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

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

 CHAIRMAN:  Call the meeting of the Owensboro Metropolitan Board of Adjustment to order. I want to welcome you all this evening. Before we start set up a few guidelines. If you wish to speak on any item, come to one of the microphones on each side of the room. State your name and you'll be sworn in because we're recording everything for record in case there are appeals or anything.

 First item on the agenda this evening is to consider the minutes of past meeting of August 2nd.
They're on file in the office. There have been no
adjustments or problem discovered in the record?

MR. NOFFSINGER: That is correct, sir.

CHAIRMAN: Would entertain a motion to
approve.

MS. DIXON: Move to approve.

MS. MASON: Second.

CHAIRMAN: A motion been made and a
second. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

First item on the agenda please, sir.

-----------------------------------------

CONDITIONAL USE PERMITS

ITEM 2

3133 Commonwealth Court, in a B-4 zone
Consider request for a Conditional Use Permit in
order to construct an individual storage structure
(mini-warehouse units).

Reference: Zoning Ordinance, Article 8, Section
8.2L7, Section 8.4/48

Applicant: Ward O. Pedley

MR. PEDLEY: Mr. Chairman, I need to
disqualify myself from this item.

CHAIRMAN: So note it for the record
please.

(MR. PEDLEY LEAVES ROOM AT THIS TIME.)

MR. NOFFSINGER: Mr. Chairman, this
particular request 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. This is an application to construct a mini-warehouse structure that will have retail sales in the front portion of the building. The structure is approximately 5,520 square feet and it will have a parking area between the building and Commonwealth Court. Mr. Chairman, it's ready for consideration.

CHAIRMAN: Has there been any objections filed in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is there anyone in the audience representing the applicant?

(NO RESPONSE)

CHAIRMAN: Anyone in the audience have any comments for or against the application?

(NO RESPONSE)

CHAIRMAN: Hearing none what is the board's pleasure?

MR. WILLIAMS: Mr. Chairman, I make a motion we approve this permit.

CHAIRMAN: You've heard the motion. Is there a second.
MS. DIXON: Second.

CHAIRMAN: Is there any other discussion from any board members or comments by the staff?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

(MR. PEDLEY RE-ENTERS THE ROOM AND JOINS THE BOARD.)

CHAIRMAN: Next item of business.

ITEM 3

619 Frederica Street, in a B-2 zone
Consider request for a Conditional Use Permit in order to use an existing building as a dormitory to house up to eight (8) students.
Reference: Zoning Ordinance, Article 8, Section 8.2A7
Applicant: Brescia University, Inc., Sr. Vivian M. Bowles, President

MR. NOFFSINGER: Mr. Chairman, this applicant 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. It's found to be in order. Includes existing building that fronts Frederica Street with a parking area to the rear of the property. These improvements are existing and the building is in the stages of being redone, remodeled for residential
activity. I believe the president of the University is here tonight should you have any questions. It's ready for your consideration.

CHAIRMAN: Been any objections filed in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Anyone in the audience wishing to speak in opposition of this?

(NO RESPONSE)

CHAIRMAN: Anyone want to add anything in favor of it?

(NO RESPONSE)

CHAIRMAN: Hearing none what's the board's pleasure?

MS. DIXON: Move to approve.

MS. MASON: Second.

CHAIRMAN: You heard the motion been made and a second. Any other questions or comments?

(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 4

10124 KY 258, in a proposed A-R zone
Consider request for a Conditional Use Permit in
order to expand an existing beauty shop.
Reference: Zoning Ordinance, Article 8, Section
8.2D3, and Section 8.4/46
Applicant: Leslie L. & Lauran R. Gossett

MR. NOFFSINGER: This application, Mr.
Chairman, has been advertised for public hearing at
this time. All adjoining property owners have been
notified. The Planning Staff has reviewed the
application. The application is in order. If this
item is considered favorably, it should be approved
subject to the Daviess County Fiscal Court taking
final action to approve the rezoning of the property
from A-U Urban Agricultural to A-R Rural Agricultural.
With that it's ready for your consideration.

