The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, June 7, 2007, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: C.A. Pantle, Chairman
      Gary Noffsinger
      Ward Pedley
      Marty Warren
      Sean Dysinger
      Ruth Ann Mason
      Judy Dixon
      Clay Taylor
      Madison Silvert, Attorney

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CHAIRMAN: Call the meeting to order. Want to welcome all of you this evening. We start our meeting each evening with a prayer and the pledge of allegiance. We invite you to join us if you so desire. Judy Dixon will have our prayer this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Thank you.

Again I want to welcome all of you to the Owensboro Metropolitan Board of Adjustment this evening.

If you have any comments or complaints on any item, please come to one of the podiums. State your name and you'll be sworn in. Then proceed with your
comments from there. The one that is speaking at that
time have questions of the other side, please address
them to the chairman and we'll find out or try to find
out the answer at that time.

With that the first item this evening is the
minutes of the May 3, 2007 meeting. They're in the
office. I don't think there's any problems with it.
With that I'll entertain a motion to dispose of them.

MR. PEDLEY: Motion to approve.
CHAIRMAN: Motion to approve.
MR. DYSINGER: Second.
CHAIRMAN: All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries.

Next item, please.

MR. NOFFSINGER: Mr. Chairman, I would ask
that the Board of Adjustment amend this agenda to hear
Item Number 5 as your first item under the Conditional
Use Permits.

The reason for that the applicant has
requested a postponement. I think that will just take
us a minute to do. We will need you to vote on
amending the agenda.

CHAIRMAN: I'll entertain a motion to amend
the agenda.
MS. DIXON: Move to amend the agenda and place Item 5 at Item 2.

MS. MASON: Second.

CHAIRMAN: A motion has been made and a second. Any other discussion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

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CONDITIONAL USE PERMITS

ITEM 5

9300 KY 815, zoned A-R (POSTPONED at May 3, 2007 meeting)
Consider request for a Conditional Use Permit to add a 600 yard rifle range to an existing pistol and rifle range.
Reference: Zoning Ordinance, Article 8, Section 8.2K7/42
Applicant: Darrel and Rebecca Whittaker

MR. NOFFSINGER: Mr. Chairman, the applicant's attorney, Edwin A. Jones, has requested that we postpone action on this item until our July meeting which will occur the first Thursday in July.

His position is that the gun range has closed and they will not re-open the gun range until this board acts on the Conditional Use Permit. They also have a contract with the NRA to conduct a testing, if
you will, of the range and to make a determination, and that was on June 4th. They have not received that report back.

So with that there is opposition to this. The adjoining landowner that is of record is opposing this application is represented by Bob Kirtley. He was made aware of that in advance. If you wish to postpone, it will take a motion to postpone.

CHAIRMAN: What's the board's pleasure?

MR. DYSINGER: Mr. Chairman, move to postpone this item until our next regularly scheduled meeting per the applicant's request.

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

MS. DIXON: Second.

CHAIRMAN: A motion has been made and a second. Any other discussion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries. The item is postponed until next month.

Next item, please.

ITEM 2

6731 Pond River Road, zoned A-R (POSTPONED at May 3, 2007 meeting)
Consider request for a Conditional Use Permit in order to provide migrant farmer housing for a maximum of eight people that will be occupied six months out of the year.

Reference: Zoning Ordinance, Article 8, Section 8.2A7/6a

Applicant: Brad Stephen and Clint Hardy

MR. NOFFSINGER: Mr. Chairman, I do have a packet of information that needs to be entered into the record.

Each board member has received a copy of this packet of information that was provided by the applicant in advance of this hearing. The applicant is represented by counsel, Mr. Charlie Kamuf. He submitted this in a timely fashion to the board. Each member was mailed a copy a week in advance. Each of you have it. We just need to make sure that is a matter of record.

MR. WARREN: Mr. Chairman, I need to excuse myself from this item.

CHAIRMAN: So noted.

Is the applicant here?

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

MR. KAMUF: Charles Kamuf.

(MR. CHARLES KAMUF SWORN BY ATTORNEY.)

MR. KAMUF: This application meets all the requirements for guest workers.
Guest workers are not new in Daviess County. About 12 years ago we filed an application for Joe Elliott, who is here to testify. He has a conditional use in Eastern Daviess County for approximately 15 workers. He has bunkhouses similar to the same that we have applied for. The conditional use was approved by this board approximately 12 years ago. He hasn't had any problems with the seasonal workers.

The bunkhouse that's manufactured, I'll start out with exactly all the requirements that we had to go through.

There are two things that I will pass out. One will be the statement from the inspector that he has passed the housing. Another one that he has qualified under the Criteria for Conditionally Permitted Housing Groups. What this means, I'll give you a copy of it, the noise. Everything about this building has to be approved according to OMPC regulations. They have done that. He has filed an affidavit in the record. I think you have that in the record. Let me file this, if I can.

The first document that I've presented to you this evening, the approval of the inspector that he made for approving a mobile home, which will be involved in this matter.
The other one, Exhibit B, is the required information which is required by your board before we can make an application.

There's a statement attached to it by Brad Stephen.

Is it okay to go ahead, Mr. Chairman?

CHAIRMAN: Go ahead, please, sir.

MR. KAMUF: The OMPC regulations requires an on-site administrator. I think there was some question by one of the board members, according to the paper, the last time what this would be. The on-site administrator would be Brad Stephen. His cell phone number is 929-5048.

When Brad Stephen is not available, the on-site administrator who will be on the premises will be a gentleman by the name of Alfonso Martinez. His cell number is 903-4112.

Mr. Martinez has been in Daviess County for more than two weeks. He has a driver's license and he speaks English.

A little about, there was some question I think by Mr. Taylor the last time about what is an H2A worker. What I have done is that I have brought you a gentleman from the state by the name of Rick Alexander. He has a degree in agricultural economics.
He has worked five years for the Commodity Growers Cooperative. He administrates and administers the H2A Program in the State of Kentucky. He has been approved by the Department of Labor. He has a federal license to administer the program. He does the paperwork for the farmers to get the H2A worker. The farmer will have a contract with the Labor for approximately ten months. He will tell the board exactly how the program works.

Just a couple of statements about the H2A Program. Every person that qualifies under the H2A Program nowadays has to have a 15 year background check. If he's been in trouble in a foreign country, he will not be eligible to come to the State of Kentucky. If he gets in trouble while he's in the State of Kentucky, be will be sent back to the area.

It's a federal program. It will be a seasonal and temporary program. The worker must be paid at least $8.65 an hour. The employer must show that there are no other available workers to handle this job or they cannot come to the states.

The employer must provide free housing to all workers who are not reasonably able to return to their resident on the same day. The housing must be inspected by OSHA.
That's the statement that I gave you a few minutes ago.

Three meals must be provided to each worker or furnish free and convenient cooking and cooking facilities for the workers, prepare their own meals. The employer must reimburse the worker for the cost of transportation and substance after the worker has completed 50 percent of the work on the contract.

In addition, he must provide free transportation between the employer's housing and the work site.

Rick will be here to tell you about that. Joe Elliott will be here to tell you about his experience with the H2A Program, and his conditional use which was approved by this board approximately 12 years ago.

We think we've done everything possible to get the legal guest workers here in Daviess County and on the farms. With that I will leave it open.

If you would like Rick Alexander to give you a statement. He can do that or he can stand up here and give you the answers to the questions you'd like.

The other one is Joe Elliott. I would like Joe just to make a short statement on exactly how his business has operated. I think some of the members of the board have actually been up to Joe Elliott's and
looked at them. I know that some of the staff from
the Planning & Zoning has looked at them.

