The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, July 5, 2001, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  C. A. Pantle, Chairman
Marty Warren
Judy Dixon
Tim Miller
Bill Williams
Ward Pedley
Gary Noffsinger,
Planning Director
Stewart Elliott
Attorney

CHAIRMAN: Want to welcome you to the Board of Adjustment meeting this evening. Set up a few guidelines to operate the meeting better.

If you want to speak on any particular item, come to the microphone and state your name for the record. You will be sworn in and then everyone will have a chance to be heard unless you keep duplicating comments and then we'll cut you off.

First item on the agenda this evening is the minutes of the last meeting. They're on record in Ohio Valley Reporting
(270) 683-7383
the office. I don't think there's been any faults found by anybody.

MR. NOFFSINGER: No, sir.

CHAIRMAN: If not the Chair will entertain a motion to dispose of the item.

MR. WILLIAMS: Make a motion to approve.

MR. PEDLEY: Second.

CHAIRMAN: Motion has been made and a second. All in favor raise your your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

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CONDITIONAL USE PERMITS

ITEM 2

1117, 1121, 1125 Allen Street, in an R-4DT zone Consider request for a Conditional Use Permit for operation of a halfway house for 8 to 14 single women recovering from alcohol and drug abuse.

Reference: Zoning Ordinance, Article 8, Section 8.2C1 Applicant: Jennifer House, Inc., Jeanne Owers, CEO

MR. NOFFSINGER: Mr. Chairman, this application I will clarify for the record pertains only to 1125 Allen Street. It is for six women residents. I'll ask legal counsel to comment as to whether or not that is correct based upon the agreement that we have.

MR. ELLIOTT: Yes, that is correct. For
the record and for the board this matter is back on
the agenda. The Board is well aware of this Board's,
its individual members, City of Owensboro, Mayor over
the granting of this Conditional Use Permit.

There was also a complaint filed with HUD
over the granting of this Conditional Use Permit. In
that the individuals of this board were individually
named in the lawsuit, and the Board was individually
named in the lawsuit, it was referred to our insurance
carrier. Our insurance carrier provided legal
counsel, Dave Whalin out of Louisville. After he had
done a research of the case filed and talked with the
plaintiffs in the lawsuit, recommended to this board
that this matter be settled. I looked at that
recommendation and I too recommend to this board this
matter be settled. As a part of that settlement
agreement, it provides that the Conditional Use Permit
as amended and submitted for a maximum of six
recovering women for the address of 1125 Allen
Street. The permit would be granted. The permit
would also be subject to all requirements of the state
and local ordinances. It's my recommendation to this
board based upon the Settlement Agreement that this be
approved, the Conditional Use Permit be approved and
is granted. I'd like to submit as part of the record
that Settlement Agreement that was entered into and
signed by the parties. Make that a part of this
record if anyone would like to see that.

CHAIRMAN: The settlement does state for a
maximum of six people only?

MR. ELLIOTT: Yes, it does. In Paragraph
Number 2 it says, "for use as a half-way house for a
maximum of six women recovering from alcohol and drug
abuse." Then it refers to the half-way house at 1125
Allen Street. That's the Settlement Agreement. So
that should be fairly indicated in record as to what
the Conditional Use Permit should be granted for.

CHAIRMAN: Want to be sure that is
correct.

MR. ELLIOTT: Make sure that the record
indicates that I am aware of the Board's feelings on
this matter. That the Board has denied this
Conditional Use Permit and this board is acting on
advice of legal counsel in granting this Conditional
Use Permit. I listened to Mr. Whalin, the attorney
that researched this matter. He recommended it be
settled. I'm recommending it be settled. I think the
public should know that the board is acting under
legal advice when they grant this Conditional Use
Permit.
CHAIRMAN: Let the record show that this is a federal Fair Housing Act and it overrides anything we could -- our personal feelings or ideas here.

Is the applicant here and do they have any comments?

State your name for the record.

MS. OWERS: My name is Jeanne Owers.

(MS. JEANNE OWERS SWORN BY ATTORNEY.)

MS. OWERS: Do you gentlemen and ladies have any questions at this time? I wanted to just state that we appreciate the board hearing us and we appreciate the Conditional Use Permit. We will be eventually building onto the property that is adjacent to 1125 and when we do we'll gather the correct information and come back and resubmit for that particular piece of property, but six is the correct number for 1125, and as it is stated that is correct.