CHAIRMAN: Has there been any objections
filed in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Anyone in the audience wishing
to speak in opposition?

(NO RESPONSE)

CHAIRMAN: Does the applicant or anyone
have anything they want to add to it?

(NO RESPONSE)

MR. NOFFSINGER: Mr. Chairman, I would
like to add for the record the existing beauty salon is 20 by 14.5 deep. The addition will be similar, 14.5 by 20 foot addition.

CHAIRMAN: Seeing none and hearing no comments, what's the board's pleasure?

MR. PEDLEY: Mr. Chairman, I make a motion for approval subject to the Fiscal Court approval to the A-R zone.

CHAIRMAN: So noted in the motion that the zoning change must be approved also before it's granted. Is there a second?

MR. MILLER: Second.

CHAIRMAN: Any other questions or comments?

(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, sir.

ITEM 5

6850 Thoma Drive, in an R-1A zone
Consider request for a Conditional Use Permit for placement of a 16-foot by 80-foot Class B manufactured home.

Reference: Zoning Ordinance, Article 8, Section 8.2A10B, Section 8.4/7

Applicant: Francis & Loryene Litton
MR. NOFFSINGER: Mr. Chairman, this application 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. It's found to be in order. This is for placement of a 16 by 80 foot single-wide manufactured home replacing and existing 12 by 60 foot wide home. With that it's ready for your consideration.

CHAIRMAN: Has there been any objections filed in the office?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Anyone want to add anything to the application?

(NO RESPONSE)

CHAIRMAN: Hearing none what's the board's pleasure?

MR. MILLER: Mr. Chairman, motion to approve the Conditional Use Permit based upon the application and stated recommendation.

MS. MASON: Second.

CHAIRMAN: Is there any other questions or
comments by the staff or the board?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

-----------------------------------------

VARIANCE

ITEM 6

10901 US 231, in an R-1A zone
Consider request for a Variance to reduce the front
building setback from 75 feet from the street
centerline to 71.8 feet from the street centerline and
to reduce the front building setback from 25 feet from
the property line to 11.8 feet from the property line
in order to construct a covered porch.
Reference: Zoning Ordinance, Article 8, Section
8.5(c)
Applicant: David Lee & Tammy A. Hickey

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

Mr. Chairman, this is an existing home
that is located on the property. The property is
about 1.786 acres in size. The existing home on the
property is constructed toward the front portion of
the lot with a large rear yard available to the
property. US 231 is an arterial roadway through the
community and is one of our gateways and major
corridors into Daviess County from Ohio County.

After reviewing the application we find
that the existing home was constructed and encroaches
upon the building setback line for few feet. This
encroachment as proposed would further encroach, the
building would further encroach into the building
setback line area and place that structure closer to
the major thoroughfare.

The applicant is proposing a porch, I
believe, that will have a roof type covering over it.
The roof covering is what necessitates the variance.
The applicant could construct a patio off the front of
the home without a porch covering, if you will, and
would not meet this variance.

Planning Staff after having reviewed the
application find that there is adequate area to the
rear of the property, off the rear of the home to
construct this kind of porch and would find that the
granting of this variance would allow an reasonable
circumventions of the requirements of the zoning
regulations and therefore should not be approved.
With that it's ready for your consideration.

Ohio Valley Reporting
(270) 683-7383
CHAIRMAN: Is the applicant here?

MR. HICKEY: Yes, sir, I'm here.

CHAIRMAN: Would you come up and state your feelings on it.

MR. ELLIOTT: Let me swear you in. State your name, please.

MR. HICKEY: David Lee Hickey.

(MR. HICKEY SWORN BY ATTORNEY.)

MR. HICKEY: I disagree with the Planning Director. I don't think it's going to be a problem. Has anybody seen the actual property line, physically looked at the property? If you look at the property line and the offsets, they drop that from 40 foot offset on the highway line to a 60 right in the middle of the road, up front where I want to build the front porch.

I grew up with a front porch. My grandmother, everybody I've ever lived with had a front porch and I enjoy sitting on a front porch. I've got a back porch. I don't sit on it much. I like the back porch so I can associate with my neighbors across the street.

