OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

DECEMBER 6, 2007

The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, December 6, 2007, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Ward Pedley, Vice Chairman
Gary Noffsinger, Director
Marty Warren
Sean Dysinger
Ruth Ann Mason
Judy Dixon
Clay Taylor
Madison Silvert, Attorney

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CHAIRMAN: Call the Owensboro Metropolitan Board of Adjustment December 6th meeting to order. Would like to welcome everyone. We'll begin our meeting with the prayer and pledge of allegiance to the flag. Will you stand please.

(INVOCAUTION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Again, I would like to welcome everyone to our meeting. Anyone wishing to speak on any item may do so. We ask that you come to one of the podiums. State your name and be sworn in. Direct your comments and questions to the board and the chair and we'll get your answer.
First item on the agenda is to consider the minutes of the October 2007 meeting. They have been placed on file in the planning office. Are there any additions or corrections?

MR. NOFFSINGER: No, sir.

CHAIRMAN: If not Chair is ready for a motion.

MS. DIXON: Move to approve.

MR. DYSINGER: Second.

CHAIRMAN: We have a motion and a second. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item on the agenda.

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CONDITIONAL USE PERMITS

ITEM 2

2401 Grimes Avenue, zoned I-2
Consider request for a Conditional Use Permit to operate a metals and plastics recycling business including automobile crushing and storage
Reference: Zoning Ordinance, Article 8, Section 8.2G4/27
Applicant: Dennis A. Knott Testamentary Trust, et al.

MR. SILVERT: State your name please.

MR. HOWARD: Brian Howard.

(MR. BRIAN HOWARD SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property was rezoned from I-1
Light Industrial to I-2 Heavy Industrial at the November 8, 2007, Planning Commission meeting. The proposed crushing and storage of automobiles on the subject property requires a Conditional Use Permit within an I-2 Heavy Industrial zone. Conditions were placed on the rezoning that are applicable to the Conditional Use Permit application process. The conditions include bringing access to the site more into compliance, installing vehicular use area screening as required by ordinance, installing a minimum eight foot fence to screen the wrecking yard with one tree every 40 feet, submission of a consolidation plat, and that crushed automobiles shall not be stacked higher than the fence within the wrecking yard.

LAND USES IN SURROUNDING AREA

The subject property and all surrounding property is zoned I-1 Light Industrial. All surrounding land uses are industrial in nature including warehouses, machine shops and a rail yard.

ZONING ORDINANCE REQUIREMENTS

1. Parking is calculated at one space per two employees on the maximum shift or a minimum of five, whichever is greater.

2. The entire storage area around the
wrecking yard must be screened with a 10 foot easement
with an eight foot continuous wall or fence with one
tree every 40 feet.

SUGGESTED CONDITIONS

1. The existing access on the west side of
the property should remain as is in order to provide
sufficient room for truck maneuvering. The 120 foot
plus opening on the east side of the property should
be narrowed to a 50 foot maximum width as far east
along the property frontage as possible. Curb and
gutter along with a grass strip shall be restored
along the remainder of the frontage.

2. Vehicles stacked within the storage yard
shall not exceed the height of the fence.

3. A consolidation plat shall be submitted to
the OMPC to consolidate the subject property.

4. A pest control plan should be implemented
annually.

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

CHAIRMAN: Anyone here representing the
applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anyone here would like to speak in
opposition on this item?
CHAIRMAN: Does the applicant have anything they would like to present to the board?

APPLICANT REP: No.

CHAIRMAN: Any board members have any questions?

CHAIRMAN: If not chair is ready for a motion.

MR. SILVERT: Mr. Chairman, I just wanted to clarify one item. I believe one of the suggested conditions as stated, I had a question for Mr. Howard. Is it that a pest control plan must be implemented annually or should be implemented annually?

MR. HOWARD: Must. I'm sorry, yes, must be implemented annually.

MR. SILVERT: Thank you.

CHAIRMAN: Any other questions?

CHAIRMAN: Chair is ready for a motion.

MS. MASON: Mr. Chairman, I move for approval.

My Findings of Facts are since there is no opposition, it's compatible with the area. All the areas around are industrial in nature, including the warehouses, machine shops, and a rail yard. The suggested
conditions are what Mr. Howard stated earlier.

CHAIRMAN:  Do we have a second?

MS. DIXON:  Second.

CHAIRMAN:  Any question on the motion?

(NO RESPONSE)

CHAIRMAN:  All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN:  Motion carries unanimously.

Next item.

ITEM 3

533 Triplett Street, zoned B-4, I-1
Consider request for a Conditional Use Permit to
operate a family fun center including laser tag,
skeeball and video games.
Reference:  Zoning Ordinance, Article 8,
Section 8.2B11/13
Applicant:  Jason Ebelhar and Kenneth & Johanna
Boarman

ZONING HISTORY

OMPC records indicate that the subject
property has historically been zoned B-4 General
Business and I-1 Light Industrial.  No rezonings or
plans of any kind are on file in the office.

The applicant proposes to use a portion of an
existing building to operate a laser tag business
which is considered an indoor recreational activity
and requires a Conditional Use Permit.  Other uses on
the subject property at this time include a tax office
and warehouse space. A final development plan has been submitted for the subject property for the December 13, 2007, Owensboro Metropolitan Planning Commission meeting. The applicant has also indicated that an arcade could be opened in the future.

The site is currently not in compliance with vehicular use area screening requirements and should be brought into compliance as part of the Conditional Use Permit process. A three foot element and one tree every 40 linear feet shall be installed where the vehicular use area abuts road right-of-way. There is an existing drive to Triplett Street that serves as the principal access to the site. No additional access to Triplett Street shall be permitted.

LAND USES IN SURROUNDING AREA

The subject property is surrounded by a mixture of B-4 General Business, I-1 Light Industrial, and R-4DT Inner-City Residential zoning. Land uses include automobile sales, a tire and auto repair business, residences and vacant tracts.

ZONING ORDINANCE REQUIREMENTS

1. One parking space per employee on the maximum shift, one per two participants and one per three spectators.

2. One parking space per 400 square feet for
One space per 600 square feet for the warehouse space.

One space per 100 square feet for the future arcade use.

Vehicle use area screening shall be installed in compliance with zoning ordinance requirements.

SUGGESTED CONDITIONS

1. Access to Triplett Street shall be limited to the existing access point only. No additional access to Triplett Street shall be permitted.

2. Approval of a final development plan.

3. Installation of required vehicular use area screening.

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

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes, sir.

CHAIRMAN: Is there anyone here like to speak in opposition of this item?

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything they would like to address to the board?
APPLICANT REP: No, sir.

CHAIRMAN: Any board members have any questions?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. WARREN: Motion to approve this conditional use permit with the findings that there is no opposition and that the property is surrounded by a mixture of B-4 general business and light industrial, and that all zoning requirements are met. That a final development plan is submitted and approved by the Planning Commission with the conditions that were stated by Mr. Howard.

MR. DYSINGER: Second.

CHAIRMAN: We have a motion and a second. Any question on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 4

635, 815 Triplett Street; 715, 719, 721, 801 East Ninth Street; 800, 804, 805, 810, 814 East Seventh Street; 616, 618, 620, 708-728 Center Street, zoned B-4, R-4DT, P-1

Consider request for a Conditional Use Permit to
operate a facility that provides long-term and
rehabilitation services for people with disabilities,
construct a sensory park, expand parking facilities
and construction of additional residential facilities
for Wendell Foster residents.
Reference: Zoning Ordinance, Article 8, Section 8.2C1
Applicant: Wendell Foster's Campus for Developmental
Disabilities, Inc.

ZONING HISTORY

Several Conditional Use Permits have been
approved for different sections of the Wendell
Foster's campus in the past. The most recent
Conditional Use Permit approval was in May 2003. This
proposal, in conjunction with a rezoning request that
will be heard at the Owensboro Metropolitan Planning
Commission meeting next week, a consolidation plat,
and final development plan, will unify the campus
under one zoning and one conditional use permit
approval.

LAND USES IN SURROUNDING AREA

The property to the north and east is zoned
R-4DT with vacant lots, residences, storage, a car
lot, a church and Wendell Foster assisted living
houses. The property to south is zoned P-1 and is
parking for the Owensboro Medical Health System
hospital. The property to the west is zoned B-4 and
R-4DT with car lots, residences and businesses.

ZONING ORDINANCE REQUIREMENTS
1. Two parking spaces plus one per 10 persons under care.

SUGGESTED CONDITIONS

1. Approval of a consolidation plat for the entire property.
2. Approval of a final development plan.

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

CHAIRMAN: Anyone here representing the applicant?

MR. KAMUF: Yes.

CHAIRMAN: Let's see if we have any opposition, Mr. Kamuf.

MR. KAMUF: I'd like to point out that we have written letters, Mr. Chairman, to all of the 26 property owners.

MR. SILVERT: Excuse me, Mr. Kamuf. Raise your right hand.

(MR. CHARLES KAMUF SWORN BY ATTORNEY.)

MR. KAMUF: We have sent letters to all 26 property owners advising them as to what we're doing and we only got one reply and they want to sell the property to us. That's pretty well where we are.

We have an engineer and also the CEO of the Wendell Foster Center here to testify.
CHAIRMAN: Let me see if we have any opposition. Thank you.

Anyone here like to speak in opposition on this item?

(NO RESPONSE)

CHAIRMAN: Do you have any further comments, Mr. Kamuf?

MR. KAMUF: Not unless the chair has.

CHAIRMAN: Any board members have any questions of Mr. Kamuf?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Mr. Chairman, I move to grant the conditional use permit based upon findings of fact that several conditional use permits have been approved for several sections of the Wendell Foster Campus in the past. This serves as a logical expansion for their facility. It is surrounded by mixed uses and there is no opposition. Subject to them meeting the zoning ordinance requirement and subject to the two conditions read by Mr. Howard.

CHAIRMAN: Do we have a second?

MR. DYSINGER: Second.

CHAIRMAN: We have a motion and a second. Any question or comments on the motion?
(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 5

2767 Veach Road, zoned B-4
Consider request to amend a Conditional Use Permit to provide daycare for a maximum of 110 children from 6:00 a.m. to midnight.
Reference: Zoning Ordinance, Article 8, Section 8.2B3
Applicant: Antoinette Brown and Lee Kassinger

ZONING HISTORY

Three Conditional Use Permits have been approved for the subject property in the past. The most recent was approved in September 2007, for an additional 350 square feet to provide care for a maximum of 11 infants. The plans for the additional square footage have changed and will not be used exclusively for infants. Also, the original daycare has been approved by the state for 99 children which is an increase of three from the amount previously approved. This application is for the existing building which can accommodate 99 children and the additional 350 square feet that was approved at the September 2007 meeting for a total of 110 children.

LAND USES IN SURROUNDING AREA
The property to the north, east and south is all zoned B-4 General Business. The property to the west is partially zoned B-4 General Business and partially zoned R-3MF Multi-Family Residential. Land uses in the vicinity include a shopping center, retail stores, pet grooming facility, medical laboratory and residential.

ZONING ORDINANCE REQUIREMENTS

1. Two parking spaces plus one per 10 children for the existing and proposed day cares.

2. One parking space per 300 square feet for the remaining commercial space on the property.

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

CHAIRMAN: Anyone here representing the applicant?

(NO RESPONSE)

CHAIRMAN: Anyone here like to speak in opposition of this item?

(NO RESPONSE)

CHAIRMAN: Board members have any questions?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. TAYLOR: Mr. Chairman, I vote to approve the conditional use permit based upon a findings of
fact that there are no opposition of this. There have
been previous conditional use permits approved by this
board as well as the zoning of this operation be
coherent with the zoning in the area.

MS. DIXON: Second.

CHAIRMAN: We have a motion and a second. Any
question on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 6

222-232 Walnut Street, zoned B-2
Consider request for a Conditional Use Permit to
provide Lighthouse Recovery Program sponsored
residential transitional housing in three existing
buildings with a maximum of eight beds per building
for a total of 24 occupants.

