The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, September 4, 2003, 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
Sean Dysinger
Ward Pedley
Stewart Elliott
Attorney

CHAIRMAN:  We'll stand for the invocation and pledge of allegiance and then we'll get started.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  Want to call the Owensboro Metropolitan Board of Adjustment to order. Want to welcome all of you this evening. Set a couple of guidelines.

If you wish to speak on any item, come to one of the microphones. State your name for the record and be sworn in. We'll try to get the answers
to your questions, if you have them, or your comments related to the items.

If you have any major questions, direct those to the Chair and we'll get the answers for that.

With that the first item on the agenda is the minutes of the August 7th meeting. They're on record in the office downstairs. I don't think there's been any problems with them. With that I'll entertain a motion to approve them as on file.

MS. DIXON: Move to approve.

MR. MILLER: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item on the agenda, please.

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CONDITIONAL USE PERMITS

ITEM 2

1647 Creek Haven Loop, 3500 Blk Old Hartford Road, in an R-1C zone

Consider request for a Conditional Use Permit to construct an "at grade" walking/biking trail (connector to the City of Owensboro Greenbelt/Horse Fork Trail) within a designated floodway.

Reference: Zoning Ordinance, Article 18, Section 18-6(b)(2)

Applicant: Creek Haven Development, Inc., City of Owensboro
MR. PEDLEY: Mr. Chairman, I need to disqualify myself from this item.

CHAIRMAN: So noted for the record.

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff. It contains all necessary approval. Is ready for consideration.

CHAIRMAN: Have there been any objections filed in the office or anything?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Does the applicant have any comments?

(NO RESPONSE)

CHAIRMAN: Does any board member have any comments?

MR. NOFFSINGER: I just wanted to add for the record that the developers, Creek Haven developers are doing this project at their own expense. This will provide a connector to the Greenbelt for that.

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

MS. MASON: Motion for approval.
MS. DIXON: Second

CHAIRMAN: Any other discussion?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT, WITH THE DISQUALIFICATION OF MR. WARD, RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

ITEM 3

1539 West Second Street, in an R-4DT zone
Consider request for a Conditional Use Permit to operate a non-hospital non-medical based long-term rehabilitation facility for alcohol and other drug abuse problems.
Reference: Zoning Ordinance, Article 8, Section 8.2C1
Applicant: Roger Stacey, d/b/a Victory Properties, LLC, David Baker

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff. We should note that there will be a condition that the maximum number of occupants will be eight. With that it's ready for your consideration.

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

MR. NOFFSINGER: No objections.

CHAIRMAN: Is there any objections in the audience?
MR. KASEY: Yes.

ME. ELLIOTT: State your name, please.

MR. KASEY: Jerry Kasey.

(MR. JERRY KASEY SWORN BY ATTORNEY.)

MR. KASEY: We are kind of concerned about having that type of facility in our neighborhood because of the people that's going to be staying there. There are only two people, myself and an individual, that lives next-door to this piece of property that even got a letter about it. We've got quite a bit of drug problems down there in English Park right now and two or other three other places around there within three or four blocks of where I live. We're concerned about these type of individuals being in our neighborhood. Where they're going to be, I can throw a baseball and hit the back door from my yard. It wouldn't take much to throw. I work swing shift. My wife is at home at night every other week by herself. There's some other individuals in the area that works swing like I do too. I'm kind of concerned about the safety. I mean, what type of restrictions are going to be on these people, who's going to be watching them. I mean what's the whole deal?

CHAIRMAN: We'll try to get some answers.
to your questions. We'll let the applicant come forward and state his plans and then you come back up and reask your questions.

MR. KASEY: Thank you.

MR. STACEY: I'm Roger Stacey.

(MR. ROGER STACEY SWORN BY ATTORNEY.)

MR. STACEY: I first want to say the gentleman has raised some very valid questions, and if I lived in the neighborhood I would have the same questions. I want to go through what we're actually doing with these houses. This is our third house. Try to for his benefit, as well as the rest of the neighborhood's benefit, explain to them what we're doing and assure them that their neighborhood will be better in the long run with these residents in this home than not there.

First of all this is a lady's house.

Eight people there. Most of these people will have been through some drug treatment program. They all will be in recovery. They all have to get a job. They have to pay rent. They have to go to AA every day. We strongly suggest they go to church on Sunday. We can't make them, but half of them do attend church because there's a very strong relationship between the faith element and getting sober and clean and getting
their lives back in order.

They live a very structured life in that Sandy Rich, who is the director of women for Lighthouse Recovery, will have the responsibility of this house. She'll be in there daily. That house will also have a live-in senior resident that will be the person that we feel is the most capable and the most mature in their recovery program who is the senior resident in this house.

They have curfew. No men are allowed. They're randomly drug tested by the contract they have with Lighthouse Recovery. They're randomly drug tested as required by the drug court of which most of these ladies is referred to this program from drug court.

I would submit to the gentleman that the people living in this house are far less to be using drugs and causing problems in the neighborhood than someone who is just renting this house as an individual who can go in there and be cooking methamphetamine for this Saturday afternoon. That will not happen in this house.

We have two homes on Clay Street. One home in operational for about a year. One has been operational for residents for about three months.
We've had zero, no occurrences or problems in the neighborhood.

