The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, July 3, 2008, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

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CHAIRMAN: Call the Owensboro Metropolitan Board of Adjustment to order. We will begin our meeting with the prayer and pledge of allegiance to the flag.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: I would like to welcome everyone. Anyone wishing to speak on any item tonight we welcome your questions and comments. We ask that you please do not speak from your seat.

First item on the agenda is to consider the minutes of the June 5, 2008 meeting. Are there any additions or corrections?

(NO RESPONSE)
CHAIRMAN: Chair is ready for a motion.

MR. PANTLE: Motion 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 unanimously.

Next item.

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CONDITIONAL USE PERMITS

ITEM 2

5281 Old Lyddane Bridge Road, zoned A-R
Consider a request for a Conditional Use Permit to build, operate and maintain a dairy products and farm products sales facility with limited retail sales of merchandise.
Reference: Zoning Ordinance, Article 8, Section 8.2E1 and 8.2E3/45
Applicant: Kuegel's Dairy Barn, LLC and John L. Kuegel, Sr.

MR. SILVERT: State your name, please.

MR. WILLIAMS: Zack Williams.

(ZACK WILLIAMS SWORN BY ATTORNEY.)

ZONING HISTORY

OMPC records indicate that no conditional use permits or variances have been issued for this address.
The property is currently zoned and used for agricultural use.

LAND USES IN SURROUNDING AREA
The adjoining property on all boundaries is zoned A-U Agricultural and is used for agriculture uses.

ZONING ORDINANCE REQUIREMENTS

1. One parking space per 300 square feet of building space.

2. The two-way vehicular drive from Old Lyddane Bridge Road must be a minimum of 24 feet wide on the subject property.

SUGGESTED CONDITIONS

1. ADA Accessible parking spaces and offloading area must be paved.

2. The first 50 feet of driveway from Old Lyddane Bridge Road must be paved.

MR. WILLIAMS: I would like to enter the Staff Report in the record as Exhibit A.

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anyone here have any questions or comments of the applicant?

(NO RESPONSE)

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

MR. DYSINGER: I do, Mr. Chairman.
I'm just wondering, is the applicant aware of the conditions that you mentioned? Were those discussed with the applicant?

MR. WILLIAMS: Yes, they were.

CHAIRMAN: Any other questions from any board members of the applicant?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Move to approve the Conditional Use Permit based upon Findings of Fact that it's compatible with surrounding agriculture uses and subject to the conditions: 1) ADA Accessible parking drives and offloading must be paved; and 2) The first 50 feet of driveway of the Old Lyddane Bridge Road must be paved.

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 unanimous.

Next item, please.

ITEM 3

2241 East Parrish Avenue, zoned A-U
Consider a request for a Conditional Use Permit to
replace a caretaker's home within an existing
cemetery.
Reference:  Zoning Ordinance, Article 8, Section 8.2J1
Applicant:  Adath Israel Cemetery, Inc.

ZONING HISTORY

The subject property has been in use as a
cemetery since before zoning regulation was enacted.
OMPC records show no conditional use permits have been
granted for the subject property.

LAND USES IN SURROUNDING AREA

The adjoining properties are zoned and used as
follows:

To the north and east, I-1 Light Industrial
zoning and it's used for Light Industrial;
To the west, B-1 General Business, used as a
Medical Plaza;
To the south, P-1 Professional, Medical Plaza.

ZONING ORDINANCE REQUIREMENTS

1. Two parking spaces for the dwelling unit.

MR. WILLIAMS:  We would like to enter the
Staff Report into the record as Exhibit B.

CHAIRMAN:  Anyone here representing the
applicant?

MR. KAMUF:  Yes, Mr. Chairman.

CHAIRMAN:  Let's see if we have any questions
or comments, Mr. Kamuf.
Anyone have any questions or comments on the application?

(NO RESPONSE)

CHAIRMAN: Board members have any questions of Mr. Kamuf?

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

It says replace. I'm assuming there's an existing structure, and if so is it significantly different than the proposed use?

MR. KAMUF: It will be the same thing. There's a dilapidated house that's on the property. We have a picture of it that I can show you. The caretaker needs a new home.

CHAIRMAN: Any other question of Mr. Kamuf?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. MASON: Mr. Chairman, I move for approval. My Findings of Fact are it's compatible with the area and the existing use and it's the replacement of an existing caretaker home.

CHAIRMAN: We have a motion.

MR. DYSINGER: Second.

CHAIRMAN: We have a motion and a second. Any comments or questions 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 4

2700 Rinaldo Road, zoned I-2
Consider a request for a Conditional Use Permit to
construct a 418' x 260' offload and storage facility
for dry fertilizer.
Reference: Zoning Ordinance, Article 8, Section 8.2G4/27
Applicant: Miles Farm Supply, LLC and Owensboro
Riverport Authority

MR. DYSGING: Mr. Chairman, before we get
into that too much. For the record my wife works for
Miles Farm Supply; however, I don't think that bother
my decision one way or the other.

CHAIRMAN: So noted.

Counsel, do you have any comments on that?

MR. SILVERT: Is there any discussion from
anyone here who might have an objection, or a question
or a comment as to Mr. Dysinger's statement now would
be the appropriate time to hear that.

(No Response)

CHAIRMAN: With no opposition we'll go
forward.

ZONING HISTORY
The subject property has been granted two (2) Conditional Use Permits for the storage and handling of coal in 1986 and 1983 respectively. The property is currently used for heavy industrial uses today.

LAND USES IN SURROUNDING AREA

The adjoining property is zoned and used as follows:

To the north, west and south I-2 Heavy Industrial Owensboro Riverport Authority. The property is bounded to the east by the Ohio River.

ZONING ORDINANCE REQUIREMENTS

1. One parking space per two employees on maximum shift (minimum 5).

2. All vehicle use areas must be paved.

MR. WILLIAMS: We would like to enter the Staff Report into the record as Exhibit C.

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anyone here have any questions or comments of the applicant?

Please step the podium.

MR. SILVERT: State your name, please.

MR. WAITMAN: I'm Richard Waitman.

(RICHARD WAITMAN SWORN BY ATTORNEY.)
MR. WAITMAN: We have the property, which was unmentioned, to the west, which is down the river between this proposal and Hurrica Island. It's a farm.

I'd just like to say that it seems to me that the cost of our farm supplies and our ability to get our farm goods to other people, that is the logistic part of our business, is very significant. Anything that will increase the availability and reduce the price of the fertilizer and other goods we need is a good thing. Of course, would be good if it was moving our crops away. I support the idea as I've understood it to be presented. Thank you.

CHAIRMAN: Thank you very much.

Anyone else have any comments on the item?

(NO RESPONSE)

CHAIRMAN: Any board members have any questions?

(NO RESPONSE)

CHAIRMAN: Mr. Noffsinger.

MR. NOFFSINGER: I do have one question of, I guess, the applicant and Staff.

I just want to make sure that you make reference to the proper site plan in the application because there were two drawings. I want to make sure
it's very clear as to which drawing we're considering.

MR. WILLIAMS: It's site 2.

CHAIRMAN: Any other questions or comments?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. WARREN: Move to approve this conditional
use permit based on the facts that previous zoning
history does indicate it be granted. Two conditional
use permits in the past for similar uses. It is in
keeping with the general vicinity.

