The private lane gravel comes out onto the blacktop. State garage, the gravel comes out on the blacktop. So you're going to get that anywhere and everywhere. As far as blacktopping it, I don't see any sense in it.

Besides that'd probably just invite kids from across the street to come and play on blacktop. That's all I have to say. I have no complaints with Mr. West.

CHAIRMAN: Anyone else wishing to speak on this item in opposition?

MR. ELLIOTT: State your name, please.

MR. McPHERSON: Virgil McPherson.

(MR. VIRGIL McPHERSON SWORN BY ATTORNEY.)

MR. McPHERSON: As far as neighbors, we don't have no complaint about it. Our complaint is
using the lot next to ours up there as a dumping area for his trash. I have some pictures here to show you here.

CHAIRMAN: Is that the only complaint you have?

MR. McPHERSON: Yes, sir. That and because you know what this brings on. This brings on, you know, rats and stuff like that if that stuff stays up there. That's, what, within 20 foot of my house.

MR. NOFFSINGER: I have a question of Mr. McPherson, please.

Mr. McPherson, you have two pictures here that show a large truck using a gravel drive. Would you explain to the board the location of where that picture is taken? Is that on the subject property?

MR. McPHERSON: This is next to my property right here, within ten foot of where that dumping is at.

MR. NOFFSINGER: This gravel lane that I see, this gravel area, is this the private lane we've been speaking about or is that a drive lane on his property?

MR. McPHERSON: This is the private lane here and that little spot there goes back to his property.
MR. NOFFSINGER: So that would be -- is it Fairview Heights Lane?

MR. McPHERSON: Right.

MR. NOFFSINGER: That appears they're using with their vehicles which was a condition, specific condition that that lane not be used.

MR. McPHERSON: Right.

MR. NOFFSINGER: Do you have any concerns regarding the use of that lane by the business vehicles?

MR. McPHERSON: Sure. It's a private lane. It's not commercial lane. We have to take care of that.

MR. NOFFSINGER: So you have two issues. One, the use of that private lane; and then two, the storage areas or over the storage areas.

MR. McPHERSON: I have no complaints about his business down front.

CHAIRMAN: Do you have any more comments?

MR. McPHERSON: That's all I have.

CHAIRMAN: Thank you.

Anyone else wishing to speak?

Mr. West, I'd like to get you up.

MR. MALONE: I was going to say, Mr. Chairman, may we look at that picture and Mr. West
will be glad to testify about it. If you do recall
for the board the last time we were here, I believe
Mr. McPherson did come forward with those complaints
and I believe the board after considering those that
that was something that's not specifically within this
board's responsibility; although the use of the lane
certainly is an issue and Mr. West will be glad to
address that.

Essentially what I think he will tell you
is that in the past he has used some fill material to
fill in some low areas in the back of that lot.
He'll be glad to testify to that if the board would
like to hear that, but we would remind the board that
I believe the last time you thought that was a matter
that really should be considered by some other body.
Mr. Clark can also verify that. The board wants to
hear Mr. West. We would like to look at the pictures
so he could try to address it.

CHAIRMAN: We would and I think the
neighbors would like to hear also from Mr. West.

MR. MALONE: Could you show us the picture
that's been introduced into evidence? The one that he
identified, I believe. The others have not been
identified. We don't know when or where they were
made.
(MR. MALONE AND MR. WEST REVIEW PHOTOGRAPHS.)

MR. ELLIOTT: State your name, please.

MR. WEST: Jim West.

(MR. JIM WEST SWORN BY ATTORNEY.)

CHAIRMAN: Would you respond to the neighbors concerns on the dust.

MR. WEST: Yes. When we're dumping up there what we've been doing is approximately, what, three acres up there. You drive up there the land is flat and there's a big drop off right there and there's a dip right there in front. There's a little pond up there. We've been backfilling that. Like we'll dump up there in probably two weeks. We'll go up there with a tractor and push it down and level it up. I've talked to the neighbors, the Clarks, and told them exactly what we were doing.

The land was all grown up when we bought that up there. Nothing but woods. Cleared all of that off. We have done nothing but improvement on the land. Since they brought it up to my attention about the dumping up there, we haven't dumped up there. The last load we took a load of leaves up there probably a month, month and a half ago.

I told the guys to be sure not to dump up
there no more. What we were doing anyway was just
dumping. We would probably dump two to four loads a
week up there on top of the hill, push it down. I've
had the city come out there already to look at it.
They said what I was doing was nothing illegal at all.
I don't understand what the problem is, but as far as
to the neighbors, you know, he had a problem with it
so we quit doing it. It's not even an issue any
longer as far as I'm concerned.