These folks are living in this structured environment because once you go through a treatment program and/or come out of the drug court system, you have one choice. That is either they go back home in that same drug environment you came out of or go back to jail. Those people that choose to go into a structured living environment, they have a chance to pull their lives back together. We see men and women getting their families together, getting their families and children back.

It's a positive thing that has to happen if a person who has a drug or alcohol problem intends to get into recovery. They cannot do it by going back into the community. They have to live for what we hope at least a year in this structured environment, but it is totally controlled.

If somebody goofs up, if a lady doesn't clean the bathroom or burns the eggs of a morning, whatever happens, any infraction, I'm serious about this, any infraction, they have what's called community. That person goes before the entire group that lives there and tells what they've done wrong. The group then will decide if they want that person
even staying in that house or not. If the infraction
is serious enough, if this person, for example, got
cought dirty on a drug test, they would probably very
likely be asked to leave the house and not come back,
but it's a self-governing body that these people live
there because the ones that are there are very
thankful for having the opportunity to have a place
that is safe and clean, a place they can get their
lives back together, and they can't do that on the
street.

Again, I say to this gentleman back here
as I did to one of the other neighbors that called me
with some concerns, who is disabled, had concerns
about physical violence and all of these kinds of
things. These people for the most part all have jail
sentences handing over their heads. We know where
they are. They're accessible. They're right there.
We can pick them up that fast. So those things just
don't happen.

So I ask the gentleman to certainly accept
us as good neighbors. My name is in the phone book.
I'm not unlisted. Any problems you have, I will
respond to and correct immediately. I assure you of
that, sir. I hope I've answered your questions. Any
other questions, I'll be happy to address them.

Ohio Valley Reporting
(270) 683-7383
CHAIRMAN: Any board member have any questions of Mr. Stacey?

(NO RESPONSE)

CHAIRMAN: Any other objections or questions at this time?

(NO RESPONSE)

CHAIRMAN: Does that answer part of your questions?

MR. KASEY: It answered part of it. Like I said one of my biggest problems --

CHAIRMAN: Come to the mike so we can get it all on the record. State your name again for the record.

MR. KASEY: Jerry Kasey.

My biggest concern about was the availability of what these people are trying to get over. I've lived in that neighborhood all my life. From 1953 until I went in the Air Force. Then I've live in the house where I live now for 27 years. I guarantee you go to English Park any night you want to and score anything you can score. Same thing is true over around Lee Manor. Anybody that lives down there knows where the stuff is at. Unfortunately, need a lot done to get rid of some of these people and some of these problems or maybe they're just not getting
caught.

What he was saying about, you know, making meth in that house. That's what the last guy did. He got busted.

My major concern is my wife's welfare and her safety. Like I said the availability of all this stuff of these people that are trying to kick this stuff. It's all over down there. Any time you want a score, all you've got to do is just walk down the block. You can't take a kid down there and let them play now.

CHAIRMAN: Any board member have any comments or questions?

(NO RESPONSE)

CHAIRMAN: Anyone else? Do you have any other objections?

MR. DYSINGER: I'm sorry, I do have a question. What's the drug testing policy of --

CHAIRMAN: Mr. Stacey, would you come forward.

MR. DYSINGER: Mr. Chairman, I'm sorry for being late. I apologize to the board.

What's the drug testing policy?

MR. STACEY: In order to be in one of our Lighthouse Recovery homes, it's a random drug testing
program which is required both by the contract of
being in the Lighthouse Recovery Program as well as
being part of the drug court program. There's two
things we're talking about here.

As far as the gentleman back here, I'm
interest in what he said about. If we had any concern
about the location being a bad location, being
detrimental to the recovery of these people, we
wouldn't have it there.

First of all, these people are the least
likely to be using the drugs because we have complete
control. We know where they are basically every hour
of the day. If they're at work, they're at work. We
check on them to make sure they are at work. We have
a curfew at night. No men are allowed on the
premises. Nobody. If Mr. Baker, who owns this home,
if he rented this house today --

MR. DYSINGER: Mr. Stacey, it's random.

How often do you test?

MR. STACEY: I cannot address that. I
would say this much, --

MR. DYSINGER: Is it daily? Is it weekly?

MR. STACEY: No. Any time we would
suspect that a person has any problem at all, we would
test them automatically. I can't tell you how often.
MR. DYSINGER: So if they relapse with no
warning, then they wouldn't have been tested
beforehand?

MR. STACEY: Say again, please.

MR. DYSINGER: If they relapse with no
warning, then they would not have been tested
beforehand?

MR. STACEY: The testing wouldn't keep
somebody from relapsing. I don't understand the
question.

MR. DYSINGER: The question -- this one
alarms me. I read this one beforehand. It's scary to
live in a neighborhood with a high concentration of
admitted addicts and you don't know if they're being
tested. You say they're being controlled. How much
are they tested? How much are they -- how much can
you guarantee that there's not going to be a relapse?