CHAIRMAN: We have a motion. Is there a
second?

MR. PANTLE: Second.

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

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

Next item.

MR. NOFFSINGER: Mr. Chairman, Item 5 has been
within drawn.

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VARIANCES

ITEM 6
2725 Frederica Street, zoned R-1A
Consider a Variance to increase the allowed height of a fence in a residential side-yard from 6' to 8'.
Reference: Zoning Ordinance, Article 3, Section 3-7(g)(2)
Applicant: Brenton L. and Tara S. Ford

MR. WILLIAMS: There are special circumstances with regards to this request.
The adjoining residential property to the east has an eight foot fence in their side and backyards that would abut the proposed fence.
Additionally the adjoining property to the north is a commercial bank which has been robbed recently and the applicants claim the robber fled through their property. The applicants desire the additional safety that an eight foot fence would provide for their young children.
The Staff does not believe it would cause a hardship if this variance were not granted because they would still have access and use of their yard. They could still have the six foot fence.
There are no circumstances. They haven't willfully done anything to take an action that would violate the zoning ordinance.
Staff finds that granting this variance will not adversely affect the public health, safety or welfare; will not alter the essential character of the
general vicinity; will not cause a hazard or nuisance
to the public; and will not allow an unreasonable
circumvention of the requirements of the zoning
regulations. Therefore Staff recommends approval.

I would like to enter the Staff Report into
the Record as Exhibit D.

CHAIRMAN: Anyone here representing the
applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anyone here like to speak in
opposition or have any questions or comments of the
this application?

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Move to approve the variance
because it will not adversely affect the public's
health, safety or welfare; will not alter the
essentially character of the general vicinity; will
not cause a hazard or a nuisance to the public; and
will not allow an unreasonable circumvention of the
requirements of the zoning regulations.

MR. DYSINGER: Second.
CHAIRMAN: We have a motion and a second. Any comments or questions 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 7

2106 Old Henderson Road, zoned I-1
Consider a Variance to reduce the required setback
from 50' to 35' from the right-of-way line of an
intersecting street for a vehicle access point.
Reference: Zoning Ordinance, Article 13, Section 13.22
Applicant: David and Ann Leonard

MR. WILLIAMS: Staff finds that there are no special circumstances with regards to this case.
The circumstances have arisen because the applicant has developed the property in a way that is not conducive to the equipment that they now utilize, specifically trailers of various lengths.

In October of 2000 a minor subdivision was approved to consolidate 2106 and 2100 Old Henderson Road. This consolidation was for the purpose of constructing a building addition on the portion of the property for which the variance is now being requested.

The applicant's desire to widen an access
point in front of the new construction so that it will be easier to back vehicles pulling trailers onto the property and into a building addition.

Article 13 of the zoning ordinance prohibits the development of property in such a way that it requires the backing onto and off of a public right-of-way. It is clear that by approving the minor subdivision in 2000 the intent was not for the applicant to utilize the property in such a way that hinders traffic or causes safety concerns, or to operate in violation of the zoning ordinance.

It is our understanding that the applicants are currently backing into the site from the public right-of-way, which is in conflict with zoning ordinance requirements.

The variance should not be approved that would legalize an illegal activity by promoting the backing from a public right-of-way into the site and the current occurring backing from the public right-of-way.

Not approving this Variance would not cause a hardship on the applicant because the applicants have two options by which they can utilize the property without a Variance and without causing a traffic hazard.
The access point for which the applicants request the Variance can be widen to a total 30 feet without encroaching upon the intersection setback.

A second alternative is to utilize another access point on the property that could easily be widen since the curb is already open in excess of 60 feet. This access point currently has 19 feet of paved drive. In both cases the applicants should enter the property before backing their vehicles in order to avoid a traffic safety hazard.

Strict application of the regulations would not create an unnecessary hardship because the applicants have chosen to develop the property without accommodation for the equipment they now employ. Expansion of a commercial use should not come at the expense of public safety.

The circumstances are from the applicant's direct actions, but they're not willful actions in violating the zoning ordinance.

Granting this Variance will adversely affect the public health, safety or welfare; will not alter the essential character of the general vicinity; will cause a hazard or a nuisance to the public; and will allow an unreasonable circumvention of the requirements of the zoning regulations.
For these reason Staff recommends denial.

CHAIRMAN: Anyone here representing the applicant?

MR. DUTY: Yes.

CHAIRMAN: Anyone here like to speak in opposition on this application or comments or questions?

(NO RESPONSE)

CHAIRMAN: Would the applicant like to address the board?

MR. DUTY: Yes, Mr. Chairman.

MR. SILVERT: State your name, please.

MR. DUTY: Russell Duty.

MR. SILVERT: Mr. Duty, I recognize the oath you took as an attorney.

MR. DUTY: Chairman Pedley, Members of the Board, what I'd like to say is I'm here on behalf of David and Ann Leonard. They own Leonard's Steamway Cleaning which is located on 2106 Old Henderson Road.

The situation that they have is they have a 14 foot entryway to their property. Unfortunately the way the entryway is, is that it is not directly in front of the garage doors that open the access of their building. So as a result of that they have to pull in to the side. They have to back up and pull
their trailers into the opening. So what they're actually attempting to do here somewhat limit their problems with access to the road.

What they're proposing is basically a 31 foot entryway that is actually in front of their garage doors which would allow them to pull off of Old Henderson Road directly into their building. It will also give them ability to back out and pull on their actual lot more so and get out of traffic.

Now, Mr. Williams had indicated that part of the problem here is that they have grown as a business and that they have increased the length of their trailers to haul their equipment. Basically some of their trailers that they haul are 16 feet long. If you add that to the length of their truck, it's almost impossible for them to pull off of Old Henderson Road and pull into their garage without backing up. You just can't do it.

Really what they're requesting is is something that would help the safety of the road. Actually right now when they pull over and pull into their lot on that 14 foot right-of-way or entryway, what they have to do is they have to pull over into oncoming traffic and come into the lot so it square up. So this 31 foot length in front of their building would
prevent them from doing that.

In all due respect to Mr. Williams, we disagree. We think that this would certainly limit the safety issues on Old Henderson Road. It's clearly within the character of the property.

We have put some pictures in the application. Basically they are showing businesses that are across the street. They actually have access right on both corners of this particular lot. One is Acme Heating & Cooling. Their accesses are right on the corner.

Where we actually propose the entryway to be is before you get to the yellow line on the curb. It says you can't park there any more. So there's still substantial distance between the actual curb at the intersection and where the entryway will be.

So in essence we're actually -- our proposal is that this would assist us in limiting the safety and danger, to helping the safety of the public and any danger to oncoming motors. That's really the reason for the Variance at this point.

CHAIRMAN: Any board members have any questions?

MR. DYSINGER: Mr. Chairman.

The Staff indicates that they think that you can basically get what you are wanting. You know,
expanding this access point to get your trucks out of
traffic, which I think we can all agree is what we all
should be shooting for here, without this Variance.
Can you speak to that at all?