Reference: Zoning Ordinance, Article 8,
Section 8.2A7/6a
Applicant: Crandall Properties, LLC and Kenneth L.
Crandall

ZONING HISTORY

OMPC records indicate that the subject
property has historically been zoned B-2 Central
Business. No rezonings or plans of any kind are on
file in the office.

There are four existing buildings on the
subject property. Over the years they have been occupied by a variety of uses including both residential and commercial. With this application, three of the four buildings are proposed to serve as residential transitional housing as part of the Lighthouse Recovery Program. Each of the three buildings will have a maximum of eight beds for a maximum of 24 occupants. Based on zoning ordinance requirements for parking, ten total parking spaces are required and the vehicle use area shall be paved. The site plan submitted with the Conditional Use Permit shows ten parking spaces which are to be paved.

LAND USES IN SURROUNDING AREA

The property to the north, west and south is all zoned B-2 Central Business. The property to the east is partially zoned B-2 Central Business and partially zoned I-2 Heavy Industrial. Land uses in the vicinity include automobile sales and repair, vacant tracts, residential, and retail sales.

ZONING ORDINANCE REQUIREMENTS

The following criteria apply to a conditional use permit for residential transitional housing;

1. Any person residing in the referenced housing situation shall be subject to all state, federal or local jurisdiction laws.
2. The facility shall be located with 1/2 mile of public transit.

3. The facility shall not be located within an identified historic district recognized by the legislative body.

4. The facility shall employ an on-site administrator, who is directly responsible for the supervision of the residents and the implementation of house rules.

5. The applicant shall provide the Board of Adjustment, the Zoning Administrator, the public and the residents a phone number and address of the responsible person or agency managing the facility.

6. A fire exit plan shall be submitted with the conditional use application showing the layout of the premises, escape routes, location, operation of each means of egress, location of portable fire extinguishers, and location of the electric main. The fire exit plan shall be prominently displayed within a common area within the facility.

7. Hallways, stairs and other means of egress shall be kept clear of obstructions.

8. The facility shall comply with all applicable building and electrical codes.

9. A list of house rules shall be submitted
to the Board of Adjustment with the application for a conditional use permit and shall be prominently displayed in a common area within the facility. The rules should be adequate to address the following: Noise control, disorderly behavior, proper garbage disposal, and cleanliness of sleeping areas and common areas.

10. The Owensboro Metropolitan Board of Adjustment may impose additional conditions as may be necessary for the property integration of the use into the planning area.

The applicant has submitted commitments with the Conditional Use Permit application pertaining to the referenced zoning ordinance requirements. The commitments fully address all of the requirements.

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

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anyone here like to speak in opposition of this item?

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything they would like to present?
APPLICANT REP: No, sir.

CHAIRMAN: Any board members have any questions?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. TAYLOR: Mr. Chairman, I vote to approve the conditional use permit based upon the findings of fact that there is no opposition and that they have submitted commitments with the application pertaining to the zoning ordinance requirements and the commitments fully address all the requirements to make them be in compliance with this conditional use permit.

CHAIRMAN: Is there a second?

MR. DYSINGER: Second.

CHAIRMAN: We have a motion and a second. Any question on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

ITEM 7

9310 KY 1389, zoned A-R
Consider request for a Conditional Use Permit to construct a 40' x 60' fellowship hall at an existing
church facility.  
Reference: Zoning Ordinance, Article 8, Section 8.2B4
Applicant: Bethlehem Church

ZONING HISTORY

According to OMPC records, no previous conditional use permits have been approved for the subject property and it appears as though it has always been zoned agricultural. Churches and accessory uses such as a fellowship hall require a conditional use permit in an agricultural zone.

LAND USES IN SURROUNDING AREA

The subject property is located in a rural area with large agricultural and wooden tracts and scattered rural large-lot residential uses. All adjoining property is zoned A-R Rural Agriculture.

ZONING ORDINANCE REQUIREMENTS

1. One parking space per five seats in the main auditorium.
2. Vehicular use area screening.

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

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anyone here that would like to speak in opposition of this item?
CHAIRMAN: Does the applicant have anything you would like to state?

APPLICANT REP: No.

CHAIRMAN: Any board member have any questions?

CHAIRMAN: Chair is ready for a motion.

MS. MASON: Mr. Chairman, I move for approval.

Findings of fact is since there's no opposition, it's zoned agricultural which allows churches and fellowship halls in that use, and the land use, also the area is compatible for an addition to an existing church on this lot. The church has been located on this lot for a long time.

CHAIRMAN: Is there a second?

MR. DYSINGER: Second.

CHAIRMAN: We have a motion and a second. Any question on the motion?

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.
ITEM 8

512 West Seventh Street, zoned R-4DT
Consider request for a Conditional Use Permit to
operate a birthright service for pregnancy counseling
and to provide housing for up to four women that are
pregnant.
Reference: Zoning Ordinance, Article 8,
Section 8.2A7/6a and Section 8.2B10/12
Applicant: Roman Catholic Diocese of Owensboro, KY

ZONING HISTORY

OMPC records indicate that the subject
property has historically been zoned R-4DT Inner-City
Residential. No rezonings or plans of any kind are on
file in the office.

The subject property is an existing
residential structure that the applicant would like to
convert to a birthright service which includes
counseling and housing for a maximum of four pregnant
women. The use of the property as a dormitory for the
pregnant women and the associated philanthropic
services provided through birthright, both require a
Conditional Use Permit within an R-4DT Inner-City
Residential zone. Based on the site plan submitted
with the application, it appears as though there are
no planned alterations to the exterior of the
structure. Parking is proposed to the rear of the
building with the majority of the parking located
across the alley. All parking area are required to be
The applicant has also submitted a final development plan that will be heard by the Owensboro Metropolitan Planning Commission at the December 13, 2007 meeting if the Conditional Use Permit is approved.

LAND USES IN SURROUNDING AREA

All adjoining properties are zoned R-4DT Inner-City Residential and are either used for church related activities or as residences.

ZONING ORDINANCE REQUIREMENTS

The following criteria apply to a conditional use permit for residential transitional housing;

1. Any person residing in the referenced housing situation shall be subject to all state, federal or local jurisdiction laws.

2. The facility shall be located with 1/2 mile of public transit.

3. The facility shall not be located within an identified historic district recognized by the legislative body.

4. The facility shall employ an on-site administrator, who is directly responsible for the supervision of the residents and the implementation of house rules.

5. The applicant shall provide the Board of
Adjustment, the Zoning Administrator, the public and the residents a phone number and address of the responsible person or agency managing the facility.

6. A fire exit plan shall be submitted with the conditional use application showing the layout of the premises, escape routes, location, operation of each means of egress, location of portable fire extinguishers, and location of the electric main. The fire exit plan shall be prominently displayed within a common area within the facility.

7. Hallways, stairs and other means of egress shall be kept clear of obstructions.

8. The facility shall comply with all applicable building and electrical codes.

9. A list of house rules shall be submitted to the Board of Adjustment with the application for a conditional use permit and shall be prominently displayed in a common area within the facility. The rules should be adequate to address the following: Noise control, disorderly behavior, proper garbage disposal, and cleanliness of sleeping areas and common areas.

10. The Owensboro Metropolitan Board of Adjustment may impose additional conditions as may be necessary for the property integration of the use into
the planning area.
The applicant has submitted commitments with
the Conditional Use Permit application pertaining to
the referenced zoning ordinance requirements. The
commitments fully address all of the requirements.

SUGGESTED CONDITIONS

1. Approval of a final development plan by
the OMPC.

MR. HOWARD: I would also like to add that two
letters were submitted to the Planning Office. Those
have been entered into the record and are in the file.
Would like to enter the Staff Report into the
file.

CHAIRMAN: Anyone here representing the
applicant?

MR. KAMUF: Yes.

MR. SILVERT: Could you state your name again.

MR. KAMUF: Charles Kamuf.

CHAIRMAN: Do you have anything that you would
like to add?

MR. KAMUF: Mr. Chairman, I don't know exactly
how much opposition there is. I talked to the one
gentleman that indicated that he is not in opposition
to Birthright, but he had some questions to ask
because this might take a while if we present our
case. It might be a lot easier if he has no
objection, but he wants some explanation, we might be
able to do that.

CHAIRMAN: Let me see if we have opposition.

Mr. Noffsinger, has there been any
correspondence in the Planning Office in opposition?

MR. NOFFSINGER: Yes, there has. There was
one letter I think that was sent in from the Cathedral
Neighborhood is the way it was identified. Each board
member was made a copy of that and is a part of your
application as well as the applicant was given a copy
of that letter.

We also have one other letter that was sent in
from one of the fathers, Father Vaughan, which each
board member has been given a copy of that and has
been made a part of the application.

Other than that, there's no other
correspondence.

CHAIRMAN: Is anyone here that wishes to speak
in opposition of this item?

Step forward please to the podium.

MR. SILVERT: State your name, please.

MRS. ATKINSON: Eva Atkinson.

(MRS. EVA ATKINSON SWORN BY ATTORNEY.)

MRS. ATKINSON: My name is Eva Atkinson. I
work as a counselor at Brescia University and I've been there for about 12 years.

I've been a resident, my husband and I have owned 516 West Seventh and the empty lot adjoining that across the alley, 717 Cedar Street for over 20 years. We've been married 29 years. We've owned the property since 1983.

With me tonight is my husband David, our two daughters, Michelle and Anna, and also a letter from another resident that couldn't be here, Rodney Berry.

I just wanted to go on record that I in no way oppose Birthright or its intention or Right To Life or any of those other parties that may be here on that behalf.

I am in opposition of turning a residential home into a semi-institutional use. We have seen -- so far on our side of the block, the St. Stephen's Cathedral has bought two properties. One of which has been torn down and is a meditation garden. The house next to it is now a youth center home. While the property is maintained, I'm not sure that there was any change of permits needed or granted or anything along those lines. That house is used on Sundays for youth groups and occasionally for overnight stays for lock-ins that they might have with their teenage youth
The house next to that has been purchased by the Diocese of Owensboro. I heard it read that there are no physical changes, plan for the exterior of the house. It was a non-functioning room, but a room nonetheless that's been torn off of the house and the roof, including the sheeting, has been replaced.

One, those are necessary -- and guttering. That is a necessary repair, but I'm not sure if those changes needed to be permitted, and if so if they were done that way.

The next thing I wanted to say is that there is -- the church is the main occupant of our neighborhood. Yet the side of the street we live on has been traditionally residential and all of the surrounding places are either rental or single family dwellings. My opposition comes in the form of yet another residential home being turned into an institution or commercial because I assume that diocese is going to rent it to the office of our -- I don't know what kind of arrangement they have with that. That's none of my business.

Other than we have already had trouble with people parking in the alley. I'm not so -- the other opposition I have is I don't know if there's been any
study or I would want as a landowner to know that if all of that property behind my house is paved that I will not have problems with run-off from the paved parking lot because our property is lower than the property that they're talking about turning into a paved parking lot.

The other concern I have while it's not a use like Lighthouse where we have identified people that are in like recovery for drugs and alcohol and we might expect that. I would be concerned about knowing what ages of residents they propose to have in the house. What type of supervisions these residents might have and if it's going to be 24 hour supervision or if these folks are considered to be renters.

We did refer our phone numbers to, and I don't know her name, but she's sitting over there. Early on in this project, and we have not been contacted by them. My husband after the tornado did cut their limbs. We tried to be good neighbors so far. I'm not opposing it due to their lack of communication, but they obviously have come out in full force tonight. I feel already intimidated as a neighbor that this is what we might expect. Thank you.

CHAIRMAN: Anyone else speak in opposition?

Step forward, please.
MR. SILVERT: State your name, please.

MS. EVANS: Barbara Evans.

(MS. BARBARA EVANS SWORN BY ATTORNEY.)