MR. STACEY: I can't guarantee there's not
going to be a relapse. I can assure you there will be
relapses. Any addicts or alcoholics that knows the
program, they're going to have relapses. There's no
perfect world. Again, I'm just saying, at least in
this situation, if Mr. Baker, the owner of this home,
decides to rent it to XYZ Family, I don't think that
they'd have to come here to get a permit to do that.
I don't think so. If they did, as you said, sir, and I knew that had been a methamphetamine manufactured home before, they could be in there cooking meth at 9:00 tonight. That will not happen with this program. Yes, these women are, they are addicts and alcoholics, but they're paying their price. If I was living down there under the circumstances, I'd much rather have the guarantee of what I'm offering here this evening asto run the risk of someone else move into that home that has no control. It's all thrown to the wind.

This is a drug court program that is coming out of Judge Castlen's court. He's on top of this. These people go back before him maybe once a month to review what they're doing. Do you have a job? Have you had any problems? When that happens, our counselors go back in with these residents and tell the judge, yes, he has got a job, but he's had a problem. He failed to come in one night before curfew, whatever, because these people aren't perfect. I want to say as far as causing problems because they're living in a community that has a large concentration of drugs being used down there, I think that's positive for the community. That's one home that will not be making methamphetamine in the bathtub.
this weekend. That won't happen there.

Sean, does that answer your question?

MR. DYSINGER: Yes, it does.

MR. STACEY: I cannot tell you for sure what the drug testing schedule is. I know that the people there, when you're in this program, if I were on drugs and walked into the house, the people there would know before I sat down in the chair that I had been doing something. It's just that evident. When that happens, they're tested that quickly because there's no one there that wants to lose the privilege of living in that home. That's their only choice, their only chance of getting sobriety is to have that kind of home environment. They don't want to screw that up because their roommate over here is using anything stronger than an aspirin.

CHAIRMAN: Any other --

MR. ELLIOTT: If I can help you with the answer to that question. I'm familiar with both the Lighthouse and the drug court program.

I know the drug court program they have mandatory drug testing. If you test positive, you jeopardize your place in the drug court and usually the consequence of it you're placed back into the custody or in the jail for the weekend. It's an
excellent program. Judge Castlen meets with these people on a weekly basis. They meet every Monday and a report is made and drug testing is done. If they don't comply, they're no longer in drug court. The consequence of that is that they go to the penitentiary. Lighthouse Program is similar. I know that they have random drug testing, depending on the degree of your addiction, but there are drug testing and they do an excellent job in doing that. Both of these programs do, if that helps you any.

MR. DYSINGER: It does.

CHAIRMAN: Any board member have any questions?

(NO RESPONSE)

CHAIRMAN: Anyone else in the audience have any other comments?

(NO RESPONSE)

CHAIRMAN: The applicant have anything else they want to add?

MR. STACEY: No.

CHAIRMAN: Staff have anything to add?

MR. NOFFSINGER: No, sir.

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

MR. PEDLEY: Mr. Chairman, based on Mr.
Stacey's statements and the need for this program, I make a motion for approval.

CHAIRMAN: Is there a second?
MR. WARREN: Second.
CHAIRMAN: Any other discussion or comments?
MR. NOFFSINGER: I want to clarify the motion. Is that for a maximum of eight occupants?
CHAIRMAN: That will be limited to eight.
MR. PEDLEY: Is that the request in the application?
MR. NOFFSINGER: No. It was brought up tonight. They did not include that in the application.
MR. PEDLEY: Mr. Stacey, would you step back up.
MR. DysINGER: Our approval is based on that.
MR. PEDLEY: Are you asking for eight?
MR. STACEY: Eight max. Probably six, but eight max. If you have a situation where you have people that does really need to come in, you'll probably have eight there. Normally they have six people there.

MS. MASON: How many bedrooms are there?
MR. STACEY: Three. Three bedrooms. It's a nice house.

MR. PEDLEY: I want to add to my motion that it be a maximum of eight.

MR. STACEY: That's fine. That's good.

CHAIRMAN: That's in the motion.

MR. WARREN: Second.

CHAIRMAN: Any other discussion?

MR. DYSINGER: Is there any sort of review involved with this? Will we look at this in a year and see if it was six?

MR. NOFFSINGER: Only in terms of complaints. If we get a complaint that there are ten occupants there, we go out and do a review. If they're not in compliance with what's approved, then we report that to the board of adjustment.

CHAIRMAN: Any other comments or questions from the board?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries. Next item, please.
ITEM 4

4028 US 60 E, in an I-1 zone
Consider request for a Variance to waive the
requirement for a solid wall or fence at least six (6)
feet in height to be installed on all sides of the
gravel outdoor storage area.
Reference: Zoning Ordinance, Article 8, Section
8.5(j)
Applicant: American Road Express, Charles Redmon

MR. NOFFSINGER: Mr. Chairman, Planning
Staff reviewed this application. We do have a
recommendation. That recommendation will be for
approval in that it will not alter or 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.

That is conditioned upon screening being
installed on the south and west sides of the property.
That the proposed property be paved, the parking
areas and drive as shown on the attached site plan,
and that the screening fabric be placed in the
existing fence on the west and south of the storage
area. So that will be a partial, recommending
approval of a partial variance on the property whereby
they still have to do their required paving as shown
on the site plan as well as they have to do the
screening on the south and west sides. They're exempt
at this time on the north and east.