MR. DUTY: My clients have told me that that's
not possible because without the Variance being the
way that we are requesting it, then we do not have an
entrance directly in front of the doors that open to
the building. They're still going to be offset, which
there in lies and creates the problem. That's the
response to that, sir.

CHAIRMAN: Any other questions of the
applicant?

MR. WARREN: Your trucks back into this
building?

MR. DUTY: They will either back in or pull
into. One way or the other they either have to back
out or back into it depending on how they come in
during the day. It's not the ideal situation. If
there was room, it would be best that they could come
out the back of the building, but there would not be
access available back there to do that.

CHAIRMAN: Any further questions?

(NO RESPONSE)

CHAIRMAN: Does the Staff have further
(NO RESPONSE)

CHAIRMAN: Does the board members have any questions of the Staff?

(NO RESPONSE)

CHAIRMAN: If not further questions, Chair is ready for a motion.

MR. DYSINGER: Mr. Chairman, I don't have a question necessarily, but it seems we have a discrepancy and that it makes it difficult for a decision to be made in that these folks deserve to be able to conduct their business.

I guess for me the question has not been answered. They can do what we want them to do without the variance. You see what I'm saying. These folks have to be able to get these trucks out of traffic. They have to be able to do that. It hasn't been answered to me yet. The Staff's contention that they can do that without the variance. So if the Staff could speak to that, respond to that in some way.

CHAIRMAN: Mr. Noffsinger, would you address that?

MR. NOFFSINGER: The zoning ordinance does not allow the backing of vehicles in a commercial or nonresidential area. What they're doing right now, as
indicated in the application as stated by the applicant, is that they're backing to or from the public right-of-way and this simply is not allowed. They need to find a way to maneuver on that site without backing to or from the public right-of-way. If they are, then they're using it for, the use is clearly in violation of the zoning ordinance.

The applicant is asking for a Variance to construct this access point closer to the property corner on the adjoining street intersection than is allowed.

I think the point that Staff is trying to make is that you could -- they could still widen their existing driveway and be 50 feet off of the corner without the variance. Now, that's not going to put them directly in line with the doors on the building, which I don't know how critical that is, but by granting -- the Board has to be cautious in that by granting a variance that you're not encouraging an illegal type of maneuvering in the public right-of-way to occur.

You can still widen that driveway without the variance, but you still have the issue of backing to and from the public right-of-way which is an issue that would not involve this board unless you approve
this variance. Then you're actually, you know, perhaps making it easier for that to occur.

     Staff was suggesting, they have two driveways now, that perhaps about both of them or one of them be widen so that you can pull in one and then go out the other one. How it works on that site, it is a tight site if you're going to be using it for trailer maneuvering.?

     MR. DYSINGER: Mr. Chairman.

     The applicant, you contend that you cannot do it the way the Staff recommends and still be able to do business or it would be inconvenient?

     MR. DUTY: Well, it's not only inconvenient it becomes hazardous to us too. The problem -- what we're trying to eliminate is the backing in on the street. Best way to do that is to have the access directly in front of the doors. That is the best way to do that.

     Now, what I could also do, what we could propose, if the board would want to table this matter, we could bring in maybe better site pictures and let the board see that and then show the board through those pictures and how it's done and how that the actual opening would actually work and how we could eliminate the backing in and off of Old Henderson
MR. WARREN: It appears to me, Mr. Duty, from looking at the pictures that you have today, that even if we put the driveway or the access right directly in front of the door so that you can pull into it, you're still going to have to back out into the street which is more dangerous.

MR. DUTY: It's dangerous, yes. I don't know that it's more dangerous because now they're back out, back in and back out both ways. At least if -- the door is wide, fairly wide on the building. So if they can come in, they could maneuver hopefully onto their property and pull out actually without having to back the trailers out on the street. That's what we're trying to do. I don't think or see how that could be done when you've got a driveway that's offset to the doors.

That's the real issue. The doors give you access and ability to move those trailers in and out if you come in straight. When you're already coming in at an angle, you're limited as to what you can do at that point.

MR. PANTLE: Mr. Chairman, I move that we table this until we get some design, a diagram that's a little better to understand before we make our
decision.

CHAIRMAN: Are you making a motion for postponement?

MR. PANTLE: Yes.

MS. DIXON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: It will be postponed until the next meeting.

ITEM 8

815 Triplett Street, zoned P-1
Consider a Variance to waive the roadway buffer along Triplett Street to accommodate an existing parking area, sign, and required landscaping.

Reference: Zoning Ordinance, Article 13, Section 13.622 and 13.6221
Applicant: Wendell Foster's Campus for Developmental Disabilities, Inc.

MR. WILLIAMS: Staff finds that there are no special circumstances with regards to the general vicinity of this application.

A development plan was approved for this property on May 7, 2008 that complies with all zoning ordinance requirements.

The development plan specifically shows that an existing sign, pavement and landscaping at the intersection of Triplett Street and what was formerly
East Seventh Street would be relocated out of the roadway buffer along Triplett Street.

With this variance the applicant seeks to avoid moving the sign, pavement and required landscaping around a vehicle use area out of the required roadway buffer. The buffer is necessary and should be maintained to ensure that future road widening is possible.

Previous development plans for this property have been approved that did not address this nonconformity with the zoning ordinance (1998, 2001 and 2002).

It is typical to address zoning ordinance requirements to the extent of the alteration or expansion of the property. Previous development plans focused on expansion or alterations on other areas of the campus.

This development plan includes the installation of a sensory park in the vicinity of the Seventh Street closure and the conversion of the intersection of Seventh Street to a private entrance with expansion of the existing subject parking lot.

A portion of East Seventh Street was closed by the city and reverted to the applicants for the installation of this park. Therefore, this is the
appropriate time to bring this portion of the property
into conformance with the zoning ordinance.

If the board chooses not to approve this
Variance, the Staff does not believe it will cause a
hardship on the applicant because they can meet all
zoning requirements as drawn in the development plan.

Denial of the Variance would require the
applicant to comply with the approved development plan
which involves moving the aforementioned sign,
removing some of the established parking and the
required landscaping out of the public right-of-way.

There appears to be no justification for this
Variance beyond the expense of the project. All site
development requirements can be met as evidenced by
the approved developed plan. Because of this it would
constitute an unreasonable circumvention of the
requirements of the zoning ordinance.

The Applicant's Actions: Are the
circumstances from which relief is sought a result of
the applicant's actions? We say, yes, but not
intentional or willful.

The Staff finds that granting this Variance
may adversely affect the public health, safety or
welfare; it will not alter the essential character of
the general vicinity, because it's been there for some
time; it may cause a hazard or a nuisance to the
public; and it will allow an unreasonable
circumvention of the requirements of the zoning
regulations.

Therefore Staff recommends denial.

CHAIRMAN: Anyone here representing the
applicant?

MR. KAMUF: Yes.

MR. SILVERT: State your name, please.

MR. KAMUF: Charles Kamuf.

MR. SILVERT: Mr. Kamuf, you're sworn.

MR. KAMUF: As stated I represent the Wendell
Foster Center.

As Zack said, as part of the Sensory Park
Addition to the Wendell Foster Center, it's expanding
the parking lot across old Seventh Street right-of-way
of Triplett Street for additional parking.

