The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, September 5, 2002, 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 to order.
Want to welcome you all to the Owensboro Metropolitan Board of Adjustments this evening. I want to set a few guidelines out for you for the ones that's here for the first time.

If you wish to speak on any item come to one of the microphones. Be sworn in by our legal counsel and then state whatever questions or comments you have. Everybody will be entitled to state your opinion, but when it gets to be an old hat and we hear...
the same thing over and over we'll cut you off.

With that the first item on business this evening is to consider the minutes of the last meeting which was August 1st. They're on record in the office. Find no corrections that need to be made in it. The Chair will entertain a motion to dispose of it.

MS. DIXON: Move to approve.

MR. WILLIAMS: Second.

CHAIRMAN: Motion been made and a second to approve as filed in the office. All in favor say aye.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

First item of business, please.

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CONDITIONAL USE PERMIT

ITEM 2

1035 Frederica Street, in a B-4 zone (Map N-4) Consider request for a Conditional Use Permit to locate and operate a day care facility for 47 children on the second floor of an existing building Reference: Zoning Ordinance, Article 8, Section 8.2B3 Applicant: Susan Dockery, Commonwealth Properties, Terry Blake

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

Mr. Chairman, Conditional Use Permit was
issued on this property back some time ago, I think
about a year ago, for an adult day care facility.
This will be a child care facility for 47 children.
As I stated the application is in order
and ready for your consideration.

CHAIRMAN: Is there anyone in the audience
wishing to speak in opposition of this item?
(NO RESPONSE)

CHAIRMAN: Was any oppositions filed in
the office?
MR. NOFFSINGER: No, sir.

CHAIRMAN: Does the applicant have
anything they would like to add or does Staff have
anything they need to ask them?
MR. NOFFSINGER: No, sir.

CHAIRMAN: Board members have any
questions or comments?
(NO RESPONSE)

CHAIRMAN: Dispose of the item.

MS. DIXON: Move for approval.

MS. MASON: Second.

CHAIRMAN: Motion been made and a second
for approval. Any other discussion?

(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 3

2946 KY 142, in an R-1A zone (Map CO-67)
Consider request for a Conditional Use Permit to construct a 50-foot by 100-foot addition to an existing church
Reference: Zoning Ordinance, Article 8, Section 8.2B4
Applicant: Bethabara Baptist Church

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

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

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Is the applicant here and do

Ohio Valley Reporting
(270) 683-7383
they have anything they want to add to it?

APPLICANT: No.

CHAIRMAN: Staff have any conditions that need to be added on?

MR. NOFFSINGER: No, sir. However I will add for the record that with the expansion I believe there's some property parameter landscaping being included to bring the property into compliance with the zoning ordinance.

CHAIRMAN: This has been discussed with the applicant?

MR. NOFFSINGER: Yes, sir, and it is included on their site plan.

CHAIRMAN: Any board member have any comments or questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Again, you don't have anything you want to add to it?

APPLICANT: No.

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

MR. WILLIAMS: Motion to approve.

MS. DIXON: Second.

CHAIRMAN: Motion been made and a second to approve. Any other discussion?
(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

4625, 4635 Philpot Heights, in an R-1A zone
Consider request for a Conditional Use Permit to locate a 12-foot by 55-foot manufactured home to provide temporary living quarters during construction of a single-family residence.
Reference: Zoning Ordinance, Article 8, Section 8.2A10B
Applicant: David and Traci Witherspoon

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

CHAIRMAN: Again, has there been any objections filed in the office?

MR. NOFFSINGER: Yes, sir, I do have one letter that I need to read into the record. This is to Becky Stone from a Judith Shemwell.

It says, "Becky Stone, I am very much against a trailer on this property. This property could not pass the perk or water test previously."
trailer would be disastrous to our property value. I
definitely do not want a trailer in our neighborhood
even temporarily."

CHAIRMAN: Is there anyone in the audience
wishing to object to this?

(NO RESPONSE)

CHAIRMAN: Is the applicant here?

APPLICANT: Yes.

CHAIRMAN: Do you have anything you want
to state for the record, please? Come forward and
state your name and be sworn in, please.

MR. WITHERSPOON: My name is David
Witherspoon.

(MR. WITHERSPOON SWORN BY ATTORNEY.)

MR. WITHERSPOON: This is just, like it
said here, a temporary residence. This home will be
just used while the permanent residence is under
construction which I am a builder and would be solely
on that construction job and nothing else during the
time. I don't think it would take very long to
construct the home. Also there was a, I don't think
they call it a perk test any more, but there was a
test for a septic system to be put in and did pass.
That's all I have to say.

CHAIRMAN: How long do you anticipate it
1 will take you to construct this?

2 MR. WITHERSPOON: I would hope three to
3 four months.

4 CHAIRMAN: Is there any conditions the
5 Staff has to add to this?

6 MR. NOFFSINGER: Staff would recommend
7 that if you do approve a temporary placement of the
8 home that a time limit be placed for removal of the
9 unit.

10 When did you plan to start construction?

11 MR. WITHERSPOON: Right now we do not
12 know. We have a house that is for sale, for sale or
13 lease. We'll take either option there. As soon as
14 either one of those is being completed, that home has
15 been sold or leased out then we would begin
16 immediately after that. As far as time to start, I do
17 not know.

18 MR. NOFFSINGER: Is the manufactured home
19 currently located on the property?

20 MR. WITHERSPOON: No. We do have one in
21 mind that we have not purchased yet. We do have one
22 just down Highway 54 from the property.

23 MR. WARREN: Once you finish with this
24 home, you're going to have to sell it?

25 MR. WITHERSPOON: Yes, sir.
CHAIRMAN: You will not put the home on it until you start construction; is that correct?

MR. WITHERSPOON: True. Yes.

CHAIRMAN: In other words, we could put conditions on it from the date that he sets it on there with so much time if the board so chooses.

MR. NOFFSINGER: Yes, sir. I would recommend that you tie that to the issuance of a building permit, placement permit for the home on the property. That your time frame begin upon issuance of that permit and the home is not to be placed on the property until such time that you obtain that permit.

CHAIRMAN: Can you comply with that with no problem?

MR. WITHERSPOON: Yes, I think that will be just fine.

CHAIRMAN: Any board member have any questions or comments?

MR. WILLIAMS: Do we need to say six months or a year?

MR. NOFFSINGER: I would think six months.

MR. WILLIAMS: After the permit.

MR. NOFFSINGER: Has be issued.

MR. WITHERSPOON: That will be fine with me.
CHAIRMAN: Any other comments or questions?

(NO RESPONSE)

CHAIRMAN: Entertain a motion to dispose of the item if no one else in the audience has any comments.

MR. WILLIAMS: Make a motion to approve on those conditions.

CHAIRMAN: Condition being six months after the issuance of the permit.

MR. WILLIAMS: Yes.

CHAIRMAN: Is there a second?

MR. PEDLEY: Second.

CHAIRMAN: Motion been made and a second.

Any other discussion?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

ITEM 5

6601 US 231, in an R-1A zone
Consider request for a Conditional Use Permit to construct a 450 square foot bathroom addition and a 24-foot by 30-foot lobby addition to an existing church building and a 28-foot by 32-foot garage on the Ohio Valley Reporting
(270) 683-7383
church property, and 24 by 20 carport.
Reference: Zoning Ordinance, Article 8, Section 8.2B4
Applicant: Masonville Baptist Church

MR. NOFFSINGER: This carport is shown on
the site plan; however we failed to include it on the
agenda for consideration. It should be considered
tonight.

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.
The Planning Staff do have some concerns and issues
regarding pave of vehicular use areas and landscaping
around these vehicle use areas so I can't say that
it's in order. We're recommending that you move
forward until such time those issues are addressed.
Mr. Jim Mischel is here tonight to present those
issues to you. The applicant is here as well.

CHAIRMAN: Has there been any objection
filed on this?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is the applicant here?

APPLICANT: Yes, sir.

MR. ELLIOTT: State your name, please.

MR. MISCHEL: Jim Mischel.

(MR. MISCHEL SWORN BY ATTORNEY.)
MR. MISCHEL: I'd just like to give a handout addressing the landscaping at this site right now.

I think like Gary said the only concerns we have right now concerns the landscaping of the parking areas and there's some spill-over parking on the far side of the church that is now gravel. We would like to address those items here tonight.

CHAIRMAN: Proceed.

MR. MISCHEL: If you look at that first sheet that you have of the green marker at the top, that kind of shows the elevation of the parking lot. On the last sheet there is the site plan. The green, what I have marked in green is the area we think should be landscaped with shrubs and trees. The elevation there is pretty much flat. We believe this area should and could be used for landscaping, shrubs. So that area I have in green we think that landscaping should be put in shrubs.