    Should some activity occur down the road
to where there's a change and use on the property or
there's additional building expansion, then we would
need to look at additional screening on the north and
east.

    CHAIRMAN: Have we had any objections
filed in the office on this?

    MR. NOFFSINGER: No, sir.

    CHAIRMAN: Is the applicant here?

    APPLICANT: Yes, sir.

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

    (NO RESPONSE)

    CHAIRMAN: Do you have anything you want
to add to?

    APPLICANT: No, sir. We're going to do
everything he spoke of.

    CHAIRMAN: You understand all that has
been put down?

    APPLICANT: Yes, sir.

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

(NO RESPONSE)

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

MR. PEDLEY: Mr. Chairman, I make a motion for approval based on findings stated by Mr. Noffsinger and also the conditions approval that was recommended, the north and east side only on the condition that the proposed paved parking and drive as proposed be installed and on the condition that screening fabric be placed in the existing fencing to the west and south of the outdoor storage area.

CHAIRMAN: Is there a second to this motion?

MR. MILLER: Second.

CHAIRMAN: Any other discussion 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 unanimously.

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ADMINISTRATIVE APPEALS

ITEM 5

Ohio Valley Reporting
(270) 683-7383
302 East 20th Street, in an R-4DT zone (POSTPONED)
Consider request for an Administrative Appeal to
change from one non-conforming use as a skateboard
shop to another non-conforming use as a retail store
for handmade furniture.
Reference: Zoning Ordinance, Article 4, Section 4.53
Appellant: Shiloh Barksdale

MR. NOFFSINGER: Mr. Chairman, the
applicant has indicated, has desired to withdraw this
application; however, we've tried on a number of
occasions to have the applicant submit a letter to
that effect and we have not received that. So if the
applicant is not here tonight to withdraw or to
present a case, that would recommend that you deny the
appeal and affirm the decision of the zoning
administrator.

CHAIRMAN: Is the applicant here?
(NO RESPONSE)

CHAIRMAN: Board, you've heard the Staff's
recommendation. What is your pleasure?

MS. DIXON: Move to deny the appeal and
uphold the decision of the zoning administrator.

CHAIRMAN: Is there a second?
MR. DYSINGER: Second.

CHAIRMAN: Any other comments from the
board?
(NO RESPONSE)

CHAIRMAN: If not, all in favor raise your
right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

ITEM 6

212 Oak Drive, in an R-1A zone
Consider request for an Administrative Appeal to
appeal the zoning administrator's interpretation that
placing a new manufactured home on the property is in
violation of the Zoning Ordinance because the property
currently is occupied with an illegal principal
business use.
Reference: Zoning Ordinance, Article 5, Section 5.2,
Article 3, Section 3-2(c) Section 3-2(c)(1)
Appellant: Wanda Aldridge

MR. NOFFSINGER: Mr. Chairman, the Planning
Staff review was conducted by Mr. Jim Mischel, the
zoning administrator. He is here tonight to describe
his side of the story as well as the appellant I
believe is in the audience tonight as well.

CHAIRMAN: Ms. Aldridge here?

MS. ALDRIDGE: Yes.

MR. ELLIOTT: State your name, please.

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I'm just going to give you a
little bit of history on this property.
I'd probably say about the last week of
June I think Ms. Wanda Aldridge come into our office
to obtain a building permit to place a manufactured
home on the property at 212 Oak Drive. In discussions with her, as far as the site plan and things of that nature, it was discovered that this property is zoned R-1A, which is single-family, has a commercial business on there. It's a body shop, I believe or repair shop. She was wanting to place a manufactured home, I think it was 28 feet by 60 feet.

In the course of that discussion, in a single-family zone, of course, you're not allowed to have a business. I guess that's why we're here, to determine if that is grandfathered in or not.

The county adopted the ordinance in December 1979. So I guess that's our starting point. If this business has been there since '79, is it grandfathered in?

I think there's two things to look at. One, the business being there before '79 and also this manufactured home. If the business was there since '79, that's grandfathered in. Shouldn't make any changes without coming into compliance. Now, if the business and the manufactured home was there, both of them before '79, then they're allowed both to stay because they're grandfathered in. They shouldn't make any changes if that manufactured home back in '78. Whatever size you can replace it with the same size or
smaller. You shouldn't go any larger.

So I guess that's what we're here to try
to determine what was there.

In the discussions that followed in a few
days or weeks, it just was not clear to me if this was
the case or not. I'll just give you a little hand out
here to kind of show you where this property is.

Essentially this is just showing you where
the property is. Where I've highlighted in yellow is
the property. You can see it's zoned R-1A. It's off
Oak Drive.

The second page is, I believe, the
applicant has talked to Kenergy about a utility bill
which they did fax to us. If you look at it, I
highlighted it, this bill was for July of 2003. Under
customer name it states that it's a storage shed, but
also down at the bottom it says commercial. That's
all the information I have. Now, Kenergy says, well,
we can't tell you if it's being used as a business.
We can't tell you if it's been there since '79 or '90
or 2000 or just moved in last month. This is what
they have. I wanted to let you all have a copy of it
too.

With that I think you pretty well know
what I know. That's the reason why I felt I couldn't
approve that permit because I wasn't clear if it was
non-conforming use. I don't know if you have any
questions now or what.