CHAIRMAN: Any board members have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Thank you, ma'am.

Does anyone have any objections or comments they want to enter into the record?

(NO RESPONSE)
CHAIRMAN: Hearing none what's the board's pleasure?

MS. OWERS: Thank you very much.

CHAIRMAN: You're welcome.

MR. MILLER: Mr. Chairman, on recommendation of legal counsel and in accordance with the lawsuit settlement my motion to approve the Conditional Use Permit.

CHAIRMAN: You've heard the motion. Is there a second?

MR. PEDLEY: Second.

CHAIRMAN: A motion has been made and a second. Any other questions or comments by the board members?

(NO RESPONSE)

CHAIRMAN: Hearing none all in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

MS. OWERS: Just have one question. Will that be sent to us at the 1125 Allen Street address?

CHAIRMAN: That's the address, location that you can only use at this time.

MS. OWERS: Right. And that will be sent to us.
CHAIRMAN: You'll have to pick that up at the office.

MR. NOFFSINGER: Ms. Owers, that Conditional Use Permit application may go to the address of the Jennifer House, Jeanne Owers, CEO, 6962 Leslie Lane.

MS. OWERS: That's incorrect. 1125 Allen Street is correct.

CHAIRMAN: You have a mailbox and everything there?

MS. OWERS: Yes. Thank you.

CHAIRMAN: Next item.

ITEM 3

1030 Oglesby Street, in an R-4DT zone (Map N-7) Consider request for a Conditional Use Permit for permanent placement of a 16'x84' Class B manufactured home.

Reference: Zoning Ordinance, Article 8, Section 8.2A10B, Section 8.4/7 Applicant: Herman Ann Wilson

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff. It's found to be in order. All adjoining property owners have been notified and it has been advertised for public hearing at this date.

The Board of Adjustment considered a request on this property last month and granted the Conditional Use Permit for placement of a smaller
manufactured home on the property. However the size that was included in the application was incorrect. The applicant does intend to place a larger home on the property which is a 16x84. The only alternative in order to do that was come back to this Board of Adjustment to reconsideration.

Just remind the applicant that the site of the development requirements include the removal of the tires, tongue, hitch assembly wheels from the unit as well as a concrete or masonry type skirting around the perimeter of the home.

CHAIRMAN: Doe the applicant have anything you want to say?

APPLICANT: No.

CHAIRMAN: Any board members have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Anyone here speaking in opposition of the Conditional Use Permit?

(NO RESPONSE)

CHAIRMAN: Hearing none the Chair will entertain a motion to dispose of the item.

MR. WILLIAMS: Mr. Chairman, I make a motion we approve this Conditional Use Permit under the conditions as stated.
CHAIRMAN: We have a motion. Do we have a second?

MS. DIXON: Second.

CHAIRMAN: Motion been made and a second.

Any other comments or questions from the board?

(NO RESPONSE)

CHAIRMAN: Hearing none all in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, sir.

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VARIANCES

ITEM 4

3313 Bryant Court, in an R-1B zone
Consider request for a Variance to reduce the rear building setback from 20 feet to 13 feet and 4 inches in order to construct a sun room addition.

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

Applicant: Steve & Rebecca Raymer

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

This similar request or same variance request was heard by this board March of this year.
At the public hearing the Board of Adjustment denied the request. The applicant has decided to come back before this board tonight, he's represented by legal counsel, to discuss the matter further with you. With that it's ready for your consideration.

CHAIRMAN: Is the applicant here? Come forward, please.

MR. PACE: Pat Pace, attorney for the applicant. Also Mr. Raymer is here. You might swear him in as well.

(PACE PACE AND STEVE RAYMER SWORN BY ATTORNEY.)

MR. PACE: I am Pat Pace and represent the applicant and his wife on this matter. As you were told, this regards the addition of a sun room. Mr. Raymer was here previously. At that time there were some matters that were not brought to your attention or placed in the record which we think are very significant and which we'll demonstrate that there are special circumstances that affect this application.