Joe, would you just make a short statement,
please.

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

MR. ELLIOTT: Joe Elliott.

(MR. JOE ELLIOTT SWORN BY ATTORNEY.)

MR. ELLIOTT: I appreciate the opportunity to
come before the board down here.

As Charlie said, I started with this here,
it's been probably 12 or more years ago. We've had
good relations with our workers. We've tried to
provide them descent housing and try to treat them,
would not treat them no different than we do any local
workers. We do have local workers on site too.

Anyway, everything has worked out pretty good.
We haven't had any trouble with our guys at all. I
will say, you know, they are human too. Can't promise
you that nothing ever will happen, but there won't be
nothing happening on our farm any more than what would
be happening if we had local people.

I'm up for any questions if anybody would like
to have or I'll be back for another statement if you
want.
CHAIRMAN: Board members have any questions of Mr. Elliott?

MR. PEDLEY: Mr. Elliott, the investigation by the state on the H2A program, do they check you on a regular basis, once a year or two years?

MR. ELLIOTT: The Department of Labor will come to our farm and inspect our housing. They will come back sometimes through the summer and check on you. You better have all your paperwork ready because the wage and hour can walk in about any day. They may give you a notice and they may not. I've had that to happen to me a couple of times. They check all your payrolls and stuff like work permit and everything. Yes, you're eligible to be inspected by either wage and hour or the Department of Labor at any time. That's throughout the contract. That's part of their business that they can do it.

CHAIRMAN: Anyone else? Does the board have any questions?

(NO RESPONSE)

CHAIRMAN: Staff have any comments or questions for Joe at this time?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Thank you.

Do you have someone else you want to bring up?
MR. KAMUF: Yes. Rick, you want to make just a short statement.

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

MR. ALEXANDER: Rick Alexander.

(MR. RICK ALEXANDER SWORN BY ATTORNEY.)

MR. ALEXANDER: I am Rick Alexander. I work for Commodity Growers. I am a licensed farm and labor contractor. What we do is we enter into a contract with the growers in order to get this labor to them. We work with the Department of Labor, Immigration Services and the State Department to get these workers here.

These are legal guest workers. They can be here for up to ten months and then they have to return home and reapply. The whole process starts again.

We work with the Department of Labor which does, every contract has to meet certain criteria. The Department of Labor approves those contracts and then Immigration Services approves those contracts. It's a very, a lot of paperwork involved. It's not unusual to have a folder an inch thick on all the paperwork that you have to do in order to get approved and in order to brings those workers in here.

Not only do they do background checks for them
in Mexico, they also anything -- if they had been in
the US illegally and there's a record of that, then
they can't come as well.

This year one of the things that's changed a
little bit is the State Department has been able to
get more and more records as time goes on. So
Homeland Security records are now available to the
State Department when the interviews are done. It's
getting harder and harder to get people through.
They're doing more investigation of those workers.
That's good. You want good workers here. The history
of this program is that you do get good legal workers.

Any questions?

CHAIRMAN: Any questions from the board?

(NO RESPONSE)

CHAIRMAN: Staff have any questions?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Thank you at this time.

Anything else you want to add at this time?

MR. KAMUF: We're here to answer questions
after we hear opposition.

CHAIRMAN: The position have any questions
this evening or comments?

State your name, please.

MR. PIKE: Larry Pike.
MR. PIKE: I'd like to know, they said in the last meeting it was a 14 by 70 trailer. I was wondering if that's big enough for eight people, eight grown men?

CHAIRMAN: Mr. Kamuf, will you answer that, please, sir.

MR. ALEXANDER: The only thing I can answer from the standpoint is if the Department of Labor comes and approves. Each facility is approved for a certain occupancy. So if the Department of Labor approves it, there are certain criteria that has to be met. They've approved that so, yes, that trailer has been approved. It's OSHA requirements for the housing. It's not a state thing. It's a federal thing. It's OSHA requirements.

CHAIRMAN: That's the paper you've given and entered, Mr. Kamuf? The paper with the report was entered into record already.

MR. KAMUF: Yes.

CHAIRMAN: Any other comment?

MR. PIKE: They said Mr. Stephen was going to be on site. Is he going to be on site all the time? If the migrant worker or whoever the other guy was that he named, like I said that's like a fox guarding
a hen house. He ain't going to say nothing bad.

CHAIRMAN: Either one of you all have a

comment to add on to it?

MR. KAMUF: I might just say this: This site

requirement is not part of the H2A Program. This is

part of your all's program, as far as the regs from

the OMPC. In other words, that's the best we -- Brad

Stephen will be there most of the time, but if he's

not there we have an alternate and that's the one that

I talked to you about, Mr. Martinez. We gave you his

cell phone number that you can call him. You can call

Mr. Stephen any time. Last time I think there was

some question about communication. This gentleman

speaks English and has a driver's license. I don't

know that I can tell you much more about him. He's

been here for awhile. He's living in Daviess County

at the present time.

CHAIRMAN: Thank you.

Does that answer your question?

MR. PIKE: Somewhat.

CHAIRMAN: State your name, please.

MRS. PIKE: Sherry Pike.

(MRS. SHERRY PIKE SWORN BY ATTORNEY.)

MRS. PIKE: I would like to know if anyone can

answer why did we receive or why is it necessary that
we received a notice in the first place to let us know that this was coming across the street from us?

CHAIRMAN: Staff.

MRS. PIKE: What was the purpose of that?

MR. NOFFSINGER: The proposed use, which is a use of migrant farm worker housing is a conditionally permitted use in the zoning ordinance that Daviess County has adopted. So in order for them to have this use, they have to receive a permit from this board. A conditional use permit with that is a requirement that the board has issued that adjoining landowners have to be notified and there has to be a notice of public hearing published in the news media. Because it is a conditionally permitted use and there's a public hearing involved, and you're an adjoining landowner, you received notification as to what's going to occur and the opportunity to speak to the permit. So it's a requirement of law and based upon the ordinance that Daviess County has adopted.

MRS. PIKE: I would also like to clarify that it came up in the paper after the last meeting that we lived a tenth of a mile. We're like an eighth of a mile. We're right across the street from it. It said that I had talked about the trash being the issue. The trash was the last thing on my list. My property
value was my first concern. I would just like to
clarify that.

CHAIRMAN: Thank you. We have no control over
what the newspaper puts in the paper. What they write
we can't control. Sorry.

Anyone else? State your name, please.

MS. WRIGHT: Stacy Wright.

(MS. STACY WRIGHT SWORN BY ATTORNEY.)

MS. WRIGHT: I would just like to make a
statement.

If you look at the minutes from the last
meeting, on Page 11 and 12, lines 25 on Page 11 and
line 1 through 2. Under sworn testimony Mr. Stephen
said, "I was going to put these guys at my house, but
I'm in the floodplain so there's no way I can get a
permit to do that."

Toward the end of our discussion on the
meeting he once again reiterates that he would have
them by his house and also said that his wife wouldn't
mind it.

I would like to know who did he check with on
the codes department to not be able to get his permit?
If he's going to put them by us, he ought to be able
to put them by him. I've talked to Brian Bishop at
the county codes department and he never said, no, he
couldn't get a permit to put a trailer over there.

CHAIRMAN: Staff, answer that please.

MR. NOFFSINGER: I didn't hear, Ma'am, who you spoke with in the codes department.

MS. WRIGHT: Brian Bishop from the county codes department. Because I believe that he actually, Mr. Stephen actually resides in Henderson.

MR. NOFFSINGER: I can't answer that question. It involves Henderson County. It wasn't anyone from the Daviess County Codes Department.