MS. EVANS: I live at 719 Cedar Street. I've been there since '96. I purchased my home. I'm really thrilled about Birthright. It's great. A wonderful thing that's happening. I'm sorry that they feel the way they do.

I live next to their lot behind their home. It's a road that nobody could park there if they wanted to. I don't feel that they have a problem with that. I really think it's great. I hope this goes through for Birthright.

I have never seen anybody park in the parking lot, the alley. I've never seen that. I have a pretty clear shot to it. I hope this goes well for the church.

CHAIRMAN: Any board member have any questions for Ms. Evans?

(NO RESPONSE)

CHAIRMAN: Anyone else like to speak in opposition of the item?

Step forward, please.

MR. SILVERT: State your name, please.

MR. ATKINSON: David Atkinson.
(MR. DAVID ATKINSON SWORN BY ATTORNEY.)

MR. ATKINSON: I have a statement that was prepared by Rodney Berry who couldn't be here tonight. I told him I was going to bring a statement of my own. He said if I could read his along with mine. With your permission I'll read it now.

"Unfortunately, we are unable to attend this public hearing, so we offer a few comments on the proposal to convert the former home of Colonel and Mrs. Allen Head on Seventh Street to the offices of the Birthright agency. For 26 years, our family has lived at 705 Locust Street, across the street and a few doors away from this historic home.

"We salute the people associated with Birthright who provide valuable counsel and assistance to young women at a difficult time in their life. Father John Vaughn and the people associated with St. Stephens and the diocese are good neighbors. This is not about them at all.

"We are not concerned about property values; we don't plan to move anywhere. We are not concerned about living near Birthright clients; they would be welcomed to our neighborhood. We are simply concerned about how we casually dismiss our community plan and ignore the importance of redeveloping our inner city."
"We would object to this proposal if it were a law, real estate or insurance office, or another social service agency. If we want to redevelop our inner city neighborhoods, we should not insert commercial uses in the middle of residential blocks. It is increasingly difficult to attract families to our neighborhood when we continue to lose neighbors to commercial uses.

"Our city planners and the citizen boards that work with them have adopted goals within a comprehensive plan to redevelop our inner city neighborhoods. Why would we want to ignore the plan now that it is adopted." This is from Rodney and Joanne Berry, 705 Locust Street.

This is my statement: "Let there be no mistake about the way I feel about life and the protection of the unborn children everywhere. I feel there needs to be an organization like Birthright to provide a much needed service like counseling and shelter to mothers who might otherwise chose a more disastrous alternative.

"Having said that, we now must turn our attention to the real purpose of this meeting. We as property owners in the St. Stephens neighborhood have been notified in writing that Birthright of Owensboro
and the Diocese of Owensboro has requested special permission by this board who I before you today to make an exception to the guidelines set forth by Planning and Zoning.

"I would like to keep things simple in order to cover all that is necessary at this meeting. I feel that much more discussion of this situation needs to occur before any granting of permits is done.

"The people involved with this project have not come to us as neighbors to discuss plans or include us in any way to see if there were ways that we could exist in harmoniously.

"I have a family here. We like the way it feels here and the way it looks. The alley is not just an alley. It is also our driveway.

"My other neighbors are in the same situation. Bill Carrico who owns the house at the end of the alley on Locust, he parks in the back of his house. He has to access to the alley from either side, Locust Street or Cedar Street. The only reason we should expect to be blocked from getting to our homes is due to storm damage or an occasional OMU truck.

"The Birthright board members are not going to live here. They're going to leave it behind daily as they go to their homes in some other neighborhood. I
doubt anybody or agency is applying for special use permits in their neighborhoods.

"Unless we as neighbors get what we want from this meeting, then we shall remain opposed to the granting of the special use permit.

"No signs. No fences. No paving. No re-landscaping. Just basic yard maintenance and paint. No cars blocking the alley. Only restoration to existing structures. No additional parking created next to the house. No parking on the north side of the alley."

CHAIRMAN: Sir, would you step back up to the mike, please.

Would you like to submit those into the record?

MR. ATKINSON: If you can read them.

MR. NOFFSINGER: I hope we can read them because you lost me at "no signs," because I was trying to take down what you were saying.

CHAIRMAN: Anyone else like to speak in opposition of the item?

(NO RESPONSE)

CHAIRMAN: Mr. Kamuf, would you like to address their concerns?

MR. KAMUF: Yes, Mr. Chairman and other board
First of all I think, Gary, some of those issues that he talked about might be answered by some of the Staff. He mentioned about the parking. He mentioned about the landscaping. He mentioned about no cars. Those are things that we didn't necessarily do our own. Those are necessarily things that were required by the Staff. I don't know whether you want to touch on that or not. He raised a couple of those issues.

MR. NOFFSINGER: Yes, I would because they're not requirements by the Staff. Those are requirements by the zoning ordinance that has been adopted by the City of Owensboro. Staff is charged with enforcing those.

MR. KAMUF: Sure. That's what I meant. Some of the issues that he raised -- the parking that we have on the south side of the other parking, it's necessary because of the zoning ordinance. Not necessarily because we want it.

Anyway, I'll start out. We have several witnesses that would like to testify.

As some of you know this is a two-story building. It is located between Cedar and Locust on Seventh Street. The reason that this area was chosen
is because it was near the St. Stephens Neighborhood. It is an area of peacefulness and solitude. We thought this would be an area that would be good for the ladies that are trying to rework their life.

The Birthright will be on the first floor. On the second floor there will an area for pregnant women to rebuild their lives. The Catholic Diocese bought this property along with other donors. The reason that they bought the property was for these purposes.

They paid $80,000 on it and they will spend at least $40,000 more. It's a beautiful old house in one of the oldest neighborhoods. Next door to the property, as I'll show you in a few minutes, there is a house that the St. Stephens Cathedral uses for a youth group.

I might show this plat that was proposed to show just some of the area that we see.

First of all as you see, this is an area -- I might say that this area is sort of an oasis for the Catholic Diocese of Western Kentucky. It is also an oasis for social concerns. Right within the next block is the Pitino Shelter.

So the first area that we have that you see is the Pitino Shelter which is in this particular area here. Then you have St. Stephens Cathedral and you
have an area along Locust Street which is for the
Latin Americans. You have St. Stephens Cathedral.
You also have the -- along there is the diocese office
and also the pastoral center.

The orange area that I might point out, it's
kind of hard to read and I'll show it to some of you
that may not know.

The orange area that you see is the subject
property. All of that in blue in this area is the
diocese property. As you see up there, there is Haley
McGinnis Funeral Home. When you get down to the south
is the fire department. Over here is the South
Central Bell telephone area.

The area is an older section of town. I might
point this out it is an area that is in transition. I
can assure you within the block of Seventh Street to
Ninth Street to Locust to Cedar there are 28 separate
parcels. Based on the current records of the Daviess
Count PVA office, slightly over one-third of the
properties are owner occupied. Ten out of the 28, 36
percent. The remaining 18 parcels, which are
approximately two-third, are rental properties or
vacant lots.

I have some photos to show you. I'll pass
these around if that's okay.
This photo that you see is a photo of the subject property which is the middle. That property that you see -- this area that you see, in the middle is the house that's the subject property. To the east side is the youth home. I'll pass that around in just a second.

This is what you see directly to the north. This is the St. Stephens parking area. You see the parking area for the directory. This is a picture of the vacant lot. As you can see, this one here is the parking lot. St. Stephens Cathedral, which is directly across the street. Many people in that particular area, a lot of them use that parking lot.

This is the vacant lot I think that is owned, which is directly behind the gentleman, Mr. Atkinson, that is a vacant lot.

This is a picture of the rear of the Atkinson home which will -- this is what we'll be looking at and they'll be looking at the area that we have.

In the middle of the block that you see on Locust Street, when I said this is an area in transition, and the reason I point this out, this is a vacant lot that is on Locust Street and there are other apartment areas, it's a block that has many apartment buildings on Locust Street and also on Cedar
Along Cedar Street, as I told you, it was a transition, an area in transition. This is an area, a rental house that has been boxed up and boarded up. This is directly across from the intersection of Cedar and Seventh Street on the west side.

As you can see this one here is a beautiful picture of the subject property. It's a picture of the home that we purchased and spent the money on hoping to preserve.

Directly across the alley that we're talking about, the alley runs from along Seventh Street and it goes from Cedar Street to Locust Street. At the end of Locust Street this is an alley that goes through South Central Bell for their -- it's a large antenna that they have there for South Central Bell. This one here is just a picture to show you that at the intersection of Fifth and Walnut is the Pitino Shelter. Just to give you an idea of what's in the particular area that we're talking about.

I would like to pass these around and mark them if I could.

I would like to point out, Mr. Chairman, the related feature and the main feature of this is that this is the St. Stephens Cathedral Neighborhood. The
diocese of Owensboro and the Cathedral Parrish have been extremely long and continuous history providing both religious and social services in the area.

This is another area to provide more social services for the people in the community. We have -- I can talk later if there's some questions about the goals and objective of the comprehensive plan.

One of the provisions that I thought was interesting in the goals and objective of the comprehensive plan, it states that the maintenance and improvement to the urban neighborhood be accomplished through improvements of community, facilities and services.

It also says that it acknowledges an establishment of residential areas be surrounded with properly buffered non-residential uses such as those family orientated surfaces provided by the diocese.

Now, we have several -- I think some of these issues can be answered. We have Sister Joseph Angela from the diocese. She is the chancellor. We have Terri LaHugh. She also runs the Birthright as it exist now. She can tell you exactly those areas that we need. We have Father McCarty. He will tell you about the old Birthright area at St. Joe and exactly what takes place up there and that the entire time
that he has been up there as pastor of Sts. Joe and
Paul Parrish, there has never been any objection or
any problem with Birthright.

Now, we also have a real estate appraiser here
who will testify concerning those items.

I'm ready to start presenting some of that
case if I could, Mr. Chairman. The first witness I
would like to call is Sister Joseph Angela. She is
the controller of the diocese. She had that job for
years and she can tell you an idea of what's going to
take place. It might take some of the fears away if
some of the residents or the two residents that
object.

MR. SILVERT: State your name, please.

SISTER ANGELA: Sister Joseph Angela Boone.

(SISTER JOSEPH ANGELA BOONE SWORN BY
ATTORNEY.)

SISTER ANGELA: Birthright had been in
existence up on Fourth Street since probably 1982 when
Bishop McRaith came to Owensboro and started this
mission and ministry of helping pregnant girls.

At some point later they had a pregnancy care
center there. At one point when Sts. Joe and Paul
needed the space for their own parish hall they had to
move to a new location.
As Mr. Kamuf has said, we have not had any complaints whatsoever about the location and the ministry that's been going on in that location.

One of the reasons we thought about this house was because of its location and its value and its character. It has such great character to it that we wanted to preserve that by having it as a homeowners house for homeless pregnant girls that didn't have a place to live. We wanted it to be a place where we could make it a better quality of life for those people, the girls that would be living there and for the Birthright people. It's close to the cathedral. There's good parking over there. They wanted privacy and we thought we needed privacy because of the location to help the girls.

We did not even dream that there would be a problem in having homeless girls living there with the right jurisdiction and the supervision from the people that will be helping them to get on with their life, by helping them to get a job so that they will be something down the road instead of being a homeless pregnant girl.

Any questions I can answer I'll try to do so.

MR. DYSINGER: Sister, to your knowledge did anyone from your group attempt to talk to some of the
neighbors about concerns they may have?

SISTER ANGELA: We never even dreamed that they would have concerns. The neighbors, we have been over there when we cleaned up and they had talked with them, but not in a way that thought that there would be any problem with them, with our ministry.

MR. DYSINGER: Thank you.

CHAIRMAN: Any other board member have any questions of the Sister?

MR. WARREN: I do.

I'm thinking this is probably a question you can probably answer. The rectory for St. Stephens, it's next-door to this property?