This is in Owen Park Subdivision. Mr. Raymer and his wife when they purchased this property did so with the intention to add a sun room on the back. In doing so they inquired of all the neighbors.
to make sure that they were in agreement with such an
addition. Mr. Raymer spoke to two different builders
about this matter. I've got quotes from them and
assurances that he could build this sun room
addition. He spoke with Steve Lambert of Lambert
Remodeling, and also Jimmy Bowlds of Four Seasons.
They advised him that there were no problems. In
fact, he did enter into an agreement with Four Seasons
and need $4,000 down for the purchase of this sun
room.

There's no evidence on the plat of a 20
foot setback line and he did make inquiry. There was
no reference to a setback peculiar to this subdivision
in the Deed of Dedication for the subdivision as
recorded.

The situation that makes this unique is
there are lots to the northeast of this lot on this
street, Bryant Court, which are much deeper than the
lot purchased by the Raymers. In fact, it's
approximately 40 foot deeper. The one immediately
adjacent actually has an addition built on the back.
It's not a sun room. It's an actual building
condition that extends back approximately to where the
Raymers' sun room addition would extend towards the
rear lot.
Apparently what happened is during the development of this unit there was a decision made by the developer to increase the lot number or size lots on the cul-de-sac which is at the rear of this particular lot and an extension of Bryant Court. As a consequence of that, Mr. Raymer's lot and the one immediately to the other side of his lot were shortened.

In effect what you have at his rear lot line is a side lot line for his neighbor to his rear. It's his neighbor side lot line and his rear.

This variance if granted would be more than 10 feet. 13.4 feet from that line and would actually constitute that that neighbor's rear line.

Every one of the abutting land owners have agreed with this variance and has signed a petition in support of it and I would like to make that a part of the record. I can give that to the report. Mr. Raymer can confirm that each and every owner of the lot on Bryant court is in support of this.

I'll just take a moment briefly to read this to you. "We, the undersigned are the owners and residents of the indicated lots on Bryant Court and the neighbors of Steve Raymer and Rebecca Raymer who live at 3313 Bryant Court. In our opinion, the
granting of the variance 1) will not adversely affect
the public health, safety or welfare; 2) will not
alter the essential character of our neighborhood or
the general vicinity; 3) will not cause a hazard or a
nuisance to the public; and 4) will not allow an
unreasonable circumvention of the requirements of the
Zoning Ordinance. We support the addition of the sun
room at 3313 Bryant Court and request that you grant a
variance to the rear setback requirement to permit its
construction."

I also have a plat of Bryant Court in this
unit which I'll submit that corresponds to each of the
owners that have signed off on requesting an
approval. As to make that a part of the record.

Now, during the last consideration of this
variance, there was a statement that the staff was not
aware of any violations of the setback lines in this
area or any variances. There was a reference in our
application, but the address was incorrect. At one
time our application we were referring to two
different properties in this subdivision. The correct
reference should have been to an address of 941 Rogers
Court where there is a sun room addition. This is two
blocks from Mr. Raymer's property. It is
approximately nine feet from the rear lot line.
Mr. Chairman, if I may approach the commission I want to show you an aerial photo that will lay out what I've been telling you here.

This street here, and I'll take this down, is Burlew Boulevard that runs right here, and then comes into Byers Avenue. Then this is Bryant Court. The lot in question seeking variance is this lot right here. As you can see the neighbors, and I'll bring this back around for you all. The neighbors to his northeast both have much deeper lots. When this was modified Mr. Raymer's lot was the one to the southwest was shorter. So these are 40 feet deeper here.

Now, the one that presently has a sun room is just over here right off of, in fact, the side of the lot is on Burlew Boulevard and you can actually see the sign there. I have a picture for you.

Mr. Raymer can tell you that it is nine feet from the rear lot line.

MR. NOFFSINGER: Mr. Pace, what's the address of that property?

MR. PACE: The address of that property is 941 Rogers Court. I have a plat too.

MR. NOFFSINGER: Is that included in your application, that address?

MR. PACE: We said there were sun rooms in
the area. The address that was given at one time we
had two references. The wrong reference was taken out
when that was modified. It's on the same street.

MR. NOFFSINGER: The only example you've
given us in terms of addresses is the --

MR. PACE: We're not faulting the staff at
all for that. That was a mistake.