MS. WRIGHT: I mainly just wanted it noted that he said under sworn testimony, if he could put them by him, he would put them by him.

MR. NOFFSINGER: Mr. Chairman, that would be a question that would have to be answered by the applicant Mr. Stephen. Not the Staff.

CHAIRMAN: Mr. Stephen, would you come forward, please?

MR. KAMUF: I don't think that's relevant. We're here to talk to you and answer the question if you want to.

MR. SILVERT: State your name, please.

MR. STEPHEN: Brad Stephen.

(MR. BRAD STEPHEN SWORN BY ATTORNEY.)

CHAIRMAN: You heard her comment. Would you
answer that, please?

MR. STEPHEN: Actually I have had two conversations with Jim Mischel at Planning & Zoning. I guess maybe I did not state it right. I would have had to build up a lot of dirt which would have been, the cost would have been a very great thing. That's why we chose not to go that route. I would have to build up six feet. I do have an Owensboro address. I do not live in Henderson County.

CHAIRMAN: In other words, where you had planned on putting on was in the floodplain?

MR. STEPHEN: Yes.

CHAIRMAN: Thank you. That answers it.

MR. NOFFSINGER: For clarification of record, Mr. Chairman. It sounds like what Mr. Stephen is saying is that the property is located in the floodplain. However, after talking with Jim Mischel, it was determined that he could build in the floodplain; however, he would have to build it up. The floodplain could have been a limiting factor in it, but it's not a factor that says, no, it can't be done.

CHAIRMAN: Any other questions?

Come forward and state your name, please.

MS. PAYNE: Donna Payne.
MS. PAYNE: I just want to know, I know they have to have proof that they did try to get the jobs through the newspapers from around in the community. I just want to know if they do have proof of that? Because that is a requirement. I have investigated it quite thoroughly.

CHAIRMAN: Come forward and answer that question, please.

MR. ALEXANDER: Rick Alexander.

Yes, that has been done. We have documents in our office affirming that the advertisement was done.

MS. PAYNE: I would like to see the documents myself.

MR. ALEXANDER: No problem.

CHAIRMAN: Where you're office? You're welcome to go to his office and check it.

MS. PAYNE: Where is his office?

MR. ALEXANDER: My office is in Lexington.

MS. PAYNE: I'm not going to Lexington. I'm in Owensboro.

MR. DYSINGER: Mr. Chairman, that requirement is not a requirement of this ordinance.

CHAIRMAN: No, it's not.

MR. DYSINGER: So I don't know that this is
necessarily the venue for that.

MS. PAYNE: It is for the program.

MR. DYSINGER: Yes, ma'am, but not the ordinance and that's all we have control over. Do you understand what I'm saying?

MS. PAYNE: No.

MR. DYSINGER: The requirement you're speaking to is not a requirement of this board or this zoning requirements in Daviess County. It's a requirement of the program. We don't have any control over that.

MS. PAYNE: I'm just trying to clarify. They could put the building there, but in order to get the workers they have to go through that, right?

CHAIRMAN: Through his office they have to go.

MS. PAYNE: Right. So they could put the building there with nobody in it until they go through the requirements, right?

CHAIRMAN: Answer that, please.

MR. ALEXANDER: The advertising is done. Up until 50 percent of the contract is reached, if somebody applies, then the drawer has to employ that person. So it's ongoing. It's not did I advertise and nobody applied for that job. It goes concurrently. We advertise. We do proof of insurance. We have to send the Department of Labor to
prove that we advertised. We send that documentation with them before they'll ever approve for us to go forward. After that's approved, then at the same time the housing inspection is done. If somebody does today applies for the job that Brad has, then he needs to hire that person, that US worker, up until 50 percent of the contract is made. Whatever 50 percent of that is, he has to take that US worker.

MS. PAYNE: So they don't have to advertise before?

MR. ALEXANDER: Yes, they do advertise before. We advertise prior to contact. That's part of the requirement we have to do in order to get approval to do this. We have to go ahead early on and start the advertising process. We advertise early. That is always open. If somebody wants to apply, they can apply. The drawer has to take that person up until 50 percent of the contract is made. After that point, they do not have to. The first 50 percent of the contract that we have with DOL, they need to hire that person.

MS. PAYNE: Right. So if I get in contact with your office, then you would be able to show me proof that they did advertise?

MR. ALEXANDER: Oh, absolutely.
MS. PAYNE: That's what I need to know. I will require that.

CHAIRMAN: Any other comments in opposition?

(NO RESPONSE)

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

MR. KAMUF: Not at this time unless there's some questions.

CHAIRMAN: Any other comments or questions?

Come forward and state your name again.

MS. WRIGHT: Stacy Wright.

I just want some clarification on the on-site administrator. They talk like that was something that you all required; is that right, or is it a requirement of the H2A?

MR. NOFFSINGER: That is correct. The OMPC or the Daviess County Zoning Ordinance requires that they address that issue with all types of uses such as this. They have an on-site administrator identified and contact information.

CHAIRMAN: Any other questions from opposition?

(NO RESPONSE)

CHAIRMAN: Seeing none and hearing none, the applicant have anything else to say at this time?
MR. KAMUF: No, sir.

CHAIRMAN: Board have any questions of the opposition or the applicant?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

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

MR. DYSINGER: Mr. Chairman, given the finding that the applicant has met all of the requirements of the ordinance, I move that we grant the conditional use permit.

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

MR. TAYLOR: Second.

CHAIRMAN: A motion has been made and a second. Any other questions or comments from the boards?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No.

MR. PEDLEY: I would like to add a condition to that if it's okay.

CHAIRMAN: Will you hear the condition?

MR. DYSINGER: Sure.
MR. PEDLEY: Condition 1 would be Item 2 may be waived provided housing is where work is being conducted, and Condition 2, the applicant shall provide transportation for workers to necessary community services, and Condition 3, would be phone numbers of Mr. Brad Stephen and the on-site administrator shall be posted on site in clear view of the public.

CHAIRMAN: Does the motion maker accept that?

MR. DYSINGER: Just to clarify. We're waiving the half mile transit. No objections to that.

CHAIRMAN: Does the second accept that?

MR. TAYLOR: Yes.

MR. DYSINGER: Mr. Chairman, I'd like it just for the purpose of clarity to restate the motion and then we can add the amendment as we go.

Given the findings that the applicant has met all the requirements of the ordinance and that it is not incompatible with the neighborhood, I move that we grant the conditional use permit with the conditions that we waive the requirement for half mile proximity to transit, that the phone numbers and names of the on-site administrators are posted, and transportation be provided to the workers as necessary to the facilities.
CHAIRMAN: Second to the motion.

MR. TAYLOR: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT - WITH THE DISQUALIFICATION OF MARTY WARREN - RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 3

1600 River Road, zone I-2

Consider request for a Conditional Use Permit in order to operate a scrap iron, salvage storage yard and wrecking yard to include sorting, baling, shearing and processing of scrap metal.

Reference: Zoning Ordinance, Article 8, Section 8.2G4/27

Applicant: Dixieland Properties, LLC, Marnic, LLC

MR. SILVERT: State your name, please.

MR. HOWARD: Brian Howard.