If you notice on that drawing of the site plan, there's an area in the back that is blue. The second photograph shows that area and there is an elevation change on that. We believe this area of shrubs will not serve the purpose in that area and we believe in that blue area maybe just trees would
satisfy that. The shrubs should be in that area.

I'd like to put one of those in the record too.

The second area here if you look at the first two pages it shows a gravel driveway and gravel parking area. The third picture we have is aerial photo of the premises when the ordinance was adopted. You'll see that there is no gravel parking or gravel driveway. So therefore this came sometime after the adoption of the ordinance. We feel like this area, this spill-over parking area and the driveway should be paved or turned back to grass. If they choose to pave it, we think that area should be landscaped too. The option if they don't need it they can put it back in grass.

If you have any questions, I'll be glad to answer them.

CHAIRMAN: Does any board member have any questions at this time?

MR. MILLER: Jim, where is this spill-over on the site plan?

MR. MISCHEL: If you look on that second hand-out I gave you, it's over here in the corner.

MR. MILLER: Existing parking?

MR. MISCHEL: Yes.
MR. WARREN: You said it's where? In the corner?

MR. MISCHEL: Here.

MR. WARREN: The whole thing?

MR. MISCHEL: Yes. I think the church has told us that that's not used all the time. It's just used in certain cases, but he could probably explain that better than I can.

CHAIRMAN: Any board member have any questions of Jim at this time?

(NO RESPONSE)

CHAIRMAN: Will the applicant come forward and state his case or any comments.

MR. ELLIOTT: State your name, please.

MR. POSTLEWAITE: Gary Postlewaite.

(MR. POSTLEWAITE SWORN BY ATTORNEY.)

MR. POSTLEWAITE: The gravel lot was put in probably around 1980. It's there specifically to pick up usually about Easter just some overflow. It would put an imposition on us to have to pave that. We're asking not to have to pave that one particular lot. Plus it does have run off to water in the county too.

CHAIRMAN: Any board member have any questions of the applicant?
MR. MILLER: Mr. Postlewaite, will you consider returning that area back to grass then as staff suggested?

MR. POSTLEWAITE: We'll probably have too because probably don't have funds to pay for it. Then we'll just park in the grass.

We have adequate parking for normal and per code we do have adequate paved parking which was put in around 1958. This is something that's not new. It's been there a good while.

CHAIRMAN: Any other questions of the applicant? Staff have anything to add?

MR. NOFFSINGER: Mr. Chairman, I would like to add for the record that I understand Mr. Postlewaite's concerns as well as the church; however, this Board and Planning Staff in dealing with applications on a routine basis we have to maintain consistency.

MR. POSTLEWAITE: We understand.

MR. NOFFSINGER: That is the reason that we're asking for these improvements is that there's a considerable amount of expansion here in different areas of the church. To be consistent with what this board has approved in the past, it's generally been with the improvements that we've described to you here.
tonight. That's the reason that we're asking for those improvements. It's to maintain consistency.

MR. POSTLEWAITE: Just one comment from us. We're not adding enough square footage that would require us to add additional parking. Like I say this is just an overflow lot that kind of catches Easter and maybe Annual Day where we have large numbers. We just ask your consideration on that.

CHAIRMAN: Thank you, sir.

Any board members have any other questions or comments?

(NO RESPONSE)

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

MR. PEDLEY: Mr. Chairman, I make a motion for approval with the condition that landscape area according to the Staff's recommendations be put in place and the graveled parking area either be removed or paved.

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

MR. WARREN: Second.

CHAIRMAN: Any other discussion from the board or comments?

(NO RESPONSE)
CHAIRMAN: You understand the motion the way it was made, sir?

MR. POSTLEWAITE: Yes, sir.

CHAIRMAN: Hearing no other comments all in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

The Chairman's prerogative is to deviate from agenda we have and we're going to go pick up Item 7 and 9 and then come back to 6 and 8 if the board doesn't object.

Any objection from any board member?

(NO RESPONSE)

CHAIRMAN: If not would you read Item 7, please.

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VARIANCE

ITEM 7

1829 Mayfair Avenue, in an R-1A zone
Consider request for a Variance to reduce an interior side yard building setback from 10 feet to 5.360 feet in order to construct a 12-foot by 13-foot addition to an existing residence.
Reference: Zoning Ordinance, Article 8, Section 8.5.5(d)
Applicant: James G. Gaw

MR. NOFFSINGER: Mr. Chairman, this variance 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 and it's found to be in order and ready for your consideration.

CHAIRMAN: Has there been any objections to this variance in the office?

MR. NOFFSINGER: Yes, sir, we do have one objection, a letter.

CHAIRMAN: Read that into the record, please.

MR. NOFFSINGER: This is from Attorney Garland Howard.

"To: Ladies and Gentlemen of the Board of Adjustment.

The undersigned represents Raymond and Irene Bell who live at 1909 Mayfair Drive. Mr. and Mrs. Bell's property adjoins the property owned by James Gerard Gaw at 1829 Mayfair Drive.

Mr. Gaw proposes to construct an additional room and attach it to the south side of his existing home. As proposed, the new addition would extend to a point within about five and one-half feet from their common property line. To permit this deep side yard violation Mr. Gaw is asking your Board to grant a variance to allow the construction as
Since I am unable to attend your September 5 board meeting, because of another commitment at this time, I ask that you consider this letter and make it a part of your minutes.

The Bells ask that I express their position in this matter and their reason for same. They feel that a nine or ten foot extension of the home may have been acceptable but they are totally opposed to a thirteen foot extension toward their property. They feel that a twelve by thirteen foot room is large for any purpose and is very large for a bathroom.

The Bells are very elderly and likely will not attend the meeting.

Sincerely, Garland W. Howard"

CHAIRMAN: That will be made a part of the record.

Any other objections in the office?

MR. NOFFSINGER: There have been no other objections raised.

CHAIRMAN: Is there anyone objecting at the meeting?

LADY WITH MRS. BELL: Mrs. Bell is here
and has prepared a statement that she would like to read to you.

CHAIRMAN: Let me get the applicant then and we'll get the objection in.

Is the applicant here?

MR. GAW: Yes.

CHAIRMAN: Would you come forward.

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

MR. GAW: James Gaw.

(MR. GAW SWORN BY ATTORNEY.)

MR. GAW: I brought here some pictures of some other residents on the street that have some structures that are within ten feet of the setback line. There's five or six pieces and you all can look at them.

The house I bought at 1829 Mayfair it hadn't been updated 1951. There are no closets and only a bath and a half on the ground floor, in the whole house actually. It would help the value of my property and also I believe even the neighbor's property. Goetz is the builder. It's going to be professionally done. It's going to be a brick structure just like the existing house. It will be painted. The roof line will match the existing roof.
I understand Mrs. Bell's concerns. I talked to her yesterday or the day before yesterday for an hour or so, I think. They had worried about noise. It's going to be a bathroom and a walk-in closet. Not going to be like a party room.

It looks like a carport or a garage would be more noisy than a bathroom and closet up on the side of the house.

What you have here is you're looking at is people have garages and carports that are attached and detached from their homes. This is going to be -- they're within 10 feet of the setback. This will be within 10 feet of the setback. It will be quiet building. That's really all I have.

CHAIRMAN: You want to attach this structure to the house, make it part of the house?

MR. GAW: Yes. It's going to be attached.

CHAIRMAN: What you show here on these pictures --

MR. GAW: The top four pictures are my house. On the south side of the house there --

CHAIRMAN: The bottom four pictures show detached structures?

MR. GAW: Not all of them. Some of them
are attached.

CHAIRMAN: Which ones are attached?

MR. GAW: I believe you see this here is attached. Right here is attached. This garage here is attached. That last one I showed you is attached garage. You know, what keeps them from turning that into a family room, enclosing it and being part of the home instead of a garage? It's right on the line. I'm thinking it's probably two or three feet. It's right on the line I think. That's actually just right across the street from Mrs. Bell.

CHAIRMAN: While the board members are looking at the pictures any comments from the board or question of the applicant from any board member?

MR. GAW: It will be landscaped. It will be professionally done. I bought the house about three months ago. I've already spent $38,000 and most of that is on the outside. That has improved the property tremendously. It will just be another asset to the whole street, I believe.

CHAIRMAN: Staff have any comments or questions of the applicant?