MR. NOFFSINGER: It's a situation that the
staff needs to check out to be able to fairly report
to this board whether or not there's a violation that
exist at that site and whether or not the unit was
permitted, the particulars involved. Certainly if
you're bringing up new sites to us, we'd have to have
the opportunity to check those sites out to see what
the situation is.

MR. PACE: This certainly wasn't done
intentionally.

MR. NOFFSINGER: I understand.

MR. PACE: You know, we could present this
to the board and then if it's necessary that you check
this out. We also have some photos of the area.

MR. MILLER: Mr. Pace, could I see the
plat that you entered into evidence?

MR. PACE: Yes. This is the plat of the
Bryant Court area. I have a plat of the other area
CHAIRMAN: Mr. Pace, going back one statement. You made a statement that two contractors said there would be no problem. Did they check the zoning ordinance to be sure there's no problems or did they just say there'd be no problems?

MR. PACE: I certainly don't know. Mr. Raymer I think probably went beyond what most laymen would do in checking this out. He checked the plat itself. He looked at the Deed of Dedication. He checked with the neighbors. Then he asked the builders if there'd be any problem.

CHAIRMAN: Did he check the zoning regulation is what I'm getting at?

MR. PACE: Obviously he didn't know that was there, no, sir.

CHAIRMAN: I would say, your his legal counsel, he may have reference to go back if somebody by chance if it's not granted because it is stated in the regulations. If somebody gives you bad advice for whatever reason.

MR. PACE: Yes. We merely introduced that to show that he was operating in good faith when we talked about hardship and the money that he's been out and the planning that he did and checking with the
neighbors which has been confirmed by their
submission.

CHAIRMAN: Thank you.

MR. PACE: I have two photos of the 941 Rogers Court property that --

CHAIRMAN; Do you know when those were constructed?

MR. PACE: No, I do not know when this was constructed. It's also part of Owen Park Subdivision.

Start one at each end and I'd ask that these be made a part of the record as well. These were taken by Mr. Raymer if you want to ask him any questions about them.

MR. WILLIAMS: This picture is it one on Rogers Court?

MR. PACE: Yes, it is.

MR. NOFFSINGER: What is that address again, please?

MR. PACE: 941. I have a plat here that will show you that.

CHAIRMAN: Have anything else you want to say?

MR. PACE: Yes, I do.

Maybe just one comment, suggestion. I think it might be very helpful for these type of
situations if the developers were required to show
these setback lines on their plats. It seems like it
would be not that -- might avoid these types of
situations because I think Mr. Raymer was, if he would
not have bought this house, if he had known this, he
could have done more and he could have hired a lawyer
and checked it out. I think he was acting in good
faith. We ask you to approve this. I have him here
if you would like him to confirm any of this, the
measurements, the pictures, his discussions with the
builders. Be glad that he advise you in answering any
questions that you have, but we respectfully request
that you reconsider this matter and under the
circumstances approve it.

Gary, did you have anything else that you
found out on 941?

MR. NOFFSINGER: Yes, I do if I might, Mr.
Chairman. I would like to address first one that Mr.
Pace's is making about developer showing all setbacks
on the plat. There's a reason that all setbacks are
not shown on the plat. The front yard setback in
rural subdivision is the only plated setback shown
because that is a definite setback for all structures
whether they be principal structures or homes or
whether they be accessory structures. You have 25
foot front setback in this development and in this
zone. The setback will vary depending on the the side
yard setbacks and the rear yard setbacks. Those will
vary depending on the matter of construction. For
example, principal building is to set 20 feet off the
rear line and in this particular zone 5 feet off of
each side line. An accessory building that's not
attached to the principal building can set within 3
feet of the rear property line or within 3 feet of the
side property line. So the reason you don't show the
side of the rear setback lines is because it varies
depending on the matter of construction. If that
developer shows a 20 feet rear yard setback and then a
5 foot side yard setback, then they've restricted a
lot in terms of its development over what the zoning
ordinance would actually leave allow. So we've looked
into the matter, but I don't think we could recommend
the developer show all the setback lines that pertains
to a particular piece of property since we don't know
the matter of the development. That's to address that
situation.