(MR. BRIAN HOWARD SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is currently zoned I-2
Heavy Industrial. The Owensboro Metropolitan Zoning Ordinance requires salvage and scrap yards to be conditionally permitted in Heavy Industrial zones. The subject property was rezoned in 1990 from I-1 Light Industrial to A-U Urban Agriculture to I-2 Heavy Industrial. Property immediately to the south of the subject property at 1564 River Road was a part of the 1990 rezoning and received a conditional use permit in July of 1990 for operation of a vehicle storage lot. Property to the north of the subject property is zoned I-1 Light Industrial. Property to the east across River Road is zoned I-2 Heavy Industrial and is part of the Owensboro Riverport property. Property to the west is zoned EX-1, Coal Mining and the applicant proposes a 100 foot buffer from this zoning classification along the entire western boundary of the property. The applicant's site plan proposes 5 paved parking spaces, an 8’ high minimum solid screen around the working area and an access point spaced 500 feet from the existing access point to the north of the property. River Road is classified as a minor arterial roadway with spacing standard of 500 feet between access points. In addition to the requirements of the Owensboro Metropolitan Zoning Ordinance, there are private restrictions that apply
to the property as identified by the letter provided by the applicant's attorney.

The Staff Report explains what those conditions are. However, since this application was filed, there has been an amendment to those requirements.

So the Staff Report states that private restrictions include a greater setback requirement on River Road of 100 feet. That has been amended to be 45 feet from the property line, which their site plan does meet.

The applicant's site plan, that has been taken care of.

The private restrictions also require a minimum 10 foot width landscaped area adjacent to each driveway, which is still not reflected on the site plan. Private restrictions on land use state that they will be based on performance standards, and any operation that is dangerous, or objectionable because of smoke, fumes, noise, etcetera, or that would have an adverse affect on the existing business will not be permitted.

The final statement in the Staff Report has been taken care of as well.
1. A minimum eight (8) foot high solid fence or screen shall be required to enclose all outdoor storage areas on all sides.

2. One tree per 40 linear feet along the boundary of the screened outdoor storage area is required.

3. Minimum of five (5) paved parking spaces, one of which is handicapped accessible.

4. Access is limited to one access point and should be spaced a minimum of 500 feet from existing access points on River Road.

   The special conditions that you might want to take into consideration would be the prior restrictions that are on the property. However, like I said those have been amended and we do have attorney letters that states that the use that is proposed for the property is not in conflict with the prior restrictions on the property.

   With that I would like to enter the Staff Report into the record.

CHAIRMAN: Any other comments from the Staff at this time?

MR. NOFFSINGER: I just have one question of Mr. Howard.

Are you saying that the application including
the site plan is in order, meeting the minimum
requirements of the Zoning Ordinance as well as the
amended Deed of Dedication?

MR. HOWARD: It is in order in regards to all
Owensboro Metropolitan Zoning Ordinance requirements.
However the amendment I believe removed paragraph 7 or
condition 7 on the previous restrictions, which I
believe in section 6 was a requirement that there be a
10 foot strip along the driveway. I do not believe
that that has been reflected on the site plan.

MR. NOFFSINGER: Ten foot landscape strip?
MR. HOWARD: Ten foot with landscape area
adjacent to each driveway I believe is how it was
stated.

MR. DYSINGER: But it's your testimony that
this application is in order at this time?

MR. HOWARD: It does meet the requirements of
our Zoning Ordinance, yes. However there is one prior
restriction I believe, unless I'm mistaken, is still
in effect and is not on the site plan.

CHAIRMAN: Staff have any other comments?
MR. NOFFSINGER: No, sir.

CHAIRMAN: Has there been any opposition filed
in the office?
MR. NOFFSINGER: There's been no opposition
filed. There have been questions raised by folks in the office.

CHAIRMAN: Anything that we need to put into the record?

MR. NOFFSINGER: I don't think so.

CHAIRMAN: Just for information, is there anyone in opposition to this item?

MR. KAMUF: Mr. Chairman, Charles Kamuf again. I represent the Owensboro Riverport. Pursuant to that letter I think that John Bickel sent in to you as far as there would be some restrictions that might prevent some of the conditional use, we have entered into an agreement with the seller and the purchaser and there is a waiver of those restrictions and there is an amendment somewhat and I would like to file that in the record to be sure that this is part of the record here today.

CHAIRMAN: Please do it at this time.

MR. KAMUF: This is a Deed of Amendment to the restrictions signed by the Riverport by Marnic and also by Dixieland Properties.

CHAIRMAN: So noted and put in the record, please.

The applicant come forward and state your name and go from there, please.
MR. KIRKLAND: Drew Kirkland.

(MR. DREW KIRKLAND SWORN BY ATTORNEY.)

MR. KIRKLAND: I'm not the applicant, but the applicants were too busy and I'm the father of one of the applicants so I'm involved in this case.

I have a question for Mr. Howard.

Mr. Howard, either I was confused or I didn't understand. What was the situation about the screening, about the gate?

MR. HOWARD: I don't believe that it was in regards to the gate. I believe that as it was stated in the original deed that we received when the application was filed. I believe under Item 6 on that, which that's in the file and I believe the board should have a copy of that, I believe it states that there should be a ten foot landscape along the drive. The amendment that was submitted late this afternoon, which I had a chance to briefly look over, I believe it says it only replaces section 7 of the previous requirements. I don't know that Item 6 has been addressed.

MR. NOFFSINGER: Just reading that and looking at the site plan, I don't think that's anything that would prohibit this board from considering the application. It sounds like it's a ten foot wide
landscape easement on either side of the drive that
the Zoning Ordinance doesn't require, but the private
restrictions may require, but we don't enforce the
private restrictions.

MR. KIRKLAND: It's a ten foot wide --

MR. NOFFSINGER: Each side.

MR. KIRKLAND: On each side of the gate.

Okay.

Just for my clarity. It means ten foot either
side of the gate there will be no landscaping per
visual entrance and exit?

MR. NOFFSINGER: No. That's actually
requiring it. Minimum width of ten feet is to be
landscaped adjacent to each drive. I don't know if
that means parallel with the road or perpendicular to
the road, but that's not anything we're going to
enforce. It's not anything the Planning Commission --

MR. KIRKLAND: I think Mr. Riney and I have
that worked out.

MR. DYSINGER: Drew, you represent the
applicant? Do you represent the applicant here?

MR. KIRKLAND: I'm the father, yes. I got
involved because the applicants are too busy.

MR. DYSINGER: It's your testimony that you
believe everything is worked out with regard to prior
restrictions?

MR. KIRKLAND: Absolutely.

MR. DYSINGER: Thank you.

CHAIRMAN: The applicant have anything else at this time?

(NO RESPONSE)

CHAIRMAN: The board have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: The Staff have anything else of the applicant right now?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Opposition would you come forward and state your name, please, sir.

MR. KING: I'm Norman King. I own the property next to.

(MR. NORMAN KING SWORN BY ATTORNEY.)

MR. KING: When you take into consideration a conditional use permit, I'm not trying to stop Mr. Kirkland or anything in particular. I just want to get a few things clarified and make sure that some of the restrictions or some of the things are taken care of.

I've owned the property next to this for approximately 15 years. I haven't had a bit of water
problems or anything until this property -- it used to
have trees and valleys and stuff on it. They cleared
it up and sewed it down in fescue. It looks real
nice.

Since this has happened, I'm having a large
amount of water problems right across my property.
The water comes down right across the property that
Mr. Kirkland is planning on purchasing. I have some
pictures here that show my front gate and where a lot
of this water is going.

What has caused this problem, I'm not going to
say. I don't know. I did not have this before this
property was cleared up and straightened up. At the
same time this was going in, the Owensboro Riverport
was putting in some stuff across the road from me and
there were two large ditches there. These ditches has
put culverts in them and covered over and large mounds
of dirt put over it, which lets this water out of
there.