SISTER ANGELA: It's across the street. It faces the rectory there at St. Stephens.

MR. WARREN: At any given time how many priests live in that home?

SISTER ANGELA: There's been as many as four.

Right now three's three.

MR. WARREN: So currently there's three priests living in that house across the street?

SISTER ANGELA: That's correct.

MR. WARREN: And your home is for four pregnant women at max?

SISTER ANGELA: That will be the max. We
don't know that we'll have any, but we're hoping to have preparations for them if they become necessary.

MR. WARREN: Thank you.

CHAIRMAN: Any other questions for the sister?

MS. DIXON: I do.

When did you actually learn that there was opposition or that people had concerns?

SISTER ANGELA: About a week ago.

MS. DIXON: Since that time has there been any communication, direct communication with the Atkinsons or any of the --

SISTER ANGELA: I haven't personally, no.

MS. DIXON: Has Mr. Kamuf?

MR. KAMUF: No. I got a letter from, I guess from the Planning office and they told me. There was a Mr. Mountjoy that had a listing on it. Some of the people I didn't know, but some I knew. I knew Rodney Berry.

This is hearsay. They called him and talked to him and he said, you know, I'd rather have it like it is, but I will not be at the meeting to object.

Then there was another gentleman by the name of Mountjoy. Had his name on the list. He said he really didn't object, but he wouldn't be at the hearing. So we quit calling. We did call some of the
people on there.

I might say this. There was a group of us. I'm involved in Birthright. There was a group of us that went down and cleaned up. We spent two hot days down there cleaning up. I talked to the gentleman over there that runs the candy store. He didn't object to when we were cleaning up. We had a youth group there. We had I'd say 10 or 12 people. We did a good job. I didn't hear any objection from him at that time. He asked some questions. I think his main concern, Ms. Dixon, at that time was, don't put a fence up. We don't want to put a fence up to separate his property from ours. That was the main objection at that time. I think my position was that we don't want to put a fence up. If there's required screening by the Planning and Zoning ordinance, then we'll do that.

MS. DIXON: How do you feel about not having a fence or about the signage issue? Those were two things I picked up on what Mr. Atkinson said.

MR. KAMUF: I think Terri will have to answer that.

About the fence, we don't want to put up a fence.

Isn't that right, Sister?
SISTER ANGELA: No, we don't.

MR. KAMUF: We don't want to put up a fence.

We will if it's required. Whatever screening is required, whatever. We don't want to pave the parking lot, but if it's required we'll do that. Then there was the issue about the sign.

MS. DIXON: Right.

MR. KAMUF: I didn't take a picture of it.

That's my fault.

The sign, Terri, why don't you come up here. She can tell you. She runs it. She can tell you what size sign. They have a sign that used to be there in front of the old St. Joe rectory there on Fourth Street. Now it's moved behind Sts. Joseph and Paul Church. It's a small sign.

MS. DIXON: I was concerned about the signage. For the benefit of your clients, if you're talking the issue of privacy, it would appear that a small sign on the actual house would be better than one in the yard. That would just be my -- if you are addressing privacy for your clients.

MR. KAMUF: We have talked about this in great deal. Terri can probably handle that. We mentioned this. What kind of sign are we going to have? We want it in an area where it will look good, but it's a
one-way street. We thought a little sign out front, whatever that would be, so if they were looking for this area they could find it. We've talked about it.

    Terri.

MR. SILVERT: State your name, please.

MS. LaHUGH: Terri LaHugh.

(MS. TERRI LaHUGH SWORN BY ATTORNEY.)

MS. LaHUGH: As far as a sign, our sign that we have now is probably 3 foot by 4 foot. We've had it for years at the home on 508 East Fourth. We were there 23 years. That sign is not 23 years old, but it's before me. I moved here eight years ago. I've been with Birthright almost since I moved.

    The sign we can work with that. I don't feel there would be a problem. I would love to have a sign out front for the girls to find us. Other than that, you know, I'm easy. We can put it on the house if that would suit the neighbors more or whatever.

    Whatever we can do to make peace.

    MS. DIXON: Check with Mr. Atkinson on that.

I was thinking that with privacy of your clients, and it looks more tasteful. Plus I don't know if you've noticed that area, but you can be really prone to some graffiti sprayed on signs and so forth.

    MS. LaHUGH: We are a little bit worried about
the neighborhood, the area.

MS. DIXON: No, let's not worry about the neighborhood. It is an oasis. Mr. Kamuf mentioned it.

MR. KAMUF: Please.

MS. DIXON: I said you called or someone referred to it as an oasis. Let's leave it as that, please.

MR. DYSINGER: Could you discuss any other changes in the appearance of the building. It seems to me that it not looking like a house and it looking more like an institution is a concern. If you could just talk about that,

MS. LaHUGH: I agree. I don't know if anybody here that might remember the home at 508 East Fourth, but it was a home that was 110 years old when it was torn down. We have been there for 23 years and loved every bit of it. We did a lot of work to it along to keep it. Keep its integrity. Keep it working. There was always projects that needed done because of the age of the home. We respected that home. I think that's probably why we enjoy buying this home at Seventh Street because it reminded us of our old home that we had so long. We intended to make a substantial investment in this property to make it be
very presentable. It will be a home. We are a home life facility. We're not professional. We're a crisis pregnancy center that is nonprofit. All volunteers. It's a charitable organization. We just help women in need.

If you have any other questions. I don't want to go too long.

MS. MASON: Will you be adding handicap accessible?

MS. LaHUGH: If needed to. Depending on Planning and Zoning.

CHAIRMAN: Mr. Noffsinger, do you have a question?

MR. NOFFSINGER: I think perhaps at this point would you like for me to list these things that Mr. Atkinson has requested and then see what their answers are to those so at least we've addressed those specifics. I need to address parking as well.

CHAIRMAN: Yes, I'd appreciate it if you would. You have it in front of you. Several questions there I'm seeing. If you will do that.

MR. NOFFSINGER: First of all no signs. I think we've touched on that. One idea was to limit the signage to the building only, the face of the building. Another suggestion might be typically in
residential zones you're allowed, I believe, a sign of
two square feet. That would be out in the yard and a
free-standing sign. The sign you've described I think
is about 12 square feet, but typically in a
residential zone you have the two square foot sign in
the yard. That would be in keeping with the
residential zone. Then there's also this option of a
building sign.

Next no fences. The zoning ordinance will not
require any fences to be erected on the property. I
think the applicants have stated here tonight they
don't want to put up a fence.

However, the zoning ordinance would require
the parking area that's going to be constructed and is
necessary to meet zoning requirements will need to be
screened with a three foot high continuous element.
Now, that could be a 3 foot high fence or it could be
a 3 foot high shrub row. If they don't want any
fences, it may be that a three foot high shrub row
would be acceptable and then one tree every 40 feet.
The zoning ordinance does require the parking
area to be paved. There's not a waiver process for
that.

However, drainage must be handled on site. In
review of your development plan, the city engineer
will have to approve the drainage plan. So there will
be a drainage plan and you can talk to the city
engineer about that, Mr. Joe Shepherd, but they will
be responsible for drainage as it goes off of their
property.

No re-landscaping. You know, that's an issue
that I've addressed some of the required landscaping,
but any other landscaping you might do I certainly can
address that.

No cars blocking the alley. I think that's a
common courtesy or a neighborly thing to do. You just
don't block the alley.

The biggy here I think is the restoration to
existing structures. It sounds to me like the folks
are saying, we like the home that's there. It's in
character with the neighborhood, and it is a beautiful
home.

What are you plans for that structure? I'm
hearing that they want the home to stay. They want to
keep it intact. They want it to look the way it does
today. Maybe some necessary repairs, but restore it
to its original condition. These are all conditions
that this board could consider in granting a
conditional use permit.

MS. LaHUGH: We have agreed. We have spoken
with the families. Every visit we were there this summer we chatted. We assured them that we intend to keep the house. He asked, make sure we didn't want it tore down. I said, my gosh, we've just invested everything we can come up with to have the home. We're thrilled to have it. We're making plans to improve just enough to get the doors open. We have put $23,000 into a brand new roof and gutters on the home inside where the roof had leaked for years. It needs a lot of plaster and dry wall work. Some painting and just some minor plumbing issues maybe. Just make sure everything is up-to-date. Other than that, we have no changes. We have tore down leaning extension that had been on the side of the building. It was leaning and unsafe. They pointed that out where it was needing support. I was grateful for that. We took that off of there to make sure nobody got hurt and also improve the looks of the home. It was a mess. The roofers did this for us.

MR. NOFFSINGER: The only other thing I would like to address is the neighbors have also asked no parking on the north side of the alley. That would be the lot the home is on. You do have two parking spaces, possibly three. Maybe handicap space. The parking issue is
going to be the same whether this use is approved or if it's used for residential. They could still put parking spaces in this location. In fact, across the alley now where the main parking lot is going to be is pretty much graveled and there's a shed there. Looks like a carport type structure, shed. So that's basically what it's used for is parking now.

The other idea, and I just talked with Jim Mischel who is on my staff, said that he did talk with Mr. Kamuf about maybe using the parking lot for the church and seeing if that conserves the parking for this use as well as the church.

The concern that the church might have is whether or not you have enough parking on the church's site to meet the current parking requirements for the church. I don't know if you do or not, but if you did and this could be counted as parking for Birthright, then that would eliminate the need to construct the parking lot south of the alley. That's not the application that's before us tonight. The application is for parking to be on the south side of the alley, but that's just another option that I don't know if you could explore that.

MS. LaHUGH: I agree. We do have permission from the Bishop of the Diocese of Owensboro to use any
of the parking that we would like; volunteers, clients, residents, the house mother. We didn't anticipate a lot of traffic in the alley because it is a quiet alley. I think it would be hard to find for the girls that come to our place looking for us. I think it would be hard just to find the alley.

MR. NOFFSINGER: And to maneuver.

MS. LaHUGH: You're exactly right. It's very tight. I worry about that. We will fix it up if we are needed to by Planning and Zoning. We will make it proper to whatever you require. Other than that, we feel that we have more than enough parking with the streets and with the church's generosity of using their property any time we need it.

Are there any other questions about the parking?

MR. NOFFSINGER: I've gone over each item that was in this list, I believe.

That's all I have, Mr. Chairman.

CHAIRMAN: Mr. Kamuf, do you have anyone else?

MR. KAMUF: I have one. Father McCarty is here. He's the pastor of Sts. Joe and Paul Parrish. He can give you an idea of what Birthright has meant and whether there's been any complaints.

MR. SILVERT: State your name, please.
FATHER McCARTY: Father Carl McCarty.

(FATHER McCARTY SWORN BY ATTORNEY.)

FATHER McCARTY: I can speak to the parking situation.

We've never had a problem with parking at Sts. Joseph and Paul. There's not a lot of cars that are generated by Birthright. There's two, three, four cars perhaps at a time, if even that.

As far as the structure of our facilities that Birthright has used, which was the house on Fourth Street and now they're using what was our old office house, they've only added to those facilities and those structures. They have maintained those structures for us. We helped to maintain the outside. They helped maintain the inside.

The girls that have come there are always polite, courteous. Many of them that I see are sometimes even dropped off there and then picked up again. So cars are not remaining there. There is some foot traffic that does come in in relationship to the bus traffic and the bus system. So the parking on the outside of the buildings we have not had any trouble with whatsoever. They have a direct mission. That mission is only added to our mission and to the neighborhood mission, the old Germantown area.
For myself I've worked to keep Birthright there as long as we could, but conditions have continued to grow and change and we all need to do that. Change is probably the hardest thing here. Make a little fear in relationship to what's going to take place.

So if I can help to alleviate any of that fear, they have certainly added to our neighborhood. We do not mean to intimidate whatsoever. We certainly are here to communicate. If we can help to communicate any other thing that may need to be answered, we want to do that.

CHAIRMAN: Any board member have any questions of Father McCarty?