In terms of 941 Rogers Court, we cannot
find any evidence of a building permit being issued at
that site. The Planning Staff and Zoning Staff would
have to look into that particular address further
before we could comment because since we don't have a
building permit it could be that the structure was
built in violation of an ordinance. It could be
grandfather use, but those particulars of it we
couldn't comment on any further until we investigate
what's taken place at that location.

Now, in terms of proximity to this
particular piece of property, I think it's off on
another street in another section of the
development. I think that section was developed
earlier than this section of Owen Park. To get back
to the shape of the lot, you hear correct. That the
lots were shaped as they are and these two lots are
not quite as deep as the other lots because the
developer chose to maximize the number of lots in that
development. It had more lots created along that cul-
de-sac. In order to do so, he had to reduce the depth
of these two particular lots. That was a choice made
by the developer at the time this property was
subdivided. So in terms of a basis for granting the
variance, I don't think that is a particular the board
should get into or the Planning Staff is going to have
to look at each and every development within this
community. Only recommend that we have lots that are
equally sized and equally shaped. I don't think
that's the intent of the zoning ordinance.

MR. PACE: Mr. Chairman, I might just say we certainly understand that and I think that's the reason for the variance process, in that the neighbors to the northeast of this property, the line of the rear of their homes would be consistent with this. So I think as far as scheme and why you do this, that would not be controverted by doing something like this variance.

CHAIRMAN: Any board member have any questions of Mr. Pace?

(NO RESPONSE)

CHAIRMAN: You have anything, Mr. Raymer, you want to add?

MR. RAYMER: Yes. I would like to add that the testimony Mr. Pace gave that I would have not purchased this home is correct. I thought I was doing enough research and I didn't. I had a plat lot prior to purchase. I had the builders come to look at the home prior, two months prior to purchasing the home before I went to any purchase agreement to see if I could add a sun room to it. I received estimates those dates. The deed of dedication was looked up. It didn't refer to -- refer to a plat. The plat didn't show it and I thought I was okay. The builders
thought I was okay. So I entered into an agreement to purchase the home. At this time my other home sold. I entered the agreement to build the room when all of this came up.

I just ask what -- it's a hardship on my wife and I. This was going to be our last purchase and retire here.

CHAIRMAN: Not to be disagreeable or anything, but just for our information, did the builder state that he had no problem with building or it wouldn't be any problem with the zoning regulations?

MR. RAYMER: Exactly. Both builders said there would be no problem with building the room. That's the the reason I had them over there. They said it would be well in the five foot setback.

CHAIRMAN: What I'm trying to get to is did they refer to the zoning regulations or they just said, we'll have no problem with building it?

MR. RAYMER: They didn't refer -- I don't know if they referred to the zoning regulations or not because I was just taking them at their word that they knew. They build all the time, both of these people do in Owensboro. Of course, any builder is going to say, I have no problem building it, but they both
assured me it could be built on this lot. We were looking at a place where we could build a home, build a sun room addition. We were looking for a home that we could do that. We wanted a smaller lot so we wouldn't have to mow.

CHAIRMAN: Not being critical of any of the builders because I know nothing about them, but I've in past history have had builders that make statements that they knew were wrong on the zoning records in years past. So I wanted for the record whether they referred to the ordinance or anything is the reason I was asking that question.

MR. RAYMER: The adjoining lot line to my home is my rear neighbor, Mr. Ed Ballard. It's his side line. His house, he's not within five feet of side line. He's 22 feet from the side line. Even with my addition our homes would be 33 feet apart, 34 feet apart even after it was constructed. Whereas some of the side lines over there, they're on the five foot line. So there's only 10 feet between the homes. Then the sides of my home are still -- from my site setback I'm 12 feet on each side. There's a lot of green space around my home. Even with the addition there will still be a lot of green space.

CHAIRMAN: I appreciate your answer.
Does any board member have any questions?

(NO RESPONSE)

CHAIRMAN: Any comment from anyone else in the audience, objections or otherwise?

(NO RESPONSE)

CHAIRMAN: Does the Staff have anything else?

MR. NOFFSINGER: I have one comment. It's unfortunate that the Messenger-Inquirer is not here tonight. This is an example of the need for contractors registration program for this community. Planning Staff and the building department has been working for some time to put together a program requiring contractors to register and having the board set up to review these types of matter. If we had a review board like that in place, I think these contractors would be held to a higher standard. We might prevent some of these problems. It certainly not to cure all of them, but it would certainly help. That's just a plug for that program. I certainly wish that we could hear more from the public, people that have been in a position where they would appreciate this type of board to speak out. Thank you.