The Wendell Foster Center does not propose any
new construction within the requirements of the
roadway buffer that Zack talked about.

The purpose of the Variance is to allow all
existing features, including existing pavements,
landscaping and signage to remain as it exist today.
There will be no new construction. We do not intend
to build anything within the roadway buffer. We will
keep the roadway buffer as it exist.

    Just for your help, I have three blowups that
I would like to show you and pass around.

    First of all this shows the roadway buffer
that we're talking about. It's the area between the
street and the sidewalk.

    The picture that you see is not a statute.
That is Terry Brownson.

    The next one shows also -- these pictures, all
of them are the roadway buffer which is existing in
front of the Wendell Foster Center that is part, that
is existing at the present time.

    This one here shows the picture from the other
direction.

    This one here shows the signage. I don't
think the signage is in violation.

    I would like to pass those around, if I could,
before we go any further.

    I'll proceed while the photos are going
around. The photos I think are critical because I'm
going to compare them to something else in just a
minute.

    Now, the purpose of the roadway buffer, we
have to get the whole perspective here. The purpose
of the roadway buffer is to maintain a corridor for
future roadway acquisition for street improvements and
widening of streets.

Wendell Foster Center agrees not to build any
structure within the buffer area and to leave the
buffer area as is conditioned.

If there is any additional right-of-way needed
for the widening of Triplett Street, we agree to
remove at our expense all of the signage and the edge
of the parking lot as well as anything around the
perimeter of the roadway.

The whole idea of the buffer area is to have
sufficient land for the widening of the road. We're
asking you to allow us to leave the existing
landscaping. I think the better policy would be that
if you have something that is existing in the
right-of-way of a roadway that is to be in the future
or if you want to build a temporary structure in the
roadway area, that there's no necessity to do that
until such a time as there is a widening of Triplett
Street. As far as I know, there are no plans
whatsoever, it's a one-way street, to widen Triplett
Street.

In contra to what Zack says, we think that it
would be an unreasonable hardship. I think Zack says
it would adversely affect. I don't know how leaving
the existing structures or the landscaping would adversely affect. Certainly it would not affect traffic because it doesn't block anything because it's a one-way street.

In any event the hardship, we'll lose parking places that are really important to the construction and the improvement of the Sensory Park. It will increase the project which is sponsored or the money we get is 100 percent from donations. We don't have enough money right at the present time to finish the Sensory Park, but if we're required to do this, we have an estimate that we will produce. It will cost us over $36,000. At least that much. We have to replace the landscaping. We have to saw cut and remove five feet of the pavement and curb. We have to replace the curb with some asphalt and replace the concrete curb. We have to create an additional grass strip along Triplett Street.

Now, our argument and our concern is this: Right next-door we have the hospital. Here are some pictures of the hospital and what we have there. This picture here is right across the street. As you can see this one here, this is looking in a southerly direction. That's the hospital property. That's at the railroad track. You go just a
few feet down. This is another picture of the roadway buffer area and the hospital.

If you turn left and go up Ninth Street, this is the roadway buffer that you see on Ninth Street of the hospital.

I would like to introduce all of them.

The reason we think those pictures are important, and our concern is why are we required to be or come in compliance with the zoning ordinance when you did not require the hospital.

Just next-door right across the street on October 11, 2001, the Planning & Zoning Board approved a revised development plan just exactly in the area that we're talking about ours but only one block up for the hospital which included converting the old emergency room into a material handling facility. This work involved the reconstruction of the parking lot and deliver area south of the roadway on Triplett Street.

All existing improvements within the roadway buffer, as you can see on those pictures, were allowed to remain. That's what we're asking you to do. I have reviewed the plans, the development plan, and I've had an engineer to look at it. That is my contention as to looking at it that we are not asking
We agree that the hospital should not have to comply with the roadway buffer. The hospital should not have to remove landscaping and pavement until Triplett Street is widen. We do not think that Triplett Street will be widen. There are no plans for that at this time.

We disagree with the Staff's position on the removal of the landscaping and the pavement for the Wendell Foster Center.

In looking at the pictures that you see there, the perimeter landscaping extends to the back of the sidewalk, which is located in the street right-of-way. Not only did they allow the roadway buffer, but it's in the right-of-way of the street.

What we're asking you to do, and we have some of the board members here, and Terry Brownson, he will give a little talk on the necessity to have this and the hardship that will be created.

Understand, no new construction. I understand previously you all have denied other cases where a requested new construction. No new construction. We agree to remove anything within that right-of-way. We'll sign a contract with you or agree to it, put it in their minutes. That in the event that Triplett
Street is widen that we will agree to remove at our
expense any and all of the signage landscaping and
pavement. In other words, we think that we're
entitled to the same consideration that the hospital
was. This is basically our concern.

If you have questions of me, you can ask them.
If not, I would like to turn part of it over to Terry
Brownson who can give you a better idea of the
hardship that will be caused.

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

MR. NOFFSINGER: I have a comment. If I may,
I have a comment.

CHAIRMAN: Okay.

MR. NOFFSINGER: Mr. Kamuf, if this variance
is approved tonight, you will be required to amend
your final development plan which has already been
approved. So the language you have discussed here
that are in the minutes and the record would also
appear on that development plan. So that would be the
contract, the minutes we have of the transcript and
the revised development plan.

MR. KAMUF: I have no problem with that. We
kind of got the wagon in front of the horse. We
should have done this before we did the development
plan. We agree to that.

CHAIRMAN: Thank you, Mr. Kamuf.

MR. BROWNSON: I'm Terry Brownson, CEO of
Wendell Foster Campus.

(TERRY BROWNSON SWORN BY ATTORNEY.)

MR. BROWNSON: I've got a blown-up map, and
I'll spend just a second talking about that. The key
point that I want to make tonight is -- and I do
appreciate the position you guys are in as volunteers.

We're concerned as to how Wendell Foster's
Campus justifies spending about $36,000 extra, which
were unexpected costs on this project on something
that we don't see how it benefits anyone nor does it
benefit the public in any way in the foreseeable
future.

We've spent over two years raising the funds
that we got to get two of the three phases of the
project done. It takes a long time to raise $36,000
in charitable dollars. That's our concern. How do we
justify doing that.

Now, let me explain kind of in more detail
exactly what's happening here. Kind of what happened
to us in the development plan, because quite honestly
I overlooked that little, that add on until we came
back later and the contractor said, we're going to
have to do an add on to this.

This is Triplett street. This is what used to be Seventh Street. If you remember kind of Murphy's was in here. It's a little bit offset. This has been closed.

Back behind the administration building and down Seventh Street over here is this new Sensory Park and garden. As we closed down Seventh Street and we needed to add some new parking. So we own this little corner lot here. Adding Seventh Street to that corner lot, then we're adding a new parking plot which is actually lower. I guess we've been kind of calling it a lower parking lot and a new parking lot or an upper parking lot.

The only modification we were seeing doing to that it used to be that you would come in and this would be the entrance to the parking lot. We felt that it would just make some sense to help the flow in the upper parking lot to just add a little entryway in there. I guess by doing that suddenly that says, well, they're modifying the whole parking area. There was no intention to modify that. If they want us to take that back out and just have one lower thing, we can do that.