That highway has been through there since, I think was planned in 1938. I think it was built in 1946 when they actually put the highway through at
that point. At the rate of Owensboro growth it will
be 210 years before they widen that road. So I don't
see that it would be a problem.

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

(NO RESPONSE)

MR. NOFFSINGER: Mr. Chairman, for the
record the offset in the right-of-way is not what's
causing the need for the variance. If the
right-of-way were uniform throughout the frontage of
the property, this variance would still be necessary.
It does require prior because of the offset a certain,
in certain area the proposed porch that would require
a greater variance to be approved, but regardless
there would need to be a variance considered for
approval.

Along this type of roadway, which is an
arterial roadway, the setbacks are set to where future
development of properties and future roadway
improvements would be and could be compatible. It
takes into account the traffic counts, future traffic
counts as well as the right-of-way that would be
necessary for widening those roadways and then
describes a different setback pending on the type of
roadway the classification it is.
This being an arterial roadway, the 75 foot setback is taken into account to accommodate future roadway improvements and so that your home and your livability there would not be impinged when those roadway improvements are made. That's the reason for the setbacks. Planning Staff feel that those setbacks that are put in place are there for a reason and should be adhered to.

MR. HICKEY: Am I to understand that if anyone else puts any variance or anything into a setback all through 231 that they're going to be disapproved by this board?

CHAIRMAN: We haven't voted yet so I can't tell you how it's going to come out. That's the Staff's recommendation. Sometimes we follow it and sometimes we don't.

MR. HICKEY: I understand. Tonight is my first time.

CHAIRMAN: You're getting a little ahead of us.

Any board member have any questions of applicant?

(NO RESPONSE)

CHAIRMAN: You have anything else?

Does anybody else in the audience have any
comments for or against this item?

(NO RESPONSE)

CHAIRMAN: Anything been filed in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: What's the board's wishes on this?

MR. HICKEY: Mr. Chairman, I have one more thing. I know it's a different county, but a mile down the road there's another building that was built there and it's a lot closer to that highway than what I am in Ohio County. Just one mile down the road.

CHAIRMAN: Do you have any other comments?

MR. HICKEY: No, sir.

CHAIRMAN: What's the board's wishes on this particular item?

MS. DIXON: Mr. Chairman, move for denial because it would allow an unreasonable circumvention of the requirements of the zoning regulations.

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

MR. PEDLEY: Second.

CHAIRMAN: Is there any other discussion or comments?

(NO RESPONSE)
CHAIRMAN: Anyone else have anything else to add?

MR. HICKEY: I would like to know what constitutes an unreasonable infringement on the offset? Is it three feet? Is it five feet? Where is the cut off?

CHAIRMAN: You want to add why you made that motion.

MS. DIXON: I think the Staff's recommendation addresses the fact that there's ample property to the rear and the side that would allow for you to build a porch without an encroachment. You have to draw the line somewhere.

MR. HICKEY: I understand that, but is the line the actual 25 foot offset? Is that where we're drawing the line or is it three feet for the variance? Where are we drawing the line?

MS. DIXON: There's a big difference between 25 feet and 11.8 feet.

MR. HICKEY: That's what I'm saying. If you see where the pin settings are, that 40 feet run all the way across -- I'm asking for three feet. Why they drop it from 40 to 60 is beyond me. The thing was drawn in 1938. I don't know.

MR. NOFFSINGER: Mr. Hickey, if I might
ask: Do you know when your home was constructed?

MR. HICKEY: I believe it was built in the 1950's.

MR. NOFFSINGER: What happened in that particular situation is there was a setback prescribed on that lot. Since that time when setbacks were put in place, you enjoyed what is known as being grandfathered in. Your home, the premises becomes legally non-conforming in that situation because it was constructed prior to the ordinance, but after that time since 1977 if you proposed to enlarge or alter that structure to where you further encroach on the building setback lines then that necessitates the variance.

Then this board has to determine, and they have to determine on a case by case basis the specifics of the case taking into consideration the roadway, the functional classification of that roadway, its status being arterial or its local street and determine whether or not what's being proposed would allow a certain unreasonable circumvention and ordinance which is defined by statutes.