(NO RESPONSE)

CHAIRMAN: Mr. Kamuf, do you have anything else?

MR. KAMUF: I might say this. We probably looked at 60 or 70 houses in Owensboro. This met all the requirements. We felt like it was a peaceful place for the girls. It had to meet so many requirements. It has to be so close to a bus stop. I mean there were just a lot of requirements that were required for us to qualify under Planning and Zoning requirements. We felt like that this was the best
choice that we could make. Not only for us but for
the citizens. I'm talking about the people that come
to the Birthright center. I might point out one other
ting. As far as development plan, as far as the
drainage, Jim Riney has prepared -- we have to file a
development plan and it will show all the drainage and
all the requirements as far as the drainage.

CHAIRMAN: Thank you.

Going back to the opposing side for a few
comments and then we're going to wrap it up and give
you a decision.

Anyone over here have any additional thoughts
or comments?

MR. ATKINSON: What was said about the parking
on the north side of the alley, is there plans for
parking on that side?

MR. NOFFSINGER: Mr. Chairman, if I may. They
are showing two parking spaces on the north side of
the alley. That would be right to the rear of the
home off the alley. One is a handicap parking space
and the other is a regular parking space.

MR. ATKINSON: If they could figure another
way to do that, that would be good.

MR. DYSINGER: The parking is not actually in
the alley though, sir.
MR. ATKINSON: I understand that part.
There's not much yard back there and it would ruin the looks.

MRS. ATKINSON: I was a lifelong member of Sts. Joe and Paul Church. My parents and sister and her family still attend there. I'm very familiar with that neighborhood because it is the home neighborhood of my grandchildren and my sister lives there.

I do want to point out that the Birthright house on Fourth Street and where it is now behind St. Paul's Church, it was not in a residential neighborhood. They were freestanding houses with no neighbors with commercial parking lots adjacent to these homes already.

The other thing is we haven't had trouble with parking until the board people show up and then they park all over the yard and all over the alley and seem to disrespect that it is a residential neighborhood. It's like they all come down and have a -- nobody parked in the front. Nobody parked in the gravel lot that St. Stephens has on the corner of Seventh and Cedar. Nobody parked in the paved parking lot at St. Stephens. They all parked in the back, which they own the property or at least the diocese does, but they were very inconsiderate in how they parked when they
had their shower parties and things, whatever, bringing things to the house.

The other thing. Obviously we support life. Both of our daughters are adopted. Our last daughter, and I had to laugh at Ms. Barbara opposed us during the opposition.

Our last daughter is a medical special needs daughter. For the last three years I've been very involved in going to hospitals. She's had numerous surgeries. Yes, our yard is a mess, but I resent that was an issue that was pointed out to them when it was, most of it is a result of either her or my health issues not allowing us time to tend to the property.

The other thing is we have invested our lives in downtown Owensboro. We have a small business that struggles to make it. I do also want to say that I resent that Mr. Kamuf said or threatened that he would not do business with us anymore, which is his prerogative, if we opposed Birthright moving into that house. There was a Right To Life person or a Mr. Howard called Mr. Berry and was scathing to him that he would oppose it. We are not opposed to Right To Life. We are not opposed to Birthright. I have had students that have used those services that I referred there. I had very good relationship with them. I
just oppose the intimidation. I oppose that this is an quasi institutional use in a residential neighborhood. I just feel very disrespected. I'm glad that they respect their clients more than they respect their neighbors.

CHAIRMAN: Anyone else like to speak? I'm going to wrap it up on this side and brief comment over here and ask for a vote.

Come to one of the podiums.

MR. SILVERT: State your name again for the record.

MS. EVANS: Barbara Evans.

I would just like to say I don't understand about why they wouldn't want a fence up. I'm curious about that one. Seems like if they're so upset and worried about who was going to be next-door to them, why wouldn't they want them to put a fence up. I don't understand that.

As far as the parking, they're hardly ever at home like she said because the yards prove it. I'm the one usually having to take care of the yard on Cedar Street in front of their house. I quit though. After so many years you get tired of doing somebody else's work and clean up.

I have been to the old Birthright where it
was. It was very nice. Very nice sign. I've never -- all the ladies were so sweet and kind. I try to do charity work and help as many people as I can. They're very good people and they're very clean. It would be an asset to the community over there to have them here. Everyone should be jumping for joy over this. I'm just thrilled when I heard that they were coming here because it's going to run off a lot of the riffraff.

I don't understand what the issue is about the parking. There's plenty of parking for them. As far as the neighbors next-door to Cedar Street, they park over on Cedar Street because they put a fence around their back yard. They don't even have parking in the back yard. I mean there's a little gravel spot, but they don't park there. They might pull up there for a few minutes, but that's it.

I'm sorry they feel the way they do about this, but I'm very excited and I hope this goes through. Thank you.

CHAIRMAN: Mr. Noffsinger.

MR. NOFFSINGER: This board is charged with making a determination as to whether or not this use can be properly integrated in the neighborhood. That's why it's called a conditional use permit. This
is a particular use that involves not only a
residential use, but also somewhat of an institutional
use in that there would be offices for counseling in
this location.

Given the nature of that, the zoning ordinance
recognizes that there may need to be a more stringent
review of the proposed use and the way it's going to
be operated or the character of that use before it can
be integrated into a residential zone. I think
everyone here tonight, and I really believe this,
thinks Birthright is a good thing. They do wonderful
work, but that's not the issue and that's not why
we're here tonight. If that were the issue, then it
wouldn't be for this board to decide.

The real issue comes is whether or not this
use and what they're proposing to do with the premises
can be properly integrated into the neighborhood. I
think most of us would have some of the same concerns
that these adjoining property owners have if
Birthright or any other type of use of a
nonresidential nature would come into our
neighborhood.

Now, this board has a very difficult job of
determining whether or not the use can be properly
integrated in. That's their decision. They get very
little staff guidance. What we do as the Planning Staff is that we prepare them the facts. We get them copies of the application. They look at that information and then they listen to the testimony that's here tonight presented to them. Then they have to make a decision and they have to make their decision that's supported by facts that's submitted here tonight.

Again, please the use or the group, Birthright, I don't believe is at issue here tonight. The use is whether or not this residential home in this residential oasis type neighborhood can be properly integrated in. If it can, then the board has the right to set special conditions upon that approval. If they feel it can't be properly integrated, then this group may deny the conditional use permit.

With that said, from a planning perspective I wanted everyone to understand why we're here and that both sides present good points and are deserving to be heard.

CHAIRMAN: Mr. Mischel, you have some comments?

MR. MISCHEL: Short comment.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)
MR. MISCHEL: I just have one comment on the condition that there be no parking on the north side.

Under the Kentucky Building Code ADA, which is American Disabilities Act, I feel like you would have to have at least one on that north side to comply with those.

MR. DYSINGER: Of a handicap nature?

MR. MISCHEL: Yes.

MR. NOFFSINGER: And that's what they are proposing.

MR. MISCHEL: Have it marked no nobody else can park there unless they have a disability. I do believe they need one to meet the code. That's the only comment I have.

CHAIRMAN: Anyone else would like to speak? Did we miss anyone?

Step back up, please.

MR. ATKINSON: In response to what Jim has said. I was wondering if we could request that the handicap parking space be parallel with the alley?

You know how you parallel park.

MR. NOFFSINGER: According to the site statistics 13 parking spaces are required for this use. Eleven of these spaces are south of the alley. Two of those spaces are north of the alley. You could
probably get two parking spaces parallel north of the alley, but what you may find is that you have to remove -- it's going to take up additional -- it's going to take up the same amount of land and you may lose a tree. You may lose some bushes. I don't know. That certainly could be done, but you're still going to have to pick up two parking spaces.

In terms of being handicap accessible, Mr. Mischel, parallel space off that alley, do you see any concerns there?

MR. MISCHEL: Well, the parking space and the ADA that goes along with that, they have to be able to get out of the car and get in that ADA and be able to access the property without going in that alley. You don't want somebody with a disability have to get into the alley. That can be looked at, but right now I would have some reservations until we see it.

MR. NOFFSINGER: And that would be from the driver's side as well as passenger side?

MR. MISCHEL: That's right.

MR. NOFFSINGER: It would take as much probably paving to do it parallel as it would to do it the way it's shown.

CHAIRMAN: Does that answer your question? I'm going to wrap it up on this side. Any more
questions? Very briefly, please.

MR. ATKINSON: One more comment I might make is the property line does not come up to the alley. The alley over the years has meandered over. So there's about three foot of yard between the alley and the actual property line. I'm done.

CHAIRMAN: Mr. Kamuf, any final comments?

MR. KAMUF: No comments unless there's some questions from any of the board members. I'll try to answer anything. I think we have people here that can answer some of the guess there are.

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

MS. DIXON: I don't have any questions. I do have a comment because I've been sitting on this board a long time and we always have these emotionally charged issues that reflect on neighbors and properties and everything. I just wish at some point attorneys and applicants and all would learn to communicate early in the game rather than letting tempers escalate and feelings get hurt and it hurts the whole project. What we have here is a failure to communicate. There's a way for people to get along, if we approach each other early in the game. Please take that for what it's worth. That's my story and
I'm sticking to it.

MR. KAMUF: I understand.

CHAIRMAN: Any other board member have any questions?

(NO RESPONSE)

CHAIRMAN: Mr. Noffsinger?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Chair is ready for a motion.

MR. TAYLOR: Mr. Chairman, I move to approve the conditional use permit. Be based on some findings of facts and special conditions as well.

My findings of facts are that the applicant has submitted commitments with the conditional use permit application pertaining to the reference zoning ordinance requirements. The commitments fully address all of those requirements. This will be touched upon further, the conditions, but there will be no alteration of the exterior of the building.

It seems the alterations of the neighborhood will be minimal because there is mixed use of these similar events in the overall neighborhood. Maybe not perhaps on that street, but in a larger neighborhood. My conditions are that the sign that will go along with the property will be effaced to the building as opposed to in the yard.
Also I wanted to make some concessions I've noticed. You know, to meet as many of the concerns they can, but no matter what you do not all concerns will be met. I do think by putting that sign on the building and saying that there will be no major structural alteration to the exterior of the building, other than to keep the upkeep of the building.

MR. DYSINGER: I'll second that motion.

MS. DIXON: Would you entertain a friendly amendment?

MR. TAYLOR: Absolutely.

MS. DIXON: No fences.

MR. TAYLOR: I'll also throw into those conditions no fences which was agreed upon by both.

MR. NOFFSINGER: Shrubs, but no fences.

MR. TAYLOR: Absolutely shrubs. The screening will be required.

CHAIRMAN: We have a motion and a second. Are there any further comments on the motion?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Let's take a short break.
CHAIRMAN: Call the meeting back to order.

Next item on the agenda, Mr. Noffsinger.

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VARIANCES

ITEM 9

1805 West Parrish Avenue, zoned B-4
Consider a Variance to reduce the building setback
along West Parrish Avenue from 75 feet from the street
centerline to 55 feet from the street centerline.
Reference: Zoning Ordinance, Article 8, Section
8.5.16C
Applicant: West Parrish Plaza, LLC

MR. HOWARD: I'll give you a brief overview of
the Staff's viewpoint on the situation.

Basically the subject property along the two
properties immediately west were rezoned from R-4DT
Inner-City Residential to B-4 General Business at the
September 2007, Planning Commission meeting.

As we look at it, when any rezoning or
redevelopment of the property takes place, site should
be brought into compliance and that's whether it's in
this instance, meeting a building setback line,
installing require screening, shrubbery, fences
anything like that.

Based upon that information, the Staff has an
objection to this Variance request.

Both of the residents that were on this
property along with the other two that were rezoned all encroached or currently do encroach into the established building setback. That should be remedied.

It is our opinion that when the sites do redevelop that it’s reasonable to expect that the new building would meet the applicable building setback requirements. There have been additional buildings in the same block front that have redeveloped at the opposite end in the past year or so. As they redeveloped, they have met the applicable building setback requirements.