I think the Clarks, you can talk to them,
what I was doing. There's a big dip down there. It's
close to their land. They've seen me on the tractor a
million times pushing it down and leveling it off.
That's what we've been doing. Once we get it filled
in, that's it. I mean that's all we're doing anyway
is just backfilling the low area by the pond.

CHAIRMAN: I notice you're parking your
utility trailers out in the front near the road.

MR. WEST: Yes.

CHAIRMAN: I have a problem with that.

Some of the neighbors across the road in Brookhill
Subdivision has a problem with that. You could park
those in the rear, couldn't you?

MR. WEST: Yes. Trailer, yes. It just
makes it easier to hook on to them getting out right
CHAIRMAN: Any board members have any questions of Mr. West?

(NO RESPONSE)

MR. ELLIOTT: You need to restate your name.

MRS. CLARK: Nancy Clark.

My parents owned that piece of property and we sold it to Mr. West. I've lived there I'm going to say forever. Let's just put it that way.

When Mr. West bought that property from my mother, like he said it was nothing but grown up with blackberry bushes, thickets, you name it, everything. Now it's very nice. I mean you want pictures, I can go get you pictures showing you what it did look like before Mr. West took it over. He does go up there and he does dump out stuff to landfill it in order to make the land. That property went down like that.

Most people don't know that's an old abandoned coal mines back there. Most of that is where it's coming from. How many of you all knew that? He's filling that in and it's making it look 100 percent better than what it was when he bought it four years ago or three years ago - I don't even know how long now - before my mother died. He's doing a
super job.

As far as rats, I say the rat population is coming from the I-1 section next to us, the one next to it. If you look at that, you've got concrete that's been out there for -- I've been there in the new house for 20 years. It's been there forever. Ever since Peters came there, ever since AT and whatever it is next-door to us now. That's where your rat population is coming from because that's never been cleaned up.

Mr. West does keep his clean. I think you need to check on those companies to see if they can't do a little bit of clean up over there. Old abandoned buses and everything else. Mr. West has filled in that part. He mows it. He keeps it mowed constantly and it's nice and it's neat. As far as trash burning, you see everybody up and down there burning their leaves, burning their wood when they cut down a tree or whatever. Everybody is burning out that way.

I have to say Mr. West does keep that area clean and he is backfilling that place in. It was a very big ditch. Like I said I've got old pictures when I lived up there in the old house. If you'd like to see them, I can show you what the place used to look like. Thank you.
CHAIRMAN: Thank you.

MR. WEST: As far as dumping up there, probably nine months ago someone came from the city out there, someone called, you know, and I took him up there. I thought I was doing everything okay. I even took him up there. He said, you're not doing anything wrong. It's leaves and dirt. We're dumping and it's probably three or four loads a week if that. Some weeks not any.

CHAIRMAN: Anyone have any questions for Mr. West?

MR. ELLIOTT: Restate your name.

MR. McPHERSON: Virgil McPherson.

I have no problem with him filling that ditch he's talking in if he fills it in with dirt, but all you know, everybody here knows that you don't fill in a ditch with grass and leaves.

CHAIRMAN: Thank you.

You have any more comments, Mr. Mischel?

MR. MISCHEL: I would just say again I believe that road being updated to a minor arterial is still important. If you take a road such as Southtown Boulevard, Carter Road and J.R. Miller, that's the same classification. That's a minor arterial as Fairview Drive. A lot of traffic goes through there.
I think in the future it's going to be developed even more. I think it's important for a minor arterial street to be upgraded as far as paving.

CHAIRMAN: Any board members have any questions?

(NO RESPONSE)

CHAIRMAN: If not Chair is ready for a motion.

MR. NOFFSINGER: Mr. Chairman, before you do that I would like to remind the board that whatever the recommendation would be that you make sure you tie any conditions to that recommendation that may have been a part of the original approval and/or any new conditions. You need to be specific on those conditions.

MR. MILLER: Mr. Chairman, I just wonder what Mr. Noffsinger is saying, I wonder if you could run back through the conditions of the original Conditional use Permit.

MR. NOFFSINGER: Would you like to do that or would you like that and the staff's recommended conditions and then go from there?

MR. MILLER: Yes.

MR. NOFFSINGER: With that staff would recommend approval subject to the following

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conditions:

(1) The private lane, which I believe is Fairview Heights Lane, shall not be used in conjunction with this business.

(2) Screening along the south property line with evergreen trees five feet tall and planting space 25 feet apart.

(3) No outdoor storage on the site.

(4) Vehicular use area shall be paved from Fairview Drive to the front edge of the building.

(5) Installation of a minimum 3 foot high continuous element and one tree per 40 feet along Fairview Drive.

MR. MILLER: Mr. Chairman, Mr. Noffsinger just saved me a lot of work. I make a motion that the Conditional Use Permit be approved with the conditions as set forth by staff.