Now, I'm going to show you a few pictures here
of my front gate and where the water is coming. You
can kind of see where it's coming from. It's coming
from this property that the proposed junk yard is
going to be there. This water is going to come across
him right over into a ditch between him and my
property. The ditch cannot hold it. So it comes out
of the ditch and comes over into my property, runs
across it and it can't hold it. Then it goes across
the highway in front of me. I've got pictures here
showing six or eight inches in the road going across
the road. My driveway it's probably 12 to 15 inches
trying to drive out of here.

Now, this has all happened here in the last
couple of years. As this is going through, I would
love to have this straightened up. I don't want all
of the scrap and all of the whatever is coming off of
these two properties running across the front of my
property.

I don't think any of the neighbors down the
road from me that has to drive through this water to
get home, I don't think any of them were notified.
Some of them slow down to two or three miles an hour
to go through this water.

If this is cleared off and a bunch of this
stuff is done, no water is going to soak in. It's
going to get worst.

I don't know who needs to cure it. I don't
know whether I'm at the right meeting or not, but this
water needs to get on out of here for Mr. Kirkland's
sake, for my sake, and the neighbors down the road
from me.

Until somebody decides what we need to do here, I think that it needs to be in consideration as you take this permit in consideration.

I'm going to show you these two pictures there. This is the road going to my property. All the water is coming from the property headed down through here.

MR. SILVERT: Mr. King, could you return to a microphone.

CHAIRMAN: So we can record it and everybody can understand it and get that on the record, please.

MR. KING: There's two pictures there. The one that he's holding up right now is my front gate going into my property and the highway in front.

You can see that the water coming out by those two yellow gates are approximately 12 to 18 inches. My secretary was afraid to drive out of there until it ran down.

You can see the highway it's not handling it. It's going across the road towards the Owensboro Riverport and it doesn't handle it. The reason it's going down here is because the ditch up above that used to handle it can't handle it any more. This is how much extra water we're receiving and trying to get
out of there.

This picture here is shot back towards Nick Cambron's property, which they're fixing to do the junk yard. You can see all the water. If you see a little brown trace in the grass up there, you can see a bunch of the water coming down right through this property trying to get to the ditch and it gets to the ditch. If it would stop there, I'm okay. It just don't stop. It just keeps on coming. It used to stop. That ditch used to hold it. This is something that has happened in the last, since this property has been cleared up and since the property across from me has filled up these ditches and put a pipe in.

I don't know what needs to be opened back up, but I need to get something opened up here. Mr. Kirkland needs it opened up where it doesn't give him a problem.

In consideration here also, my office is right across that ditch from where he's proposing to put a machine to cut up metal and compact it. As long as that noise doesn't disturb my office, we're in good shape. I don't care what he does over here as long as the noise -- I don't want something going bang, bang, cutting and going on when we're trying to work.

Some trees was proposed to go between us, you
know, to try to knock down some of this noise hopefully. At the same time it would be -- I would rather see some pine trees that I would a big pile of junk out here. It's going to take ten years probably for these pine trees to grow and do any good.

Mr. Kirkland has mentioned an eight foot fence. An eight foot fence is normally good, but my property, if you take a look at it there, is lower than this is. An 8 foot fence is not going to do much good. He had mentioned maybe putting a 12 foot fence up.

These are some of the things that I would love for Mr. Kirkland to address or you all take into consideration as this goes through. If it takes a few days here to get the water situation straightened up, I don't know whether Mr. Kirkland is wanting to move in tomorrow or next week, but I'm sure he would like to have this straightened up also.

I definitely need you to take into consideration what's happening here before you just sign off on this thing.

CHAIRMAN: Does Staff have any comments?

MR. NOFFSINGER: Only to address just a few of Mr. King's questions.

Number one, the applicant is proposing a 12
foot high fence. Now, the ordinance requires a
minimum 8 foot high. He has said he's going to do a
12, I believe. I think that's what the board is going
to hold him to at a minimum.

The drainage, I think the appropriate person
to talk with will be the city engineer. Prior to the
issuance of any building permits on this property, the
city engineer will have to review the drainage plan.

Certainly if you're having a problem now,
which it looks like that was back a year ago, July
21st of '06, somewhere in there, and we had a lot of
rain that year, but that's not to say something hasn't
happened out there to those ditches and culverts.
That's there not a blockage. I would certainly make
the city engineer aware of that. What we will do,
Brian Howard tomorrow morning will get in touch with
the city engineer's office and make them aware of the
issue you've raised here this evening.

CHAIRMAN: Does the board have any questions?

MR. TAYLOR: I have a question.

Mr. Noffsinger, you said a 12 foot fence, but
it looks like in the application, unless you have
something different, it says he propose an 8 foot high
minimum.

MR. NOFFSINGER: Yes, sir, on the application
it's a minimum 8 foot. As I understand it, the agreement that they have with the Riverport, which has been entered into the record and made a part of the application, is a 12 foot high fence.

CHAIRMAN: State your name again, please.

MR. KIRKLAND: Drew Kirkland.

On the two sides, per our agreement with the Riverport, on each side of 230 feet there's going to be a 12 foot. Then beyond that there will be an 8 foot fence was our agreement with the Riverport. So it will be a 12 foot in the front and on the two sides. The property does sit higher than Mr. King's property. So as you look up, whether it be an 8 foot or a 12 foot, the angle would pretty much screen what's going to be done.

Mr. King, I had some conversation with him on the 24th and sent him a diagram and invited him to come to our location to see what we did. He was worried about scrap, as he said, moving. Any of you that have been to our location, if any of our scrap starts moving you better get to the high ground because it's going to get you. We have i-beams, channels, extremely heavy material, very dense.

He had a question about the noise of our machine. There again I invited him to come to our
location to actually hear the machine.

We had a three done survey done by OSHA. I believe most of you are familiar with who they are.

We had them monitor. Every one of our employees wore monitors. In the three day monitor of our employees, every one of our employees met an 85 db threshold, which means that none of our employees are required to even wear hearing protection. We use what they call a hearing conservation program. We instruct our employees it would be in their best interest to wear hearing protection, but it's not mandatory. So as far as the hearing, you know, as far as the noise, and I think Mr. Cambron can address that. He was down to my office today and I took him over there where the machine is operating. The 85 db is the OSHA hearing threshold for safety of hearing. Hearing protection is not required.

The 12 foot fence is 230 feet on each side and the front.

MR. NOFFSINGER: Mr. Kirkland, that's my question.

So we get this right on the site plan. We need to know what you're proposing in terms of where that 12 foot high fence is going to be and the 8 foot. Along River Road --
MR. KIRKLAND: Will be 12 foot solid fence.

MR. NOFFSINGER: Twelve foot along River Road.

What about on the north side?

MR. KIRKLAND: On each side would be 12 foot extending I believe it's 230 feet. No. 275 feet, I'm sorry.

MR. NOFFSINGER: Then it goes to an eight foot?

MR. KIRKLAND: Eight foot fence.

MR. NOFFSINGER: And then the rear?

MR. KIRKLAND: The rear, we're going to come back for a -- not a conditional use.

MR. NOFFSINGER: A variance.

MR. KIRKLAND: But a variance. The rear is a 75 foot cliff which we own up to a wooded forest.

MR. NOFFSINGER: So for tonight's consideration it's an 8 foot fence?

MR. KIRKLAND: Yes, it's 8 foot, but it will be life-threatening to get somebody to fence it.

MR. NOFFSINGER: Unless a variance is approved.

MR. KIRKLAND: Correct.

CHAIRMAN: Any board member have any questions of the applicant right now?

(NO RESPONSE)
CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Come forward please and state your name.

MR. SILVERT: State your name, please.

MR. CAMBRON: Nick Cambron.