CHAIRMAN: Do any board member have any
questions of Mr. Mischel at present?
(NO RESPONSE)

CHAIRMAN: Jim, may have to call you back.

Would Ms. Aldridge have anything she wants
to add, please?

State your name for the record, please.

MS. ALDRIDGE: Wanda Aldridge.

(MS. WANDA ALDRIDGE SWORN BY ATTORNEY.)

MS. ALDRIDGE: The problem with this
property is the man that owned it is dead. It was
George Hutchason's father.

Mr. Mischel asked me to prove that it had
been there for 25 years. I have called the IRS. I've
called everybody I know, but the IRS says that they
can't track records of this man because after you're
dead four years they give your Social Security Number
to somebody else. This man paid sales tax. He had a
legal business license, but they tell me I can't trace
it. Not even to Frankfort because his Social Security
Number no longer exist. So how do you prove a
business has been in for 25 years? I asked Jim
Mischel to help me. Every time he would send me somewhere, it wasn't good enough. So I didn't know what to do. So he suggested the electricity, which so did the IRS, but I didn't think he would accept it. So when he mentioned it I thought he would. So I thought I had found something when Kenergy told me that this building has had electricity since 1972. I only brought him one month bill to show him at the bottom it listed commercial even though it said storage shed. They listed things different in 1972. This building has had electricity since 1972 and running as a business, but the man is dead that started it.

As far as what's sitting on the property now that I live in, it has been there since 1979 because his sister lived in it and she says that they was moved in when her father was alive, but how do you prove it? The man is dead.

I don't know anything else to do. I didn't try to hide the fact of anything. I called him. Asked him for a permit. He said if there is an existing home, an existing septic tank, I see no problem. I didn't hide a thing. He told me there couldn't be two things on one property. I told him there was no two homes on one property. There was a
business and a house, because the business is legitimate so I wasn't trying to hide a thing.

I just don't know what to do to prove the business, you know, is in compliance. It was in business since '72. I'm asking to put a double-wide where one already exist.

MS. MASON: There was a double-wide there?

MS. ALDRIDGE: There is one right now. I'm living in it.

MS. MASON: No. Before then.

MS. ALDRIDGE: I'm living in the only thing that's ever been on 212 Oak Drive.

MR. NOFFSINGER: You have not moved the new home on the property?

MS. ALDRIDGE: No, I can't. I don't have a permit.

MS. MASON: Okay. You have not moved the new home?

MS. ALDRIDGE: No. I'm asking for a permit to move a new one in.

MS. MASON: I misunderstood and thought the new home had already been moved in.

MS. ALDRIDGE: No. I can't move it in without a permit.

CHAIRMAN: To be sure we've got it
correct. You are living in a double-wide now that is there?

MS. ALDRIDGE: I'm living in two singles that were put together years ago in 1979.

CHAIRMAN: What size are they?

MS. ALDRIDGE: I have no idea, but it had an addition built on years ago too, but the laws in 1979 are different than the laws now. I didn't do all of this. I didn't build onto it. I just moved into it seven years ago.

MR. DYSINGER: Do we know what the footprint is currently of the structure? Jim, do you know?

MR. MISCHEL: No.

MR. NOFFSINGER: Mr. Chairman, I have a few questions of Ms. Aldridge.

Ms. Aldridge, what is the current business use of the property?

MS. ALDRIDGE: It's his business. Do you want to talk to him?

MR. NOFFSINGER: Please.

The reason I ask these questions we need to determine two things. One, the residential use of the property, and number two, the business use of the property.
MR. ELLIOTT: State your name, please.

MR. HUTCHASON: George Hutchason.

(MR. GEORGE HUTCHASON SWORN BY ATTORNEY.)

MR. HUTCHASON: It's a garage. It used to be Hutchason's Garage. I'm pretty sure Mr. Pantle knows.

CHAIRMAN: That's the back one.

MR. HUTCHASON: Correct. I do mechanic work.

MR. NOFFSINGER: Mechanic work. How long have you been at that location?

MR. HUTCHASON: My dad had been there since '72. I worked for him for all them years. Since he's been there. I don't know how many years it's been.

MR. NOFFSINGER: So you've been familiar with the property since 1972?

MR. HUTCHASON: Yes.

MR. NOFFSINGER: And you're stating your father operated a business at that location since 1972?

MR. HUTCHASON: Yes.

MR. NOFFSINGER: And the current use would be mechanic work. What was it back in 1972?

MR. HUTCHASON: He built trailers, worked
on cars. He done a little bit of everything. Didn't
do just one thing out there. He done everything.

MR. NOFFSINGER: Has there ever been a
time where a business use of the property ceased?

MR. HUTCHASON: No.

MR. NOFFSINGER: Do you know approximately
what size the manufactured homes would be on that
property, foot-print?

MR. HUTCHASON: No, not really. I don't
know for sure how they measure them. I've got 11
acres back there if that makes any difference.

CHAIRMAN: George, she stated that there
was two single trailers put together and an addition
built on to that also.

MR. HUTCHASON: Yes. It's a pretty good
place size now where it's been added on to, but it's
gotten in such bad shape it needs to be replaced.

MR. NOFFSINGER: I have a question of Ms.
Aldridge when you're finished with Mr. Hutchason.