MR. NOFFSINGER: Yes, Mr. Chairman. For the record I think Mr. Gaw pointed out that the house located at 2012 Mayfair Avenue does encroach in that
ten foot side yard. Upon examination by the Planning
Staff, we did find that the chimney, as you'll see in
that picture, does protrude into that setback by
approximately two feet. However, the main building
wall of that structure is located ten feet from the
side property line which you do have that minor
encroachment into the setback.

Also the carport I believe that you have
described at 1908 Mayfair Avenue, the Staff looked at
that home and it was identified as having an attached
carport and it does encroach into the setback line;
however, it's attached only at the roof line, I
believe and is not enclosed on sides. That's just to
clarify the record in terms of what the Staff found
when they went out.

CHAIRMAN: Any board member have any other
questions of the applicant at this type?

MR. PEDLEY: Yes, I do.

Mr. Gaw, have you talked to Mr. Goetz
about turning that parallel with the house? Say 8 by
20, that's 160 square feet. What you're proposing is
156 square feet. If you turn that parallel with the
house, 8 by 20, you don't need a variance. It would
work with your roof line.

MR. GAW: Yes. We have talked about that.
The only thing is I'm going to lose three windows. I'm going to lose two upstairs windows and a downstairs bathroom window to go back further toward the backyard. We talked about that. Also if I add on to the back of the house, it wasn't financially feasible because I get into the roof line and make the back bedroom bigger, make that master bedroom and then add bathroom and closet onto that. This was financially feasible way to go. I would lose three windows in the house. Two upstairs windows and one downstairs bathroom window. The way it is 12 by 13 it stops at the bathroom window, comes down and leaves it there.

MR. PEDLEY: But that could be done. That's an option that you have if this board turns this down. You could still put an addition on that house?

MR. GAW: Yes, I could. There's a lot of things I could do. That is one option.

MR. PEDLEY: Yes.

CHAIRMAN: Any other questions of the applicant at this time?

(NO RESPONSE)

CHAIRMAN: You sit down and we'll take the objections from Mrs. Bell or anyone else.
MR. ELLIOTT: State your name for the record, please.

MRS. BELL: My name is Irene Bell.

(MRS. BELL SWORN BY ATTORNEY.)

MRS. BELL: My name is Irene Bell. My husband, Raymond Bell, and I own the property adjoining that of James Gaw who is requesting the proposed variance.

I wish to reiterate the reasons for the protest as set forth by my counsel in his communication regarding the variance application of James Gaw of 1829 Mayfair.

I would like to present to the commission a few points in addition to those provided by my attorney. I have exactly three.

To my knowledge there have been no additional rules built to houses extending beyond the setback boundaries established in the original areas as developed by Flemming Bowles. Perhaps garages or a fence in this area exist beyond those boundaries, but to my knowledge there have been no such structures as is proposed by this variance application.

Number 2, the original plat as set up in the 1950's require the building should have a setback of 10 feet from the property line. This has to my
knowledge never been changed. If it has been changed, we have never been notified of any such changes. This area was never set up for condominiums or homes that are in close proximity to each other. We think it should remain this way.

Number 3, because in the past we have noticed a water build-up and poor drainage in the yard at the site of the proposed addition and because of the close proximity to the property line we fear that we may experience a water problem if this variance is granted.

My husband and I hope that you will consider these points and will decide against granting the proposed variance. Thank you.

CHAIRMAN: Does any board member have any questions of Mrs. Bell at this time?

(NO RESPONSE)

CHAIRMAN: Anyone else wish to speak in opposition of this variance?

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything else they would like to add at this time?

MR. GAW: I would like to add something. The original plat, it did call for things not be, additions be built. A lot of that expired in 1975, I
believe, garage apartments. I know the 10 foot setback is still there. The flood, I think the water problem I've been there three months. We haven't had any rain at all for three months so I don't know of any water problem. I could do something to, you know, make it drain toward the back of the yard or front of the yard or anything to make sure it doesn't drain toward her property if the water is a problem. There's not going to be any hard feeling either way. They're great neighbors. I want it to stay that way. I don't believe it will be a problem. It will be professionally done.

CHAIRMAN: Becky, is there anything on Deed of Dedication or anything on this?

MRS. STONE: Mr. Gaw submitted the Deed of Dedication because his attorney's letter referred to that, to those restrictions. I did not see anything in the deed that restricted the side yard setback to 10 feet. I believe it called for the setback as per plat and the plat showed the front yard setback. Now, the zoning ordinance does require the 10 foot setback.

CHAIRMAN: If there was a Deed of Dedication, we couldn't even consider it.

Any other board member have any other
questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Anyone have anything else you want to add to this application?

(NO RESPONSE)

CHAIRMAN: What's the board's pleasure on the item?

MR. PEDLEY: Mr. Chairman, I have a comment before I make a motion. R-1A zone, it's 10-foot side yard, that allows 20 feet between houses. When you change this you change the character of the neighborhood. You change the intent of the R-1A zone. So I make a motion for denial. The reason it will alter the essential character of the general vicinity and it will allow unreasonable circumvention of the requirements of the zoning regulations.

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

MS. DIXON: Second.

CHAIRMAN: A motion has been made and a second. Is there any other discussion?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

Ohio Valley Reporting
(270) 683-7383
ITEM 9

2063 Wyandotte Avenue, in an R-1B zone
Consider request for a Variance to reduce the rear
yard setback from 20 feet to 16 feet in order to
construct a 20-foot by 33-foot addition to an existing
residence.
Reference: Zoning Ordinance, Article 8, Section
8.5.6(e)
Applicant: Sisters of the Lamb of God

MR. NOFFSINGER: 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. We find the application to be in order.
The subject property contains a
single-family residence. The proposal is to add a 20
by 33 foot addition to the rear of the property. The
rear property line is at an angle. It's not a
perfectly square or rectangular lot. There would be
one corner of this proposed addition that will extend
into that 20 foot setback by about four feet. The
majority of the proposed addition will be in
compliance with the setback requirements.

With that it's ready for your
consideration. Excuse me. There is one other
addition on the property. An 18 by 18 1/2 foot
garage, I believe. That addition will be in
compliance with the setbacks.

CHAIRMAN: Is there any objections filed
in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone wishing to object in
the audience of this item?

(NO RESPONSE)

CHAIRMAN: Hearing none the applicant is
here. You want to state your name for the record?

SISTER GOLD: I am Sister Audrey Mary Gold
for the Sister of the Lamb of God.

(SISTER SWORN IN BY ATTORNEY.)

CHAIRMAN: Go ahead and state your case
for the record, please. Do you have anything you want
to add for the record?

SISTER: No. I would say it's really
necessary for us.

CHAIRMAN: Everything is what we asked
for.

Any board member have any questions of the
applicant?

(NO RESPONSE)

CHAIRMAN: Does anyone in the audience
have any questions or comments?

Ohio Valley Reporting
(270) 683-7383
CHAIRMAN: Hearing none the Chair will entertain a motion to dispose of the item.

MS. DIXON: Move to approve.

CHAIRMAN: Motion been made for approval.

MR. WILLIAMS: Second.

CHAIRMAN: Second. Any other questions or comments from the board?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Proceed with Item 6.

ITEM 6

1253 Willett Road, in an A-R zone (POSTPONED)
Consider request for a Conditional Use Permit to construct a 42-foot by 107-foot bunkhouse to house a maximum of 14 migrant farm workers.
Reference: Zoning Ordinance, Article 8, Section 8.2AC
Applicant: MISAS, Inc., Robert J. & Lisa C. Wimsatt

MR. NOFFSINGER: As I stated earlier earlier this item was postponed from our August meeting. We did have a postponement at that time to allow the Planning Staff to obtain additional information regarding the property as well as to provide the applicant and the residents that had
concern to hopefully get together and talk about the project.

Becky Stone on the Planning Staff does have a list that she would like to read into the record in terms of what some of the concerns were at the last meeting and what has been done in terms of answering those concerns.

MR. WARREN: Mr. Chairman, before Becky does that I would like to excuse myself from this item.

CHAIRMAN: So noted.

Could you bring us up to date?

MRS. STONE: Becky Stone.

(MRS. BECKY STONE SWORN BY ATTORNEY.)

MRS. STONE: We ask that the applicant provide additional information based on some of the concerns from the last public hearing. I'll just go over that list with you and what we ask for and what was submitted for this meeting.

First of all there was a concern about identifying the lease area on the property. What area the Conditional Use Permit was going to be attached to. Since that meeting the owner of the property has submitted a subdivision plat dividing 2.16 acres at 1253 Willett Road. This application will be tied to
that specific lot.

The plat has been approved by the Planning Director. It is not recorded yet. A condition, if approved, was granted tonight, will be that the plat and the deed will need to be recorded within seven days of approval.