MS. DIXON: Second.

CHAIRMAN: We have a motion and a second. All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: That's unanimous.

Next item, Mr. Noffsinger.
ITEM 4

3825 Riverside Drive, in an R-1A zone (Map N-36)
Consider request for a Conditional Use Permit for
construction of a private boat dock and stairs to
descend to the Ohio River.
Reference: Zoning Ordinance, Article 18, Section
18-6(b)(2)
Applicant: David Howerton and Georgine Howerton

MR. NOFFSINGER: Mr. Chairman, this
application has been advertised for public hearing at
this time; however, we do have a request from the
applicant that the item be postponed due to this
application has not received approval from the Corp of
Engineers. It has not been approved by the Division
of Water. We recommend that you consider postponing
this item until the April meeting of the Board of
Adjustment.

MS. DIXON: Move to postpone.

MS. MASON: Second.

CHAIRMAN: We have a motion and a second
to postpone. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: That's unanimous.

Next item, Mr. Noffsinger.

VARIANCES

ITEM 5

3313 Bryant Court, in an R-1B zone (Map N-23)
Consider request for a Variance to reduce the rear yard building setback from 20 feet to 13 feet and 4 inches in order to construct a sunroom addition.

Reference: Zoning Ordinance, Article 8, Section 8.5.7(e)

Applicant: Steve and Rebecca Raymer

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff. It's found to be in order. It has been advertised for public hearing at this time and all adjoining property owners have been notified. It is a request to encroach upon the rear yard setback by about 7 feet.

This property is located in Owen Park Subdivision, a plat of which was approved right around 1989, 1990. It is a newer residential subdivision. Plan development for the pattern of the lots was defined and marketed as well as being a plan development. Planning Staff is not aware of any setback encroachments within the area. With that it's ready for your consideration.

CHAIRMAN: Anyone here wishing to speak on behalf of the applicant?

MR. ELLIOTT: State your name, please.

MR. RAYMER: Steve Raymer.

(MR. STEVE RAYMER SWORN BY ATTORNEY.)

MR. RAYMER: First off the address is 3313 Bryant Court. I brought this to the attention of the...
variance board by phone. They re-advertised it and
corrected the address in the paper. All the neighbors
I've spoke with, they pointed out the address was
wrong and it's wrong again tonight. It is 3313 Bryant
Court.

We're asking for this. We just purchased
this house in July 2000. Have a really small rear
lawn. There's 25 feet from the back of the house to
the existing property line. The proposed room
addition won't cause any problem to any of my
neighbors. It will not encroach upon any utility
easements. The only utilities in the rear are
telephone. Electric, water, and gas, and sewer are
all in the front lot. The cable TV is on the side
lot.

We ask this board to consider -- this
particular street, Bryant Court, we have the smallest
lot. Most the lots there have, besides my next-door
neighbor, he's the same size as mine, but the rest of
the lots have a really deep lot. This one is very
short. The sunroom, there is seven sunroom additions
in this neighborhood. There is one particular sunroom
addition on Rodgers Court that only has a nine feet
from the back of the sunroom to the back lot. We ask
that you consider that. That's all I have to say.

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CHAIRMAN: Thank you.

Anyone here wishing to speak in opposition?

(NO RESPONSE)

CHAIRMAN: Staff have any comments?

MR. NOFFSINGER: Mr. Chairman, the Planning Staff in review of this application could find no setback encroachments on Bryant Court. Again, this is a newer residential subdivision that was laid out recently and laid out in line with the requirements of the Zoning Ordinance and subdivision regulations. Being that there are no other known encroachments within this area, more particularly on Bryant Court and being that we find no special circumstances or no hardship, we would recommend that it not be approved because it will allow unreasonable circumvention and requirements of the zoning regulations.

CHAIRMAN: Any board members have any questions?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Mr. Chairman, move to deny because it will allow an unreasonable circumvention with the requirements of the Zoning Ordinance and
that there are no special circumstances and it would not create a hardship.

CHAIRMAN: We have a motion for denial.

MR. WARREN: Second.

CHAIRMAN: We have a second. All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: That is unanimous.

Next item.

ITEM 6

501 Ford Avenue, in an R-1A zone (Map N-9)
Consider request for a Variance to reduce the side street yard building setback along McCreary Avenue from 25 feet to 17 feet in order to construct an addition.
Reference: Zoning Ordinance, Article 8, Section 8.5.5(c)
Applicant: Michael E. Pike

MR. CHAIRMAN: Mr. Chairman, this application has been reviewed by the Planning Staff. The application is found to be in order. It has been advertised for public hearing at this time and all adjoining property owners have been notified.

Mr. Chairman, this application was before this board a couple of months ago. They were requesting a much greater setback than they are tonight. They are proposing an addition to the property surrounding an existing covered porch. The
applicant is here tonight to present his case. With
that it's ready for your consideration.

CHAIRMAN: Anyone wishing to speak on
behalf of the applicant?

MR. ELLIOTT: State your name, please.

MR. PIKE: Michael Pike.

(MR. MICHAEL PIKE SWORN BY ATTORNEY.)

MR. PIKE: I believe that all of you are
familiar with our property from the past request for
variance.

Tonight we're asking to reduce the setback
along McCreary Avenue side to 17 feet to 25 feet.
What we have is an existing 8 foot screened in porch
on the side of the house that needs to be replaced. I
think at this time it extends 5 foot beyond the 25. I
think it's at 20 foot right now from the property
line. That house was built in 1934 before the zoning
ordinances went into effect that are in effect now.

We would very much like to build an
enclosed room there due to we don't feel like that
screened in porch is really a usable item in that
area. We have a high school there. We have a lot of
traffic. We have parents waiting for kids beside our
house in the afternoon with motors running, this and
that. You can't use it during the ball games and
things like that. There's a lot of noise.

We're wanting to build an enclosed space.

In order to build an enclosed space, what we had asked for before was we were going to build a large room and had a lot of options or whatever. Tonight we're back asking what we feel like is a minimal usable space.

We're asking that we build a 11 foot addition which once you take out for brick and insulation and stuff and whatever, it give us about a 10 foot room.

In that 10 foot area we do have a fireplace from the living room that sticks out into that area about 18 inches. So if we want to be able to put any type of furniture and still walk by, you know, 10 foot would really be a minimum inside area we would need. We don't feel like there would be a hindrance to anyone in the neighborhood.

Our lot is such a size that we cannot go build to the back. We don't have as deep a lot as most the surrounding homes. So that's the only way we can go as far as that. We don't feel like it's feasible or cost efficient to build an enclosed space back on the existing footer because it wouldn't be a usable room and we don't feel like that building a screened porch is cost efficient either. We do feel like that it would create a hardship on us if we can't
use this variance.

CHAIRMAN: Any board members have any questions of Mr. Pike?

(NO RESPONSE)

CHAIRMAN: Thank you, Mr. Pike.

Anyone wishing to speak in opposition of this item?

MR. ELLIOTT: State your name, please.

MR. MEHLBAUER: Tony Melbauer.

(MR. TONY MEHLBAUER SWORN BY ATTORNEY.)

MR. MEHLBAUER: I'm not here to speak in opposition to the Pikes. I live across the street from them on Ford Avenue, 412 Ford Avenue. I'd just like to offer my support to the Pikes. They take very good care of their property. Their sunroom that they have now is in bad shape of repair. Myself, our house has an enclosed room on the side. The properties along McCreary and Ford Avenue all very much different than most and I think that it makes a nice cozy neighborhood. I'm certain that the Pikes would build an addition which would help with the neighborhood as far as the looks go. I'm just here to offer my support. Thank you.

CHAIRMAN: Thank you.

Any board members have any questions?
(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. MILLER: Mr. Chairman, motion to
approved based on the fact the strict application of
the regulations would deprive the applicant reasonable
use of his property and will not allow unreasonable
circumvention of the requirements of the zoning
regulations.

MS. DIXON: Second.

CHAIRMAN: We have a motion and a second.

All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: It's unanimous.

Mr. Noffsinger, next item.

ITEM 7

1717 Freeman Avenue, in an R-1A zone (Map N-9)
Consider request for a Variance to reduce the side
yard building setbacks from 10 feet to 7.5 feet in
order to construct a new single-family residence.
Reference: Zoning Ordinance, Article 8,
Section 8.5.5(d)
Applicant: Homes by Benny Clark, Inc.

MR. NOFFSINGER: Mr. Chairman, this
variance application has been advertised for public
hearing at this time. Adjoining property owners have
been notified. Planning Staff has reviewed the
application and found the application to be in order.
The applicant is here and ready to speak and with that

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I'll say no more.

MR. ELLIOTT: State your name, please.

MR. CLARK: Benny Clark.

(MR. BENNY CLARK SWORN BY ATTORNEY.)

MR. CLARK: Tonight I come before you to ask for this variance, two and a half foot on each side yard, to allow me to build a larger home, approximately four foot in width. I'm asking for five foot as you see on the application. Most of the homes that I build, and I've been building for about 20 years here in Owensboro, are 40 foot wide. I brought some renderings of homes and character that I build.

The existing lot would only allow me at this particular time to build a product 36 foot wide. I'm asking for the additional two and a half foot on each side to be able to allow me to build a little more compatible product.