If you look, the new parking lot, it kind of
ends here and that's the 60 foot buffer. If you look at what happens on -- I guess you probably can't see these little pink dotted lines here, but that's basically what they're asking us to do. Is come back and cut off this to back this out.

Well, you see in the process we lose about a dozen parking spots here. The expenses he mentioned, and one of the things he didn't mention is we've got underground utilities in through here and there's a big pole here and lighting. So that's another expense. We're going to have to pull that stuff out. Great big beautiful Blue Spruce up there we're concerned about losing in the process. So that's the added cost. We're saying, well, if there's really no plans here, what's the purpose of tearing out perfectly good landscaping, losing parking spots and paying, like I said, a charitable dollars for an add on that we really didn't expect and we probably should have seen.

As Charlie said, we would promise not to build anything that could be permanent. We'd be happy if there was plans along Triplett Street to go along with that. We just can't see the justification at this point. Therefore we ask for the variance.

Anyone have any questions?
CHAIRMAN: Any board members have any questions?

(NO RESPONSE)

CHAIRMAN: Thank you very much.

Let's see if we have any opposition or anybody have any comments.

MR. KAMUF: Mr. Chairman, may I make one thing. Mr. Bryant told me I may not have made this clear.

All new construction complied with the roadway buffer. It's just the existing that does not.

CHAIRMAN: Anyone here that would like to speak in opposition or have any questions or comments on this item?

(NO RESPONSE)

CHAIRMAN: Any board members have any questions?

MR. DYSINGER: Mr. Chairman, I had another question for Mr. Kamuf.

Regarding how long has this area been like it is? You said it wasn't changed in any way when you did the new stuff. How long has it been like this?

MR. BROWNSON: The lot was built in 1986. The upper lot, when the Green Therapy Pavilion was built, all of that was put in in 1986.
MR. DYSINGER: And the shrubbery?

MR. BROWNSON: It's my understanding that all of that along there was put in at that time.

MR. DYSINGER: Thank you, sir.

CHAIRMAN: Mr. Noffsinger.

MR. NOFFSINGER: I have a few.

Mr. Brownson, I have a few questions. I just want to make sure that we're clear on that parking lot and what you're actually losing.

You're losing about seven feet going from Triplett Street say going toward the parking lot. So you're losing about seven feet. In your development plan, you still show the parking spaces running perpendicular to Triplett Street as you're showing here. You're not losing those spaces. What I'm wondering is by removing seven feet of pavement and moving those bushes back, how many parking spaces are you really losing? Because you're not losing those spaces. You're just moving them seven feet back.

MR. BROWNSON: Yes. We're having to move that back and I probably should have shown it. There's parking spaces in here and there's parking spaces in here. We could lose as few as four spaces.

The other piece, which we didn't realize, just in moving that back that much was that, we also had to
move back all the landscaping and all of that other
kind of stuff, the way I read the ordinance. That the
ordinance includes not only the parking lot, but any
landscaping associated therewith. So it all has to be
moved back.

MR. NOFFSINGER: Any required landscaping. It's not that you would have to necessarily remove
that, but required landscaping is suppose to be out of
the roadway buffer. If you left it, you would have to
plant new. I'm not saying that that's what you would
do.

It sounds like that $36,000 to cut that
pavement and plant some new bushes is quite excessive.
I don't know what detail you're going to have to go
through in terms of relocating utilities or why you
would even have to do that.

MR. BROWNSON: There's a hole right there that
obviously will have to be taken out if that moves
back. I'm just going with what the contractor said we
would have to do in terms of cutting and repaving and
recurring and all of those kind of things.

MR. NOFFSINGER: Mr. Chairman, I think we need
to hear from Zack Williams. A statement that the
hospital plans did not show or we did not require the
hospital to meet the roadway buffer. I think Mr.
Williams might have some information contrary to that.

CHAIRMAN: Would you step up, Mr. Williams.

MR. WILLIAMS: There was no agreement made with the hospital with regards to leaving their landscaping. Any landscaping that's in the roadway buffer was done without our intention or knowledge, as I discussed before, areas of development in a full project or dealt with at the time. If there was landscaping there that was overlooked, it was not intentional.

MR. NOFFSINGER: I think too that we did review those hospital plans and it clearly indicates that the hospital was required to meet the roadway buffer on all of their construction. So it's not that we let the hospital out of anything. Their plans clearly show that they are to meet the roadway buffer. Now, I don't know in terms of the actual inspection, as to whether or not the inspectors missed the proper location of those plantings or if we're still holding surety to guarantee that they're going to be relocated or what the case is. We did make sure that the hospital, their plans showed that the roadway buffer would be respected.

MR. BROWNSON: I do have more detail on the cost here, if they would like to hear the cost.
MR. DYSINGER: I would, Mr. Chairman.

MR. BROWNSON: They were saying site
demolition in that area would be 5,500. Tree
protection, 500. Erosion control, 400. Earth work
around there 1,145. New asphalt pavement, 3,030. New
cement curbs, there's currently concrete curbs all
around that area, 6,000. Landscaping, 2,000. Then
other costs in terms of moving light poles and all of
this, and this may be where they have the swish in
there, but they had 17,376 in there for the utilities
work and moving light poles and all that kind of stuff
around. So that came up to 35,951.

MR. DYSINGER: Thank you.

CHAIRMAN: Thank you.

Mr. Kamuf, I notice you jumping around. You
have some more?

MR. KAMUF: I'm nervous watching him. I just
would like to say this: I did review the plans, the
preliminary plan. They did require the hospital on
any new construction to comply. On nonconforming
landscaping they weren't required to remove according
to the preliminary development plan. The final -- I
don't know. One of the development plans that I read.

MR. NOFFSINGER: We've got them all the way
around there, Charlie. Even the existing and the new.
We did not let the hospital out of any of that.

I will not say that they're in compliance.

They're probably in violation, but their plan show where the materials are being located. We'll have to address that with the hospital.

MR. KAMUF: I don't know how to read the plans anyhow. I had somebody else to look at them.

MR. NOFFSINGER: Charlie, when I drove by there, I anticipated what you would bring to the table tonight. I saw exactly what you're talking about. I reviewed those plans to make sure we didn't miss something in the plan review. We didn't miss it in the plan review. Something is not right in the field.

CHAIRMAN: Mr. Noffsinger, are you finished?

MR. NOFFSINGER: I think so.

CHAIRMAN: Staff, you have anything else?

MR. WILLIAMS: No, I do not.

CHAIRMAN: Any board members have any questions?

(NO RESPONSE).

CHAIRMAN: Chair is ready for a motion.

MS. MASON: Mr. Chairman, I move to grant this Variance. In my opinion, I think denying this Variance would deprive the applicant of reasonable use of the property and would create a hardship as the
applicant will lose some parking spaces and there
would be an increase in the cost of the project which
is funded by donations.

My findings of fact it will not adversely
affect the public health, safety or welfare. As the
features in the buffer area will remain as they exist.
It will not alter the essential character of the
vicinity, as the appearance will not be changed and it
will retain it's well-kept appearance that I saw when
I drove by today. It will not cause a hazard or a
nuisance to the public in that it will not change the
general appearance of the buffer and the features as
they will still remain the same. It will not allow an
unreasonable circumventions of the requirement of the
zoning ordinance, as new construction will not be
allowed. It's only the existing will stay there. The
buffer area will remain the same as it exist today.