There have been no other building setback variances along this block front on West Parrish Avenue. The zoning ordinance has flexibility built in which enables a property to or a development to average their building setback. At present the prescribed setback is 75 feet from the street center line, which I believe in this instance would be 45 feet from the property line. The way the average works is that you take what your setback is on your lot, prescribed setback, and you can average it with the actual setback of the building on the adjoining lot. Which in this instance is 25 feet. With that average of the setback you could by ordinance reduce
the required setback from 45 feet from the property line to 35 feet from the property line.

With that flexibility build in Staff would feel that that is a relief from the requirement of a greater setback and that that should be the amount of variance that's allowed on the lot. Not grant the additional ten feet which will get the building closer, the new commercial building closer to the, property line closer to the road. For those reasons Staff would recommend the variance request be denied.

I'll be happy to answer any questions that you may have.

MR. NOFFSINGER: I have a question. Just point of clarification.

Mr. Howard, you're saying the setback is 75 feet from the center line of the street right-of-way?

MR. HOWARD: Correct.

MR. NOFFSINGER: The applicant is asking that to be reduced to 55 feet, but the zoning ordinance allows you to average the setback based upon the location of existing buildings. That would be a 65 foot setback?

MR. HOWARD: Right.

MR. NOFFSINGER: So if this variance is not approved tonight, there will still be some relief to
the applicant in that that setback will be reduced
from 75 feet to 65 feet.

    MR. HOWARD: That is correct. I kind of
switched gears, as far as the dimensions because the
site plan that was submitted all the measurements are
based upon the property line. I got away from 75 and
just talked about the 45 and 25. The 45 plus the 30
foot right-of-way from the street center line is the
total of 75.

    Basically, right, as Mr. Noffsinger said.
They could go from a 75 foot prescribed setback to a
65 foot setback based upon an average of flexibility
that's built into the zoning ordinance. They're
requesting a drop down to 55.

    MR. NOFFSINGER: What is the classification of
Parrish Avenue, roadway functional classification
here?

    MR. HOWARD: I believe that Parrish Avenue is
classified as a principle arterial.

    MR. NOFFSINGER: How wide is that facility
now? Is that a two lane facility at this location?

    MR. HOWARD: At present I believe it's a three
lane facility with one lane of travel in each
direction and the continuous center turn lane or
chicken lane as they're sometime referred to, but it's
a three lane cross section.

Mr. Noffsinger brings up a good point. At the time that the rezoning was done, the applicant did mention that Parrish Avenue had been widened from Bosley Road out to the bypass to a cross section. If this variance is granted, as I mentioned, the building would be closer to the road and a widening of that section of Parrish Avenue wouldn't really benefit from a building any closer to the roadway than the building setback would dictate.

CHAIRMAN: Anyone here wishing to speak in opposition of this item before we hear Mr. Kamuf? Anyone here opposing this item?

(NO RESPONSE)

CHAIRMAN: Mr. Kamuf, you want to proceed.

MR. KAMUF: Mr. Chairman, Charles Kamuf again. I have talked to the neighbors. The neighbors have no opposition to this whatsoever. The gentleman next-door is a fellow by the name of David Haycraft. He recommended when I talked to him on -- I did talk to some of the neighbors this time. I did talk to him. He has no objection.

Let me tell you what makes this issue unique and very unique to any of them in Owensboro. It's a lot that has three roads on each side, I mean
together. You have Parrish Avenue on the main side. You have Independence Avenue on the east side. On the other side you have James David Court. What makes this unusual, if the property next to me had not been zoned commercial, I would have a 25 foot setback line from that line and all you could put on it would be maybe a dumpster. It makes it unusual in that you have a three sided lot.

Furthermore, what makes it unusual is that you have -- this is the Stop-N-Shop Shopping Center. This is the property that we're talking about here. That Stop-N-Shop blocks the whole area that you see. So the hardship that I have in this property is that I have a three sided lot. I have a setback from Parrish Avenue, a setback from Independence, and a setback from James David Court.

To meet the requirements of parking, I'll show you the plat that I have prepared.

What I have here, this is a picture of the old house that was torn down. The importance of that old house is that old house was built in the '20s. This gentleman was the county judge of Daviess County. A gentleman by the name of McFarland. He developed this property and it was known as the McFarland Subdivision. He set his house up, but then set
setback for all the rest along Parrish Avenue for 25 foot.

What I've just showed you is the McFarland addition plat. If you see along Parrish Avenue, there's a 25 foot setback line.

Here is what it looks like on this photograph here. This is the house that you see along Parrish Avenue. What we're asking for is no more and no less that we be able to match whatever the setback line is on these particular houses. In line with what Gary said, as far as if there is an improvement to Parrish Avenue, and I hope there is, there will be sufficient -- this is another reason to do it our way instead of putting parking out front. If there is a condemnation case, they've got plenty of room out front to widen Parrish Avenue. In other words, without taking any parking.

The other problem that I -- remember I pointed out that we have a three sided lot. We have the Stop-N-Shop Shopping Center. For us to get an adequate building on the lot and adequate parking, as Gary said in the other case that we had a while ago. Parking is not a variance. I can't get a variance for parking, but I have sufficient parking on that lot and it meets all the requirements if I set the building
back. Hale, Riney & Gilmore set it back according to
that plat that you see that I think I filed it and you
also see it.

Here are a couple of photographs that show.
This shows the other side of the shopping center.
This is a picture of the older house what was torn
down recently. I think when it was mentioned about
being able to average and reduce the setback line, the
purpose of that it recognizes that there will be
unusual circumstances and there would be averaging.

In this case the reason it doesn't work is I
can't get the parking on the lot to make the adequate
parking with the setback lines.

May I point these out. These are the
photographs.

I might point out again I have talked to the
neighbors. The neighbors have no objection to this.
They didn't have any objection to the rezoning. I
would not be asking for that if I could properly
locate the building on the lot with the adequate
parking. I think what makes this an unusual hardship
are those three things that I point out to you. I
doubt if there are many lots in Owensboro that have
streets on three sides where there would be setback
lines from the rear, the side and also from the main
I'm here to answer any questions.

CHAIRMAN: Any board members have any questions of Mr. Kamuf.

MR. WARREN: You've got a picture of the Stop-N-Shop Plaza. You're saying that that plaza being so close to Parrish Avenue would block visibility for your business?

MR. KAMUF: Right. I think that was built sometime about 1950. I lived in that area. There were no setback lines then. The Stop-N-Shop Shopping Center is built right on the sidewalk. If you don't pull it out a little bit, even if there's a sign out front, it will be setback in line with the rest of the houses along Parrish Avenue. If you set the sign back so far, then you still can't see it from the Stop-N-Shop Shopping Center.

When I bought the property, I knew there would be a setback line, but I did not have any dream that it would be any further back than what those existing houses were.

CHAIRMAN: Any other questions of Mr. Kamuf?

Mr. Noffsinger.

MR. NOFFSINGER: Just some observations on the plat that Mr. Kamuf submitted.
This lot, the subject property is certainly laid out as, really in terms of width, the largest lot in that block. It was recognized. I'm sure that it was a corner lot. Had frontage on three sides. It was laid out larger to meet the setback. Too, keep in mind that this was laid out and be developed as residential property. It was zoned residential up until just a month or two ago when Mr. Kamuf came in the office and showed us two or three lots I think it was that he was rezoning. We thought we were going to see a plan for two or three lots to develop.

Well, now we're only seeing a development on the corner lot which makes it difficult to develop because instead of taking take two or three lots that's typically in line with what's happening in that area, we're just trying to develop the one lot.

There's also a note on this plat that, a little concern, says, "No building other than a residence to be erected less than 30 feet."

Charlie, I know you've --

MR. KAMUF: Which one is that now?

MR. NOFFSINGER: It's the plat of the subdivision. I know you've researched the deed of dedication. You stated there's no deed restrictions on the property, but it says, "No building other than
a residence to be erected less than 30 feet from the
property line."

MR. KAMUF: I looked those up. The
restrictions that they apply, the restrictions are not
on that particular lot. I certified that. My son ran
the title. He certified on those three lots. Some of
them further down, if you notice down where there's a
development by Mike Martin further down, there are
restrictions on those lots and they had to be
alleviated.

MR. NOFFSINGER: It's just that it was laid
out as a residential development. As staff, when
we're recommending approval on a zoning change and
we're looking at site conditions and changing the
class of these residential areas, I think we have
to anticipate that the development requirements are
going to be met.

Here is a case where we've taken really a
substandard lot and rezoned it to commercial and we're
trying to squeeze development onto it and compromise
the setbacks that have been established in the zoning
ordinance. We're even compromising off the prescribed
setback and reducing that down to 65 feet.

MR. KAMUF: Gary, the whole idea of the zoning
ordinance is the variance and I outlined it
completely. I spent a lot of time laying out the reasons for the variance. This lot will be hidden back there as a result of several things. The main thing is that Stop-N-Shop Shopping Center. Very few lots in town have that issue along with being a three corner lot.

CHAIRMAN: Any other questions for Mr. Kamuf from the board members?

(NO RESPONSE)

CHAIRMAN: Staff?

MR. NOFFSINGER: No, sir.

MS. DIXON: Are you ready for a motion?

CHAIRMAN: Yes, chair is ready for a motion.

MS. DIXON: Mr. Chairman, my motion is that we deny the variance request because of the information supplied and the Staff review that relief is available with the averaging of setbacks. That there have been no other building setback variances in the vicinity of the subject property on West Parrish, and if approved this would be out of character with other lots, and that it may adversely affect the health, safety and welfare and will alter the essential character of the general vicinity.

MR. DYSINGER: Second.

CHAIRMAN: We have a motion and a second. Any
comments or question on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

MR. TAYLOR: I would like to address the issue on my behalf just -- I really don't know the proper steps.

I'm kind of familiar with the property just because it's kind of on my route home. It's kind of something I do. The special circumstances that he mentioned I realize that it is a three corner lot and things like that. I don't know what happened in the zoning meeting with assumptions of two or three, but when I examined it as opening another existing business in a B-4 zoning I went and I kind of looked as I drove back because I was kind of familiar with it. When I was approaching it from the east, I did notice that Stop-N-Shop is, you know, five or ten feet off. When I approached it from the west, I noticed that all the houses weren't aligned. When I looked at the plat, it looked like it was in line. When I came, you know, I was under the assumption that it was kind of something that was going to be approved. I didn't know that it was going to be denied. I don't know other than vote against it I guess to show my disapproval of the motion.
CHAIRM AN: We have a motion on the floor and
we have a second. Let's vote on it.

MR. TAYLOR: That's what I was saying. I
didn't know the proper procedure. That's what I was
trying to lay out.

CHAIRM AN: All in favor raise you right hand.

(BOARD MEMBERS SEAN DYSINGER, RUTH ANN MASON
AND JUDY DIXON RESPONDED AYE.)

CHAIRM AN: All opposed.

(BOARD MEMBERS MARTY WARREN AND CLAY TAYLOR
RESPONDED NAY.)

CHAIRM AN: Three to two. Motion carries.

Next item.

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NEW BUSINESS

ITEM 10

3905 Carter Road, zoned B-4
Consider revocation of the Conditional Use Permit
issued to Atlantis Swim and Sport Complex, Inc. and
Floyd D. Tapp approved at the September 6, 2007,
Owensboro Metropolitan Board of Adjustment meeting.
Reference: KRS 100.237(4)

(MR. CLAY TAYLOR LEAVES MEETING AT THIS TIME.)

MR. NOFFSINGER: Mr. Chairman, I think at this
point we should call on Mr. Mischel to tell us why
we're here tonight.

CHAIRM AN: Mr. Mischel, would you step to the
podium, please, and bring us up to date on this issue.

MR. MISCHEL: I'll try to give you a brief description of what brought this item back before you.