(MR. NICK CAMBRON SWORN BY ATTORNEY.)

MR. CAMBRON: The first thing is I want to address the water issue. I wasn't aware -- I'm the property owner there now. Mr. Kirkland and his two sons are acquiring that from me.

I wasn't aware of the water issue until yesterday afternoon about 4:00 and I met with Mr. King. Myself and Mr. Riney met with Mr. King for about an hour, hour and a half down at the property. We weren't familiar, I wasn't familiar with any kind of water issue other than what he told me yesterday.

Again, we're into trying to address that. I never knew a thing about it, but there was a culvert failure there also in that road. I'm not sure. We're trying to figure out if it's the city or the county issue or who came to repair it.

I have Mike Riney who is going to meet me out there tomorrow, Commissioner Mike Riney, because that's the county where Mr. Kirkland is purchasing
that property. So I'm not sure if the state is going
to take care of the issue or how we're going to
address that, but it is an issue, as I saw there in
those two photographs, which I finally saw today.

Again, everything that Mr. King has said about
this water apparently is an issue, but I didn't know a
ting about it until yesterday. I am going to pursue
it. I don't want to leave this burden with Mr.
Kirkland nor do I want to leave this burden with Mr.
King. Mr. King I have known forever and have gone to
church with for years and I don't want to have no
problem there.

I do have pictures here just showing you that
the county did come out. I'm not sure exactly what
they did. They came out and made a culvert extension.
I want to submit these just so you'll see that, and
also to address -- you can have all of them.

CHAIRMAN: You want those entered into the
record?

MR. CAMBRON: Yes, sir.

CHAIRMAN: Mr. Kirkland, do you want these
pictures in the record?

MR. KIRKLAND: No problem.

MR. CAMBRON: Again, I want to go on record as
stating I am going to be pursuing this. Had I known
about it earlier, I'd be glad to try to resolve this problem. I don't know which way to turn. I don't know if it's the state, or the city, or the county, or who is going to be addressing it, but I'll have somebody out there just as soon as possible to try to see what the problem is.

Apparently there's a 24 inch culvert that goes underneath the road there that does go into the Riverport's property to the east. There is an issue there with that culvert. I don't know if it's stopped up. If I'm not mistaken, I think that culvert runs under the Riverport property and runs back to -- anyway, it runs back there. For all we know it may be stopped up. Again, there is something wrong there and we're going to try to figure out what the problem is.

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

MR. KIRKLAND: Mr. Chairman, I have one other statement.

Mr. King, and I do appreciate you bringing the water issue to my attention before we purchased the property. Mr. Cambron and I are going in to a legal agreement about the water situation. He will be responsible for the water situation before we purchase the property. Obviously I don't want it. You don't
want it. Whatever it is, it is something that happens periodically. Mr. Cambron has assured us and he will enter into a legal agreement with us in regards to that before we purchase the property.

Mr. Chairman, I want to address as far as the noise issue there. I want to make sure Mr. King is satisfied with that. I will offer for him to come to our premises again if he'd like.

CHAIRMAN: Thank you.

The Staff will check with the city or county, whichever, engineer which needs to straighten that out.

MR. NOFFSINGER: Yes. I just want to make a point of clarification for the record.

The property is indicated here to be in the City of Owensboro.

Now, Mr. Cambron, my staff could be wrong here, but that's what we show. It's probably one of those situations where we have some city out there in the area and then some hasn't been annexed into the city. Regardless, I think we probably need to make the city engineer and the county engineer aware of the issue that's been raised.

MR. CAMBRON: I agree. I'm not sure. I was always told that's the county, but apparently a part
of it was annexed in. I don't know if it took in the road itself. Again, the issue, there's some problem under the road.

MR. NOFFSINGER: They might not have taken in the road. They might have just annexed the property. I think it might had to do with consolidation of the property and divided it and had to annex. Anyway, I just wanted to make sure.

MR. CAMBRON: And I am addressing the issue.

CHAIRMAN: Any other questions from the board?

(NO RESPONSE)

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

MR. KIRKLAND: No.

CHAIRMAN: Opposition have any other questions?

MR. KING: No.

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Entertain a motion to dispose of the item.

MR. TAYLOR: Mr. Chairman, I vote to approve the conditional use permit based upon the findings that the applicant has met all requirements by the OMPC as well as placed restrictions beyond our
requirements and that it seems a conditional use is coherent with the zone of the property.

CHAIRMAN: Is there a second to the motion?

MR. WARREN: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 4

3585 Thruston-Dermont Road, zoned A-U
Consider request for a Conditional Use Permit in order to construct a 2,986 square foot addition to an existing church.
Reference: Zoning Ordinance, Article 8, Section 8.2A4
Applicant: Heritage Baptist Church, Joe Mattingly

ZONING HISTORY

The subject property is zoned A-U Urban Agriculture. A church is conditionally permitted use in an A-U zone. The property was created by minor subdivision plat in 1980 and contains 4.468 acres. A
conditional use permit was approved for the property in July of 1981 for the construction of a church building including a sanctuary and Sunday school class rooms. Property to the north of the subject property is owned by Heritage Baptist Church and is zoned A-U, Urban Agriculture, and contains a gravel parking lot located on the lot. Properties to the south fronting on Thruston-Dermont Road are zoned R-1A and A-U and are occupied by single-family residences.

ZONING ORDINANCE REQUIREMENTS

1. One paved parking space for every five seats in the main auditorium

2. Vehicular use area screening (3') high continuous and one tree per 40 linear feet between parking area and R-1A zone should be installed.

MR. HOWARD: We would like to enter the Staff Report into the record.

CHAIRMAN: Has there been any opposition in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is there anyone wishing to speak in opposition this evening?

(NO RESPONSE)

CHAIRMAN: Is the applicant here?

MR. MATTINGLY: Yes.
CHAIRMAN: Come forward and state your name.

MR. MATTINGLY: Joe Mattingly.

(MR. JOE MATTINGLY SWORN BY ATTORNEY.)

MR. MATTINGLY: I guess the only thing that I would want to add is we feel like we've met all the requirements, all the obligations. We just request and hope that you would approve this conditional use permit.

You just noted there was no opposition to our request so we would request that you approve our conditional use permit.

CHAIRMAN: Does the Staff or the board have any questions of the applicant at this time?

MR. NOFFSINGER: I have a question.

Mr. Mattingly, do you know how long the church has existed in that location?

MR. MATTINGLY: Approximately 25 years.

MR. NOFFSINGER: Thank you.

CHAIRMAN: Any other questions from the board.

MR. DYSINGER: I just had a question of Staff about the parking.

Are they in compliance now with parking?

MR. HOWARD: Correct. We were given the number of seats in the auditorium and they do meet that requirement.
CHAIRMAN: Any other questions or comments from the board?

(NO RESPONSE)

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

MS. MASON: Mr. Chairman, I move for approval. My findings of facts are that since there is no objections and since they've met all the Zoning Ordinance requirements, since there's been a previous conditional use permit granted, and since the property is zoned A-U and churches are permitted in this zone I move for approval.

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

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

MR. MATTINGLY: No, sir.

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

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

Next item, please.

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VARIANCE

ITEM 6

4010, 4016, 4022, 4028, 4038 Caddie Cove, 407, 421, 427, 433, 437, 445 Stableford Circle, 300, 308 Chip Shot Cove, zoned R-1C

Consider request for a Variance in order to increase the front yard fence height from 3 feet to 8 feet to the rear of the proposed single-family residential homes on these lots having double street frontage.

Reference: Zoning Ordinance, Article 3, Section 3-7(g)(2)

Applicant: Thompson Homes, Inc., PKP 79 Co.