CHAIRMAN: Any board member have any
questions or comments?

(NO RESPONSE)

CHAIRMAN: Chair entertain a motion to dispose of the item. What's the board's wishes?

MR. PEDLEY: Mr. Chairman, I have a comment or two to make on this item. I for one am sympathetic with Mr. Raymer. The problem we have is if we approve this and then we open the door for anyone else in that subdivision and ask for the same, then how do we deny it. This is a little unusual for reason it is a shallow lot. It doesn't have much room, and the one at 941 Rogers Court might be violation. We don't know that. I don't know how we can do this without opening a door for others to come in and we have to do the same for them. If we do that then we just throw the ordinances out the window.

I'm going to make a motion to deny it for reason that it will allow unreasonable circumvention of the requirements of the zoning regulations.

MS. DIXON: Second.

CHAIRMAN: Any any other comments or questions?

(NO RESPONSE)

CHAIRMAN: Be sure these are made of record.

Ohio Valley Reporting
(270) 683-7383
Hearing none all in favor of the motion
raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

ITEM 5

1206 St. Ann Street, in an R-4DT zone
Consider request for a Variance to reduce the rear
building setback from 20 feet to 8 feet in order to
construct an addition.
Reference: Zoning Ordinance, Article 8, Section
8.5.11(e)
Applicant: Nita Kincaid & Perry Hagan

MR. NOFFSINGER: Mr. Chairman, this
application has been reviewed by the Planning Staff.
There were some complications with this application.
I think those have been addressed and I'll get into
them in just a minute; however, it has been advertised
for public hearing at this time and all adjoining
property owners have been notified. The application
came in originally for the construction of a garage
with living space above the garage. Any time you have
living space above a garage that has to be counted in
your lot coverage. Within this particular zone and
the type of use that you have there, there's a 35
percent maximum lot coverage. Well, the existing home
on the property already exceeds that maximum lot
coverage; therefore, we could not have additional
living space built onto this property. This applicant
has amended the application which allows this board to
consider the variance with an attached letter that
states, "Please amend my application to limit the new
classification to a garage with no habitable space above
it." That would be signed by Nita Kincaid.

So with that this application is ready for
your consideration. It is proposed to be an attached
garage, no living space above, and if this variance is
approved by the Board of Adjustment, I think there
should be a condition that the building be built with
premanufactured trusses so as to prohibit occupancy of
that upper level in the future and a conversion of
that adding space, if you will, for human occupancy.
Things are a whole lot tougher to do a conversion down
the road if you have that type of system as opposed to
custom built frame. So with that it's ready for your
consideration.

CHAIRMAN: Is the applicant here?

MS. KINCAID: Yes.

CHAIRMAN: Just a second before we swear

you in.

Is anyone objecting to this application?

(NO RESPONSE)

CHAIRMAN: Any objections been filed in

the office?
MR. NOFFSINGER: No, sir.

CHAIRMAN: Thank you. State your name for the record.

MS. KINCAID: Nita Kincaid.

(MS. NITA KINCAID SWORN BY ATTORNEY.)

MS. KINCAID: Basically as you said we're amending our application to add a 24 by 24 garage and I'm sure all of you are aware that in our neighborhood we're a bit unique. It's an old neighborhood. We're not asking to be an exception. It seems to be the rule in our neighborhood that most of the alleys have fences, garages, primary structures on the alley right-of-way. If you were to drive down our alley, and you all have photos and copies and I think a photo is worth a thousand words in this case. It shows you exactly what is going on in our neighborhood. It's that simple. I'm not asking to be an exception. It's already there.

CHAIRMAN: Thank you. Any board member have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Any other person in the audience have anything to add to it?

Come forward and state your name for the record, please, sir.
MR. HAGAN: Perry Hagan.

(MR. PERRY HAGAN SWORN BY ATTORNEY.)