Seems like on September 6, 2007, Mr. Tapp representing Atlantis Swim and Sport Complex asked for a conditional use permit to install netting on the tennis courts to allow paintball activity. At that meeting it was approved. There was some minutes of the meeting had some items that he stipulated he would do at that meeting.

At the time he started the paintball activities I received a complaint. I have the letter here, a memo I had written to Mr. Tapp. It was October 3, 2007 concerning this. I might try to read that into the record.

This is addressed to Mr. Tapp. "Our office has received complaints concerning the paintball activities located at 3905 Carter Road. At the meeting, you stated that the fencing would be 12 foot tall with netting on top of that to prevent the paintballs from going out and over into the neighborhood behind the complex. The complaint states that the paintballs are landing in the neighborhood.

Upon inspection on October 3, 2007, it was found that the fence is not 12 feet in height and does not have
the netting above it. The paintball activities should not continue until all conditions have been met.

Thank you for your cooperation in this matter.

"If you have any questions, please call."

At that time I went out to inspect the property. Mr. Tapp and his family was there and his father was there. We discussed it. I think the fence at that time was about 11 feet tall. There was a little bit of netting up on the top, but not much. They were having difficulty they stated to me trying to get the netting to stay anywhere on top of it. The netting that they got was not 12 feet. They had some on order.

I just made a recommendation that they do not operate until they fix this. He said that they were going to work on that. His dad I think had some ideas on how to do that.

At that time I didn't hear anything else either from him or the neighbors that were complaining.

In the recent past though, I've received more complaints from a couple of neighbors concerning this. I might give you these pictures. These pictures were turned in to us.

While you're looking at the pictures, I might
give a brief description. At the meeting that night on September 6th, I'm going to give some brief.

I think Ms. Mason had asked a few questions. She said, "I have a question for you. The fencing that you're going to put around, how tall is that going to be?"

"MR. TAPP: It's going to be 12 foot tall and we're also going to put a netting on top to prevent it from going out and over into the neighborhood behind us."

"MS. MASON: And the 12 foot tall fencing, what is that going to be exactly? Inflatable?"

"MR. TAPP: No. The netting is a specially engineered netting specifically for this purpose. It won't allow anything bigger than three millimeters to go through."

"MS. MASON: That's around the perimeter?"

"MR. TAPP: The entire perimeter and on the top as well."

Now, three millimeters, just an educated guess, is about a quarter inch. Last time I saw it the netting was not all the way across the top. I had a telephone conversation with Mr. Tapp and he indicated that it wasn't. It was hard to do.

Seeing all that, the remedy that I found in
the KRS statute for conditional use permits, are
100.237(4) it states, "If the landowner is not
complying with all of the conditions listed on the
conditional use permit, the administrative official
shall report the fact in writing to the chairman of
the board of adjustment."

It also goes on to say that, "The board shall
hold a hearing on the report within a reasonable time,
and notice of the time and place of the hearing shall
be furnished to the landowner," which we did. We gave
a letter to the board members and to the owner. I
think we copied the adjoining property owners. I have
a copy of that letter. I think everybody got a copy
unless you need to put it in the record.

I would like to put that, the minutes of the
meeting, and the inspection report and pictures into
the record.

I don't know if you have any questions right
now.

MR. DYSINGER: Jim, the netting that was up,
did it seem to be the netting that was described in
the minutes, the three millimeter?

MR. MISCHEL: I'm not sure it was a quarter
inch. Mr. Tapp could probably tell us better. I'm
not sure about the quarter inch. I would have to go
back out and take a look at that.

CHAIRMAN: Anyone else have a question of Mr. Mischel?

(NO RESPONSE)

CHAIRMAN: I guess that will be all, Jim.

I would like to ask: Is anyone here that would like to speak with their displeasure and concerns of this permit?

MR. SILVERT: State your name, please.

MS. CARTER: Ginger Carter.

(MS. GINGER CARTER SWORN BY ATTORNEY.)

MS. CARTER: I live at 3844 McIntyre Crossing, which is for your reference seven houses from Tamarack Road. I'm right behind Atlantis.

I'm not here in opposition of the paintball facility. I have no animosity towards the Tapps. However I am opposed to paintballs. These are, I guess I collected these in the last week.

I have conversed with Mr. Tapp several times about these. He has hollered over my back fence to see if I've had any more. I've had paintballs on my car twice. He did offer the first time to have some boys come and wash it. I said, well, it's gone to be washed and waxed, but thank you for your offer.

I am opposed to the paintballs in my yard.
Like I said, this is a small sampling. I am opposed
to paintballs on my front sidewalk. Have had
paintballs on my car twice. You have to realize they
are on the other side of my stockade fence. I'm also
opposed, I have not lodged this last complaint with
Mr. Tapp. I think I talked to him last Tuesday, I
believe, or maybe Wednesday. The last one was after
my dog had $900 worth of surgery last week and I found
one of these little paintballs in his mouth. I do
realize they're not suppose to be harmful to humans,
but I don't think one of those in his little belly is
going to set real well.

My point is that if we can remedy the
situation. I don't mind the activity back there. I
honestly don't. I welcome it actually because it's
pretty isolated back there without anything going on.
That doesn't bother me whatsoever. But I am opposed
to the paintballs in my property. I can't speak for
the other neighbors. I don't want them to close the
paintball facility down. That's not my intent
whatever. Thank you.

CHAIRMAN: Thank you.

MR. DYSINGER: I have a question, Mr.
Chairman.

Ma'am, can you tell or do you suspect, are the
paintballs getting over just accidentally because of the netting issue, not having enough netting issue?

MS. CARTER: I would assume. I don't know that for certain.

MR. DYSINGER: But you don't have any reason to believe that they're getting over there purposely by people being irresponsible?

MS. CARTER: The only thing I can say about that is that when I discovered a lot of these paintballs last week, they were all in one area, one corner of my yard. How that happened I don't know. I don't know if that was intentional or not. I can't answer that.

MR. DYSINGER: Thank you.

MS. CARTER: Most of the time they're just in general all over the yard. Like I said even on the front sidewalk.

CHAIRMAN: Thank you.

Anyone else.

MR. SILVERT: State your name.

MR. HAMILTON: Dallas Hamilton.

(MR. DALLAS HAMILTON SWORN BY ATTORNEY.)

MR. HAMILTON: I live next-door to her. Eight houses down from Tamarack. We're having the same problems with paintballs in the yard, on the house, on
the fence. We have a dog that runs around and eats them. He eats more. This is what I picked up over two weekends, last weekend and the weekend before. That's what I picked up other than what the dog has eaten.

Like she said, I have no problem with Darrin. He's been over at our house four or five times. He's offered to clean it up and everything. Like she said, having the business back there and the lights on at night will keep people from -- because all it is is basically a ditch in-between Atlantis and our backyard. I have no problem against him or anything he's doing. I don't want to have to go out and inspect my property two or three times a week to make sure it's not tore up. That's all.

CHAIRMAN: Anyone have any questions?

MR. DYSINGER: I'm just going to ask you the same question. Do you have any reason to believe that the proper netting would not solve the problem?

MR. HAMILTON: I believe if it's totally enclosed, the top on and down, yes. I don't believe there would be any more problems out there. Somebody shoots them over there on purpose would be the only thing.

MR. DYSINGER: Thank you.
CHAIRMAN: Mr. Tapp, would you step up and address these concerns.

MR. SILVERT: State your name, please.

MR. TAPP: Darrin Tapp.

(MR. DARRIN TAPP SWORN BY ATTORNEY.)

MR. TAPP: I've got some pictures I would like to pass around.

As my neighbors have said, we have had problems. Initially what I tried to do was put the netting all the way around as we discussed.

Actually if you could use this one, sir. I've got them numbered so I'll know which one I'm referencing.

Initially we bought like five big rolls, 300 foot long netting. They were suppose to be 12 foot tall. This netting, if you could think of it like a shawl type blanket. When it's pulled this way on a roll, it makes it less tall because it's a weave. It ended up being like ten foot six inches, which I believe Mr. Mischel measured when he came out to visit me. That was the first round of complaints that we had.

Also, if you look at picture Number 4 and 5, I've put a top on the back and on the sides. I had spoke with the fence company prior to coming to this
meeting. I did not intend to give the impression that I was going to build an entire roof system for this because that was never my intention. The fence won't hold it. You're talking about 10,000 square foot of netting. It's extremely heavy stuff, especially with that many square feet.

What I did, I had envisioned a backstop at a baseball field where the fence goes up and you lean it up over. I figure that would catch anything ricocheting or randomly being shot out. My calculations were wrong and I apologize for that.

What is happening is the middle bunkers in the middle of the field, especially in the middle of the day when it gets hot they over-inflate and the balls are hitting it and some of them are bouncing out.

For instance, like this weekend we had our championship series tournament. We shot over 250,000 balls this weekend. I've about got a handle on it. I don't want half a dozen balls in a week getting in your all's yard. I want to cure it. I've almost got this thing licked. I've made several adjustments.

If you look at four, that's actually an older picture. That was the way we first had it done. You notice it's kind of low, the top is. If you look at 1, 2 and 3, that was the last series of adjustments I
did to it. It seemed to help a lot, but if you notice
in 3 on the backside when it meets at the corner, it
had a low spot and that's what's actually right down
where they live. That's the main problem I'm having
is right there in that corner where those two
neighbors, actually three of them. There's a guy on
the other side who's having some go into his yard too.
So I've bought more netting and I'm adding more.

What I'm doing is the white poles that you see
in these pictures are 20 feet tall. Okay. They're
actually bent in a little bit. I've probably got 18
feet in true height on this right now.

If you look in picture 3, you can see where
the netting is overlapping from the top, overlapping
on the bottom about two and a half feet. I went to
Bluegrass Fencing and bought 22 foot poles. On the
corner telephone poles all the way along the back of
my property I put big anchor bolts in.

So what I'm telling you in short is I'm taking
it up to 20 feet tall all the way across the back.
It's going to be anchored into these telephone poles
on the corners of my property. I think that's where
the remainder of the problem is is right in that
corner where they live. Because the netting on the
top, actually the way it was originally designed to
make that back drop style that I initially did was
wrapped around the top of the end pole. So it came
down from 18 foot to 12 foot in that corner. As you
can see, I put a little skirt up, but that didn't
catch it all. So what I envision doing to try to
remedy this is to take it 20 foot minimum to 22 feet
all the way on both sides and all the way along the
back. I think that should remedy our problem.

The other thing like I said that I found is
more closely monitoring the inflated bunkers. It
seems to not be an issue as long as we keep them soft
to where the balls won't bounce off of them and bounce
over the fence.

I've also got copies, these are the letters
that I've sent out to all my neighbors. I've tried to
stay in close contact with them, call them and stop by
and see them and see if they've been having any more
problems for a couple of reasons. If I can see where
the balls are landing or if it's hitting something, I
can tell what the trajectory is and where the problem
may be coming from and adjust from there.

I wish that my fencing could hold an entire
roofing system on it. That would be an easy solution
and it probably would have cost me less than all this
adjusting that I've done to date, but at present it
won't, you know.

I'm committed to this. I'm committed to making my neighbors happy and making whatever adjustments I need to make. If they ever do have a problem, like these letters that I've sent out, I will pay to have their homes or care or whatever cleaned in an event that some do randomly get over there.

I've also, as far as pets and concerns with pets go, I've got a letter from the manufacturer of the paintballs that addresses those concerns. It's right here as well. It actually tells you what they're made out of and the whole nine yards on that.

We've got over 300 kids. Each kid individually has to get a waiver signed that have come so far in a little over two months to play. I just hope you guys -- I really appreciate your all's patients and tolerance with me. I hope we can find a solution that works for everybody because I do want to be a good neighbor to these people and continue to provide fun, safe activities for these kids.

MR. DYSINGER: Mr. Chairman, if it's all right.

CHAIRMAN: Yes.