MR. HOWARD: This application for variance comes before you this evening in that in the Fiddle Stick Subdivision there were some lots that were developed that were double frontage.

Based upon the definitions within our Zoning Ordinance, the front yard is any yard adjacent to the street. So in this instance these lots have two front yards.

The maximum fence height for front yard is three feet. However, in the rear of the yards, for instance, if they want to put in a swimming pool or something like that, it would be beneficial to be able to go higher and be in line with the fence height requirements if these weren't double frontage lots.
That's why it's before you tonight. Staff would recommend that you take this item into consideration for approval. That it won't be out of character with fence heights of any other lot that was not double frontage.

Be happy to answer any questions that you have.

CHAIRMAN: Is there any questions from the board at this time of the Staff?

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything you want to add at this time?

MR. SILVERT: State your name, please.

MR. THOMPSON: Tommy Thompson.

(MR. TOMMY THOMPSON SWORN BY ATTORNEY.)

MR. THOMPSON: Mr. Chairman, thank you. I appreciate this opportunity to present this request tonight. Certainly be willing to answer any questions that the board has.

CHAIRMAN: Board have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Anyone else in the audience have
any comments?

(NO RESPONSE)

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

MR. DYSINGER: Mr. Chairman, move to grant the variance request given the findings that 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; and will not allow an unreasonable circumvention of the requirements of the zoning regulations.

MR. PEDLEY: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Do you have any other comments, Mr. Thompson?

MR. THOMPSON: No, sir.

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

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

Next item, please.

Item 7

4729 Wimbley Way, zoned R-1B
Consider request for a Variance to reduce the front building setback from 25 feet to 23.8 feet to accommodate a portion of an existing residence encroaching into the prescribed setback.
Reference: Zoning Ordinance, Article 8, Section 8.5.6(c)
Applicant: Jagoe Land Corporation

Mr. Howard: As Mr. Noffsinger stated, this variance request comes before you tonight because during construction activities about 1.2 feet of the garage was constructed in the front building setback. So they have to request a variance in order to proceed with that.

Staff does not have a major objection to this request. We would like to note though for you to take into consideration that if you do grant approval, that the variance should be specific to this request only, for the garage only and it would not be carried over into future additions to the residence or any future building on the lot.

Chairman: Was there any opposition in the office? Any comments or opposition?

Mr. Noffsinger: No, sir.

Chairman: Does board have any questions of
the staff at this time?

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything else to add?

MR. CAMP: Paul Camp.

(MR. PAUL CAMP SWORN BY ATTORNEY.)

MR. CAMP: We have no other comments. If there's any questions, we're here to answer them. I represent Jagoe Homes.

CHAIRMAN: Does the board have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: Since Mr. Camp is here, obviously a mistake was made here and not just the staking phase, whatever, and not to point any blame, even in the inspection process. I trust that Jagoe Home is taking necessary action to see what transpired and how this might have happened and how it might be prevented in the future.

MR. CAMP: That is correct. We have implemented a form basically for in the field that when they're laying out a foundation or a footing that they have to follow and check all the guidelines and procedures and sign off that everything has been
positioned properly. We do feel like that we've got
everything in place, that this won't happen again.

MR. NOFFSINGER: I have to say it's a rare
occurrence when Jagoe Homes comes before this board
for a variance.

MR. CAMP: Well, let's hope we don't come back
in front of you again you time soon.

MR. NOFFSINGER: Thank you.

MR. PEDLEY: Mr. Camp, last time Mr. Jagoe was
here he said if this happens again you'll move the
house.

MR. CAMP: That he would move the house? I
wouldn't want to comment for Mr. Jagoe, but I have no
knowledge of that.

MR. PEDLEY: Is Mr. Chairman ready for a
motion?

CHAIRMAN: Any other questions before we have
a motion?

(NO RESPONSE).

CHAIRMAN: Entertain a motion now.

MR. PEDLEY: Mr. Chairman, I make a motion for
approval based on 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;
and will not allow an unreasonable circumvention of
the requirements of the zoning regulations.

CHAIRMAN: Is there a second to the motion?

MS. DIXON: Second.

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

MS. MASON: Do we need to amend it with the
conditions?

MR. PEDLEY: I included the conditions.

MS. MASON: I'm sorry, I missed that.

MR. PEDLEY: The variance granted is specific
to the existing encroachment and does not extend to
future building additions that may occur on site.

CHAIRMAN: Is there a second?

MS. DIXON: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

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

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

Next item, please.

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ADMINISTRATIVE APPEAL

ITEM 8

102 West Byers Avenue, zoned R-1B
Consider request for an Administrative Appeal to
change from one non-conforming use as a vacuum cleaner
repair and parts supply store and a residence to
another non-conforming use as a variety store and a
residence.
Reference: Zoning Ordinance, Article 4, Section 4.53,
Article 7, Section 7.34
Appellant: Robert Zimmerman

MR. HOWARD: As Mr. Noffsinger stated, this is
an administrative appeal. They're appealing changing
from one non-conforming use to another.
As the board, you need to hear evidence
tonight that the requested change in non-conforming
use will not increase the extent of the use on the
property. That it will not increase the amount of
traffic. It will not increase the amount of noise and
that the use will overall not change the character of
the neighborhood and will not impact the neighborhood
any more than the previous use did. The applicant is
here.

CHAIRMAN: Mr. Zimmerman, have any comments
that you want to state at this time, please?

MR. ZIMMERMAN: Yes, sir.
MR. SILVERT: State your name for the record, please.

MR. ZIMMERMAN: Robert Zimmerman.

(MR. ROBERT ZIMMERMAN SWORN BY ATTORNEY.)

MR. ZIMMERMAN: Upon acquiring this property from the late Charlie Bratcher who had a long tradition, I knew him well, and had a long tradition of being a good neighbor in that area, the only neighbor for many years. He told me one time that it was just a corn field when he first moved there in '47.

Anyway, my intentions are having a small variety store. More of an out reach probably for that neighborhood as probably a variety store or something of that nature. Would not be cost effective in itself with all insurance and the expenses. Like I say in keeping with my policy as a long-standing landlord position, my rental property in the City of Owensboro is also, I pride myself on having some of the best rental property. I maintain it. I'm kind of amazed at the past problems in the city between landlord/tenant relationships. Really don't see why there should be such an issue there, but I know people's nature.

Anyway, basically I appreciate the board
giving me time to make this request. Would like to request to have a small variety store there. Thank you.

CHAIRMAN: Does anyone on the board have any questions?

MR. WARREN: What exactly -- just kind of would like to know a little more what you mean by variety store.

MR. ZIMMERMAN: Right. My wife and I were kind of undecided what to call it. It's going to be, if approved, just like I say, more than a community wide store. Just something that we can be a good neighbor. I'm real familiar with that neighborhood over the last 40 years. Just a lot of fine people and neighbors in that area. I guess just to kind of build a relationship.

As far as the variety store, it would just --

CHAIRMAN: State some items, please.

MR. ZIMMERMAN: Nick-knacks, typical garage sale nick-knacks, clothing, some furniture. Just mainly smaller inexpensive items.

MR. WARREN: Not like groceries and things like that?

MR. ZIMMERMAN: No, sir.

MS. MASON: I have a question for you, Mr.
Zimmerman. I drive past that every day going to and from work. I have noticed, and I don't know if you're operating something there now or what, but I've noticed a lot of things outside. Is that something that you're going to continue with and is that something that -- I'm not quite familiar with the ordinances as far as that's concerned. If I was a neighbor, I wouldn't want that.