CHAIRMAN: Anyone have any questions of
Mr. Hutchason?

MR. DYSINGER: Is there any question that
a residence has existed there since prior to 1979? Is
there a question to that? Do we accept that?

MR. NOFFSINGER: I guess what you're
saying is how long have the two manufactured homes
that Ms. Aldridge is currently living in, how long
have they been there?

MR. HUTCHASON: Since '79. My sister is
the one who lived there. Her and her husband is the
one that built it. She got married and moved to
Lexington so I bought it from her and give it to Ms.
Aldridge so she could live there because I've got a
daughter from her.

MR. NOFFSINGER: You stated you have 11
acres there. Is it in one lot?

MR. HUTCHASON: Yes.

MR. NOFFSINGER: You're going to be
selling the lot to Ms. Aldridge?

MR. HUTCHASON: No.

MR. NOFFSINGER: Renting.

MR. HUTCHASON: I told her she could stay
there as long as she wanted.

MR. NOFFSINGER: Is she the caretaker
perhaps?

MR. HUTCHASON: No. She's got my child so
I want her as close as I can. We get along good and
everything.

MR. NOFFSINGER: I still have questions
for Ms. Aldridge.
MR. DYSINGER: I have no further questions at this time.

CHAIRMAN: Come up again please, ma'am.

MS. ALDRIDGE: I don't know if this helps, but I got a petition. He had it in his business of people that are older and know this business has been in existence since 1978 or '72, whatever it is. I've got 157 names. Would anyone like to look at them or can I turn them in for consideration?

CHAIRMAN: Bring them forward and we'll put them in the record.

MR. NOFFSINGER: You're going to be purchasing this home. It's a new double-wide manufactured home?

MS. ALDRIDGE: Yes.

MR. NOFFSINGER: Did Mr. Mischel go over with you the installation requirements on manufactured homes?

MS. ALDRIDGE: No, he did not.

MR. NOFFSINGER: If you're successful in your appeal and allowed to place the home on the property, there are certain installation requirements that you have to meet. That means the removal of the tires, tongue, wheel and axle from the unit as well as the unit has to be placed on the proper foundation.
with masonry type skirting all the way around.

MS. ALDRIDGE: They're going to do that.

MR. NOFFSINGER: Wanted to make sure that you're aware of that, if you're successful.

MS. ALDRIDGE: Yes.

MR. NOFFSINGER: What I've gathered in this series of questioning from Mr. Hutchason is that his father has operated the business there since 1972. We have his word. I don't know what else we have to go on. We have this petition that I'm sure is a valid petition. Mr. Hutchason has stated that there's been mechanic work there, building trailers, and it's been ongoing. There's been no lapse. To me the issue of the business, I don't know how much more evidence you're going to be able to find that the business did exist there.

If you determine that that business is a non-conforming use in an R-1A zone, then the business end of it is out. Then you look at the manufactured home and you see that the property is zoned R-1A, which is single-family residential. A double-wide manufactured home is principally permitted in that zone.

I think the real issue is whether or not you have a non-conforming business and not so much as
the placement of the manufactured home on the
property. So I think if you find that the business is
not in illegal use because it's a non-conforming use
that can't be expanded, then with that I think you
also provide the avenue for Ms. Aldridge to place the
home on the property since it is residential and
that's the proposed use.

MR. DYSINGER: So, Gary, are you saying
that we're looking at the wrong issue all the way
around?

MR. NOFFSINGER: I think you very well
could be. I think you need to focus on the business
use of the property. The property is zoned R-1A which
is single-family residential. What should the
property be used for? Residential. That's what Ms.
Aldridge is proposing to do with the property. She
agrees that she's going to meet all the installation
requirements for the R-1A zone. You have an 11 acre
tract that certainly it may have the ability to be
subdivided. Put the business on one lot and put the
residential unit on the other. I don't think you have
to go that far so long as you find that the business
is a non-conforming use. Then they're not -- by
placing the manufactured home on the property, they
are, in my opinion, they are not increasing the
non-conforming. They're bringing the use more into
conformance in that it's going to be used for
residential. The business cannot expand over what it
is today. Now, that's not a legal opinion. That's
just my opinion.

MR. DYSINGER: Just so I understand, if
it's all right.

CHAIRMAN: Let me make a comment. I
checked with the attorney and he says I can comment.
The business has been there since early
the '70s because I've bought trailers and stuff from
him.

I would disqualify myself. I won't be
voting.

It has been there. Ever since his dad was
there I've bought parts, welding repairs, trailers.
So that has been there that long.

MR. NOFFSINGER: I think in terms of what
Mr. Mischel is charging with, when Mr. Mischel reviews
a case and he sees that there's non-conforming, he has
to have proof, sufficient evidence, in this case the
business, is a legally non-conforming use or is it
violation. Unless you produce evidence that would
support your case, he can't approve it. That's why
you have to come before this board. By coming before
this board, it's a matter of public record and you
have the opportunity to introduce evidence that
perhaps Mr. Mischel, as the zoning administrator,
can't just act on. It needs to come before the public
board and a decision granted.

CHAIRMAN: You want to go ahead and ask
your question now?