This particular case, to project that home any further out into that building setback line certainly has an impact upon the roadway, the
transportation system within the community. This board has to take a look at that on a case by case basis and can't apply these standards across the board.

I want to get back to your question earlier. In this particular case where you have adequate area on the property to build an addition or do an addition then -- you know, the Planning Staff at least feel that you should explore those possibilities as opposed to further encroaching upon that front building setback.

MR. HICKEY: Sitting on a front porch watching traffic go by is a totally different thing than building something on the back. I've got a back porch. I want a front porch is what I want. The alternative you're giving me is not satisfactory for the purposes that I want it for. As far as the traffic going through there, like I say that's not going to infringe on that traffic at all. The rate of road could be 200 years now before you need to widen that road. We also have the -- what is it going to the Green River? What road is that?

CHAIRMAN: Natcher Parkway.

MR. HICKEY: Natcher Parkway goes from Owensboro to Hartford to Beaver Dam. If traffic
increases at that point, that would be the major thoroughfare anyway in my opinion.

MR. NOFFSINGER: Certainly right now in terms of transportation the Planning, we are looking at having an interchange to be constructed on the Natcher Parkway. That change is currently being looked at and Kentucky 142 or 764. Where it will go, we don't know. If we were to have an interchange at 764, then I think it's certainly likely that there could be roadway improvements within this area.

You're located in close proximity to that area. Plus the growth area of Pleasant Ridge is where -- we are anticipating that there will be more type, more urban type development occurring in those areas more so than out in the remote areas of Daviess County, but certainly you could construct a patio off the front of the property without enclosing it or without covering that patio and still sit out on the front porch and watch the traffic go by. There are other options is what I'm getting at as opposed to having a covered structure that could be if not now could be enclosed in the future.

MR. HICKEY: The cover structure was also going to enhance the value of my home. It was going to increase the beauty of the home. I put $30,000 in
this house and this was part of my building plan. I've got other building plans for this place, but this right here throws a wrench in everything. I've already put -- I've put a metal roof. I've put vinyl siding. I've remodeled the entire inside of this house. I've got carport going on the north end of it and this was part of the building plan that I had for this property to increase the value and the beauty and enhance the looks of it and be able to set on my front porch and watch traffic go by. That was my whole plan.

I think all I'm really asking for is 3.2 feet on part of that offset. The other part is because the way the pin placement is right in the middle of my property, you know, the other part of the offset there. I really don't think it would hurt the traffic. I mean I've still got 70 feet from the center line of the highway. I guess that's all I've got. Thank you very much.

CHAIRMAN: Appreciate it.
Any other questions or comments from the board?
(NO RESPONSE)

MR. WARREN: Did we have a second to the motion
CHAIRMAN: Yes. Mr. Pedley had it.

Comments by the board?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise your right hand.

(MR. WARREN, MS. MASON, MS. DIXON, MR. MILLER, MR. WILLIAMS AND MR. WARD RESPONDED AYE.)

CHAIRMAN: Opposed like sign.

(MR. C.A. PANTLE RESPONDED NAY.)

CHAIRMAN: One objection. The motion carries.

Is there any other business that comes before this board this evening?

MR. NOFFSINGER: No, sir.

MR. HICKEY: Mr. Chairman.

CHAIRMAN: Yes, sir.

MR. HICKEY: Do I have any readdress for the board's decision?

MR. ELLIOTT: You have 30 days to appeal this decision to the circuit court. You have to file a petition.

MR. HICKEY: Okay. Thank you very much.

MR. ELLIOTT: Thirty 30 days from today.

CHAIRMAN: Mr. Elliott is our attorney.

If you need some other questions, he can answer them.
for you.

Any other business come before this evening?

MR. WILLIAMS: Make a motion we adjourn.

CHAIRMAN: Don't forget the training school on the 23rd.

Now we'll take a second.

MS. MASON: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Meeting is adjourned.
STATE OF KENTUCKY)

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

WITNESS my hand and notarial seal on this the 22nd day of September, 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

Ohio Valley Reporting
(270) 683-7383