I want to do the following conditions: 1)
Leave the roadway buffer as it exist today and do not
build any new structures. 2) If additional
right-of-way is needed for roadway purpose, then the
signage will need to be removed, the parking lot edge
will need to be moved back, and the perimeter
landscaping will need to be moved back away from the
buffer area. 3) Then also amend a final development
plan that we discussed.

CHAIRMAN: Is there a second?

MR. DYSINGER: Mr. Chairman, if possible, I would like to suggest an amendment to your second condition. It would be at the cost of the applicant.

MS. MASON: Okay. That's fine.

MR. DYSINGER: In that case a second, Mr. Chairman.

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.

ITEM 9

2853 Turfway Drive, zoned R-1C
Consider a Variance to increase the allowed height of a fence in a residential street front-yard from 3' to 6'.

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

Applicant: Stephen and Donna Conrad

MR. WILLIAMS: Special Circumstance: The Staff finds that there are special circumstances on the property. This subject property has street frontage in the back of the property. The zoning ordinance limits
the height of a fence in a street yard to three feet. A three foot fence does not provide the privacy that homeowners expect in a rear yard. Additionally, the applicants have large dogs that they would like to keep in the back yard. A three foot fence is insufficient to restrain these animals. Several other properties in The Downs subdivision have similar circumstances and have been granted variances. Granting of this variance will not be out of character for the vicinity.

If you choose not to grant the Variance, it will cause a hardship being that the applicants would not be able to keep their dogs outside; would not be able to enjoy the privacy that is a reasonable expectation in a back yard.

The applicants have not done anything willfully to violate the zoning ordinance.

The Staff finds in granting this Variance will not adversely affect the public health, safety or welfare; will not alter the essential character of the general vicinity; will not cause a hazard or a nuisance to the public; and will not allow an unreasonable circumvention of the requirements of the zoning regulations.

Therefore, the Staff recommends approval.
I would like to enter the Staff Report into
the record as Exhibit G.

CHAIRMAN: Anyone here representing the
applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anyone here have any questions or
comments of the applicant?

(NO RESPONSE)

CHAIRMAN: Any board members have any
questions?

MR. WARREN: This is a case where the back
yard is actually up against the street? I was getting
kind of turned around there.

MR. WILLIAMS: Yes. They have a street in the
front and the rear yard.

MR. WARREN: Is this the only house on this
street that's in this situation?

MR. WILLIAMS: There are several along this
area of the subdivision that have similar
circumstances. There are some neighbors that have
fences. I don't know if it's adjacent, immediately
adjacent, but down that road there are.

CHAIRMAN: Any other questions?

(NO RESPONSE).

CHAIRMAN: If not Chair is ready for a motion.
MR. DYSINGER: Mr. Chairman, move to approve
the Variance request given the findings that it will
not adversely affect the public health, safety or
welfare, and it will not alter the essential character
of the general vicinity.

MR. WARREN: I'll second that.

CHAIRMAN: We have a motion and a second. Any
questions 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.

ITEM 10

4439 Wilderness Trace, zoned R-1B
Consider a Variance to reduce the required building
setback from 75' to 60' from the centerline of
Fairview Drive.
Reference: Zoning Ordinance, Article 8,
Section 8.5.6(c)
Applicant: Joseph and Jo Anne Mason

MR. NOFFSINGER: Mr. Chairman, I understand
that there is an issue regarding the deed of
dedication on this property. That perhaps there's a
deed restriction, a valid deed restriction that could
prohibit the Board of Adjustment from granting this
Variance.

The landowner is represented by counsel and
they are working to amend the deed of dedication;
however, there's at least one family's signature that
needs to be obtained, possibly two or three. So there
needs to be some discussion on that prior to moving
forward with this item.

CHAIRMAN: Counselor, you have any suggestions
on the procedure in this?

MR. SILVERT: Procedurally they could choose
to move forward. The applicant could choose to move
forward. The opinion of counsel would be that we
wouldn't at this point have the legal authority to
override a deed restriction that hasn't otherwise been
lifted.

If the applicant were to postpone rather than
attempt something that may or may not be approved
tonight, and they wouldn't incur another application
fee certainly. We'd leave that to the applicant.

I've spoken to counsel and that would be my
recommendation. It's just a 30 day delay while they
try to remove this restriction, which I understand
they're very well along in the process of doing.

CHAIRMAN: Could this be done subject to
removal?

MR. SILVERT: I don't think that you'd have
the authority to do that at this point.
CHAIRMAN: So you recommend postponement?

MR. SILVERT: That would be my recommendation.

If the applicant wants to move forward, I think it's in the best interest of the applicant to postpone. I'm not their counsel.

CHAIRMAN: Is the applicant present?

MR. TAYLOR: Yes.

MR. SILVERT: State your name, please.

MR. TAYLOR: My name is Septimus Taylor, II. I am here on behalf of the applicants.

MR. SILVERT: Mr. Taylor, I recognize the oath you took as an attorney.

MR. TAYLOR: Thank you.

Based upon legal counsel for the board's suggestion, we would be more than willing to postpone this to the August meeting. As it stands, we have prepared a consent to the variance and waiver of restrictions which we have obtained 19 of the 22 lots signatures on consenting to that. The remaining three have been on vacation. We would like to have an opportunity to get those signatures and have them waive any restrictions or right to enforce those restrictions from there and then we will seek this again in August.

CHAIRMAN: So you're requesting postponement?
MR. TAYLOR: Yes.

MR. WARREN: Motion to postpone the item.

MR. DYSINGER: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

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ADMINISTRATIVE APPEAL

ITEM 11

7400 Highway 2830, zoned I-2
Consider an Administrative Appeal of the Zoning Administrator's interpretation that there is insufficient evidence to determine that the roadway crossing over Pup Creek is legally nonconforming. Reference: Zoning Ordinance, Article 7, Section 7.35
Applicant: Arlin Embry

MR. NOFFSINGER: Mr. Chairman, I think at this time you need to hear from the Zoning Administrator, Mr. Jim Mischel, as to why this is before you.

MR. SILVERT: State your name, please.

MR. MISCHEL: Jim Mischel.

(JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I'll make this short.

Some time ago Mr. Riney came in, and he represents Mr. Embry, from HRG, site plan to develop an industrial building at this property. Pretty much
everything has been worked out, but at this site we noticed there's a bridge over the creek there. Right now it just services the farmland.

Our concerns lie that this property that's being farmed is zoned industrial. One time in the future, if this turns in to an industrial site too, that they use this road.

We're also charged with regulating the floodplain regulations for Owensboro and Daviess County. We cannot find any records where this bridge has been permitted through FEMA, through the Division of Water, State of Kentucky. We don't have any records of it.

At the time they didn't have any records. They have some other evidence, but seeing that Owensboro/Daviess County has adopted floodplain regulations in 1980. They were updated in 1997 and they're about to be done again in 2007 here, September or October.

We thought it would be the best interest if they through Administrative Appeal coming from this board and showing evidence so we have some record of it so in the future if this does development more industrial that we have their testimony on the record that this bridge was there prior to the 1980
floodplain maps, which would make it kind of
grandfathered in.