MR. DYSINGER: It seems to me that Ms. Aldridge is not applying for anything that is out of
the ordinary necessarily. The business on the
location makes it out of the ordinary, but the
business itself is the non-conforming use. I guess my
question is: Gary, how do we handle this exactly?

MR. NOFFSINGER: Well, I think --

CHAIRMAN: An existing non-conforming
going back to a non-conforming that's not increased in
size can be granted.

MR. NOFFSINGER: That's right. I think
this board has the ability, number one, to determine
that the use of the property for the mechanic shop,
the commercial use of the property, non-residential
use of the property could be considered legally
non-conforming use. By doing that you open up, as I
stated earlier, an avenue for Ms. Aldridge to come in
and ask for placement of the manufactured home on the
property because it's not increasing the
non-conforming. The residential use is separate, is a
separate issue from the business; although, Mr.
Mischel couldn't issue the permit because he had to
clear up the issue of the business first. So I think
you have the ability to determine that the existing
business is a non-conforming use and that because the
property is zoned R-1A single-family residential, the
placement of the manufactured home would be in keeping
with the zoning requirements.

MR. PEDLEY: Does she have to come back
before this board for a conditional use permit after
we rule on the administrative appeal?

MR. NOFFSINGER: That's a very good
question, but if it's going to be a double-wide
manufactured home that meets all requirements for a
Class A manufactured home, then no. If it were a
single-wide manufactured home, then yes, she would.

MR. DYSINGER: Mr. Chair, are you familiar
with the residence on the property?

CHAIRMAN: Yes. It's been there.

MR. DYSINGER: Is it about the size of a
double-wide, a new modern double-wide?

CHAIRMAN: With the addition to the two
trailers probably.
MR. DYSINGER: Footprint-wise.

CHAIRMAN: Probably. I would have to measure. I said probably.

MR. MILLER: Gary, is the size of the new mobile home, is it restricted to the size of the current?

MR. NOFFSINGER: In my opinion, no, because the proposed use of the manufactured home would be a use that's permitted in that zone. Again, you're not increasing the non-conforming. That's the key. I think that's what you should find there and I think you should base your decision on.

MS. MASON: So you're saying even if it was a single-wide it still would be okay for the double-wide because it meets the requirements?

MR. NOFFSINGER: That's my opinion, yes.

MR. DYSINGER: It's actually zoned for what she's asking to do.

MR. NOFFSINGER: That's correct.

CHAIRMAN: Do you have anything else you'd like to add?

MS. ALDRIDGE: I guess not.

CHAIRMAN: What's the board's pleasure at this time, please? Chair entertain a motion to dispose of the item.
MR. PEDLEY: I'm not completely sure how to make the motion.

I'm going to make a motion in favor of the appellant. That the business is non-conforming and also residence is non-conforming. The zoning administrator's interpretation is incorrect.

CHAIRMAN: A motion has been made that we have a non-conforming use that's been in existence and grandfathered in and that the zoning administrator's interpretation was - won't say wrong, but appreciate you questioning it at this time, and that it is okay to approve her request or her appeal. Will entertain a second at this time.

MS. MASON: Second.

CHAIRMAN: Any other comments?

(NO RESPONSE)

CHAIRMAN: Do you understand the motion, that you'll be approved?

MS. ALDRIDGE: What do I do now?

CHAIRMAN: Nothing.

All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE WITH THE DISQUALIFICATION OF THE CHAIRMAN.)

CHAIRMAN: Motion carries.

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Next item, please.

ITEM 7

5016 West Fifth Street Road, in an R-1A zone
Consider request for an Administrative Appeal to
appeal the zoning administrator's interpretation that
the business activity located on the property (Bill's
Transmission Service) is an illegal use and must cease
operation.
Reference: Zoning Ordinance, Article 4, Section 4.3
Appellant: William C. Pointer

MR. NOFFSINGER: Mr. Chairman, Mr. Mischel
has been very busy here lately, but anyhow we'll let
him present his side.

CHAIRMAN: Is the appellant here this
everning?

APPLICANT REP: Yes.

MR. MISCHEL: Jim Mischel.

Let me give you a little history on this
one. Around the last week of June our office received
a complaint about vehicles being repaired at 5016 West
Fifth Street Road. The complaint was that this is a
residential neighborhood. This place hadn't operated
for that long of a period. We sent one of our
inspectors out to take a look at it. I think he came
back and said, yes, it looked like there's about eight
vehicles at this site. Looks like it's a repair
garage.

Let me give you a copy, and I'll put one
in the record, of the memo we sent to Mr. William Porter discussing this.

    I'm not sure of the date, but he did come in to talk to us about this situation. After we talked, I felt like it would be appropriate for him to file an appeal in front of this board if this business had been there prior to '79. I thought it would be good to get it on record so he could continue, and also to give the complainant, the person that complained, a chance to be here.

    Now, today I went through my files to see that person that called to complain. I was going to give them a call and tell them the meeting was going on tonight and they could be here if they wanted to and give their side of the story.

    What happens, a lot of times we get calls and people don't leave their name or phone number. They don't want anybody to know who they are. I didn't have a chance to tell that person.

    Anyway I think it's good to get it on record if the business has been there. It's kind of a form of protection for them. Also if we knew the person was that complained, they could be here and have their concerns heard too.