We ask for detailed floor plans of this facility. We didn't have a floor plan in the original application that shows the areas that are going to be used. You know, what those uses are. The applicant believed that because the KHC funding process is site specific they did not have the moneys to commit to an architect until they have approved site. An additional floor plan will be provided if a building permit is applied for. That will be a required architectural drawing for that. We ask for an elevation of the building or something that shows what the building will look like.

Sister Larraine Lauter was going to bring photographs tonight of the type of construction of the building.

We ask that the finished floor elevation be indicated and the setbacks of the building be indicated. That has been indicated on the site plan, the setbacks. The finished floor elevation is 387 and
that's also noted on the subdivision plat that they submitted. That's the base split elevation in that area.

We ask that a copy of KHC requirements and contracts be submitted. What they have is a copy of a letter that offers financial assistance. It's from the Kentucky Housing Corporation signed by Richard McQuaddy, Chief Program Officer. Included in this letter it says, "I am writing to offer financial assistance to MISAS for a farm work housing project in your area. KHC has allocated $222,700 for this initiative and we offered these funds to you in the form of a challenge grant."

The permits that will be required by KHC, as I understand from the applicant, are those requirements that are going to be required locally. Will be required to have a permit to build in a flood plain, local building permit, septic system permit, and plumbing permit, electrical permit.

We ask that information be submitted regarding the sewage disposal requirements in the area with tentative or preliminary health department approval. The response is there has been extensive consultation with health department staff, Ed Cecil; the local waste water treatment plant operator, Bob
Stovall; and the state inspector for the EPA, Payton Adams. All agree to workable solution for the site. Whatever the soil commissions approve to be will be possible. The solution will likely be a mound system; although, this is not fully decided.

In any case the permit for this will be tied in compliance with local and state regulations. The soil conditions are not yet determined. MISAS would prefer to schedule these tests with its attendant fees if and after a Conditional Use Permit is awarded.

We ask for a derange of services that will be provided in the facility to be submitted. They have indicated these services were described in the project overview which you got last month with your information for the August 1, 2000, hearing. They indicate here guests. They will have opportunities for recreation, shopping and laundry. Enrichment classes will be offered. Most notably classes in English.

It is our intention to offer health service counseling and intervention with the assistance of local health professionals and entities. This item was inadvertently omitted from the project overview. We do not consider the project overview to
be here binding or limiting for laundry services
making possible to provide while some other unforeseen
may arise.

The intention of any services is to
provide inculcation, shelter and support of migrant
workers in accordance with the mission of MISAS.

We ask that the qualifications of the
on-site administrative be submitted and the response
is the on-site administrator will be employed by MISAS
solely for the purpose stated in the project overview
as follows: They will have a full-time inn-keeper, a
live-in administrator who will supervise the living
arrangements of the residents and oversee care of the
buildings and grounds. The successful applicant for
this position will among other qualities demonstrate
positive leadership ability, be bilingual, good
rapport with the residents and a sense of
organization.

Then we ask that they project future
expansion possibilities and the expected number of
migrants that will ultimately served at the site. The
intention is slow and careful growth over a period of
several years. Probably to a maximum of 50 to 60
residents.

Any additional expansion of what they're
asking for tonight, if that’s approved, would, of
course, require another hearing before the board.

CHAIRMAN: Restate that. Slow growth over
how many years and up to a maximum of how many,
please?

MRS. STONE: Over a period of several
years. Probably to a maximum of 50 to 60 residents.

CHAIRMAN: Any board member have any
questions of the report she presented or comments at
this time?

(NO RESPONSE)

CHAIRMAN: The applicant come forward and
bring us up-to-date on new information, if you have it
please.

MR. ELLIOTT: State your name, please.

SISTER LARRAINE: Sister Larraine Lauter.

(SISTER LARRAINE SWORN BY ATTORNEY.)

SISTER LARRAINE: First, I have one
picture of the Strawbale house that would be the same
type of construction I’m proposing. I also brought in
a picture taken half mile from the proposed site on
adjoining property, and a picture taken one mile from
the proposed site. Actually probably about half a
mile as the crow flies which is also on the adjoining
property, the type that I was describing at the last
meeting. I would like to pass those to you.

CHAIRMAN: You want to submit those in for the record?

SISTER LARRAINE: Yes, please.

I believe we have answered fully and been very forthright about answering all of the conditions or all of the points brought up by the zoning staff. We have a number of people who are ready and willing to speak on behalf of the project. If that's possible, I would like for them to do so now.

We have a number of farmers and we have Jim Burris who is an architect for Kentucky Housing Corporation and Jerry and Virginia Morgan who are residents on Boothfield Road. It's not very far from the proposed site, on the other side. Sister Diane Taylor and Wayne Witherspoon, Bob Wimsatt. We will begin with Jim.

CHAIRMAN: State your name for the record, please, sir.

MR. BURRIS: My name is James E. Burris.

(MR. JAMES BURRIS SWORN BY ATTORNEY.)

MR. BURRIS: I'm director of technical services for Kentucky Housing Corporation. I am a registered Kentucky architect. Have been doing these, taking care of these responsibilities for about 12
years at the Kentucky Housing Corporation.

What we would do with this project is to review all of the documents required and services of an architect and engineer. We would also perform inspections during the construction. We are part of the underlaying process for the project. We would require the documents that you are requiring and we would review those documents for their completeness and for the accuracy and that they have been properly signed and executed. We would require soil tests. If we have other findings, you know, during our review, we would also extend those. We would handle the project just as if it was regular multi-family project being processed and underwriting with all of the requirements as if it was a first mortgage on that property.

If you have any questions perhaps of our process.

CHAIRMAN: Any board member have any questions?

(NO RESPONSE)

CHAIRMAN: Does Staff?

MR. NOFFSINGER: No, sir.

MR. BURRIS: Thank you very much.

CHAIRMAN: Thank you, sir.
Next. State your name.

MR. ELLIOTT: I'm Joe Elliott.

(MR. JOE ELLIOTT SWORN BY ATTORNEY)

MR. ELLIOTT: It's been probably about two and a half years ago that we got a group of farmers together in the rural development. I sort of pushed to get-together and work towards this thing because there's a lot of migrant workers in town that comes in and has no place. Lot of people want to use them a week or two weeks and they have to go from one place to another and housing has been a real problem. Anyway, finally Sister Larraine she took this on and I would say that it's really been a great thing that she has done it because nobody else has had time to do it. She's went through and done this. As far as farmers, it's not necessary that guys that migrant workers is not directly all to farming. You get a call during this time of year for several different contractors, restaurants and people building houses and different things that's looking for workers. It's not necessarily that she's going to be a contract worker or nothing like that. She's providing housing and moral support for these guys, especially when they can't or not being fully laborer. Basically it's a really good thing for the community and it's well
CHAIRMAN: Anyone have any questions of Mr. Elliott?

(NO RESPONSE)

CHAIRMAN: Thank you.

Next. State your name for the record, please, sir.

MR. CECIL: Gary Cecil.

(MR. GARY CECIL SWORN BY ATTORNEY.)

MR. CECIL: The project that Sister Larraine is working on is I think very necessary for the area as Joe alluded to about the migrant workers. There's more workers here every year and housing is a big problem. Myself I have 20 that stay here six to seven months out of the year and housing is my biggest problem. I have to have these guys because there's no other labor force out there that's going to do the stooped labor that we require in our vegetable operation and tobacco. She is offering some relief on this housing and the problem that we're running into throughout the county. I think it will be a very well-worth project.

CHAIRMAN: Anyone have any questions of Mr. Cecil?

(NO RESPONSE)
CHAIRMAN: Thank you.

Next. State your name for the record, please.

MR. RINEY: Keith Riney.

(MR. KEITH RINEY SWORN BY ATTORNEY.)

MR. RINEY: The project that Sister has been working on we've met and talked several times throughout the year. It's been a great need, like Gary said, over the past several years. We've had difficulty in housing guys. We've always been short-handed. We've got people that we can get in to work and they're really good, dependable guys. They don't cause any problems. Some of them have been here three or four years. It's the only people we can get to do the jobs that we have. Without the housing we're either going to have to quit some of the jobs that we're into and it's sustaining us now as far as vegetables and with tobacco going out we rely on that type of worker more and more every day because it takes more manual labor hours per crop. It would really be beneficial to us to have extra housing. Not only that, but some of the things that you can administer for them as far as the English, learning a little bit more there. Some of them as far as getting back towards church and things of that nature. It
would really be a blessing for us.

CHAIRMAN: Any questions of Keith?

(NO RESPONSE)

CHAIRMAN: Any more comments on supporting or the need for? I think we've established that. You got something else new to add we want to get that down.

State your name for the record, please.

MR. MORGAN: Jerry Morgan.

(MR. JERRY MORGAN SWORN BY ATTORNEY.)

MR. MORGAN: One reason I wanted to comment is because I live probably within two miles of the proposed housing. I have no objection at all for these 14 migrant workers living in our area. I think it will be a lot better housing than what they're receiving now. There's some other housing close by that is not near the quality of housing that Sister Larraine has proposed to provide.

CHAIRMAN: Anyone have any questions of him?

(NO RESPONSE)

MS. MASON: I have a question. I was not able to attend the last meeting so this may have been answered. Where are most of the migrant workers living now? Are they living on the individual farms
that they work for? I guess anyone can answer that.

CHAIRMAN: State your name again.

MR. CECIL: Gary Cecil.

At present, like I have three houses rented, but they're just scattered through the county. I don't own them. I just rent them. Two of them are in pretty dire shape, run down and I can't afford to - - the people that own them are just going to let them fall down eventually. That's where they are right now and that's the reason I -- housing is becoming a problem, finding adequate housing. I'm in the H2A Program also which we have a state inspector to inspect our housing. We have to meet certain standards and things like that. It's getting more difficult for housing than I have at the present to meet these conditions that they require. Also another reason for the need.

As Keith also said the workers like the H2A Program that I'm involved in, these workers just come here. We specify the date for them to come and the date that they have to leave to go back to Mexico. They just have a work visa to be here. Only the guys that have young families and kids back in Mexico and they send their money back. They make sure they don't get in trouble here because if they ever get in any
trouble at all at any time they can't come back to the United States. These guys bank on this just like we bank on them coming. It makes them a good living to live in Mexico. Their standard of living is a lot better than the average person down there because they can come up here and work during the year, months that we have work. As I say the housing is a big problem. That's the big issue that we're all faced with.

CHAIRMAN: Sister, is this housing only going to be for H2A workers?

SISTER LARRAINE: I would be hesitant to tie myself down to that. That's my intention. That's the intention of MISAS is to encourage the H2A program. One of the problems that we see repeatedly among this population, if people are illegal they are very vulnerable. They are very exploitable. Issues such as how they are housed is not even an issue for anybody. The H2A program these people are legal. They have coming and leaving date, all the things that Gary said. Year after year form relationships with them. It's a better situation for everyone, but the thing over and over that farmers tell me about the difficulty of using H2A is the housing. Any other questions?

CHAIRMAN: Being vaguely familiar with the
H2A, that eliminates a lot of problems that some of
the others have. If that was tied to that, it might
be easier to sell.

SISTER LARRAINE: I'm not sure that's the
purvey of this board. Maybe it is. I'm thinking off
my head. Excuse me.

CHAIRMAN: That's just my comment.

Any other questions?

MR. JOE ELLIOTT: Yes.

The comment on the H2A is the Cadillac way
of golfing. The guy that calls you and wants his
leaves raked or an older couple needs some maintenance
work, or some repair, or just garden work, or just
anything they need, usually try to be a green card.
The green card legally we try to work towards the
legal part. What Sister Larraine is going to do,
working with trying to do is support and have that
option that she can work with most of the migrants.
You going to find this town -- talk about housing.
If you go to the Cadillac Motel -- not the Cadillac
Motel. You're going to see 10 or 12 people in two
beds in an apartment. That's their only alternative
they got. They don't have no money so they put their
money together. I don't know what the name of the
motel is on 18th and Triplett. It's the one on the

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left side. You go out there and those guys they got
to do the best they can because the public has asked
them to come to town whether we like it or not. They
come here to work. So they work and they got limit of
finance. So they'll book up a room or something like
that and work. We're not saying all of the migrants
is good people because there's a bad apple in every
barrel regardless of who they are. For the majority
when you go into McDonald's or the Executive Inn,
anywhere, and get a salad some migrant worker has done
picked that. They're here and we're going to have to
provide housing for them. Which I have housing and I
went through this board probably month or so ago and
got a building permit from Mr. Mischel where you all
worked fine with us. We do our housing and try to
work it, but there's a lot of them in town that needs
some support and Sister Larraine has tried to do that
and we need to back her. The farmers has actually got
her interested in this thing over two years ago and
she's done a lot of work. It's going to have to have
housing some way, somehow. I don't know. She's got a
real good start.

CHAIRMAN: Thank you. Any questions of
Mr. Elliott?

(NO RESPONSE)

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CHAIRMAN: Mr. Wimsatt, state your name and we'll swear you in.

MR. WIMSATT: Bob Wimsatt.

(MR. BOB WIMSATT SWORN IN BY ATTORNEY.)

MR. WIMSATT: Mr. Chairman, I just wanted to mention that we have tried to accommodate all of the concerns of the staff and the committee about the land. We do have this — it's already been said. We have a subdivision plat that's been approved. It just hasn't been recorded. From the property owner's standpoint I've tried to address all of the concerns that the committee had.

There is a lot of things that I could potentially do with this property. What Sister is proposing to do is a very worthwhile project and is much better than a lot of other things that I could possibly do with this property.

CHAIRMAN: Thank you.

Any questions of Mr. Wimsatt?

(NO RESPONSE)

CHAIRMAN: I think we've heard the pros. Is there any objections? Anyone in the audience wishing to object at this time? We heard a number of those last month. You want to come forward. State your name for the record.
MR. JACKSON: Brian Jackson.

(MR. BRIAN JACKSON SWORN BY ATTORNEY.)

MR. JACKSON: Having reviewed the minutes of the last meeting concerning this application, I took the liberty of bringing some of those with me just to jog my memory.

There are still many issues that were brought up at the last meeting that have not been addressed. The length of the lease has not been addressed. We still have no idea whether this is a 5 year project or a 500 year project.

We still do not know about how water, specifically a 6-inch water line is going to be gotten to the property. I have a quote here from the minutes that says, from Sister Larraine from the last meeting, "We talked to Kentucky Housing Corporation because the Ben Hawes Park doesn't have a hydrant. We asked them permission if we could also get a line attached so we could bring and use some of that money also to improve within the park." Mr. Wimsatt then said with reference to a water line, "We may try to work something out and run a 6-inch water line down the front of this site which would be a benefit to everybody." But that does not address how it's going to be paid for or where that money is going to come.
As to the impact on the community, this is truly the issue that must be addressed I believe by this board which is over the past 25 years or so there has been a particular movement of Planning & Zoning where this property is concerned and where this area is concerned, the entire Bon Harbor area surrounding the park. Twenty-five years ago, well, ten, fifteen years ago my wife and I rode horseback through most of that area. It's subdivisions now. It is fully regulated single-family dwelling subdivisions.

Two years ago or less when this property was brought before this board with a view in mind toward development, this board stated quite plainly that the area set precedent for years of moving away from any kind of agricultural use and moving toward fully regulated single-resident dwelling type subdivisions in use. A quick drive up and down Medley Road, a quick drive up and down Luthfield will show that that progress has been booming and that the movement of that area is certainly toward this type of usage.

On the other hand, I cannot find any precedent. I do not believe there is one. Any use of any land in the Bon Harbor area or any type of
multi-family boarding facility and now we're finding that the facility that's being proposed is not only an inn or a hotel of some kind, but it's also a counseling center, an education center. There's no precedent anywhere in the Bon Harbor area for any kind of property use for that type of usage.

Mr. Wimsatt -- let me quote again from the last meeting. "What happens if this turns into a cesspool? Can we revoke the lease? We can. There's standard language that you can put in a lease so if it turns into some crime ridden facility, you just revoke the lease and that's the end of the story."

That isn't the end of the story. If the language on revocation has to be exercised, it means that there have been crimes committed. Against whom? Well, we don't know yet, but we do have a history that's been established in the Stanley area of these types of efforts and they have all gone the same route.

Now, my discussion with the sheriff earlier today and with the chief of police and several other officers, gave me to understand that normally according to the way the police and sheriff's department in this county operate they find that the crimes committed by migrant workers are not normally
crimes perpetrated against others living in the area, but rather against each other. Stabbings, shootings, beatings. Much of this having to do with alcohol abuse. This, of course, is something that I'm extremely concerned about since I do travel and my wife is alone on our property. We are the only other human beings who live on Willett Road.

That brings me to another point that I have here in the minutes. The last thing in fact that chair person said as the issue was being dropped, "Please get in touch with your neighbors and discuss this with them. That would be of help." It's been 30 days since that meeting. My phone has not rung. I have received no mail. I have received no phone call. No one. Mr. Wimsatt nor anybody from MISAS has attempted to contact me.