We have to answer to FEMA and the Division of
Water when these things occur.

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

(NO RESPONSE)

CHAIRMAN: Anyone here representing the
applicant?

MR. SILVERT: State your name, please.

MR. KAMUF: Charles Kamuf.

MR. SILVERT: You're sworn.

MR. KAMUF: I represent Arlin Embry.

This case, this appeal concerns whether my
client has to get a permit to construct a building on
his own property without getting permission from the
adjoining landowner or from the Board of Adjustment.
The Staff has a couple of issues, as Jim pointed.

The one issue is whether the bridge over the
adjoining property connecting the subject property is
adequate for future development.

You understand, whether this bridge is
adequate for the future development of the adjoining
property.

Our position on that is that we have no
control over the bridge or the adjoining property. My
client has no right to tell his neighbor how to use
this property.

We say that the bridge crossing, that's the
one that's in question, and the future development of
the adjoining property is irrelevant when we're asking
only to build a building on our tract. It's our
position that if you want to put a restriction on the
future development of the adjoining property, that
it's a separate issue for a later date and it does not
concern the issuing of a building permit on the
subject property.

Secondly, we say that the issue of whether the
bridge is inadequate, that it is grandfathered in.
That it's nonconforming and it was there prior to the
flood regulations of 1980.

Let me explain to you. I think it's a little
difficult, but I think this will do it. It will help
hopefully.

This area that you see along here is Old
Highway 60. It has a different name, but you'll
remember it as Old Highway 60. This property, it's up
there near where there's a crossing that goes over to
Hillbilly's and that other area. That's on the other
side of the road. I'm just trying to direct your idea
as to where we are.

Mr. Embry paid a lot of money for this property because it was zoned heavy industrial. This property is 84 acres. This is 18 acres. This property here is owned by a different individual than owns this property. What brought it into effect is that my client goes, and where you see the green area, he tries to build a building. No more. No less. He wants to build a building on his 18 acre tract.

There is an easement that I have put in pink. It's of dedication. It's in the deeds. There's no question about this. The pink area is a roadway that goes over to the 84 acre tract. Right there where you see the X is a bridge.

The Staff required us to get approval from the Division of Water. I think at time that we had had this, Jim, you hadn't gotten that back, but you have the permit from the Division of Water, correct? Or I have it.

MR. MISCHEL: We do have a construction permit from the Division of Water to construct that building.

MR. KAMUF: Only for the construction of the building.

MR. MISCHEL: That's right.

MR. KAMUF: When we applied for this
construction permit for the building, we talked to Kerry Johnson, who is a FEMA coordinator for the Division of Water, and he could not understand why the bridge crossing was an issue. He could not understand why the bridge crossing would prevent the issue of a permit.

Now, this property was all zoned heavy industrial. This property is zoned heavy industrial. We paid a lot of money for the property. So what our position is that whenever -- along with Zac, I went over and looked at the old zoning case where it was rezoned. There are no restrictions in the rezoning case that would prevent the building of a building on the subject property.

The record, when it was zoned, if there were restrictions that would prevent the building of this building should have been in the zoning case. You don't raise that particular issue now after we paid the money.

The issue on the rezoning, and I bring it back. You have rezoned something for heavy industrial, but if we can't build a building on it, it's useless and we can't use it for what it was zoned for.

Now, the next issue is nonconforming. I have
some photos. Took some small ones and had them blown up.

This is the bridge in question. You'll hear Mr. Mercer and some of them talk about this bridge. This is what it looks like for your convenience. It's a one horse bridge, but it's been there prior to 1969. We have the affidavits of Mr. Gaddis of record. Mr. Mercer will tell you in 1969 he owned Daviess County Sand & Gravel and he hauled sand from this 84 acre tract across this bridge up to the Falls of the Rough to build a dam up there.

We have another one. Jim Riney has gone back to a 1972 aerial photo of the area. We've shown it to Jim. Jim can't see it on there, but Jim Riney says he can see it on there. We can see that back in 1972 that this roadway was there that Lindy Mercer is talking about.

So it's our further contention that the denying of a building permit because the bridge crossing referred to above is the center of attention that is an arbitrary situation.

I have found a case out of Lexington, Kentucky which states, and I'll show this to Madison. It states this, in other words, it was a bridge case. It said that the requirement of a planning and zoning
board to require a bridge in a certain situation that it was arbitrary, that it was in violation of the federal and state constitution. Here is what it says, "While local governments barely have the funds for street maintenance, much less construction, they nevertheless may not put unreasonable burdens on development as a condition precedence to the approval of a subdivision."

So it's our contention that we have here today that this is a little far-stretched. Where you say, I want to build a building on my property. The board says, you can't build the building on your property until you get your neighbor to say that when he develops the 84 acre tract that he will abide by all floodplain regulations or that we have to get approval from the Board of Adjustment. I think that is pretty far-fetched.

In any event, we have witnesses here who will be inline with what Jim Mischel said. I think when you get through there's not going to be any evidence to disprove it.

We have the Affidavit of Mr. Gaddis. We'll have Jim Riney testifying from the '72 map. We'll have Lindy Mercer who in 1969 drove trucks across that hauling sand up to the Falls of the Rough.
I've got a copy of this case if you want to see it, Madison. You probably don't.

MR. SILVERT: Mr. Kamuf, what was the year on that case?


MR. SILVERT: I assume you've looked at that case and it's current?

MR. KAMUF: Not really. I remember when it came out. That's been years ago.

Here is the bridge that's in question of the controversy.

MR. MISCHEL: I've just got a couple of things.

I'm not here to dispute any of their affidavits or any evidence they have to show when the bridge was constructed or anything. How we got to this point, there was a couple of items. That this bridge is not on the property from the plat I saw that Jim Riney turned in. I thought the property line was down the center of the ditch which makes that bridge on both pieces of the property.

Then the rezoning, the reason was probably not brought up, when I saw the site plan, I didn't see the bridge. Mr. Riney didn't show the bridge on that site plan.
The only thing that alerted me was that easement. I said, why is there an easement going across? That's what brought all of this on.

As far as Kerry Johnson, the time I talked to Kerry, he said if -- Kerry Johnson wears two hats. He represents FEMA and he represents the Division of Water. So he kind of has two jobs there.

He indicated if it was an old farm to service that farm, hey, don't worry about it. If there's potential for industrial development, maybe you ought to get something on the plat. We went down this road and we didn't get too far. We kind of backed up. That's what brought us here today. That was just a few comments I had.

MR. WARREN: I have a question of Mr. Mischel.

After listening to what Mr. Kamuf has said, what does that have to do with him building a building on this property?

MR. MISCHEL: Well, at one time that was one piece of property. It's been divided up. That bridge is on both pieces of property.

MR. WARREN: But what does the bridge have to do with building the building on this piece of property? Is it going to hinder where the -- there's a right-of-way, right?
MR. KAMUF: There's an easement.

MR. WARREN: Is building going right in the middle of the easement?

MR. MISCHEL: No. It's off the easement.

MR. WARREN: I'm just confused as why this is even before this board.