    Anyway, that's all I know of this
situation. It is zoned like the letter said R-1A single-family residential. I don't know if you have any questions right now or not.

CHAIRMAN: Any board member have any questions for Mr. Mischel?

(NO RESPONSE)

CHAIRMAN: Do you have anything else you want to add at this time?

MR. NOFFSINGER: No, sir.

CHAIRMAN: The appellant want to come forward. State your name for the record and give us the information you have please, sir.

MR. ELLIOTT: State your name, please.

MR. WETHINGTON: Larry Wethington.

(MR. LARRY WETHINGTON SWORN BY ATTORNEY.)

MR. WETHINGTON: I'm Mr. Pointer's son-in-law. He was quite upset when it happened and he called me.

I came down and talked to Mr. Mischel. Called Bobby Whitmer. Bobby knows this business has been there. I've got a book here with 33 signatures in it; David Boswell, Keith Caine. The sheriff's department has been doing business down there for a long time. David Boswell's father has done business there.
This is a vendetta thing from a competitor. He lost a car to Mr. Pointer. They called Mr. Pointer. He didn't know it was coming from a competitor. He told them, sure, bring the car down. When the wrecker went out to the competitor, hooked up to the car. He ran to the wrecker and asked the wrecker where he was taking it. He told him to take it down to Mr. Pointer's. There's where the phone calls from from.

Mr. Pointer, he's lived there for a very long time. Has been doing business there since January 1 of '74. We've got letters here from all the neighbors. No one has ever complained. He's a good neighbor. He's been doing business there. It's a vendetta thing. He definitely falls under the grandfather clause. We would like the board to consider that, please.

CHAIRMAN: Any board member have any questions?

(NO RESPONSE)

CHAIRMAN: Any board member have any comments?

MR. DYSINGER: I have a question. Are there any of those definitive pieces of evidence that proves that it was in existence prior
MR. ELLIOTT: Larry, will you make that a part of the record here?

MR. WETHINGTON: Sure.

MR. NOFFSINGER: I think the best that we have to work with will be those signatures.

MR. WETHINGTON: There are lot of people who offered to come down here tonight and give their time. Boots Norris, a lot of people. I just didn't feel like it would be necessary. Told Mr. Pointer I didn't think it would be necessary. I thought we had the signatures. Now, these are people that's not going to lie on a sworn affidavit. They know this business has been there since 1974. I've know Mr. Pointer that long. I'm married to his daughter. I'm not going to come up here and sit here and tell you people something that's not true. It's not just going to happen. It's a vendetta thing.

I understand Mr. Mischel doing his job. I appreciate the opportunity, I really appreciate the opportunity to come up here and get it made public record so this doesn't happen again. I really appreciate that. The man has been doing business for a very long time. Two-thirds of the people in this community knows it. Like I said I don't know what
else to do. We didn't know what else to bring up here to show except those signatures.

MR. NOFFSINGER: Sean, regarding your question just to elaborate on it. The location of this property is such that it's in an area where we do not have good records because we just started enforcing the zoning ordinance outside the City of Owensboro in the year 2000. Our records start about that time. We have access to some records that go back before that, but not a lot. A lot of those files aren't available.

In this situation, you know, you have people here that I don't think we need to hear from them because I think I know what they're going to say. You look at the petition. That's the only evidence you have to consider. You do not have any evidence to the contrary. If someone were here, the person complaining were here to produce evidence to the contrary, you would have that to take into consideration, but you don't.

It is good that you're here tonight because this will set it as a matter of public record so that if we get another call we can point to this meeting. I'm going to instruct Mr. Mischel to have one of his staff come out and take pictures tomorrow.

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or in the very near future so that we can make that a part of the file for future reference, as well as on the previous case, so we have at least that documented as to when this public hearing occurred. I think based upon the evidence it's the petitions and what Mr. Wethington has stated.

CHAIRMAN: Anyone have any questions of Mr. Wethington?

(NO RESPONSE)

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

MS. DIXON: Move to affirm the appeal.

CHAIRMAN: Is there a second?

MR. WARREN: Second.

CHAIRMAN: Motion has been and a second that we affirm the appeal. Is there any other questions?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Let me add one thing, if I may. You brought up the one previous that we had, the 11 acres. If they decide down the road to do any divisions and
stuff or change, they would have to come before the zoning committee?

MR. NOFFSINGER: No. That would be --

CHAIRMAN: If they sell part of it off as a division.

MR. NOFFSINGER: No, sir. We would probably -- as long as the division met all requirements, we would approve that division in-house. It would not come before this board.

CHAIRMAN: Any other business come before the meeting?

(NO RESPONSE)

MR. MILLER: Motion to adjourn.

MR. DYSINGER: 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 48 typewritten pages; and that no signature  
was requested to the foregoing transcript.  

WITNESS my hand and notarial seal on this  
the 25th day of September, 2003.  

LYNNETTE KOLLER, NOTARY PUBLIC  
OHIO VALLEY REPORTING SERVICE  
202 WEST THIRD STREET, SUITE 12  
OWENSBORO, KENTUCKY 42303  

COMMISSION EXPIRES:  
DECEMBER 19, 2006  

COUNTY OF RESIDENCE:  
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