In asking for this and looking at the immediate neighbors on both sides, immediately to the north off of Griffith Avenue I have a home with a detached garage. This particular garage is 24 inches from the property line. The overhang which overhangs about 18 inches is within 6 inches of the property line. I have some exhibits here.

The home on the north side, for example,
the home next to it, the existing home, there's only
30 inches between his property line and the next
property line which I hold up here and I'll be glad to
give this for review. That is a lot closer than what
I'm asking for because even after my product would be
built, I would still have 13 foot after the product is
built between me and the existing neighbor on the
north side. Then I would have approximately 13 to 14
foot on the south side and 10 foot on the north side.
Looking up and down the street, there is several homes
that have probably three to five foot side yards. I
still would basically have seven and a half foot on
the property line as well as the neighbor who has six
and a half foot. My request tonight is just to build
a little more larger product.

The character of my homes are in keeping
with the tradition of the neighborhood. I think that
it would only enhance the value of the neighborhood to
be able to allow me to build a product 40 foot wide
instead of 36 foot wide. I build a lot of what I call
empty-nester homes which requires a little larger
hallway, three foot doors, accessibility. Forty foot
allows me to do that and that is my request tonight.

Would you be interested in viewing these?

MR. ELLIOTT: Show the commissioners and
then put them in the record, Benny.

(MR. CLARK HANDS OUT MATERIAL.)

MR. CLARK: The collateral material that I just handed the chairman is a blow-up shot of the neighbor's home on the north side which shows that there would still be an additional 13 foot, and I wrote that on there, after the structure is built. Then one particular handout shows the north side neighbor's garage which is two foot off its property line. The three cutter renderings are a sample of a home that we propose that we probably would build and the architecture of that particular house.

That's all I have, Mr. Chairman.

CHAIRMAN: Thank you, Mr. Clark.

Anyone else wishing to speak for Mr. Clark on this item?

MR. ELLIOTT: State your name, please.

MS. BULLOCK: My name is Loni Bullock.

(MS. LONI BULLOCK SWORN BY ATTORNEY.)

MS. BULLOCK: I've recently purchased a home at 1811 Freeman Avenue. I'm doing extensive remodeling in that home. It's not my primary residence. I'm renting it to my daughter. However, I'm also not just a homeowner in that area, but I'm also a real estate professional in Owensboro. I feel
I have qualified knowledge of market values of homes.

I wish the lot was next-door to my little home. I'd love to have Benny Clark build a new home next to me.

When we were talking about the space between the homes, the home on the north side of 1811 Freeman is less than ten feet away from my house. I mean they look right into my daughter's living room. I think that just the nature of that neighborhood calls for the homes being close.

Also I have an quite extensive knowledge of the homes that Benny builds. I've not only sold a lot of his new construction homes, but I've also lived in Benny Clark homes. I know that what he's going to build on that lot is going to be of quality product and it can do nothing but increase the value of the rest of the homes in that neighborhood and I think that's what we all want. If I could say anything to the other neighbors I would say, you know, yea Benny Clark because he's going to help the values of our neighborhood. Thank you.

CHAIRMAN: Anyone else wishing to speak on Mr. Clark's behalf?

(NO RESPONSE)

CHAIRMAN: Anyone wishing to speak in
opposition?

MR. ELLIOTT: State your name, please.

MR. WELLS: Bobby Wells.

(MR. BOBBY WELLS SWORN BY ATTORNEY.)

MR. WELLS: I'm a resident at 1723 Freeman Avenue, the house on the south side of the lot. We moved in there about approximately a year ago. I wish that I could have afforded to buy the lot and we could have avoided all of this right now anyway.

I strongly oppose the variance of seven and a half feet. I believe that the laws were established for a reason. The zoning laws say that they're suppose to be ten feet of setback. I just don't see why we should go against the laws and go seven and a half feet.

I feel that the extra distance between the houses, for one thing the windows. I don't know if you can tell from the pictures, but the whole side of our house facing the lot has large windows across the side. I think it's inevitable that a house is going to be built on the lot. I don't think there's any question about that. We can't really argue. He owns it.

He can build a house there, but the real question is the law says ten feet setback. I think
it'll depreciate the value of our home closer to his
house is to ours. I don't think two wrongs make a
right. You know, they talk about the distances of
the other houses on the street and how they're ten
feet between one and eight feet between the other. I
still think the bottom line is what the zoning law say
is ten feet. I really believe, I'm not an expert, but
I believe that more distance between my home and his
home would, you know, the value of my house would
decrease.

Also as far as the spaces in-between the
houses, I think this lot is, you know, kids and dogs
and people walk their dogs through the lot to cut
through to the alley to the library. I think the more
distance we leave between these two houses is better
for the neighborhood as a whole. It's not just me.
Of course, it does affect me more than anyone. On the
other side there's a garage.