Again, my wife and I are the only people who live on Willett road north of the park.

I've had conversations with Mike Riney, with Mark Treesh, with the Mayor of Owensboro, and they have all expressed shock and dismay. Interestingly I was the first person to tell any of them about this. They had absolutely, neither the mayor, neither the chief of police, neither the sheriff or the county, neither Mark Treesh, our state
representative, neither Mike Riney who is the person on the fiscal court who is responsible specifically for that area, none of these people had any idea that this had even been proposed and were shocked, dismayed and gave me to understand, especially the mayor, under no uncertain terms that this type of usage did not meet his administration standards for the utilization of that area.

Now, that was said in a telephone conversation. I don't have a tape recording of it, but I am under oath and that is what the mayor said to me.

I'm speaking for my wife and I. We understand that there are difficulties in farming and we understand that there are difficulties in housing farm workers. We are certainly in support of any program that will make that an easier thing for folks in the county to do. The fact is the property that it's been proposed to be done on is completely inappropriate and there is no precedent for any type of use of this nature in the area. Once again, I have talked to the public official after public official who have expressed to me both shock and dismay over this proposal. We are still absolutely adamantly opposed do it.
CHAIRMAN: Any board member have any questions of the speaker?

(NO RESPONSE)

CHAIRMAN: Anyone else have any comments in opposition? Come forward and be sworn in.

CHAIRMAN: State your name for the record.

MRS. KURZ: Gertrude Kurz.

MRS. KURZ: Mr. Jackson alluded to the land being flood land. Why can't you move to Mount St. Joseph? They've got 200, 300 acres that never has any flood on it. There's plenty of places around here that has field. Mr. Wimsatt even has hills he could put this on. We're not against the migrant worker here. We're just sitting on the flood land. Putting them in a water hole really is what it amounts to. That floods down there every three or four years. If it gets up like the '37 flood, they won't have to worry about anything. It'll all be gone.

CHAIRMAN: Thank you, ma'am.

Any other comments from the opposition?

(NO RESPONSE)

CHAIRMAN: Staff have anything they want to add at this time?

MR. NOFFSINGER: I would just to address Mr. Jackson's points. Not to be argumentative, but

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just to clarify some of the items.

Mr. Jackson, in terms of the length of the lease, that's something that we did not proceed with trying to get an answer on any further once the subdivision plat was submitted to us because that addressed the issue of the lot being created. If there's going to be a long-term lease, we felt that the statutes would require that a lot division plat be submitted, approved and recorded. So they have met that. We did not pursue the length of the lease any further.

In terms of the extension of the water main, we don't know that the water main is going to be extended with this project or not. Maybe. Might not be. Certainly the water main could be extended by Mr. Wimsatt as the landowner at his expense. That would open that area up for continued development or more rapid development if that water line is extended. Meaning it would accelerate potentially the number of lots that are created in that area. I think right now the property is served by perhaps a two or three inch water main. That may very well be adequate to provide the domestic water that would be required for the project. Doesn't address fire protection. To my knowledge fire protection is not an issue here.
Whatever is required by the building code, they will have to meet the building code.

In terms of the multi-family units, I agree with Mr. Jackson. I don't know of any other or any multi-family units in that area; however, we must consider that this is a dormitory. The occupants living here are living together as a single-family as defined by the zoning ordinance. They have one common kitchen. If they had multiple kitchens, then I think we would look at it differently and say, well, this is a multi-family unit and probably feel certain would not be allowed in this particular zone, but because they have a single kitchen and the occupants are living together as a single-family unit, then it is a use that's conditionally permitted in that zone.

Again, that's not the argumentative. That's just to state the facts as what we've learned and described a picture of that area.

MR. JACKSON: May I respond to that, please?

CHAIRMAN: Please.

MR. JACKSON: Brian Jackson.

Well, that would be a satisfactory answer, it really would, had the issue not developed from what we were told 30 days ago. A dormitory for 14 people...
period. To what we now learn is a plan apparently to
develop some kind of community there of its own of 40,
50, 60, now probably we are told within how many
years? I can't see how that is -- I can't see how
that fits in what was said last month at this
meeting. Dormitory for 14 workers. Now we find that
the plans apparently are already in place to increase
that to 50 or 60. Apparently there's a great deal
more going on than we know about.

CHAIRMAN: Let me add one thing. They
applied for 14. If they put more than 14 people there
at this time, their Conditional Use Permit will be
revoked or they'll have to come back and apply for
another four more. They're limited to 14 at this
time.

MR. JACKSON: Let me ask what apparatus
this board has to enforce, to check up on? Is there a
way that this board can exercise continuous control
over that?

CHAIRMAN: Counsel, you want to address
that?

MR. ELLIOTT: Yes, there is. Under the
Kentucky Revised Statutes, Chapter 100, a Conditional
Use Permit can be revoked if they violate their
condition. There's a procedure you have to go through
to do that. For instance, if you were to file a
Complaint, it would be investigated. It could be
brought back before this board and could be revoked by
this board. A Conditional Use Permit if that was
revoked then they could no longer use it. So there is
a means to do that.

CHAIRMAN: Mr. Elliott, would you add a
couple of more things or explain. We can put
conditions on that have to be followed also.

MR. ELLIOTT: Yes. A Conditional Use
Permit is just that. It's conditional use subject to
conditions and this board places those conditions on
use and they have to be complied with.

MR. JACKSON: But none of this addresses
the issue of the impact on the community, the extreme
variance that this represents between the current
usage of property in the Bon Harbor area and the fact
that many of us who have invested there specifically
because we have followed the progress of the city.
We've seen that the Bon Harbor area now has schools,
post office. That area is being highly developed.
There are more schools on the way. There are more
subdivisions on the way. This is simply not the
appropriate place for any type of endeavor at this
time. That's still our point.
CHAIRMAN: Thank you, sir.

Now, the pros, do you have anything else you want to present at this time?

SISTER LARRAINE: I don't think so, sir.

CHAIRMAN: Any board member have any questions or comments?

(NO RESPONSE)

CHAIRMAN: Staff?

(NO RESPONSE)

CHAIRMAN: Anyone else in the audience?

(NO RESPONSE)

CHAIRMAN: Then I'm going to cut it off and ask for a vote.

SISTER LARRAINE: I did want to offer that if we are able to use this site, we discussed this a little bit before, but not at the first meeting. It came up to me after the first meeting. I do think it would be appropriate to have a neighborhood advisory counsel, some sort of venue for neighbors to express concern or to receive information and updates to know where things are going. We don't have the agenda. We don't have a desire to create anything that will be any kind of mess at all. We would be very happy to have neighborhood input.

I would also like to point out that this

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area is on the other side of the Bon Harbor hills. If there were a flooding issue, we would move up the hill and be that much closer. Again, because of the flood plain and all of that we do not see this becoming an area that is going to be developed in the same sort of way than the other parts of Bon Harbor are.

Completely different side of the Bon Harbor hills than where we are now, than where all of that is now.

CHAIRMAN: Thank you. Give you a couple of minutes. Do you have anything else you all want to add on this side?

(NO RESPONSE)

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

MR. PEDLEY: Mr. Chairman, I make a motion for approval based on statements here tonight for the need for this program and based on statements in the application, statements made last month by Sister Larraine that there will be rules and regulations and someone on duty to enforce them. That the facility will be maintained and kept in good appearance.

Condition 1: There shall not be any expansion in number of residents or in the site plan submitted without coming before this board for approval.
Condition 2: If there are any severe rules and regulations and maintenance violations, this board may require the permit holder to appear before this board to address the problems. This board has the power to revoke the Conditional Use Permit and may do so.

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

MR. MILLER: Second.

CHAIRMAN: A motion has been made and a second. Any other discussion or comments from Staff?

MR. NOFFSINGER: Mr. Chairman, I would like the board to consider two other conditions on approval. One would be within seven days that they will submit a copy of the recorded plat and recorded deed of the property to the Planning Commission and that there be a full-time live-in administrator on site at all times.

MR. PEDLEY: Mr. Chairman, I will add those to my motion.

CHAIRMAN: That will be noted in the record. Second accepts those?

MR. MILLER: Yes.

CHAIRMAN: You've heard the additions, two conditions to the motion. Any other discussion or
MR. MILLER: Mr. Chairman, might just say for the record that this is for the 2.16 acres and not for the original 35 acres that was on the original application?

CHAIRMAN: That's correct. Amended application.

MR. MILLER: Yes.

CHAIRMAN: Any other questions by the applicant?

SISTER LARRAINE: No, sir.

CHAIRMAN: The one opposed, you understood the motion? Whether you agree or disagree you understand it?