MR. DYSINGER: The changes you just spoke about, when were those put in to place?
MR. TAPP: Like Mr. Mischel said, we went for several weeks with no complaints. I thought I had it remedied and I thought I had it solved. I kept hollering over the back fence and asking my neighbors if they were having problems. We went several weeks with no problems. Just last week did I find out -- well, you called me last week and I think you had some a couple of weeks ago or something. Did it rear it's head again I guess you would say. So I purchased more supplies. Mother nature did me a big favor Monday night. That 50 mile hour winds took down pretty much everything I had done. So it had to be redone anyway.

We've got the first field that's down from your house, I got it done today. The field that's by your all's house will be done tomorrow before we open back up this weekend.

Please, if you're still having a problem, I'm going to have all this new stuff up this weekend, let me know the first of the week and I'll see what else I can do.

CHAIRMAN: Mr. Tapp, would you like to enter these into the record or are they strictly for the neighbors?

MR. TAPP: Sure. Whatever.

CHAIRMAN: Do we need this into the record,
Mr. Noffsinger?

MR. NOFFSINGER: Yes, sir, I would say put them into the record.

MS. MASON: I have a question. You originally told me that you were going to put netting on top of it. Now you're saying that you were not able to do that. See, where we sand as a board is we approve this under the assumption that you were going to put the 12 foot tall fence and the netting above it. Of course, I realizes you say you're making all these changes, but we approved it on the basis of what you told us originally.

MR. TAPP: I did put netting on top. It come over 8 foot. It went up 12 feet and I had an 8 foot top on it. On the back and on the sides, but this is the way it was explained to me by the guy that designs the fences for the ball diamonds and stuff.

A backdrop is fine, but when they move home base away from that fence and the guy hits the ball, it's the height that's going to stop that ball from going over. Not something leaning out. If home base was out further than that backstop is, then that's where the ricochet is going to go over. So the only way you're going to stop it is to raise it up higher.

I think Jim had the same impression. He
thought we were going to build an entire roofing
system for it. I did not mean to give that impression
because it is really unfeasible. It just won't work.
It's structurally not with the fencing that we have.
It just won't work.

CHAIRMAN: Anyone have any other questions of
Mr. Tapp? I'd like to bring Mr. Mischel back up.

MR. DYSINGER: Do you believe now that you've
got the problem solved between the bunkers not being
as inflated and the extra netting? Is it your belief
that --

MR. TAPP: Yes, I do believe we have the
problem solved. I can't guarantee you 100 percent
that we're not going to get a stray ball over there.
I can guarantee you that if there is one and you call
me, I'll come over and clean it up or I'll have
somebody come over and clean it up. I think we've got
it solved.

MR. DYSINGER: If that one stray ball does get
over -- my concern, and you heard what I asked your
neighbors. Between it accidentally happening and
people who are being irresponsible doing it. When we
approved this the first time, and I'm like Ruth Ann.
I assumed that when you talked about having it on top,
it meant the whole top. I can't speak for the whole
board now looking back, but that was the assumption I
had as well. That even if somebody was going to be
irresponsible, that would prevent them from doing it.
The concern that I have now, and I do think you've
done a great job in keep -- if tonight has taught us
anything, it's talk to your neighbors.

I think you've done a good job at that so I'm
encouraged. My concern is that since there won't ever
be a solid roof, will this always be a problem for
your neighbors? That's a concern that I have.

MR. TAPP: Part of your concern, and Dallas
can also confirm this. We haven't had an incident to
my knowledge where anybody has intentionally shot
paintballs over there, but we do have some kids that
go up and down that ditch line and intentionally pull
paintballs out from under our fence and throw them at
the houses. We have caught them doing that.

See, if you took a paintball gun from that
field and tried to shoot it up over that fence, it's
not going to hit the houses. Because if you're
looking from the middle of the field up that netting,
the netting is actually higher than the telephone
poles. Trajectory-wise it's not going to land in
their backyard. It's going to completely clear their
houses and be across the street in front of them.
MR. DYSINGER: You're saying that you couldn't purposely shoot at these folks houses?

MR. TAPP: No, not from inside the fields.

MR. DYSINGER: That's why you believe that the paintballs that they have found have been accidental, bouncing off the bunker?

MR. TAPP: Yes. I'm sure of that.

CHAIRMAN: Thank you.

Mr. Mischel, would you step back up and maybe give the board what their options are. Do we give Mr. Tapp a certain amount of time to correct the problem, certain amount of days or do we revoke the conditional use permit until he comes into compliance and then he has to reinstate? The board needs some options on what we can actually do.

MR. MISCHEL: As I see it and interpret it, it's strictly by what the law says, KRS statute. It would say that this board has approved this conditional use permit back in September for the 12 foot tall fence with the top on it. If you interpret what the law says, that's what you go by.

It's hard for you to go back and make new conditions upon that. It's already been voted on and been passed.

To do that I would think that the applicant
would have to go back through the process, reapply showing that maybe this fence is going to be 20, 22 feet tall or whatever. Right now what has been passed and voted on has been a 12 foot tall fence with a top on it. I think it's kind of hard to go back on that.

MR. SILVERT: Mr. Chairman, I want to echo that. I think it's a question for the board tonight as to whether or not this conditional use permit will be revoked. If it is revoked, then if he wanted to continue his paintball facility there he would have to reapply for a new conditional use permit. So the question tonight is whether you want to revoke the conditional use permit as it already exist. A new one isn't before you tonight. You couldn't add new conditions. So it's simply a question of, do you believe that the conditional use permit as requested has been complied with substantially. If so, can you leave it alone. If you don't, then you may want to revoke it. That's your decision.

MR. MISCHEL: It's either he stays with the conditional use permit he has now and says, I'm going to make it 12 feet tall with a top on it, I would think he could not operate until he does that. That would be one option.

The second option would be to reapply in front
of this board for a different option, if he thinks it
should go 20, 22 feet or whatever and propose that.

MR. SILVERT: I would say, Mr. Mischel, if you
wanted to institute the process again of attempting to
revoke for lack of compliance, you could do so.

MR. NOFFSINGER: I agree with that.

MR. DYSINGER: My question is, I don't see how
we cannot revoke that last permit. It's clearly not
in compliance, and I don't think through any sense of
malice. I just think through misunderstanding if
nothing else. It's clearly in noncompliance.

At the same time, he does seem to have made a
good faith effort to correct the problem. I guess
what I'm looking for as a parliament to allow him to
continue to operate for the month that he has to
reapply, unless there's strong opposition from the
neighbors, which I haven't heard that.

Don't let me put words in your mouth.

I just don't want to see him suffer. I
imagine he's made a great outlay and expense in this.
To me has seemed to attempt to comply in good faith.
I think that should be recognized.

Does the Staff have or the attorney --

MR. NOFFSINGER: Might I suggest that if you
don't have enough information on this item to act
tonight, we postpone for 30 days in taking action. If you do that, I think the applicant needs to realize, Mr. Tapp needs to realize that when you come back next month you better have a roof over it or you better have applied for a conditional use application to construct this facility as you plan to construct it. That way it's very clear. Then we have a public hearing as to how we're going to dispose of it. Either approve, deny, and the neighbors have an opportunity to weigh in.

I think we all want the same thing. We want you to be able to operate the facility. These folks shouldn't have to put up with a single paintball in their yard. I know that may be difficult, but they have issues that aren't being addressed now and there was some commitments made, at least as part of the record.

The Neighbors, do you object to the board taking 30 days to examine this?

Let the record show they're shaking their heads no. Is that acceptable to everyone?

MR. HAMILTON: Yes.

MS. CARTER: Yes.

CHAIRMAN: I guess we need a motion to postpone for lack of information.
MR. DYSINGER: Mr. Chairman, I move that we postpone this action until our next regularly scheduled meeting.

MS. DIXON: Second.

CHAIRMAN: We have a motion and a second. Any question on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: It's unanimous.

MR. NOFFSINGER: Just want to make sure that the applicant understands that when we come back at the next meeting, which will be the first Thursday in January, that you need to have a roof installed and operating or you need to be in the office tomorrow morning to make an application for a conditional use permit to construct the facility as you plan to do it. I'm not sure when the dead line is to file for that application.

MR. TAPP: I just want to be clear on this. It needs to be completely, the top needs to be completely covered? Because I think in the minutes what I said was I would cover the complete exterior 12 foot high and put a top on it, but we never did define what a top was.
MR. WARREN: That's kind of my question. I've read through these minutes time and time again. Our interpretation of what he said was the entire perimeter and on the top as well. He didn't say I'll put a roof on it. He didn't say, I'll put a top on the entire. It just says, a top as well. From his testimony he's saying that he meant a top on the fence. Us, this group, interpreted it as a top over the entire tennis court. It's almost our error in interpretation. We did not make it clear that we expect you to put a roof on this. Not necessarily a roof, but over the entire top.

MS. DIXON: A canopy.

MR. WARREN: I'm not sure that he hasn't done what he said he would do and now is going above and beyond what we allow.

MR. NOFFSINGER: It sounds like he's going to be filing a new conditional use permit application that will be basically what he has said he would do or is going to do, what he feels will correct it. Then we'll consider that. I don't know if it will be approved or not. We've got an issue of paintballs and these people have issues and there are legal issues surrounding it.

I can tell you, you're doing a wonderful job
from what it seems trying to address the neighbors concerns because you understand they had real concerns.

MR. TAPP: Sure.

MR. NOFFSINGER: I think everyone is working together. Hopefully next month we'll --

MS. DIXON: This way you don't lose a month's business.

MR. DYSINGER: Exactly.

MR. TAPP: I appreciate that. I guess I'm trying to clarify for my mind how I need to approach this new one.

MR. DYSINGER: There's two things you can do. You can either cover the whole thing with a net, because Marty says that we misunderstood. I know what I thought.

MR. WARREN: I know what I thought too.

MR. DYSINGER: So that is the way that you're operating under up until now. You've stated you cannot do that. Your other option is to refile for another application, which merely outlines what you are going to do.

Gary, maybe you should have done that instead of me.

MR. NOFFSINGER: You did a fine job there.
Design in such a way where the board is going to be looking, and I think the neighbors are going to be looking at no paintballs escaping that area. Whatever it takes.

MR. DYSINGER: I would also like to hear from you guys as well if you have any further problem.

MS. CARTER: I won't be here at the next meeting, but I am excited. I saw Darrin's new higher fence up closer to Tamarack this afternoon. I thought, that looks like that might work. I really think -- I was under the same assumption that you all were. I honestly thought he was going to cover the whole thing with a roof, but evidently I misunderstood too. What he has done has not worked with his partial roof, but I'm thinking like Darrin is. The extra 22 feet looks to me like it's going to work. I'll send my proxy next month because I won't be here to let you know.

MR. WARREN: I have another comment or question or whatever. You've caught some kids grabbing up under your fence you're saying?

MR. TAPP: Yes.

MR. WARREN: Is there any way to stop that?

MS. MASON: Can you put a little sturdier area, the border around the edge to keep the
MR. WARREN: I really can see some young boys, I was one, one time.

MR. TAPP: One of them got yanked by his ear and drug in the house because I was fixing netting and I said, ma'am, you see those balls all over your house right there? She said, yes. I said, your son just did that. He's one of the two that was doing it. She asked him and he owned up to it.

Actually I don't think it's been near the problem ever since we caught him that time. I think his mom handled things. That doesn't mean that it's not going to happen.

As far as your question goes, this is flexible netting. I really don't know how you could possibly do that to where they couldn't -- you're talking about a chain-link fence that's flexible as well. I've got it tied to a chain-link fence all along the bottom. I really don't know. Again, I don't think that's been a problem for the last few weeks, ever since we caught him.

CHAIRMAN: We need one more motion.

MR. DYSINGER: Move to adjourn.

MR. WARREN: 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, LYNETTE 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 110 typewritten pages; and that no signature was requested to the foregoing transcript.

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

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