The Rineys it wouldn't effect their view,
but on my side it would greatly effect it. I believe
that the neighborhood as a whole would benefit from as
much space as possible between these two homes. I
strongly oppose it and I believe that the law should
stand of ten feet. Thank you.

CHAIRMAN: Anyone else wishing to speak in

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opposition?

MR. ELLIOTT: State your name, please.

MS. GORDON: Ruth Gordon.

(MS. RUTH GORDON SWORN BY ATTORNEY.)

MS. GORDON: I didn't realize the permits or whatever, that he was just wanting to change the variance. I'm here to oppose a house being built on that lot.

I live on lower Freeman Avenue and we've owned our house for 20 years. I feel our street is unique with this distinctive and charming older homes. With no ill-feelings towards Mr. Clark, the neighbors represent here do not want to see a new home built on 1717 Freeman Avenue. I realize there's no permit or ordinance that we could provide to prevent Mr. Clark from building on this lot.

My argument is about esthetics. Green space within the city boundaries and the character of our neighborhood and our street. A new home built on 1717 Freeman will forever change the complexion of our neighborhood and would also be detrimental to the looks and possible resale value of the house next-door. There have been many miscues and missteps regarding Planning & Zoning. Thank you.

CHAIRMAN: Thank you. Anyone else?
MR. ELLIOTT: State your name, please.

MS. WILLIS: Christine Willis.

(MRS. CHRISTINE WILLIS SWORN BY ATTORNEY.)

MS. WILLIS: I live on 1708 McCreary.

Benny Clark's plans call for a driveway coming off of the alley right behind our house. I'm here to argue that with the two and a half feet variance, no variance that the law is simply not buildable.

From either my side or the Freeman's side is way too much congestion. We're talking a distance from here to that wall that there be five driveways on the alley side and four driveways on the Freeman side. There's not enough space if they don't get the variance to even plant any trees at all to kind of keep with the character of the neighborhood.

In defense of the people who aren't here, there's many people - I have a petition right here - that don't want to see a house built for the reasons that Ruth stated and Bobby stated. The value of the neighborhood, the character of the neighborhood and the amount of congestion it would cause either on the Freeman side or on the alley side.

In that regard we would like to see the variance at least apply. Ideally, the lot not even being buildable.
In conclusion, character, congestion and value of the property are our concerns. Thank you.

CHAIRMAN: Thank you. Anyone else?

MR. ELLIOTT: State your name, please.

MR. McFARLAND: My name is Steve McFarland. I live at 1718 Freeman Avenue.

(MR. STEVE McFARLAND SWORN BY ATTORNEY.)

MR. McFARLAND: We live at 1718 Freeman Avenue which is immediately across the street from what is now the vacant lot.

I understand the situation of person having the right to do what the law allows, but I do feel like that Planning & Zoning needs to look very closely at the congestion situation both on the Freeman Avenue side and also on the alley behind. Another driveway on Freeman at that point would be a real problem. We have much transient traffic through there. The alley behind the property is not really worthy to handle even more traffic than there is right now. So I would ask you to take a look at the traffic issue on this property. Thank you.

CHAIRMAN: Thank you. Anyone else wishing to speak?

(NO RESPONSE)

CHAIRMAN: Mr. Clark, do you have

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additional comments?

MR. CLARK: Yes.

First of all the house to the south which Mr. Wells owns is only six foot to six and a half foot to the property line which is basically a non-conforming structure. Again, the garage to the north is a non-conforming structure because it's 24 inches off the line.

Driveway is not an issue. The variance request is not relevant to the alley.

Yes, I have a home plan that is very compatible as a sample and I can put this on file, but basically the bottom, your left-hand corner shows rear low garage which there's ample ways to back out of the garage, turn around on the lot to drive out the single lane alley. The front shows a porch and structure which if we had a back low garage we would not have a curve cut and still two additional parking spaces on Freeman which I know that is sacred to the people that live on that street. So I'm very much aware of the existing homes and issues and parking. I just want to tell the board that I have taken that in to full consideration. So at this time that's my final comments.

CHAIRMAN: Thank you.

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Any board members have any questions?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

(PAUSING)

CHAIRMAN: I need a motion one way or the other.

MR. WARREN: Motion to grant the variance based on the considerations that there are special circumstances. There are many other encroachments upon the variance and it would be unfair to uphold those encroachments and deny the landowner full use of this property and that it will not adversely affect the public health and safety or welfare. I don't think that it will alter the essential character of the general vicinity and cause a hardship or nuisance to the public.

CHAIRMAN: We have a motion for approval of the variance.

MR. MILLER: Second.

CHAIRMAN: We have a second. All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: That is unanimous.

Next item.
ITEM 8

5495 Ruidoso Loop, in a MHP zone (Map N-31)
Consider request for Variance to reduce the platted
front yard building setback from 15 feet (10 feet per
Zoning Ordinance) to 7 feet in order to place a
manufactured home.
Reference: Zoning Ordinance, Article 11, Section
11.35
Applicant: Brian and Kara Rice

MR. NOFFSINGER: Mr. Chairman, this
application has been reviewed by the Planning Staff.
The application is in order. It has been advertised
for public hearing at this time and all adjoining
property owners have been notified.

This is a variance request that's in the
Colony Mobile Estates which is the manufactured
housing subdivision. The manufactured home that has
been placed on the property was originally and was
already sitting there. It was placed there into the
setback line and a public utility easement. The
public utility easement has been reduced by plat and
the applicant is here tonight asking for a variance
from the front building setback line. With that it's
ready for your consideration.

CHAIRMAN: Anyone wishing to speak on
behalf of the applicant?

MR. ELLIOTT: State your name, please.

MR. MARKSBERRY: James Marksberry.
MR. MARKSBERRY: Brian and Kara Rice purchased the piece of property from Hometown Realty. They sell lots in that subdivision. They bought a lot that already had previous and existing manufactured home. It was the same size as the one that our company, Home Folks Housing, put on this lot. They just purchased the home from us. They purchased the lot from Hometown Realty.

When we went out there to install the home, our guys should have been aware. You know, they measure from the fence back. If you look at the plat on this property, it goes into a curve. After we placed the home, we were the ones that discovered that the home was placed and encroaching on a utility easement.

Brian and Kara Rice not aware what all needed to be done. We kind of stepped in because we felt the right thing needed to be done. You know, the home either needed to be taken off there or ask for a variance.

I went back and asked our field guy about checking that. They did check from the curve and they measured roughly over. You'll see at one corner of the home was in compliance, but the way it curved he
failed to catch that corner. So we just stepped in and, you know, had been assisting the Rices with getting the proper engineering, going through the proper channels to get this thing so it's right. They've already purchased the lot. They've already purchased the home from us. It would create a hardship on them if they had to move this home and replace it someplace. I'll be more than happy to answer any questions.

CHAIRMAN: Any board members have any questions?

MR. MILLER: I do. Did I understand you to say that the mobile home that was there is the same size as the new one that's been placed there?

MR. MARKSBERRY: Yes, sir.

MR. MILLER: So it was also seven feet, exactly the same place?

MR. MARKSBERRY: Yes. I don't think Hometown Realty when they sold them the lot, I think they in good faith thought this home could fit on there.

CHAIRMAN: Thank you for now.

Jim, do you have any comments on this?

MR. MISCHEL: Jim Mischel.

I believe not only this but I think we've
seen some other problems in this same area with some homes that have been placed out there.

We have taken over the permitting process and inspection process recently. We've been made aware there are some problems. There's been some confusion and we've tried to clear that up with some meetings. Some of the confusion I think is when you have what we call a single-wide mobile home, they are governed by the State of Kentucky. They have to be approved by the state for placement. When that happens the State Manufactured Housing, they inspect these units.

We still need to do inspection for setbacks, but we're not always informed of these. We need to -- when you get into a residential zoning ordinance does require that we check some these. They have foundations and we check them, but even this, if there is no foundation required we still need to do a setback inspection. On this one we wasn't called for a setback inspection. I guess we feel we've got another one. As these units move off, they need to comply. We've got a subdivision out here with subdivision regulations. It's been plated. It's been recorded at the courthouse. I guess we feel like that sometime we're going to have to step in and try to get
these into compliance. As one has taken off we need
to ensure the next one goes back adheres to these plat
setbacks that are recorded at the courthouse and I
guess not ignore and just place one on there the same
size even though it's wrong.

Trying to work with these as they come in
to assure that the problem we have a lot of times by
the time they get to us the homes are already on the
lot. They come in or they go to the electric company
and get their electricity turned on and the electric
company makes them aware they can't do that kind of
inspection and that's when they show up at our door.
They've got their loans made and they've got their
payments booklet. They're ready to start making
payments and we're just now getting involved. I think
it's important for all manufactured homes dealers or
whatever to direct these people. The first step, the
first stop should be I guess with us to ensure that
these units will fit on the lot. I think that's not
been taken first. We're the last step instead of the
first step.

CHAIRMAN: Thank you, Jim.

Anyone here wishing to speak in opposition
of this item?

MR. MARKSBERRY: I'd just like to rebuttal

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on that if you don't mind.

CHAIRMAN: Please step up.