MR. JACKSON: Yes.

CHAIRMAN: Thank you.

Any other discussion?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT WITH THE EXCEPTION OF MR. WARREN’S DISQUALIFICATION RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Why don't we take a five minute break.
- - - (OFF THE RECORD) - - - -

CHAIRMAN: Let the record show that Mrs. Dixon has left. With that Item Number 8.

MR. NOFFSINGER: Let the record reflect that due to my professional relationship with the applicant and on advice of legal counsel, I'm going to disqualify myself from participation.

CHAIRMAN: With that will you read the application, please.

ITEM 8

1214 St. Ann Street, in an R-4DT zone
Consider request for a Variance to reduce the rear yard setback from 20 feet to 4 feet in order to construct a 35.5-foot by 24-foot addition to an existing residence.

MS. STONE: The application is in order with an amended application. We have advertised it for public hearing and it's ready for your consideration.

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

MS. STONE: No, sir.

CHAIRMAN: Is there anyone in the audience wishing to object?

(NO RESPONSE)

CHAIRMAN: With that the applicant can present his case, please.
MR. ELLIOTT: State your name, please.

MR. FREE: Keith Free.

(MR. KEITH FREE SWORN BY ATTORNEY.)

MR. FREE: Thank you very much. This is my wife Susan. We're requesting a variance in our rear yard setback. It's got a 20-foot required rear yard setback and we're requesting it to be reduced down to 4-foot.

We live on 1214 St. Ann Street which is within the J.Z. Moore Historical Neighborhood. It's kind of in the downtown area where there's some older bigger houses and things like that.

The zoning classification in our neighborhood is R-4DT. This zoning classification in a lot of different areas, it's mostly a zone that's been placed over older neighborhoods that were created prior to the classification being put on the property. In the majority of the areas, R-4DT works fine and the setbacks can be met even when you place it over existing development.

In our area it's kind of unique. We have these big old houses. They don't respect the setback lines too well with R-4DT. Actually that creates the character of the neighborhood is the way that the houses are as far as not setback very far from the
property and houses are very close. It adds a lot of character to the neighborhood.

One thing Becky had said is that we did amend our application. Originally we had submitted our application the first floor plan, our initial floor plan we had included a mud room and a larger porch. The amended floor plan that's on the right, it's the same square footage, but initially when we created the floor plan -- I had talked with Mr. Mischel on several occasions to determine prior to submitting my application to make sure because I knew about maximum lot coverage. That I needed to really watch that. That's where I came up with the initial floor plan.

In the middle of the process, once I had submitted the application for the variance then I was told that the way they're looking at considering how to figure maximum floor area is they're kind of looked at a lot closer and they're interpreting a little bit different than they had looked at previously. Plus, you know, to be honest maybe it doesn't make a whole lot sense, the investment that my wife and I have made in the property or even this may not make a lot of financial sense to a lot of people why we would be talking about doing this financial
investment in this older area. We love the
neighborhood. This would add to the value of the
area.

One of the things about this, and I
understand I can't really get into it. It's more of a
matter of maybe appealing decision of the
interpretation. In the maximum lot coverage,
basically what happened is if they look at my our
front porch, its floor area, it's calculated as floor
area when you calculate for how much building and
space can fill a lot, if you count our porch in that
then we can't do the initial plan. That's why we had
to change it. We understood we couldn't come before
this board this evening if we didn't amend that.

The area where it comes down to it in
Article 14.34 where it specifically expresses, back
like Article 3 it says all the stuff must meet all
this stuff and then it kind of works it way down to a
point. The point of the object in looking at or
property is this Article 14.3 where it talks about
floor area.

This first section where it talks about
how you figure this floor area. What this first thing
is saying is that measuring the floor area is from the
exterior, I think it's the exterior face of exterior
walls. On our front porch, existing front porch, the exterior face of our exterior wall is actually the vinyl siding that's on the porch.

MR. ELLIOTT: Keith, I need to interrupt you just a minute. Aren't you getting into the appeal or interpretation of the zoning ordinance?

MR. FREE: I understand that the board cannot address this, cannot resolve this issue for me tonight. I guess what me and my wife want to do is make sure that if we were going to appeal the decision of the interpretation of the ordinance that, you know, we come back. The way we understand we have to pay $75 and we've got to wait a whole month to then come back and address this. We come back, you know, in a month from now and then you guys be like what are you doing? We're here for that variance. I didn't want you guys to think that the amended floor plan that we were submitting was just something we decided to change. I definitely understand that and I'll just go through this without explaining.

MRS. STONE: The application that we have advertised does meet the interpretation of the zoning administrator for a floor coverage. That's really not an issue on this variance application.

MR. FREE: The issue specifically is
within the framework of the square footage. It's not really the total square footage. It's how I'm busting that up. Whether it's a mud room or how big I'm making the porch. That's really where it is.

As Becky said what was advertised was correct. This is still the variance, we still want to, we still would like to request this variance. We'll just flip this portion of it. I won't go into that.

One thing I might just pull out, I'm sure that Mr. Noffsinger brought to your attention, but the e-mail that he sent me last Tuesday to let me know, "Keith, please know that I do not think it appropriate for a person in your position to request a variance. Certainly an appeal of the zoning administrator's decision." You know, that was something that surprised me as far as the way the executive director is looking at it. I feel it is appropriate. This is a public forum for my wife and I to attempt to receive a variance. We appreciate you guys hearing this tonight.

Our property, it's kind of different than a lot of other properties. The alley, this that's running, you can see where the rear of our house is located where that arrow is pointing to. Over there
where the dumpsters are, that's where the doctor's
office are. That's all commercial property.

On our block we have residential, but then
we have the alley. Then we have commercial right
against that.

Just another shot of the rear of the
property and this parking lot right behind our
property.

This is just a shot of the rear of our
house and where the alley is. You can see right
there, the 1220 St. Ann apartment, there's a garage
underneath of it and an apartment above it. That's
actually located right on our property line and it's
located to the rear. It's right on the alley
right-of-way. I understand this isn't necessarily
connected to the primary structure, but it kind of
shows you in our alley, you know, there's a lot of
fences and garages and then apartment and things like
this through the whole neighborhood.

CHAIRMAN: Let me interrupt. That
particular building was built before the zoning
ordinance went in effect.

MR. FREE: Yes, it was. I mean 99.9
percent of everything built within this neighborhood
was all built prior to this zoning classification that
I'm asking relief from was placed on all the property.

This shows 109 East 14th and 115 East 14th. Shows the side yard setbacks, what those are, but then also the rear yard setback at this location at 109 East 14th is 9-foot.

This is 115 East Parrish. Show a 9-foot rear yard setback.

This is a rear yard setback on I think it's an apartment or something. Seems like somebody was living there at one time. It is about 3-foot from the rear yard.

This is an apartment building that's right on the alley, 1312 Allen Street. It's right on the alley.

This is property at 315 West 14th. I understanding that this is a side yard setback, but it's right on the alley. It's an attractive home there. Just to show that this area as far as setbacks go there's a lot of things in place.

This is 1309 Locust Street. Has a 4-foot rear yard setback. This is attached to the primary structure.

This is 705 Allen Street. This is like plus or minus a foot rear yard setback to the white house that's behind it. The brick house is the one
that's encroaching on the setback.

Also 301 East 24th Street has a 4-foot rear yard setback. Very visible property. You can see this property and other properties are located that have alleys. They're located near the rear yard setback.

This is again is a side yard setback that shows in the general vicinity how close. This is actually, this is not a detached garage. It's attached to the house. It just so happens that the door is facing Locust Street instead of 12th Street.

This is 515 West 12th. Has a one-foot rear yard setback.

There's our property as it sits now.

I've addressed and I think everybody has copies of the different -- all of these things here, we talked about here was talked about that we weren't going to alter the essential character of the neighborhood. If anything we're even fitting in more than we actually do now with the addition. Even if the variance was granted, the addition going into that 4-foot on the alley. That's what all of those things address.

The next thing would be that granting the variance would not cause any hazard or nuisance to the
public or to the neighborhood. Also feel that the
granting of this variance is not really an
unreasonable circumvention of the zoning ordinance.
It's actually a relief to properties in our
neighborhood where the development of property
predates the R-4DT zone classification.

Also note on July 5, 2001, Board of
Adjustments approved a variance for a house two doors
down from our house. From 20-foot to 8-feet. What
we're looking at doing we're looking at probably a
35,000 to $40,000 addition onto our property. We feel
it will enhance the value of the property within the
neighborhood as well as fit in with the character of
other existing structures of the neighborhood.