MR. HAGAN: Something that's got me, and I don't understand what it is. The room that we have on the back of our house right now is 14 by 18. Now, what we're doing is we're tearing that room off in order to put a two-car garage in the back. Now, my understanding is we've already got the 14 by 18 there and we can't put that 14 by 18 above the garage? Is that what you're saying, Gary, because that's all living space there? We're totally eliminating. That puts us back to a two bedroom home, but we've got no parking space. If you ever go down our street, down St. Ann Street you'll see that Lila Jean takes up the whole entire street just about every night of the week. It's hard when I come home from work, my wife comes home from work and our neighbors that came down with us that also signed, you know, the agreement because they have their garages all the way up against the alley. There's one place that's on our street that is an apartment that is all the way up against the alley. We're not asking for anything other than what's right. I mean we would like to be able to park our car in the back of our house. Not just one car but two cars. I don't understand why we can't have
the 14 by 18 above the garage so we don't lose that portion of our living space. We're driving up in to our yard because there's no way you can drive straight into it. So you have to drive up and in. So it would be like a side loader that would be attached to the house.

MR. NOFFSINGER: That option has not been brought to my attention. This the first I've heard of that. With the existing living space that's on the property that may be an option for you. I'm going to ask that question of Mr. Mischel. Give me his opinion as to whether or not that can be done. My concern would come from the use, if you have a portion of it that's used for human occupancy above, then how do you design the balance of it so that it can't be converted in the future for human occupancy.

MR. HAGAN: That wouldn't be any problem according to some of the contractors I talked to. 14 by 18 would be placed above the garage and part of the rest of the garage would be flat or would come off at an angle where that there wouldn't be anything that you could build there.

MR. NOFFSINGER: Excuse me. Mr. Mischel, would you address this option, please.

MR. ELLIOTT: State your name, please.
MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: Let me see if I understand the question first. Basically you're asking, Mr. Hagan is asking if he could build a garage down low and not put the living space above. Is that correct assumption?

CHAIRMAN: No. What he's asking, he's tearing off part of the house now and he's questioning why he can't put the additional space above the garage as a living area.

MR. MISCHEL: Well, basically the zoning ordinance as far as you have a nonconforming on the first floor and that's not counting toward the 35 percent. When you add that garage area and you put that room up above it -- would that 14 by 18, how big --

MR. HAGAN: Probably be half the size of the garage above it. That's a bedroom that we would have to totally eliminate. Go back to a two bedroom home. The way it stands right now I mean we're asking for 24 by 24 and all you're going to have in there is cars. The only thing that you might enough room might be a stairway going up. So you're not getting the full 24 by 24. You're getting like a 24 by 20 because
you have a stairway that would have to go up a four foot stairway that would have to go up to the room above which is going to take off an additional four feet off the living space that we have now.

MR. MISCHEL: So the downstairs 14 by 18 is used as living space now?

MR. HAGAN: Right.

MR. MISCHEL: The only thing I might read this into the -- section here that might cover what we're talking about here.

Under Article 4.32, and this certainly nonconforming uses. "Low nonconforming use shall be moved in whole or in any part to a portion of the lot or parcel other than that occupied by such use at the date of adoption or amendment to the zoning ordinance; however, said use may be moved to another position on the lot or parcel through a filter or adjustment or Section 7.4 here and below."

That might my raise the question to where that living space could be moved to another portion of the lot. The downstairs could be used for the garage.

MR. NOFFSINGER: I would like to state for the record: According to your survey drawing and your site plan, that area is 14 by 16.3. So it sounds to
me like that this board could consider the variance
based upon the construction of a 24 by 24 garage with
living space above the garage not to exceed the 14 by
16.3.

MR. HAGAN: Correct.

MR. NOFFSINGER: If this variance would
need to be approved so that the garage would be
constructed so that the remaining area above the
garage could not be converted to residential
occupancy.

MR. HAGAN: That's right.

MR. NOFFSINGER: Now, how we do that is
going to have to be determined through your builders
and through the Building Department. I also state for
the record that the applicant has submitted a number
of pictures in the application showing setback
encroachments within the area. Now, many of these
encroachments are from side yard setbacks and they've
been there for some time. Our staff did note that
there is an encroachment on the rear yard setback at
the home at 115 East Parrish Avenue. Also that
encroachment on the rear yard setback at 109 East 14th
Street. I think that's the only rear yard setbacks we
were able to determine in your application for that
particular encroachment from your yard. Those are
principal buildings. They're encroaching upon your yard setback.