MR. MARKSBERRY: Jim is right. We do require all of our customers to get a permit before we place the home on any location. We did Doe Ridge Subdivision out here by Bon Harbor and I think Jim will state that I mean we're very much in compliance with that. We will not take a house out not unless we've got a permit to place it, but on the single wides he's made a good point there.

On the sectional homes they require a foundation and they do come out and check the setback lines on the foundations before they're put in, but because the single wide manufactured units do not require that, they are not. If you go back and research this thing, the other people got a permit. We went out there and placed the home. They got electrical permit. They came out and did the electrical inspection and turned the power on. They're living in the home. They're moving on with their life, and then we're the ones that found the mistake on this thing.

All we're trying to do is get the right thing done for them. Jim is absolutely right. There ought to be something to set forth when a single wide
is placed in their jurisdiction that a setback be
required on it. I'm all in favor of that.

CHAIRMAN: Thank you.

Chair is ready for a motion.

MS. DIXON: Move to deny based upon the
fact that it would allow unreasonable circumvention
with the requirements of the zoning regulations and
that there are no special circumstances.

CHAIRMAN: We have a motion for denial.

MR. MILLER: Second.

CHAIRMAN: We have a second. All in favor
raise your right hand.

(TIM MILLER AND JUDY DIXON RESPONDS AYE.)

CHAIRMAN: All opposed.

(WARD PEDLEY, RUTH ANN MASON, MARTY WARREN
RESPONDED NAY.)

CHAIRMAN: Motion fails.

MR. ELLIOTT: We need to have a motion for
approval then.

CHAIRMAN: We need one for approval.

MR. ELLIOTT: With a finding. It's not
automatically approved because it was denied. I think
the correct procedure would be --

MS. MASON: I make a motion for approval
that it will not adversely affect the public health,
safety or welfare and it will not alter the essential
class character of the general vicinity and it will not
cause a hazard or nuisance to the public.

CHAIRMAN: We have a motion for approval.

MR. WARREN: Second.

CHAIRMAN: We have a second. All in favor

of the motion raise your right hand.

(MARTY WARREN, RUTH ANN MASON AND WARD

PEDLEY RESPONDED AYE.)

CHAIRMAN: All opposed.

(TIM MILLER AND JUDY DIXON RESPONDED NAY.)

CHAIRMAN: Three to two, motion passes.

ITEM 9

1019 West First Street, in an R-4DT zone (Map N-3)
Consider request for a Variance to reduce the side
street yard building setback along Maple Street from
25 feet to 12.5 feet in order to build a single-family
residence.
Reference: Zoning Ordinance, Article 8, Section
8.5.11(c)
Applicant: Michael Wayne Pickrell

MR. NOFFSINGER: Mr. Chairman, this
application has been reviewed by the Planning Staff
and found to be in order. Has been advertised for
public hearing at this time. All adjoining property
owners have been notified. This is a 40 foot wide
lot. It is a corner lot on the northeast intersection
of West First and Maple Street. The reduction in the
setback would be necessary in order for any type of structure, residential structure to be placed on this vacant property and the applicant has proposed a home that's approximately 22 feet wide. It will meet the five foot side yard to the east; however, they do need the variance down to about 12.7 feet in order to construct — excuse me. 12.5 feet in order to construct a home on the property. With that it's ready for your consideration.

CHAIRMAN: Anyone here representing the applicant?

MR. ELLIOTT: State your name, please.

MR. PICKRELL: Michael Pickrell.

(MR. MICHAEL PICKRELL SWORN BY ATTORNEY.)

MR. PICKRELL: I've lived there for nine years and there was a trailer on that corner, 70 by 14 with attached carport. I torn it down and we would like to build a house there. If you grant us permission for the variance, it would be greatly appreciated. It would only benefit the neighborhood. Thank you.

CHAIRMAN: Any board members have any questions of Mr. Pickrell?

(NO RESPONSE)

CHAIRMAN: Thank you.

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Anyone wishing to speak in opposition of
the item?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Move for approval based upon
findings 1 through 4 in the Staff Review.

CHAIRMAN: We have a motion for approval.

MR. WARREN: Second.

CHAIRMAN: We've got a second. All in
favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: It is unanimous.

I need one more motion.

MS. DIXON: Move to adjourn.

MS. MASON: Second.

CHAIRMAN: All in favor raise your right
hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

I, LYNNETTE KOLLER, Notary Public in and for
the State of Kentucky at Large, do hereby certify that
the foregoing Owensboro Metropolitan Board of
Adjustment 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 65 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this
the 24th day of March, 2001.

LYNNETTE KOLLER, NOTARY PUBLIC
OHIO VALLEY REPORTING SERVICE
202 WEST THIRD STREET, SUITE 2
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES:
DECEMBER 19, 2002

COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

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