We're going to be sensitive to -- as you
can see, which you saw from the photo of our house,
our garage will carry that same feel and have the
fish-scales of the point of the eaves and everything.

That kind of flows everything that we were
requesting. We sure appreciate you guys considering
this. We feel that if we're allowed to construct our
addition that it would be something that would add to
the neighborhood. It wouldn't be anything that would
take away. We feel it's well within the ability of
granting the variance with the different things that

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we addressed in our application. Thank you.

CHAIRMAN: Let me ask you one question.

The construction date of this house was when?

MR. FREE: We built the house about six years ago. We designed it to fit into the neighborhood. Prior to us building the home it was a parking lot. Prior to even discussing with Mr. Mischel about, you know, before I submitted the application, about what we could maybe build and everything. My wife and I to be honest with you we were struggling with selling the house and moving to a different neighborhood. The house has a lot of amenities that we like, but we don't have -- parking is a problem with Lila Jean. I don't know if you're familiar with Lila Jean's. Tuesdays and Thursdays are pretty tough in our neighborhood about getting a parking space. There's a business up there that doesn't have any parking. It's pretty difficult to fight for a space. What we're trying to do is do something off of our alley with a garage. We understand we could do a detached garage. We could do a detached three car garage off the back and meet all the requirements and everything, but in looking at the cost of doing that for a little bit more we could attach it to the house and make something that just
work a lot better and looked a lot better for us. That's why we're requesting the variance.

CHAIRMAN: Any board members have any questions?

(NO RESPONSE)

CHAIRMAN: Staff have any comments or additions?

(NO RESPONSE)

CHAIRMAN: Anyone else? State your name for the record.

MS. KINCAID: Nita Kincaid.

(MRS. KINCAID SWORN BY ATTORNEY.)

MRS. KINCAID: I live at 1200 block of St. Ann with my husband and there were some other neighbors here but getting into the late hour had to leave. We are all encouraged with anyone in our neighborhood decides to improve their property. I'm going to read a statement that we've prepared from the neighborhood and we fully support the Frees's plan.

What I didn't realize was that Keith said that they could build a detached three car garage without having come before this board. Basically all they're asking to do is to make an attachment to the home.

As you did see in his presentation it's
not anything he's asking out of the ordinary in our neighborhood. Again, it's very rare that we have people that are willing to make the financial commitment that Keith and Susan would like to make to stay in our neighborhood. It is also true that our street is extremely narrow. That almost on a daily basis when we have cars parked going both north and south it is absolutely impossible for two cars to pass. That we either have to back up or try to dive in a place to get out of somone's way. We've been very lucky that we've not had more accidents at the south end of 1200 St. Ann because of Lila Jean's operating there and the fact that when there's cars there it is a track traffic hazard. I can understand why the Frees would want to build a garage and get their cars off the street.

I'll go ahead and read the prepared statement. "We are here to show our support for the addition that Keith and Susan Free are planning to construct. We realize the structure would extend to 4-feet from the alley, but as we've experienced from the past Keith and Susan have constructed and maintained a beautiful property. Not only did they make a massive investment in our neighborhood six years ago, but today they are seeking to stay in the
neighborhood with the approval of adding on an addition that will only improve this area financially. We continue to see residents making improvements in the hope to keep residential housing that makes our historic areas of Owensboro attractive. Thank you for your consideration to our neighbors."

I also have a letter, that I will give to this lady, gentleman that could not be here tonight in support of this as well.

CHAIRMAN: Any other comments from anyone else wanting to speak? Come forward and state your name.

MR. HAGAN: Barry Hagan.

(MR. BARRY HAGAN SWORN BY ATTORNEY.)

MR. HAGAN: Something I would hope you all understand. We have tried and tried hard in our neighborhood, that's from Allen Street all the way from Daviess, Allen and St. Ann. We put a lot of money in our homes. We're trying to make this city proud of what we've done. We've gutted our homes. We've added more space. We have done about everything a person could imagine to bring our J.Z. Moore neighborhood back up to par where when somebody comes to this town they come out around that area. We've got a house on Allen Street that they're selling for

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219,000, which before you could only probably get 50,000 out of the thing if anything. Got another house that's around 200,000, 210,000 that's on St. Ann Street at the very end. At one time before they went in there and redone that house, you could probably got it for 35,000. What we're doing we're trying every way possible to get our homes back up to par and maintain the value. Which if we maintain value it becomes more accessible for the city. Also raises taxes for the city. Numerous different things can happen.

I would like and I think J.Z. Moore would like to do the same thing. Ask the commission to work with us. I'm fully for Keith and Susan's garage that they're putting on. They have a beautiful home. It has improved our neighborhood. Of course, like my Nita just said, the street is so narrow that you can't get down. You can't even park on your own street about half the time. We have just applied for a variance not too long ago and ours was approved. It was an attachment to the house. They're not asking for anything different than what we asked for. I would hope that you all approve this. Thank you.

CHAIRMAN: Anyone else?

(NO RESPONSE)

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CHAIRMAN: Staff have something they want to add to this, please?

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I realize it's late and we've heard a lot so I'll make this short, try to anyway.

I have a couple of comments and I'd just like to say why the Staff recommendation was for denial. Basically as Kincaid said they've had a variance approved recently. A lot of the photos that Keith and Susan have, a lot of those structures if not all of them predate the ordinance where their structure is a different story. It was built in 1996.

In general the ordinance looks at those two in different situations. A new structure we try to get to meet all of the ordinances that we can, setbacks and everything. Their lot is zoned R-4DT.

In R-4DT it's required to have a minimum of 5000 square feet. Which theirs I think is about 16 square feet shy of that. Therefore they pretty close to meet the standards of that zone.

I think they did get an average setback on the front of the house with a structure on either side so they gain there. Essentially this structure being
built new in '96 is kind of a different animal if you
want to say than some of these other structures.

I share their concerns and I applaud them.

One other comment. It's hard for the Staff -- right
now I'm working on about two or three items with the
neighbors on different things as far as houses being
up for sale and make sure they stay single-family if
they lost their grandfather clause. There's been some
parking concerns and we're working on those. It's
hard for the staff to enforce those and then turn our
back on something else such as a variance or approve
something that really it doesn't go along with the
guidelines of the ordinance.

To be consistent and fair I think we have
to do that and be fair across the board. I applaud
them too to keep the neighborhood like that.

One other comments unless you all have any
questions. I'll just say this because Gary is not
here. He left the room. There was a statement made
about an e-mail being sent. I've heard part of that.
I don't think there's any malice made or anything.
Knowing both parties I think it was an extension for
cooperation or whatever. I don't think anything was
meant by it. I'm sure if he was here he would explain
he didn't mean anything by that. I wanted to add that
in. Knowing both parties I don't think anything is there.

If you have any questions or if they have any questions. It's true the structure now could be built detached and we could issue a permit. It's just its attached structure and it doesn't meet the 20 foot rear setback which is required in this zone.

MRS. STONE: I would just like to add that if the Board determines that they will be approving this variance that the Staff would like them to consider a condition that the addition with the exception of the porch be used for vehicle parking area and not converted to habitat area so that they maintain their lot coverage requirement and that the vehicular use area should be constructed at ground level.

CHAIRMAN: Any other comments from the Staff?

(NO RESPONSE)

CHAIRMAN: Any questions from the board?

(NO RESPONSE)

CHAIRMAN: Applicant have anything they want to add before we proceed?

MR. FREE: On the R-4DT zone, I understand we did this crazy thing in building this very
expensive house in this neighborhood and we're asking relief to even do more to it. I think the newness of the house, and it's just six years old, you know, taking in account the neighborhood and looking at variances. It's under certain situations. If you look at the situations in the neighborhood and the situations in our neighborhood are such that if everything burned down and you built it all back to the R-4DT standard, it would not look like the same neighborhood. You couldn't build 50 percent of the neighborhood back and make it look like it did. I know you could if it burned down you could have the right to build it back. Just visually, you know, the neighborhood would not be the same if it was built today under the R-4DT standard. Me and my wife definitely appreciate your consideration. Thank you.

CHAIRMAN: Any other comments or questions from the board?

(NO RESPONSE)

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

MR. PEDLEY: Mr. Chairman, I make a motion for approval with the findings it will not adversely affect the public health, safety or welfare; will not alter the essential character of the general vicinity;
will not cause a hazard or a nuisance to the public;
will not allow an unreasonable circumvention of the
requirements of the zoning regulations with the
conditions that Mrs. Stone stated.

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

MS. MASON: Second.

CHAIRMAN: Any other discussion or
comments from the board?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Entertain one more motion.

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

WITNESS my hand and notarial seal on this
the 24th day of September, 2002.

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:
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