CHAIRMAN: Possibly one answer to your question awhile ago about some of the others being closer to the line. If that area right there was an older location and that was done before the adoption, then it could be grandfathered in and there's nothing we could do.

MR. HAGAN: See, actually there is a foundation for a two-car garage we tore down, but the way you would come in my backyard put that garage back exactly where it was. You've got a doctor's office parking lot over there and people coming through that alley. Of course, we're going to be eight foot, after everything is said and done and over with we're still going to be eight foot off the alley, but we come up and into a side load. What would happen if we put that garage back to where it was, we would probably be in a rout about every other week. Every time we back out or something you'd get hit because the alley is used quite a bit. That's about the only way we could do it on side load. That's just about doing away with our entire backyard.

CHAIRMAN: Any board member have any questions?
CHAIRMAN: You have anything else you want to add?

MR. HAGAN: No. Thank you.

CHAIRMAN: Anyone else in the audience have anything else they want to add?

MR. ELLIOTT: State your name, please.

MR. FREE: Keith Free.

(MR. KEITH FREE SWORN BY ATTORNEY.)

MR. FREE: Good evening. I'm here with my wife Susan and we live at 1214 St. Ann Street which is just two houses south of the applicant's property. We've seen the plans on what they plan on doing as far as their garage. We have no problem with that.

The area we live in really it's unique as compared to a lot of other different areas, older home and it's very dense. The existing zoning classification on the property now was one that was just a best fit. It just kind of best fit the area, but the area is in excess of 100 years old when it was constructed and the area was built. There's a lot of encroachment in the side yards, front yards, and rear yards as to what the existing zoning is.

So there's some unique things. As far as us living down the street, we have no problem with
what the applicant wants to do and it would be an
improvement into the area and wouldn't cause any
problems.

CHAIRMAN: Thank you.

Anyone on the board have any more comments
comments or questions?

(NO RESPONSE)

CHAIRMAN: From the audience?

(NO RESPONSE)

CHAIRMAN: Chair will entertain a motion
to dispose of the item.

MS. DIXON: I move for granting the
variance of new construction 24 by 24 with living
quarters not to exceed 14 by 16.3. The remainder to
be constructed so that it cannot be turned into
additional living space.

MR. MILLER: I'll second.

CHAIRMAN: You understood the motion?

MR. HAGAN: Yes.

CHAIRMAN: Any other questions or comments
by any board members or staff?

(NO RESPONSE)

CHAIRMAN: Hearing none all in favor raise
your right hand.

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

Next item, please.

ITEM 6

1502 Wrights Landing Road, in an R-1A zone
Consider request for a Variance to reduce the interior
side yard building setback from 10 feet to 6 feet in
order to construct an extension to the attached
carport and storage structure.
Reference: Zoning Ordinance, Article 8, Section
8.5.5(d)
Applicant: Frank & Rita Boehman

MR. NOFFSINGER: Mr. Chairman,, this
application has been reviewed by the Planning Staff.
It's found to be in order. All adjoining property
owners have been notified and it has been advertised
for public hearing at this time. With that it's ready
for your consideration.

CHAIRMAN: Before we ask the applicant,
have there been any objections or anything filed in
the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: No objections. Anything you
all want to add?

MS. BOEHMAN: We brought some pictures of
the property if you would like those.

CHAIRMAN: Board wish to see the
pictures?

(NO RESPONSE)
MR. NOFFSINGER: Mr. Chairman, I will state for the record that the Staff did visit the property and the area and did find similar encroachments within the area and have recommended that the board approve it and would recommend that if you do that you attach the proper findings.

CHAIRMAN: Chair will entertain a motion to dispose of the item.

MS. DIXON: Move to approve because it will not affect the public health; will not alter the essential character; will not cause a hazard or a nuisance; and will not allow an unreasonable circumvention of the requirements.

MR. WARREN: Second.

CHAIRMAN: You've heard the motion and a second. Any other discussion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: The variance is granted.

Any other items come before the board?

(NO RESPONSE)

MR. MILLER: Motion to adjourn.

MR. WILLIAMS: Second.
CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Meeting is adjourned.

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

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 39 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this the 27th day of July, 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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