MR. NOFFSINGER: Jim, I think we're all confused. I think you need to talk about the site plan you saw. Was there some gravel? Why we got to this point. Why this bridge even comes to play here.

MR. MISCHEL: Because of that access easement. That platted easement.

MR. NOFFSINGER: That was shown on their site plan?

MR. MISCHEL: Yes, it's shown. That's what brought all of this up.

MR. WARREN: Does that easement have anything to do with where this building is going?

MR. MISCHEL: By us representing and enforcing the floodplain regulations, if we approve this, and I know there's a bridge there, it goes across the creek and there's no permit for it, where does that put Daviess County as far as enforcement. We're suppose to make sure that these permits are acquired for any type of bridge or anything like that. By proving it,
I can't back up and say, I wish hadn't asked that question. There is a bridge across there.

MR. WARREN: I still don't understand. So what the bridge is there. So what. They've gotten their permits, right, from FEMA? Are they building in a floodplain?

MR. MISCHEL: Yes. They have a permit to construct that building, but it does not address this bridge or anything.

MS. MASON: So you're saying there was never a permit issued for this bridge?

MR. MISCHEL: We couldn't find one.

MS. MASON: But the sworn affidavits in here say that it's been in existence since, one of them is 59 years or something.

MR. MISCHEL: That's right.

MS. MASON: What we're trying to prove tonight is to whether that bridge had a permit or not?

MR. MISCHEL: Or if it was constructed prior to. If it was constructed prior to 1980's, it would be what we would call legally nonconforming, grandfathered or whatever.

MS. MASON: They cannot build this building without us determining that tonight because that bridge is access to the property?
MR. MISCHEL: No. The property on the other side, that's how they get their access.

MR. NOFFSINGER: We have to review a site plan in conjunction with the issuance of a building permit. This access easement was shown on the site plan. When we got to doing the research, we found that there is a major stream crossing there and there was a bridge. We thought based upon what was submitted to us that the bridge was on this property. We were inquiring as to when the bridge crossing went in because we're required by FEMA to do so. If we miss it and they find out about it, then it puts our community at jeopardy. We're trying to build that record to where there's enough evidence to show that, hey, this was pre-existing and we weren't overlooking anything. We made our best determination in terms of what was out there. We just didn't overlook it.

So that's what we're doing tonight is building that record with the evidence that Mr. Kamuf is going to give you.

MR. KAMUF: I'll make it real easy for you.

I've got two witnesses to put on. There won't be anything against it. I think that makes it uncontroverted. This bridge was there for years prior to the adoption of the floodplain regulation.
MR. PANTLE: Mr. Chairman, let me ask one
question to the Staff.
To be grandfathered in before an ordinance,
how old does it have to be?
MR. NOFFSINGER: It would to, I believe,
predated the floodplain ordinance in 1980.
MR. MISCHEL: Yes. 1980.
MR. PANTLE: I can testify as a board member
it was there before then because it's in my community.
MR. DYSINGER: I have a quick question.
Half of the bridge is on the applicant’s
property and the other half belongs to somebody else,
the neighbor?
MR. MISCHEL: At one time I think Mr. Charlie
Gaddis.
MR. KAMUF: That's right. Judd Gaddis. Judd
Gaddis owned the whole thing. Sold part of it to --
bought it at an auction. He bought 18 acres and Mr.
Foster owns the other tract, the 84 acres.
If you just want something in the record, I
think this is going to be enough.
MR. SILVERT: State your name, please.
MR. MERCER: Lindy Mercer.
(LINDY MERCER SWORN BY ATTORNEY.)
MR. MERCER: Now, I have crossed that bridge,
but they were single axle trucks and they were like
weighted. I wouldn't attempt to cross it now with the
trucks they have today. I've been out of business
since '95.

The biggest problem you've got, in my opinion,
is that planning and zoning made a mistake. They
should have never zoned that property heavy
industrial. Especially the one on the other side of
Pub Creek. The problem is Pub Creek is controlled by
the Corp of Engineers. You don't touch any part of
Pub Creek or the Ohio River, bank, trees or anything
else until you get a permit.

The bridge started out, like Autie said, it
was one farm on both sides of the creek and they built
a bridge. It's been remodeled several times.

MR. DYSINGER: Sir, did you say when the
bridge to the best of your knowledge was originally
built?

MR. MERCER: I would say Halloween this year
to my knowledge it's been there 60 years because
that's how long I've been there, and Autie has been
longer than I have.

MR. DYSINGER: Thank you very much, sir.

MR. MERCER: The bridge that I'm talking about
now was just a farm bridge going from one farm another
across Pub Creek. The truck that I took over that
creek at that time I wouldn't take the trucks that's
running today over that same bridge. It's been
remodeled several times. I don't know the years on
that.

I do know that planning and zoning, in my
opinion, just made a mistake. They should have never
zoned that heavy industrial. I'm talking about both
to.

I'm going to tell them to my knowledge.

You've got one farm and that farm over there
has got to come across this farm and you've got to
build a bridge to get over there. I think planning
and zoning ought to just give Mr. Embry all his money
back and get that thing back to agricultural like it
ought to be.

Mr. Kamuf had me come down here, but I'm going
to tell you the truth. If I was Mr. Embry, I would
sue the planning and zoning for malpractice. Not this
planning and zoning. The planning and zoning that
zoned it and include them in it because you don't do
things like that. You can't hide a mistake by turning
something down. You've got a problem. You've either
got to turn it down. You've got to prove it or you've
got to go to court. That's the way I look at it.
CHAIRMAN: Mr. Mercer, thank you for your comments.

MR. PANTLE: Mr. Chairman, I don't know whether I ought to disqualify myself, but in the '70s I hunted along that property back there when Gaddis had it and there was a bridge there at that time.

MR. SILVERT: Mr. Pantle, you're allowed privilege of relying on your own experience and information.

MR. PANTLE: Yes, sir. If you think I should withdraw from voting, I'll do so.

MR. SILVERT: No, sir, I do not.

CHAIRMAN: The way I understand it, this board's job is to determine if it is in fact a conforming bridge. If it is a nonconforming bridge, we need to make that findings. If we can make that findings, we've done our job.

If the board members have any more questions of Mr. Kamuf, Mr. Mercer, Jim Riney, Staff, Mr. Noffsinger.

MR. NOFFSINGER: No, sir.

CHAIRMAN: Our job is to find, make findings whether it's nonconforming.

With that chair is ready for a motion.

MR. DYSINGER: Mr. Chairman, given the
findings that the denial would be an unreasonable burden on the property owner, and further that the bridge referenced in the application precedes the zoning in the floodplain ordinance, I move that we find for the applicant.

CHAIRMAN: You're finding in favor of the applicant that it is a nonconforming structure.

MR. DYSINGER: That is my motion, yes, sir.

MR. WARREN: Second.

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

(NO RESPONSE).

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

We need one more motion.

MS. DIXON: Move to adjourn.

MS. MASON: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

I, LYNNETTE KOLLER FUCHS, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Board of Adjustment meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 67 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 26th day of July, 2008.

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

COMMISSION EXPIRES:  DECEMBER 19, 2010

COUNTY OF RESIDENCE:  DAVIESS COUNTY, KENTUCKY