MR. ZIMMERMAN: Absolutely. I appreciate your input on that.

I'm ashamed of what I have there presently. I've helped it a little bit in the last week, but I've kind of been overwhelmed.

After purchasing this, in making some drastic changes on my other properties elsewhere in the city and county. I'm selling some of the property, taking them out of the rental row and putting them on the marketing them to sale. I've just been -- I have seven properties presently that I'm marketing for sale. I've just been overwhelmed. I've just, yes, I've moved some stuff. On Byers Avenue frontage, I have a tarp there that I put up two or three weeks ago now I guess. I agree, it looks -- if I was a neighbor I would not like that. I have made some, I've approved it a little bit, but I'm still not happy with
it. On the Allen Street frontage, I have made, there
again there's two or three items that are encroaching
outside an expensive vinyl fence that I intend to
extend. It's about half completed. I intend to
extend that all the way across -- not at the property
line, but back, recessed back off the property to
completely conceal any storage or cars or whatever is
under those two carports. So I haven't made pretty
good progress. In the real near future, if this
request is granted, it's going to straighten up. I
have done some landscaping on the Allen Street
frontage. So I intend to change that rapidly.

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

CHAIRMAN: Staff have anything to add at this
time, please?

MR. NOFFSINGER: There might be someone else
in the audience that wishes to speak.

CHAIRMAN: Anyone in the audience wishing to
speak?

MS. RAYMAN: I'm a neighbor. I own the
property next to it.

CHAIRMAN: Do you want to come forward and ask
any questions or state?

MS. RAYMAN: I really don't have any
objections, as far as I know. I didn't see anything wrong.

CHAIRMAN: Would you state your name so we can get it in the record.

MR. SILVERT: Could you state your name for the record, please.

MS. RAYMAN: I'm Martha Rayman.

(MS. MARTHA RAYMOND SWORN BY ATTORNEY.)

MS. RAYMAN: I have the property at 118 and 120 Byers Avenue over to Mr. Zimmerman, over to St. Ann Street.

MR. ZIMMERMAN: Just immediately west of my property.

MS. RAYMAN: Yes. Charlie Bratcher was a wonderful neighbor. I just loved him to death. I told him when I bought the property, of course, he didn't have the little vacuum shop there at that time because he bought it in '55. It's been sitting there ever since.

Anyway, I had a trailer out there. We bought it and put the trailer out there while we were traveling. Two of my brothers moved in with us immediately with their trailers. Anyway, I still have one trailer out there and I'm letting a friend use it. His trailer is out there. I have a permit for it.
I'm thinking about doing something else with it. I deeded it all to my three children and they have other purposes, but as far as Mr. Zimmerman's shop over there I don't see anything wrong with that as far as I'm concerned.

CHAIRMAN: You don't have any opposition or any objection; is that correct?

MS. RAYMAN: No, I don't. As long as he takes care of his place and I'll try to take care of mine.

CHAIRMAN: Thank you, ma'am.

MR. NOFFSINGER: Mr. Chairman, one issue has been raised here tonight in terms of possible expansion of this non-conforming use. Certainly it is not the intent for the non-conforming use to expand beyond the areas where the non-conforming portion of it exist today.

If you have outside storage that you're using the lot for now and it hasn't been in the past, then you're expanding the non-conforming. You cannot expand beyond the boundaries of where the use existed prior to April something 1977. I think certainly this board, if you consider a change in one non-conforming use to another, then you certainly need to set some parameters to go by. Certainly, you know, I can't recall the property having outdoor storage. That
could be a change in the character. It can certainly effect the neighborhood. I think certainly that needs to be addressed before you move forward.

CHAIRMAN: Does the board have any questions of Mr. Zimmerman?

(NO RESPONSE)

CHAIRMAN: Come forward, please.

MR. ZIMMERMAN: The property now is actually -- I'm trying to think here. Consist of four, I think that's right. Yes, four non-contiguous buildings.

I'm not talking about the real estate.

Gary, I may be confused. I have no plans of acquiring additional real estate for the purpose of consolidating lots. As far as the structures, there's four existing structures. The large store that Mr. Bratcher had and then three independent out buildings. I think one of them is 10 by 12 and another two are 10 by 10. They're just typical metal storage buildings.

I have no plans of adding any more buildings. Two of the sheds are in pretty poor condition. They've just got a rock floor in them rather than a slab floor. I had considered when those become non-productive is pouring a slab, not any bigger, but just pouring a slab and putting a wood frame shed there to replace those. I have no other plans. Realize that that
would be probably another administrative appeal.

MR. NOFFSINGER: Right. When I speak of outdoor storage I mean, for example, I'm going to say washer and dryers stored outside of a sheltered building, storage building or the store with tarps or not tarped over. That activity I don't recall that having taken place in the past on that property and should not be taking place today. That needs to be removed immediately.

MR. ZIMMERMAN: Exactly.

MR. NOFFSINGER: You agree there will be no outdoor storage on that property or display of materials on that property because there hasn't been in the past.

MR. ZIMMERMAN: Exactly. Yes.

MR. NOFFSINGER: Thank you.

CHAIRMAN: Do you understand that everything will have to be inside an existing building?

MR. ZIMMERMAN: Yes.

CHAIRMAN: Any other question?

MR. ZIMMERMAN: If I could bother the board a minute. I'm glad to meet Ms. Rayman. I made a special effort since acquiring the property to, and I think met seven or eight of the immediate neighbors with exception of her. I appreciate her coming and
giving us her input because I've met her tenant on the
property to the west. I appreciate her remarks.

Thank you.

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

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Entertain a motion.

MR. PEDLEY: Mr. Chairman, I make a motion to
direct the appeal to change from one non-conforming
use to another non-conforming use with the findings
that it will not adversely affect the neighborhood and
the new use shall not extend outside the previous use.

CHAIRMAN: Is there a second?

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.
Next item.

NEW BUSINESS

ITEM 9

Consider motion to enter into closed session to discuss pending litigation.

MR. DYSINGER: So move, Mr. Chairman.

MR. NOFFSINGER: Any action that's taken we'll come back out and announce and vote on it.

MS. MASON: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are in closed session.

- - - - (OFF THE RECORD) - - - -

CHAIRMAN: We'll call the meeting back to order.

Madison, will you take over.

MR. SILVERT: We have two matters of litigation that were discussed in closed session. Any action in closed session needs to be taken in open session.

Those matters are Watson versus Board of Adjustment, as well as Boone versus Board of Adjustment. Those matters have been discussed. We're ready for a motion regarding those two matters of
litigation.

CHAIRMAN: Entertain a motion.

MR. PEDLEY: Make a motion to authorize the Chairman, Audie Pantle, to sign the grievance.

MR. NOFFSINGER: On Boone versus OMBA.

CHAIRMAN: Is there a second?

MR. DYSINGER: Second.

CHAIRMAN: Any other comments or questions?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, Madison.

MR. SILVERT: The next one would be Watson versus Board of Adjustment.

MS. DIXON: That would be for you to sign?

MR. SILVERT: Correct.

MS. DIXON: Move to grant Madison Silvert the authority to sign off on the Watson versus OMBA.

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

MR. DYSINGER: Second.

CHAIRMAN: A motion has been made and a second. Any other comments or questions?
(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

One final motion.

MR. WARREN: Motion to adjourn.

MS. MASON: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

I, LYNNETTE KOLLER FUCHS, 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 72 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the
26th day of June, 2007.

LYNNETTE KOLLER FUCHS
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
OWENSBORO, KENTUCKY  42303

COMMISSION EXPIRES: DECEMBER 19, 2010
COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY