The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, August 7, 2008, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

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

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: I would like to welcome everyone tonight. Anyone wishing to speak on any item may do so. We ask you to come to one of the podiums and state your name and be sworn in. We welcome your comments and questions.

First item on the agenda is to consider the minutes of the July 3, 2008 meeting. Are there any additions or corrections?
CHAIRMAN: If not chair is ready for a motion.

MR. PANTLE: Move to be approved.

MS. MASON: Second.

CHAIRMAN: We've got a motion and a second.

All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: The motion carries unanimously.

The minutes are approved.

Next item.

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CONVERSATIONAL 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 rural facility for the
sale of dairy products, farm products, related
merchandise, and related activities, including but not
limited to; the preparation, sales, and consumption of
dairy, food, and farm products, a deli-type sandwich
shop, drive-through window service, and outdoor events
for groups of people that may include catering.
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.)

DESCRIPTION

Consider a request for a Conditional Use
Permit to build, operate and maintain a rural facility for the sale of dairy products, farm products, related merchandise and related activities, including but not limited to: The preparation, sales and consumption of dairy food, and farm products, a deli-type sandwich shop drive-through window service, and outdoor events for groups of people that may include catering.

ZONING HISTORY

OMPC records indicate that a conditional use permit was approved at the July 3, 2008 OMBA to build, operate and maintain a dairy products and farm products sales facility with limited retail sales of merchandise. The current request for a conditional use permit comes before the OMBA because the applicant intends to conduct activity that is outside the scope of the previously approved conditional use permit.

LAND USES IN SURROUNDING AREA

The adjoining property on all boundaries is zoned A-U Agricultural and is used for agriculture.

ZONING ORDINANCE REQUIREMENTS

1. Parking spaces of 1/300 square feet of retail sales floor space and 1/100 square feet of floor space for a restaurant with a drive-through window.

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 must be paved.

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

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

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

(NO RESPONSE)

CHAIRMAN: Anyone here representing the applicant?

MR. KAMUF: Yes.

CHAIRMAN: Mr. Kamuf, let's see if we have any opposition or questions on the issue.

Anyone here like to speak against this item or have any questions or comments on this item?

(NO RESPONSE)

CHAIRMAN: Mr. Kamuf, your presentation.

MR. SILVERT: State your name, please.

MR. KAMUF: Charles Kamuf.

MR. SILVERT: Mr. Kamuf, I recognize the oath you took as an attorney.
MR. KAMUF: Thank you.

I represent John Kuegel and Kuegel's Dairy Barn concerning a conditional use permit that you just heard Zack talk about.

In 1970 there were 37 dairy farms in Daviess County. Now there are three dairy farms.

In order to sustain a dairy operation, the Kuegels need to either quit, enlarge or increase the value of their operation. So they've decided to operate what is called Dairy Barn, and we'll explain that in just a little more in just a second.

It will be to increase agri-tourism and agri-entertainment. The whole idea is to get people and individuals on the farm to see the cows, to see the farm operation, to tour the farm and to see the growing crops. That's their whole idea. It's similar to what we have at Reid's Orchard. Every year they have an Apple Festival at Reid's Orchard. Of course, the Apple Festival needs to be at the Reid Farm. It wouldn't do any good to have it at the Sportscenter.

In line with what Zack said, we were here last month. We got the conditional use approved, but when John went over to get the permit there was some questions as to exactly what it was going to be used for. Mainly tonight we'll have an issue as to the
clarification of the conditional use permit.

When we refiled here is what we pretty well stated. That we will build, operate and maintain a rural facility for the sale of dairy products, farm products, merchandise, related activities and other farm activities.

The retail sales will include preparation sales and consumption of dairy food and related products.

There will be some testimony from the State Department of Agriculture concerning the Kentucky Proud Agricultural Products and what they consist of and will be sold there. It will be ice cream, yogurts, jellies, jams, meats, cheeses, sandwiches, soups, candles, spices and seasoning preparation. There will be the sale of drinks such as Cokes, hot chocolate and things of that nature, but none of them in bulk sales. There will be sales of fruits, vegetables and flowers. The sale of farm promotional items such as T-shirts and related shirts and things of that nature related to the farm operation.

This will not be a restaurant in the sense of a McDonald's or convenient store. It will be farm orientated.

Some of the activities that they will have
there, there will be agricultural events such as hay rides, corn maze, June dairy month promotions, harvest activities, Easter egg hunts, birthday parties and things of that nature.

There will be educational events such as field trips, hay rides, agricultural class events, FFA and 4-H events.

We will not initially build a drive-in, but it is proposed, it is shown on the development plan. If you have any questions about the development plan, Mr. Riney is here.

We have a 24 foot easement that goes along the western line. That adjoins Rick Kamuf. Rick Kamuf is the neighbor that adjoins this. He uses the same access point. He has about a $200,000 home there and he will tell you that he has no objection to this proposal that we have here tonight.

This will be similar, some of you all have probably bought fresh produce at Trunnell’s Market on 431 near Utica. It will be similar to that, but it will be more similar probably to Reid's Orchard and their operation up there. Like where they have the Apple Fest up there. They sell a lot of promotional activities such as pumpkins and all type of sandwiches and things of that nature.
I'll introduce this here. We have several of these in the state. I think there are about 83 of them. This is a brochure that I will show you. This is over in Bowling Green. There's a Chaney's Dairy Barn in Bowling Green. It is operated by Mr. Chaney and his three sons. They had a dairy operation over there and they wanted to add to it. Let me pass these out.

I'll give you a copy for the record.

If you have any questions about that, I'll be glad to answer them. You can see it's a restaurant type facility. They have ice cream. They have a petting zoo. Then on the other side it shows this form that you have on the front is the barn itself.

We have from the Bowling Green Chamber of Commerce, and I'll give you a copy of the letter and I won't read it, but there's just a couple of points from them. It says, "Now in their fifth year, Chaney's Dairy Barn has been named the 2008 Small Business of the Year, recognizing it for its impact on the economy. They have quickly become a community partner. Bowling Green is very fortunate to have an entrepreneur like Carl Chaney and his family who have built a profitable business so quickly and so successful."
Then another one that we have, Audie, is from the Farm Bureau. They have sent us a letter. The reason for this it states, "According to the Kentucky Department of Agricultural there are over 200 agri-tourism destinations in Kentucky and are certified road side market program. Alone we have 83 on farm markets selling directly to the consumer." Many of the 83 are similar facilities to what Mr. Kuegel is proposing.

In other words, this has gone over very well in Bowling Green and throughout the state.

The other one that we have is from, this is from the Bowling Green Convention and Visitor's Bureau. It states this: "During my 17 years as the Visitor Bureau I cannot count the number of people who have come to our visitor information centers asking to visit a farm. See particular crops growing and take a farm tour. There is truly an interest, especially from those who have lived in large cities most of all their life and have not experienced farm life."

We have we think an important item for industrial development in Daviess County. It's gone on through the state. Mr. Kuegel when he has his operation finished it will be approximately $500,000. We think it's a good thing for Daviess County. We
think it's a good thing for Owensboro.

I might say since the last meeting we have had numerous calls of individuals saying, when are you going to open up? When can I come out and see the farm?

We have people from the state here that will answer questions. Mr. Kamuf is here to answer if you have questions of him. He lives next-door to this project. Then John Kuegel will tell you some of his ideas. I think we're here and the idea is to clarify anything that wasn't explained at the last hearing so you can get an idea of exactly what we're going to do so there will be a record of the things that we anticipate to do.

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

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

The farm, the actual farm equipment and buildings and all of that, where is that in relation to this proposed structure?

MR. KAMUF: It's right across the road. Do you have a development plan in front of you?

MR. DYSINGER: I do, but I don't have across the road.
MR. KAMUF: If you look on there, as you drive up the driveway on the left is Ricky Kamuf's farm. On the right is where they intend to build the building and directly on the opposite side of the road, on the south side is where the dairy operation is. It's close to the smell.

MR. DYSINGER: You get the whole feeling then.

MR. KAMUF: Right.

MR. DYSINGER: Thank you.

CHAIRMAN: Any other question from any board member?

(NO RESPONSE)

MR. SILVERT: State your name, please.

MR. KUEGEL: John Kuegel, Jr.

(JOHN KUEGEL, JR. SWORN BY ATTORNEY.)

MR. KUEGEL: Sorry if there was any confusion that came through about this project when we came before you last time. I take responsibility for not being as maybe descriptive as we needed to in describing the business.

I'm going to give you just a little bit of background and try to inform you of how we're coming to the decision to do this and why I feel it's important.

As you all know businesses change, industries
change. Farming is changing and has changed
tremendously as Charlie stated earlier.

In 1970 when Tom Curtsinger came here as your
county agent, there were 37 dairies in the county.
Currently there are three.

What's happening in the dairy industry is a
number of farms are decreasing, but the number of
animals on those farms are increasing. A lot of times
they're increasing dramatically.

As a farmer here in this county, I know that
in order for our farms to survive there are several
options that we need to look at. One of those is
expansion.

Expanding I can tell you probably would be the
easiest of the options. Just add more cows and a
bigger facility, but that's never been my passion. We
have a registered herd. We currently have a 200 cow
herd. We're ranked in the top ten in the United
States for type for our cows. We try to do a good job
with them. I might add we do all of that here in
Daviess County without the assistance of veterinary
service. So we work hard and try to do a good job
with them.

I do know that in order for me to stay in
business as a dairy farmer I've got to do some
changes. Expansion would be one of them. That's not something that with our location that I feel is the best for our family or our community and our neighbors.

The second one is just to quit. I don't like that idea of quitting things. Being a dairy man and a cattle breeder that's a life-long occupation. It takes a long time to develop and to breed a herd of cows. So quitting is not an option that I really want to do.

The second is to add value. We've been trying to do that for years to the registered cows, but I do know that if we take our cow numbers down we've got to be able to add more value to our product that we're producing.

I've spent several years trying to research both by visiting other farms that have changed and on the internet. Agri-tourism and on-farm processing is something that's gone over in a lot of different areas. People being able to buy directly from the farm.

My first inclination was to bottle milk. Take our product and put it in a pasteurizing plant and bottle and sell it, but I haven't been able to make myself comfortable with, I guess, the liability issues
with the health departments and things like that.

As I visited a lot of the farms I went to had ice cream that they sold. When I visited Carl down in Bowling Green, when you walked in his business it was a place that you just felt like you wanted to come back to. Had a wonderful atmosphere. Most people do like ice cream. Personally I enjoy it a lot. I figure if I could work out a way that I could still work with the cows and develop them and have ice cream to make there at the farm, I thought that would be a good thing.

Just to give you a little bit of background about the making of the ice cream.

Penn State University has a class that you can take. They'll teach you about how to process it, the whole deal. Everybody has heard of Ben & Jerry's. They went through Penn State's program. I'm not saying it will be a Ben & Jerry's, but they will teach you how to do it right.

We also have a real passion I think for educating the people. Over the last 30 years our farm has had field trips. Never asked any money for anybody to come to the farm. We've hosted ag days on the farm. We've had up to 900 kids there in one day working with the 4-H Department and things. We like
having people out, but there's a need for that education.

We set out here beforehand and just in our little group we were able to understand, and many of you might too, remember some of those dairy farms that maybe a grandparent or an aunt and uncle somebody had in the community. The group of kids that are growing up now, they don't have any association with a farm much less a dairy.

So I think it's important that we able to bring kids out on the farm. Be able to let them see the animals. Let them be able to know that the milk is produced from a cow. It doesn't just come from the grocery.

Unfortunately, give you an example. Since this process started over the last month, we've had visitors from Chicago. Have people bring in family members or just call and say, we'd like to bring our family out to see the farm. For whatever reason without trying people are contacting us wanting to. So I hope that that's a good sign that people will want to come.

The important thing that it is on the farm. I can't stress that enough. That's the neat thing about it. When you come to the farm and a joke was made a
little bit about the smell. It smells. I hope that by downsizing the number of cows that we have it wouldn't be quite as bad. People need to understand that there are certain things associated with producing our food. If we have cows, that there is a smell associated with that. We just tell them that's the way our money is made. It just a little different smell to it.

So I hope the ice cream will be a good thing with that.

I will tell you also that I thought about the field trips. Carl Chaney I think this last year had almost 5,000 kids through his farm. Kids and tours all together. Carl has been a super, I can't tell you how valuable of an asset he's been on helping to get information about a business plan, providing information. I've been down to work with him. He's been super. I thought that even my wife, who couldn't be here tonight because the kids are having registration at school. My wife came through our farm on a field trip when she was in the fourth grade. I didn't know it at the time. I don't know if I was helping with the field trip. She even came through.

I hope that this business will be a good asset to our community. I'm doing this I hope as a way that
we can preserve our farm for another generation, something different. Something scary, but I think it's something that will be good.

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

CHAIRMAN: Board members have questions of Mr. Kuegel?

MR. TAYLOR: I've got a question of Mr. Kuegel.

I think the biggest concern that anybody would have of this is not the overall business and the magnitude of everything that's going on. It would be that somebody would, you know, just feel like that they can just open a restaurant. I would think to pacify those people, you know, would you be using your own products. Some of your own products in this operation. Is that going to be the case? That some of your own products are going to be used in this operation?

MR. KUEGEL: As far as the ice cream that we will do, I guess we could speak a long time on the health requirements to separate pasteurize and do those types of things with the milk. That's one of the big fears that I've had in going through that process. What it takes to do that. My intentions
will be is to purchase a mix from Flavor Rich, whose company actually purchases our milk. I can't say that I'll take my milk, pasteurize it, separate. Our milk is going through that. Maybe that's secondhand.

The issue that gets in to with, I guess, processing of your milk, there's another decision that goes into that. Every farmer that's selling milk you have a contract with your company. You're not allowed to take milk and sell it to another entity. It has to go through that company. If I do take milk out to use for my own processing, then I'll lose my contract with the company. Therefore I would, you know, nobody would come get your milk.

In stating that, with only three dairies down here in this area, we're not exactly a hot spot for people wanting to come and pick up our milk.

When we looked at putting up a new barn, the suggestion that we got from the other companies was they wanted us to at least be able to fill a semi load every time they pulled in. That's probably 550 to 600 cows.

To take milk out I'll jeopardize a contract if I was to use my own milk. So the simple thing is if I can go through a company that we market through and bring that back, that's about as close as I can get.
CHAIRMAN: Are there any other questions from a board member?

MS. MASON: What percentage of the items that you're going to have at the facility are going to be from the farm? I know you just talked about the ice cream. But are you going to have farm products like vegetables?

MR. KUEGEL: Yes. I hope that you don't think I've been evasive, but all of this is new. I'm using Carl's as a model for what he's doing.

One thing that we've been working with is a group called KPAP. Larry Snell is here with that group.

Kentucky Proud is a new way that the state is marketing new ag ventures. He's got an application to show how you would become that.

One thing that you're doing through the ag development fund is you're taking the funds, helping businesses get started. Like if you have an orchard and you're producing products you could become part of the Kentucky Proud network. They encourage the ones that are involved in it to help market other Kentucky Proud products. I might be able to get tomatoes from Rick Kamuf. I might be able to go to Trunnell's and get pumpkins. We'll try to do as much local produce.
I don't anticipate myself that I'm going to start growing specific produce to fill the market. If I can have the market and buy from other producers, that's what I would like to do.

CHAIRMAN: Anyone else have any questions?

(NO RESPONSE)

CHAIRMAN: Anyone in the audience have any questions of Mr. Kuegel or Mr. Kamuf?

(NO RESPONSE)

MR. KAMUF: Mr. Snell is here from the state. He might have a statement concerning your question.

MR. SILVERT: State your name, please.

MR. SNELL: Larry Snell.

(LARRY SNELL SWORN BY ATTORNEY.)

MR. SNELL: I'm Larry Snell with the Kentucky Center for Ag in Rural Development. I would like to explain briefly our organization.

It's a non-profit that's dedicated to everybody. Technical assistance and business support services to agri businesses across Kentucky.

One part of that is it's all about rural economic development. We work with 25 small agri businesses. Generally family-orientated businesses across the state that are really striving to add value to the products they produce on the farm. I'm talking
about meats, vegetables, grain, dairy products. A number of things. Associated with that, and maybe I can help in this endeavor is the Kentucky Proud Marketing Program sponsored by the Kentucky Department of Agricultural. There's been hundreds of thousands of dollars devoted to this effort to brand and identify Kentucky grown produced and processed food products. All of you are aware, I'm sure that today we as private citizens all have concerns about where our food is coming from.

The majority of the products that we purchase in the grocery store travel a distance of 1500 miles to get to that grocery store where you're buying this product.

Here in Kentucky and a number of other states, the citizens are very concerned with knowing and identifying and identifying the source of their foods. One thing that we need to do here in Kentucky to help Kentucky farmers stay on that farm, we have over 80,000 farms in the State of Kentucky. Granted the majority of them are small midsize farms and so forth. Traditional agriculture has its problems out here, especially from the smaller farmers and so forth.

Kentucky Proud is a registration process that
you have to go through. You can't just put this
Kentucky Proud emblem on your product. It's not for
everyone. It's monitored and this type of thing.
It's a number of products that are farm sourced from
the Kentucky farms. It's cheese factory down in
Glasgow. It's Chaney's Ice Cream. It's Salsa Sisters
up Northern Kentucky that produce salsa and so forth.
It's all Kentucky products. Grown products that are
grown here. Products that are processed here.
Products that are identified so you can readily go to
these things.

The thing that agri-tourism, you know, is
something that is developed in Kentucky and should
develop in Kentucky for recreational and educational
benefits that John and some of others have spoken for.

You know, I grew up on a farm. A lot of the
older people grew up on a farm. We understand
agriculture. We know about agriculture. There's a
generation skip here with my children, my
grandchildren or something that didn't grow up on a
farm. They don't know where that milk comes from or
how those vegetables are grown or how that meat is
actually what part of the hog so-to-speak that they're
eating.

What I want to encourage you to consider here
tonight, and a number of these agri-tourism's ventures
across the states, and there are a number of them,
they're generally from well respect families. You
only have to be in Daviess County ten minutes to
realize this family is well respected. I've got to
admire John for what he's done over the years and his
family.

Being even in the dairy industry today, you
know, there's a lot of them that have gone by the
wayside and so forth. The only way that he can stay I
would maintain and several other dairy men in Kentucky
is to add value to that product that he has out there
or make better use of that farm and facility.

One of the things that he's willing to do, and
it takes people like this family that you're talking
here tonight, you know, they've got to live this.
They've got to know what they're talking about.
Children, you know, they're sharp to know if you
really know when you're telling them about the dairy
cow or the farm or something out here. The family has
to be dedicated. This is a life changing experience,
if they go through this and they're successful in
establishing this agri-tourism out there. It has to
be something the entire family has to be dedicated to.
They have to really want to do this for something
other than money too to be honest about it. I know that's what's happening out here. It's an aspect of where we in agricultural and in Kentucky agricultural specifically have an opportunity to take youth to the farm, educate them about where the food products come from. It's all about just being outdoors, green space. They really understand what this is about.

There's another thing about it too. There's a lot of older people, and John has somewhat already experienced this. You know, my age in this day that don't have the opportunity to get back. The farm is gone. It's been gone for several years and so forth. So they want to come back. It's about an experience to coming back to the farm and so forth.

If you go to Haney's Farm in Pulaski County and talk to Mark Haney and his family, they're the counter part of dairy.

You talk to Carl Chaney down in Warren County, the counter part of what they're asking to do here in Daviess County. Well respected families. They're really appreciated in their community. Especially once this business has been in business, you know, in doing this agri-tourism for a couple of five years or something like that.

I'd be glad to answer any questions.
CHAIRMAN: Board members have any questions?

(NO RESPONSE)

MR. SNELL: Thank you for your time.

CHAIRMAN: The Staff have any comments?

Mr. Noffsinger.

MR. NOFFSINGER: Thank you, Mr. Chairman.

I want to thank the Kuegels for coming back to us and making this presentation here tonight. I can say that the presentation you've given has certainly better educated me and my staff in terms of what you intend to do. Please know that we do support you in this venture and hope you're very successful.

Mr. Kamuf, I think you've done a good job of bringing the right folks here tonight to explain what's being proposed.

I caution the board in terms of making a motion that you include findings of fact in your motion that would speak to the nature of this business as to why it's important for it to be located in the area that it's being proposed. Take into account Mr. Snell's talk here tonight about the Kentucky Proud Agricultural Products.

The reason I ask that we do that is that we don't open up to this community to someone that's wanting to put in a restaurant on a small lot and
thinking, well, the Kuegels were able to do it with
the dairy barn. Why can't I here? I think it's as
much for the protection of the agri-tourism business
and that we have in the record as to what we're really
considering so that we don't just open up the door all
over Daviess County.

CHAIRMAN: Thank you, Mr. Noffsinger.

I think we have a good overview of what you're
proposing. I think it's excellent.

If no further comment from a board member, the
chair is ready for a motion.

MR. TAYLOR: Mr. Chairman, I move to approve
the conditional use permit. Basically there is no
opposition and that they will be in all zoning
ordinance requirements. Also that this operation will
be a betterment to our community in the agri-business.
Also promoting Kentucky Proud Products and having to
have the farm involvement would make this different
than its normal zoning. Normally it wouldn't be
permitted in an agricultural zoning, I feel that the
benefit of needing this property being located in the
agricultural zone out weighs what we consider. So I
move to approve the ordinance. The only suggested
conditions that I have, and it looks like they were
addressed in the site plan, is ADA accessible parking
spaces and offloading area must be paved, and the
first 50 feet of driveway from Old Lyddane Bridge Road
must be paved.

MR. DYSINGER: Second.

CHAIRMAN: We have a motion and a second.

MR. PANTLE: I would like to add one more
amendment to it. That we recognize that the school
tourism will be added to it.

CHAIRMAN: Do you accept that in your motion?

MR. TAYLOR: Yes. Tourism.

MR. NOFFSINGER: Excuse me, if I may. In the
findings of fact, we're including the educational
portion of the program as one of the findings of fact.

MR. TAYLOR: Yes.

CHAIRMAN: 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 3

2830 Russell Road, zoned A-R
Consider a request for a Conditional Use Permit to
dedicate a 30' x 40' area along Russell Road near the
northwest corner of the property as a private cemetery
with a 30' wide access drive to Russell Road.
Reference: Zoning Ordinance, Article 8, Section 8.2J1
Applicant: Rhonda VanMilligan

ZONING HISTORY

OMPC records indicate that no conditional use permits or variances have been issued for this address. The property contains a single-family residence, auxiliary building and undeveloped woodlands.

LAND USES IN SURROUNDING AREA

The adjoining properties on all boundaries are zoned A-R, Agricultural and contain single-family residences and undeveloped woodlands.

ZONING ORDINANCE REQUIREMENTS

None

SUGGESTED CONDITIONS

1. A minor subdivision be created to contain the cemetery boundaries.

2. The deed of dedication to the property must include the requirements to maintain the appearance of the cemetery.

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

CHAIRMAN: Any board member have any questions of Mr. Williams?

(NO RESPONSE)
CHAIRMAN: Does anyone in the audience representing the applicant?

MR. POTEAT: Mr. Chairman, Steve Poteat representing Ms. VanMilligan.

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

MR. POTEAT: Thank you.

Mr. Chairman, Board Members, thank you for the opportunity to be here.

First, I apologize for Ms. VanMilligan not being able to be here tonight.

Unfortunately this is not an exciting venture such as Mr. Kamuf just presented to you. I wish it were. As a matter of fact, it's one most people don't want to think about.

Ms. VanMilligan owns it's well over ten acres out on Russell Road. I think you have a drawing of where they propose to put this as a private family cemetery.

Recognizing that Kentucky has little, if any, statutes governing cemeteries other than taking care of them. The zoning ordinance appears to apply to commercial. So we're not real sure on what should be done there.

We have no problem and Ms. VanMilligan has no
problem with the Deed of Dedication with requiring that to be maintained.

The only objection we have or the only question as to any of their findings is as to providing a minor subdivision and that that be approved and separated as a separate part of the farm. That creates more issues because of the size of it. The Deed of Dedication can take care of the concerns that would be raised by doing a minor subdivision plat. The Deed of Dedication can require as the statute requires that the owner of land upon which a cemetery is located is required to maintain it.

In fact, that's one of the only statutes we've got on the books on cemeteries. That's required. So the Deed of Dedication can take care of that.

This area is going to be fenced in with a rod iron fence. It will be maintained by this family or by any other family that if a year, five years, ten years down the road they sell it. The Deed of Dedication requires that the person that purchase it will be responsible for maintaining it.

Now, that may create a problem with them selling it, and that very well may be the case, but as far as requiring a minor subdivision plat and approval and then seeking a variance because of the size, it
doesn't meet the minimum size for subdivision, and
those matters, we think we can take care of all the
questions they have with the Deed of Dedication. We
would ask that it be approved subject only to the
preparing the filing of the Deed of Dedication.

CHAIRMAN: Any board member have any questions
of Mr. Poteat?

MR. TAYLOR: My question is mainly towards
staff.

So these conditions, they're not actually
ordinance. They're just suggested conditions that we
would want or are they actually in the ordinance that
have to take place?

MR. WILLIAMS: They're not in the zoning
ordinance. That's why we're suggesting that they be
placed.

MR. DYSINGER: Mr. Chairman, I have a question
of Staff as well.

Mr. Williams, could you comment on what the
Staff hopes to accomplish or guarantee by making a
minor subdivision?

MR. WILLIAMS: That the boundary of the
cemetery will be set clearly. Understanding that the
family more than likely will tend to maintain and keep
the property for as long as they can. Sometimes
things happen that are unexpected. Sell of the property can occur quickly. They may not have time to delineate that or properly subdivide it, etcetera. That's one reason for doing it now as opposed to waiting later and doing it.

MR. DYSINGER: The applicant's attorney seems to contend that subdividing it now it creates more problems, no longer connected to the property. Could you speak to that?

MR. WILLIAMS: All that's being asked is that a minor subdivision be created. That subdivision will need to go before the Planning Commission because it's an irregular size. It's smaller than one acre, but there's no reason why they wouldn't approve it. I don't see a problem other than perhaps time and expense of surveying. I don't know of any other reasons.

MR. DYSINGER: But it would sever the property from the rest of this property?

MR. WILLIAMS: They could keep it and sell the rest of the property off. They could sell the cemetery separately if they wanted to.

MR. WARREN: He also states that a Deed of Dedication would do the same thing.

MR. WILLIAMS: The Deed of Dedication wouldn't
separate the properties. It could be written such
that it would require the owner of the entire property
to maintain it. I think he's arguing that that should
be sufficient.

MR. TAYLOR: Maybe I'm just not understanding
it. So if he does the subdivision, will that make it
two separate pieces of property?

MR. WILLIAMS: It would. It would separate
them. Plus it would also define exactly where the
boundaries are. I think I left one thing out. As far
as if he used the Deed of Dedication and then relied
upon fencing to define the boundaries of the cemetery,
time could pass, fences can fall down, etcetera,
things can be lost. That's part of the reason for
actually surveying it.

CHAIRMAN: Anyone in the audience have any
questions or comments or opposition on this item or
any questions of Mr. Poteat?

MR. POTEAT: May I make one brief response,
Mr. Chairman?

CHAIRMAN: Yes.

MR. POTEAT: With regard to a minor
subdivision, we can delineate the area with a fence
and do it in the Deed of Dedication, but by making
this a minor subdivision, we can do that same thing
with just a survey showing this is where the cemetery will be and this is the boundaries and use that as part of the Deed of Dedication and not have to go before a minor subdivision which, again, creates more problems because of the fact that it is a nonconforming lot size. We can certainly provide a survey just to say, this is where it is. Put that with the Deed of Dedication. Fence it in. Then you know where it is. We don't have, again, we don't have to go through the minor subdivision process, which I believe creates more problems in the future than it serves right now. Cemetery is going to know where it is. The statute is going to say that whoever owns the land has to pay for it or has to maintain it, and that's what the Deed of Dedication will call for as well.

I think that just a survey plat showing the location of it, attaching that, this is where it will be, this is its size. I certainly think that does the same thing that he's asking for. Wanting to know where it is so it's not lost over time. I believe that would do the same thing.

CHAIRMAN: Any other questions or comments from the board?

MR. WARREN: So the cemetery will be surveyed?
MR. POTEAT: I'm saying that that can be done rather than having to do a minor subdivision plat. It would certainly be a lot quicker. We could make a survey of that, of that area without doing a full minor subdivision which creates, like I said, additional problem, additional variance request that we believe.

MR. DYSINGER: Mr. Chairman, I would like to know if Staff would be emendable to that, to a survey being included in the Deed of Dedication?

MR. NOFFSINGER: I'm not sure that will work in terms of satisfying. I've just been talking with our attorney.

What we feel we need to do is determine as a matter of record in the courthouse the boundaries of this cemetery so that it's very clear in the future when we're tracing the chain of title and we're looking at documents that there's a cemetery there and then we have those pins out in the field, which 100 years from now might be very important. How we get there -- Staff would support an exception. We call it a minor subdivision plat. It is a minor subdivision plat in nature in that we're not looking at it as a development lot and would not count that toward the development lots or the property's potential to create
development lots. We're just trying to make sure we have a good clean record where that cemetery is in the future.

Now, how we can legally go about that, I'm not an attorney nor am I surveyor.

MR. DYSINGER: Mr. Chairman, I guess my question, and maybe I'm missing something. My biggest concern, and I think your client's intentions, I would think if I were in her shoes to keep all her property together with her family plot. She wants to keep that in one piece and it's an understandable reason. My only concern when even talking about something like cemetery is not what's going to happen for the next five years. It's what's going to happen 50 years from now.

I guess my thinking is, is that keeping the property all attached, seems to me if it's subdivided in any way, somebody who owns this property who may not have the sentimental attachment that Mr. Poteat's client has could simply sell off eight and a half acres and those eight and a half acres have no obligation whatsoever to the upkeep of this cemetery. I guess that's why it seems to me, who I'm not a surveyor, an attorney or a planner, seems like keeping this all together -- I mean I'm a stay at home dad. I
have to deal with juice boxes and crayons all day long. It seems to me that keeping all the property together is the way to guarantee the upkeep of this property. The way to do that seems to me is to include as much as possible into a Deed of Dedication.

CHAIRMAN: One thing that concerns me if that isn't surveyed and enter a record plat, someone buys that piece of land at a future date and they decide to do a massive excavating gray work not knowing, have no way of knowing that that is a cemetery without it being surveyed and recorded plat, and the first thing you know they're out there digging up graves. That to me it must be surveyed and a recorded plat.

MR. POTEAT: I understand that. I certainly do. I must say that I think Mr. Dysinger hit it on the head when he said if it's ever sold, the remainder of the farm, if would create a minor subdivision, create this lot, that means they could sell the rest of it. Then when the VanMilligan family is gone and there's no family members left, there's no relatives, there's no one that's obligated to take care of it at that point. I think the Deed of Dedication, first of all, a Deed of Dedication will be recorded. It will be recorded under their name. If you do a title exam on the property, you're going to find that Deed of
Dedication showing that there is a cemetery and showing the approximate where the location of it is. It will set that out.

Now, if you have somebody that doesn't do a complete title, you know, I can't do anything about that. They may not even find the plat, depending on who is doing the title work. If you do a title on the property when the VanMilligans go to sell it, they're going to find that Deed of Dedication recorded in the clerk's office hopefully. I think counsel would agree with that. He hopes they're going to find it there. I hope they're going to look for it.

CHAIRMAN: Counsel.

MR. SILVERT: Again, I won't state this as a legal determination, but I will state it as a legal concern as to the Deed of Dedication being the only way of delineating this area as a cemetery. My issue, my concern is the ease in which a Deed of Dedication, particularly when there's only one property owner to whom that Deed of Dedication applies, the ease of that Deed of Dedication being lifted. It would only require that property owner, say they're selling it, the person that wants to buy it from them does not want to have that restriction on the property. It's a very simple matter of being able to record a document
in the record that would lift those restrictions
caused by that Deed of Dedication.

I guess the question shouldn't be, which way
is correct? Deed of Dedication or survey? The
question in my mind would be why not both?

CHAIRMAN: If you do not make a recorded plat
of a division, if you do not make a land division and
a recorded plat and a deed, there's really no way if
someone buys that piece of property to go back and
check the deed and check the plat to find out the fact
that it is a separate piece of property. If it has a
separate deed, there is a division made, a recorded
plat, then no one can buy that piece of property
without knowing where it is and what it is.

MR. SILVERT: Technically in the chain of
title the Deed of Dedication would come up, even if it
was lifted. So they would know that at least a
cemetery was proposed on that property. You wouldn't
know for certain if someone was actually buried there.
Neither would you by survey. I see the benefits of
having both. I guess that's why I question whether or
not having both survey and a Deed of Dedication that
would require a certainly level of maintenance
consistent with the statute wouldn't doubly ensure
that that property was recognized as a cemetery, was
maintained as a cemetery, and that those who were
looking at the chain of title would know very clearly
that it's being used as a cemetery.

MR. DYSINGER: Mr. Chairman, but once a
subdivision is achieved, aren't there then two deeds?

CHAIRMAN: That's correct.

MR. DYSINGER: Then the Deed of Dedication
would have nothing to do with the other property.
That property could be sold off with no concern taken
whatsoever for the cemetery. Is that not --

MR. SILVERT: That's very true, but it doesn't
change the fact that that Deed of Dedication on the
remaining tract couldn't also be lifted by one.

MR. DYSINGER: I guess it's a question of
leverage. The rest of that land is the leverage to
whoever owns it, you get this too and if you want this
you're going to have to take care of this.

MR. SILVERT: Arguably if you want to go that
far. It would be beyond legal opinion to determine
what the value of the property would be. As Mr.
Poteat alluded to earlier, if it did not have that
restriction on it, being the parent tract, the
non-cemetery tract, it may be more valuable because
someone doesn't have to take care of it to the level
that a cemetery does. So from that perspective, yes,
just subdivide it and you don't have to worry about that.

Legally there are a couple of considerations here. One of them is the ease with which I would argue the Deed of Dedication could be removed.

Two, is also the question of the clerk's ability to file and to record an unapproved plat. If you're looking at still doing a survey as part of this deed that would be recorded in the record room and it would look like a plat, but would not be approved as one. I know that they, at least from a practical sense, have been very gun-shy as to approving those, and for good reason.

MR. DYSINGER: Mr. Chairman, is it safe to say that no matter what we do, a crack attorney will one day be able to get around it and undo it?

MR. POTEAT: That's the point I wanted to make on the Deed of Dedication. Those can be drafted to where they cannot be revoked. It can be drafted such that it is a permanent covenant and restriction that goes with the land bound by me, my son, his daughter, his neighbor that he sells it to, and everyone else down the line. A Deed of Dedication can be drafted such that it is a binding covenant and restriction on the land forever and can't be changed unless a court
does it.

CHAIRMAN: The point is if you do not survey
and have a recorded plat and you sell that farm, then
how do you find that particular location with the
gardens on it?

MR. POTEAT: Mr. Chairman, I guess the
difference I have, I don't have a problem with, as I
mentioned earlier. What I've got a problem with is
doing it as a minor subdivision, separating it from
the main farm. I don't have a problem asking for
approval of a survey plat showing, this is where the
survey, this is where it will be, and seeking approval
of that much like we do submitting a plat on Thursday
and getting it approved next Thursday.

Once you separate this from the main tract
with a minor subdivision, there's no guarantee that
anybody is going to take care of it. The Deed of
Dedication is only going to apply to that one small
area. It's not going to apply to the rest of the
farm. It's going to apply only to what we divide off
as the cemetery.

That's our objection to doing a minor
subdivision plat and dividing this tract off of it. I
think a survey can be done. I know a survey can be
done with a request that they approve it as a private
cemetery as part of this farm. This is where it's
-going to be and it's going to be on this location.

MR. DYSINGER: Mr. Chairman, if this cemetery
is separated from the rest of this property, there is
no doubt in my mind right now that it will eventually
get lost in the shuffle and not be cared for. There's
just no doubt in my mind about that. I mean it may
stay in the hands of some long forgotten cousin, but
there's just no way that this will be cared for if
it's a separate piece of property.

CHAIRMAN: Mr. Noffsinger, can that be
surveyed and platted without making a division?

MR. NOFFSINGER: I think you're headed right
down the same path we're headed down.

Mr. Poteat, could we do a survey plat of the
parent tract and survey out or survey the boundaries
of the cemetery showing that as cemetery boundaries
and setting those pins and whatnot, but not separating
it from the boundary. Turn that in to the Planning
Staff as a surveyed plat, we initial off on it and
record it in the courthouse?

MR. POTEA'T: I would prefer to do that. If we
have to do that, I would prefer that because if we do
a minor subdivision, there's no guarantees of what's
going to happen.
CHAIRMAN: If there's no other comments or questions from the board, I would ask for a motion.

MR. DYSINGER: Do we need to wait for that to act on this?

MR. WARREN: Can't we just make that as part of the condition?

MR. NOFFSINGER: Yes. I think you make it part of the requirements and recognizing that the applicant represented by counsel is saying that's what he would prefer to do as opposed to surveying out a separate tract. Make that a condition to the approval so we don't have to come back here next month. It's not a division. It's a survey of an existing lot of record showing the property boundary.

MR. DYSINGER: Indicating the location.

MR. POTEAT: Much like we would do sometimes when you have a commercial piece of property and they discover there's a cemetery on it. They put in where the cemetery is located.

MR. SILVERT: That's right.

CHAIRMAN: Chair is ready for a motion.

MR. TAYLOR: Mr. Chairman, I move to approve the conditional use permit based on the findings that it is within all regulations and there is no opposition to it. I do have a few minor suggestions.
Deed of Dedication of the property must include requirement to maintain the appearance of the cemetery. Also, there will be a survey conducted by the applicant which will include the boundaries of the cemetery and be recorded.

CHAIRMAN: Is there a second?

MS. MASON: Second.

CHAIRMAN: We have a motion and a second. Any questions on it?

MR. DYSINGER: Is that enough to make it subject to the approval of the Deed of Dedication?

MR. TAYLOR: Survey would have to be approved. The Deed of Dedication has to accompany the survey.

MR. NOFFSINGER: The applicant understands that we're not approving the survey. We're merely reviewing the survey. We'll initial off, record it, and make it a part of the application, if that's legal with surveying standards.

MR. POTEAT: Yes.

MR. DYSINGER: That answers my question, Mr. Chairman.

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.
ITEM 4

1817 US Highway 60 East, zoned I-2
Consider a request for a Conditional Use Permit to
grade, construct a berm, headwall, place DGA and
riprap, and provide erosion control within a floodway
in order to align and stabilize the bank of the Ohio
River adjacent to the subject property.
Reference: Zoning Ordinance, Article 18,
Section 18-4(B)(3) and 18-5(B)(4)
Applicant: VBH Properties, LLC

ZONING HISTORY
OMPC records contain no history of the
property. The land is currently vacant of any
buildings.

LAND USES IN SURROUNDING AREA
The north boundary of the property is the Ohio
River.
The adjoining property to the west is zoned
I-2 Heavy Industrial and is operated by OMU for water
treatment.
The adjoining property to the east is zoned
I-2 Heavy Industrial and is operated by Barton Brands,
LTD for the production of bourbon.
The properties to the south, across US 60 east
are zoned as follows:
* I-1, Light Industrial and contains Foamy
Brush car wash;
* B-4, General Business and contains several
general business activities.

ZONING ORDINANCE REQUIREMENTS

The applicant has submitted documentation that meets the following Zoning Ordinance Requirements:

1. Certification from a registered professional engineer that encroachments into the Floodway shall not result in any increase in flood levels during occurrence of the base flood discharge.

2. A Stream Construction Permit from the Kentucky Division of Water.

3. A Construction Permit from the Army Corps of Engineers.

There are no suggested conditions.

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

CHAIRMAN: Board member have any questions of Mr. Williams?

(NO RESPONSE)

CHAIRMAN: Anyone here representing the applicant?

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: Any board member have any
questions?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion?

MR. DYSINGER: Mr. Chairman, given the findings that the application is in order, there's no objections and a stable river bank is definitely in the public interest and we approve this conditional use permit.

MR. WARREN: I'll second that.

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.

MR. NOFFSINGER: Mr. Chairman, Item 5, there's been a request for postponement by the City of Owensboro. They have not secured the necessary permit from the Corp of Engineers. Will need to take a vote from this board to postpone until the September meeting of this board, which will be the first Thursday in September at the same time.

CHAIRMAN: Do we have a motion for postponement.
MR. DYSINGER: Mr. Chairman, move to postpone this item to the next regularly scheduled meeting.

CHAIRMAN: Is there a second?

MS. MASON: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

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VARIANCES

ITEM 6

2106 Old Henderson Road, zoned I-1 (Postponed at July 3, 2008 meeting)

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: The Staff finds that there are no special circumstances with regards to this property or application.

The circumstance has arisen because the applicants have developed the property in a way that does not accommodate the equipment that they now utilize. Specifically trailers of various lengths pulled by half-ton or three-quarter ton trucks.

Back in October of 2000, a minor subdivision
was approved to consolidate two properties together. 2106 and 2100 Old Henderson Road. That property is consolidated and is shown there in your Staff Report.

It was for the purpose of an additional building to the property which they use for the storage of equipment. At the time they were not using these large trailers. We did not intend for them to use this part of the property for vehicular access, even though there was a small access point to Old Henderson Road. It's 14 feet wide.

They were required to pave it because they used or they plan to use a second access point on the property that's further from the intersection of Washington and Old Henderson. That was required to be paved and parking spaces placed in the rear of the property.

Since that time the applicants have used the property. They've grown their business. They now have large trailers that they pull into the property. They've been trying to access through that small 14 foot entrance. They want to widen that to 35 foot to the point where they're 35 feet from the right-of-way line of that intersection of Washington Avenue. The Zoning Ordinance requires 50 foot. So that's why they're asking for this variance.
Staff argues that the justification that they will bring is insufficient to warrant your approval of this variance because their justification is that they're backing onto the property and they need a wider entrance that exceeds the limitations of the zoning ordinance. It encroaches towards the intersection. So they can more quickly back into the property.

The Staff does not agree that they should be backing out of the public right-of-way on the property or vice versa, off the property into the public right-of-way.

Staff argues that strict application of the zoning regulations would not deprive them of the use of their property as originally developed. They have two access points on the property. They could utilize some alternatives that have been proposed to them over the phone and other discussions. They heard the suggestions and they still would like to proceed with this variance. So that's why we're still here today.

I've provided for you in your Staff Report some diagrams, which I will also provide to the applicant.

I would like you to consider the turn radiiuses that are shown there. We didn't have an exact turn
radius representation for a vehicle with a trailer. So we used the combined length for a fixed axle vehicle of 30 feet, assuming that they have say a 15 foot vehicle and a 15 foot trailer. The trailer can turn with a sharper radius and have done so on the property and slowly than a 30 foot fixed axle vehicle. You can see these turn radius is there. My argument would be that they should utilize the access point further from Washington Avenue. Perhaps widen it to the maximum 50 feet. The curb is already cut and graded in excess of that. They just don't have pavement there.

Perhaps they should use that access point and pull onto the property and try to maneuver their trailers in that way. Either opening the door to make it larger. Maybe would require a little bit of a redesign of their building, but that must be something that they would consider when they increase the size of their building and type of equipment that they use.

If you look at diagram 3 and 4 that I've given you, shows this turn radius granted of a fixed axle vehicle. I suggest that that turn radius is even larger than what they could do with their trailers. They could maneuver from their property into the building. They just need to access their property.
Like I said, further from that intersection they could use that access point. Pave the area in front of their business and create a way in which they would not have to back off the public right-of-way.

The Staff does not recognize a hardship in this case.

The circumstances that brought this about were due to their own actions, but they don't seem to be intentional. They didn't intentionally or willfully violate the zoning ordinance.

The Staff finds that approving this variance will adversely affect the public health, safety or welfare. That was included in their argument at the last meeting. If we don't grant it, there will cause a safety concern. We're arguing that if we grant it and they continue to back out of the street, no matter how quickly they do it they're still creating a hazard.

That will not alter the essential character of the general vicinity. They will cause a hazard, as I argued. They will allow an unreasonable circumvention of the requirements of the zoning regulations.

Therefore, the Staff recommends denial.

I would like to enter the Staff Report into
the record as Exhibit E-1 and this diagram as Exhibit E-2.

CHAIRMAN: Any board members have any questions of Mr. Williams?
(NO RESPONSE)

CHAIRMAN: Anyone here representing the applicant?

MR. DUTY: Yes, Board Member Pedley. I'm Russell Duty representing Leonard Steamway which is owned by David and Ann Leonard. I also have with me here tonight Ron Leonard who is also one of the owners of that organization.

CHAIRMAN: Is anyone here in opposition of this item like to speak?
(NO RESPONSE)

CHAIRMAN: You may continue.

MR. DUTY: Thank you, Mr. Chairman and all the other board members. I appreciate you all being here tonight. I think the only person that wasn't here the last time was maybe Board Member Taylor.

Just a little bit of information about the building and the operation of this organization.

They're basically a carpet steam company along with a restoration company. They go in and remodel fire damage, smoke damage, water damage. Do things of
that nature.

When they first purchased this property, they were actually the three owners, they were the only people that had anything to do with this as far as working it. Now they have an additional ten employees. So, in fact, they have grown substantially.

We did talk with Planning & Zoning. We want the board to know that we did listen to what their concerns were, what their suggestions were, and we'll address those and let the board know why we don't think that that can be done one by one.

What we have done is we have prepared basically a slide show of pictures that will show you the property. It will show you trucks and trailers being backed in to the existing property to give you a better idea of that property and how it looks.

You will see from those pictures that what Planning and Zoning relationship to the diagram I think that's been marked as Exhibit E-2 is just simply not possible. It's not feasible because there is not enough space between the building and the road to be able to pull onto the property and then back into it without somewhat getting onto the road with the size of trailers that they have.
If I could at this time, I would like to turn
the monitors on and show you the pictures, if that
would be okay.

If I could ask Mr. Leonard to come to the
podium and explain what you're seeing at this time.

MR. SILVERT: State your name, please.

MR. LEONARD: Ron Leonard.

(RON LEONARD SWORN BY ATTORNEY.)

MR. DUTY: Ron, if you could tell them what
we're seeing.

MR. LEONARD: That there truck you are seeing
is one of the two shortest on the fleet. That truck
there is approximately 22 foot long. That is from
bumper to hitch.

The Exhibit A's that was represented by the
city or Planning & Zoning is showing a 30 foot truck.
My trailer there is a 12 foot trailer. So you know
I've gone over the max there where he's at.

There we are coming -- I sort of did these
pictures backing in and coming out from one direction.

This is coming out going east. Do you see the
stake that's there? There is where we propose the
entrance. Keep in mind I have turned to the west.
Before we did come out to the east to try to miss that
curb. Maybe it will show in the next slide.
You probably do not have but about a foot there between the stake and the side of the truck. Same sort of slide there. Just different angle. We did have the state trooper that lives on Benton come over and sort of help control traffic while we did this.

There's the trailer, one small trailer that goes in the smaller door.

This is one of the larger trailers on the fleet. It is a 20 foot enclosed, 24 foot with tongue. The bumper of the truck, it's -- half in the building it's probably 6 to 8 foot in the building before the truck is ever off the street.

Coming out to the east there you have a wider distance there between the stake, the proposed stake or the curb there and the side of the truck from that angle.

That's the hardest one to get into the building.

The angle there, I know that Zack has said on several occasions -- you can see it in this photo slide here. To the west there's a telephone pole. In one of the exhibits, and I don't remember which exhibit it was there, we've had OMU move that pole once. They've asked us not to ask again. They were
really nice about it.

Matter of fact, a few years ago we asked them to move it, if they could move it down because it was a lot further, little bit right up next to the curb there. They did move it down to make it a little easier for us.

That's just one of things, I can't help that the business has grown over the years.

Then here we are going back out to the east with that same truck.

There you see how close that vehicle.

MR. DUTY: Ron, if you would, one of the suggestions by Planning & Zoning was that you make one large door. Have you looked into doing that?

MR. LEONARD: Yes. I did look into that after Zack called yesterday or two days ago. Whenever it was we talked.

I have eight inches of clearance from the top of the door to the bottom of the eve of the rafters. They do not make a door that is wider that will still fit in the same with. I would have to have one custom made or literally take the top off the building -- well, basically tear down the building and build a new one there and then build wider doors. Wider door is not impossible. It's just a great costly expense.
MR. DUTY: Also too one of the suggestions is that you would pull onto the property and then back up.

CHAIRMAN: Sir, would you speak from the podium so we can get it recorded.

MR. DUTY: I'm sorry, yes. Also one of the recommendations is for you to pull onto the property coming off Old Henderson Road and then backing into those doors without getting onto the road at all. Is that a possibility?

MR. LEONARD: Actually I've tried that. I should have brought these pictures up here. Anybody that would like to go outside and see the bed of my truck and when we jack-knifed it and I tore the bumper up and the side of the bed of the truck trying to get the small trailer in with one of the shorter trucks. It's just sitting right out front. Feel free. You can walk outside and look.

I mean I have really had no luck in backing that in there.

I've also had a gentleman -- I wish I could remember what his last name is. Kenny that works at the docks that has drove a semi for years has come down there and he says it is impossible, no way of backing a truck and trailer in that same combo of what
kind of equipment we have now from on the property
without getting on the street. He says it's an
impossibility.

MR. DUTY: One of the other alternatives they
gave you, was that to enter from the back of the
building or I guess behind the building where you're
at now?

MR. LEONARD: I've heard the option thrown out
there, but I know the people from the rear. I'm blank
as can be. Zack has got their names of them there. I
know there's two pieces of property behind. In the
past we have tried to buy those. They get past from
family member to family member and they just do not
seem to want to sell. I really like the idea of
personally if we could ever purchase those to be able
to put in a door on the back. To just have a
drive-thru. It would make it a whole lot easier for
me and everybody else. But as of right now that's
impossible.

The building on the other side is basically
houses, our cleaning side of the business.

In that photo there, which is the one that's
got the very faintly sign with a small, small trailer
that's up there. That's the cleaning side. This side
over here hires the restoration with the construction
side. That is something in the last five to six years, by no choice of our own, we have had to do. It's basically with the insurance work that we do, if you don't do it, you know, we're all going to have to find a new profession and something else to do. I mean I've been doing it for nearly 25 years now. I don't really want to plan on looking for another job tomorrow.

MR. DUTY: Ron, one of the other things too that I'm sure that the board wants to know is about the charter of the businesses that surround you. Can you tell us a little bit about those businesses?

MR. LEONARD: Yes, I can. I know across the street there is a business that has, the entrance curb go right up, and I'm going to guess within seeing the property pins, probably within five feet of the curb. You go to the end of the street, one business that I can think of is Old Mill Flea Market. Their entrances goes clear around the corner. It doesn't even have a curb.

DNJ Auto Parts, which is the old West Side building, same way.

The gas station that's across the street, I didn't get the tape measure out and measure. I would say they're probably 40 feet or less. There's just
several down through there.

We're not really changing the characteristics of the neighborhood. I'm not going to South Frederica and going to change that. We're staying within what the neighborhood is. Actually I'm going a little further than what most of them are. I know that there's a business at the other end of the street that his road frontage is 100 percent curb. I mean driveway access. It's across the front of his property.

I don't think I'm asking for anything that's out of the unordinary considering the characteristics of the neighborhood.

MR. DUTY: If you could, could you also address the issue of how that would allow you to enter and exit the property in a more safe manner?

MR. LEONARD: I can. I know it's been suggested to me and Zack go back and forth on this one way or the other.

Backing in is not the best option because of the flow of traffic. We try not to hit it at peak times of the day. Backing out in there is not the best thing in the world, but there is several businesses up and down the street all day long that does it.
Matter of fact I had to stop this morning because Scott Baird's truck was backing out of their lot out onto the street. It's one of things you can't help. It's the nature of the businesses that are there.

Grant you when we go, you go in and out you want to do it speedily. Hurry up and get it out. Usually there's somebody that's in that truck that has crawled out, you know, and stand out there and say, hey, hold it. There's somebody coming. Stop. Don't do that or vice versa if we go to back in.

I'm saying now when we do it with the curb, we have a tendency, it takes a little longer because you think you've hit the spot to get off the street quite quickly. When you hit that curb, sometimes it shoves that trailer in the opposite direction or bounces or does something funny. Then you've got to pull up and re-aim again. I've had a few fingers shaken at me.

Any questions at this time? I'd be more than happy to answer them.

CHAIRMAN: Any board members have a question of Mr. Leonard?

MS. MASON: So you're saying in your opinion there's no other way to be able to get your trucks and trailers in and out of this building without coming in
and out on the street?

MR. LEONARD: I don't know of a way. I have asked on several occasions if somebody -- that's the reason I went to talk to, I know a gentleman, he came down there. He's drove trucks his whole life. I would think if somebody would have a good idea, he would know. I'm not going to necessarily argue with the diagrams that's there. I can't do it. I've been driving trucks and trailers since I was 13. You know, farm implements and things like that. And I don't know how to get it in there.

MR. WILLIAMS: I'll just say with regards to the drawing that I've provided you, I was calculating based upon a 17 foot trailer. I wasn't expecting an extended cab truck. Just in our discussion on the phone, you were talking about a three-quarter ton, half-ton truck pulling a 17 foot trailer. That's why I gave you a 30 foot. Thought that might closely model what that size vehicle with a trailer of that size would be.

The Staff would have to argue the same, that approving a variance to widen the access point to I think it's 35 feet encroaching upon the setback from the intersection would be to accept their justification, which is we want to back off of the
street into the building more quickly than we can right now. I'm arguing that we shouldn't approve that because we would be in essence approving their backing on the street, which we don't approve of.

MR. DUTY: In response to that, I would like to say this: I understand his position in regards to we don't want to advocate people backing out on the street. I certainly understand that. Although, you go down Industrial Drive, Ragu Drive, it happens every day. It's a part of transportation in the process.

There's a difference.

What my client is trying to say here and is trying to get done is he's saying as it is now, it takes him more time. He's on the street more. He's having to hold up traffic. He's creating a traffic hazard by the way it is now. By widening the driveway he is reducing that. So in essence by allowing the driveway to be widen, you are limiting and helping him make the highway in front of his business a safer business.

Again, this isn't anything as they've pointed out that he's willfully created. This is something which has really been a good thing for him. His business has expanded. He's had to buy larger trailers. He's added ten employees. This will help
him utilize his property in a more safe manner.

If we look at the findings that this board has to find, one of the things that we're saying is that it will not adversely affect the public, health and welfare. Widening the driveway will not do that.

It certainly will not do anything to damage the central character of that neighborhood. I think Acme Heating & Plumbing is on across the street. It has two accesses right on the corner. Baird's Plumbing is down the street. There are businesses all along that street who probably back in and out all day long. So for us to say, well, this doesn't happen. I understand not wanting to promote it, but it does happen and we're trying to make it safer to get these big trailers off the street. Get them where they belong quicker in a more reasonable fashion.

Certainly, again, this eliminates a nuisance to the public. Certainly makes him get off the street quicker. Allows him to do that and helps him, assist him in doing that. That, again, would go right with the findings to grant this variance.

We looked at alternatives and there are other alternatives. The problem becomes is they're cost prohibited.

We would ask that they grant the variance and
certainly would entertain any questions from the board
or the public at this time.

MR. TAYLOR: My only question is to Madison or
Mr. Duty.

Is it an actual traffic violation if the curb
stays to back the trailer in there? Is that
considered a traffic violation?

MR. DUTY: I looked at the motor vehicle
regulations and there is no specific regulation saying
that you cannot back in or off property. It does say
that you must operate your vehicle in a careful
manner. So that may at times require Mr. Leonard to
have another person get out and spot, watch to move
that in. If somebody else knows of one, I don't.
That's what I could find.

CHAIRMAN: Mr. Noffsinger, do you have any
comments?

MR. NOFFSINGER: Mr. Chairman, the building
that Mr. Leonard has constructed here obviously has
been constructed, he constructed it on his own free
will. It's constructed fairly close to the roadway.
Probably right on the setback line. Staff appreciates
Mr. Leonard's business growth and we certainly want
businesses to grow. It's grown to a point to where
vehicles, these trailers are having to back on to or
from the public right-of-way which is a use that is
not allowed by the zoning ordinance. It specifically
states that maneuvering of these vehicles is to be
done on the property where the use is and not in the
public right-of-way. This board does not have the
authority to grant or allow a use that is not already
allowed by the zoning ordinance. What you in my mind
would be doing if you grant this variance is
encouraging the backing of vehicles onto or from the
public right-of-way. That is something Staff would
not recommend that you do. It's certainly an unsafe
time as is being done today. It's still going to
be an unsafe situation in terms of backing vehicles
onto and from a public right-of-way, but at this point
this board has no involvement in terms of encouraging
it, unless you approve the variance.

Now, the businesses that were mentioned here
tonight, you know, several of them have existed for
many, many years and they've operated with backing
onto public right-of-way.

The zoning ordinance can't deal with those,
but what we try to do is deal with it with new
construction. Clearly we have new construction on
this facility or on this site that probably is in
excess of the existing building that was on the site.
The new building quite frankly has created a maneuvering problem.

Staff would not recommend that you approve this variance and encourage the illegal activity of backing to and from the public right-of-way.

CHAIRMAN: Any board members have any further questions of Mr. Leonard or his counsel?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. DYSINGER: Mr. Chairman, I move that we find that granting the variance will adversely affect the public safety or welfare; it will cause a hazard or nuisance to the public; and it clearly will allow an unreasonable circumvention of the requirements of the zoning regulation. Move for denial.

CHAIRMAN: We have a motion. Do I hear a second?

(NO RESPONSE)

CHAIRMAN: Do I hear a second?

(NO RESPONSE)

CHAIRMAN: For lack of a second, chair is ready for another motion.

MR. TAYLOR: Mr. Chairman, I move to approve the variance. I do not feel that it will adversely affect the public safety or welfare as the condition...
exist now; it will not alter the essential character
of the general vicinity; it will not cause a hazard or
nuisance to the public.

CHAIRMAN: We have a motion. Do I hear a
second?

(NO RESPONSE)

CHAIRMAN: Waiting for a second.

(NO RESPONSE)

CHAIRMAN: Motion dies for lack of a second.

Where are we?

MR. SILVERT: I might add that on this motion
perhaps what the board members are waiting for is the
question of why you believe it won't adversely affect
the public safety. Why you believe it won't cause a
hazard or nuisance to the public. I would just
caution board members to make sure you back up your
findings with facts that we've heard tonight or
previously.

MR. TAYLOR: I will move to approve the
variance based on the findings of fact that it will
not adversely affect the public health, safety or
welfare, since it is the vicinity of the area I'm
familiar with and the operations that happen along
that street and how they exist right now. I believe
that the current conditions would make it more of a
hazard than if it was approved making it less of a hazard to the public welfare and safety.

I do not feel it will alter the essential character of the general vicinity. All the businesses up and down that street, as I said, I'm very familiar with and are like that.

I do not think that it will cause a hazard or nuisance to the public. In that vicinity the public is used to that traffic and that traffic is, I mean that type of driving is very consistent up and down that street.

CHAIRMAN: We have a motion. Do I hear a second on it?

MR. PANTLE: Second.

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

MR. DYSINGER: I would just say that if you're going to do something unsafe, doing it quicker is not necessarily the way to go. Say slow it down a little bit. That's a comment from me, Mr. Chairman.

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

(BOARD MEMBERS MARTY WARREN, CLAY TAYLOR, RUTH ANN MASON AND C.A. PANTLE RESPONDED AYE.)

CHAIRMAN: All opposed.
(BOARD MEMBER SEAN DYSINGER RESPONDED NAY.)

CHAIRMAN: Motion carries four to one.

ITEM 7

38 Stone Creek Park, zoned R-1A
Consider a Variance to reduce the required building setback from the centerline of Old Hartford Road from 75' to 47' for the purpose of building a 26' x 28' pool house, and to increase the height of a fence in a rear-street yard along Old Hartford Road from 3' to 6'.
Reference: Zoning Ordinance, Article 8, Section 8.5.5(c) and Article 3, Section 3-7(g)(2)
Applicant: Patrick and Suzanne Padgett

MR. WILLIAMS: Staff finds that there are no special circumstances with regard to the location of a pool house. They do consider some special circumstances with regards to the fence. I'll address the pool house first.

The applicant's property is located in Stone Creek and has a rear yard along Old Hartford Road. Old Hartford Road is classified as a minor arterial road at this location with prescribed building setbacks along Old Hartford Road of 75' from the centerline and a required roadway buffer of 40' from the centerline. Granting this variance would place the proposed building approximately 7' outside the roadway buffer. The long range transportation plan includes a reconstruction project on this portion of Old Hartford Road. The proposed future reconstruction
The project would widen the roadway to two 12-foot lanes with turning lanes where needed within the existing right-of-way.

There is no evidence in the general vicinity of encroachments into the prescribed building setback along Old Hartford Road. The intentional design of the neighborhood includes large-open lots. There is sufficient room on the property to locate a pool house without encroaching into the building setback along Old Hartford Road. Granting of this variance will allow a setback encroachment that is inconsistent with the property in the general vicinity. Therefore, it may alter the essential character of the neighborhood.

I will note that I've been out to the property and where I thought there were trees before, used to be at the rear of the property, many of those have been cleared out in preparation for this building. From the overhead picture I knew it would be close, but driving by this site, actually that building is going to be a lot closer to the road than I would have first thought. Visually it's going to -- you will see it clearly from the road.

Now, with regards to the fence in the rear of the property along Old Hartford Road.

The applicants are requesting a variance for a
6' fence in a rear-street yard. The street yard puts a requirement or a limitation on the height of that fence as a front yard of 3 feet.

So they're asking to do so in order to include a swimming pool because the Kentucky Building Code requires a 4 foot fence around swimming pools. They would like it to be a 6 foot fence for esthetics and whatever reasons that they desire.

The fence itself is already constructed of cast iron bars with masonry columns. The zoning ordinance limits the height of the fence to 3 feet. They're asking for this increase. The OMBA has approved several fence variances up to six feet in rear street-yards in the past. Many have come before you. That is available for you to consider. Staff recognizes a special circumstance there.

With regards to a hardship the Staff does not find there would be a hardship with regards to a pool house, but would find there to be a hardship if you don't grant some variance to the fence.

With regards to the pool house there's sufficient room on the property to locate the pool house without encroaching in the building setback.

Granting this variance is unnecessary and thus would be an unreasonable circumvention of the zoning
ordinance. With the widening project proposed it
would place traffic even closer to the building than
you would find now when driving along Old Hartford.

With regards to increasing the height of the
fence, in order for them to place a pool they must
have at least a four foot fence. So denying the
variance entirely would not allow them to place the
swimming pool. So a minimum of a four foot variance
is required for a swimming pool. The applicants have
asked for six.

The applicants are asking for a relief for the
fence that they've already built. Yes, they've
already done that. The proposed pool house has not
been built. Their actions with regard to the fence
are assumed to not be willful in violation.

Findings: Granting of the pool house variance
or the fence will not adversely affect the public
health, safety or welfare. Granting of the pool house
variance may alter the essential character of the
general vicinity because the visibility and the
closeness of the building to the road. With regards
to the fence Staff does not find that it would alter
the character excessively. Neither will cause a
hazard or a nuisance to the public. Granting the pool
house will require an unreasonable circumvention of
the zoning ordinance. Granting the fence variance will not be an unreasonable circumvention in light of other variances that have been granted.

Therefore the Staff recommends the denying of the granting of the pool house variance, the setback reduction from Old Hartford Road, and to approve an increase in the height of the fence in the rear yard from three to six feet for this property.

I would like to enter the Staff Report into the record as Exhibit F.

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

MR. TAYLOR: The future widening of Old Hartford Road, would that be moved into the building?

MR. WILLIAMS: No. It is within the existing roadway right-of-way. The pool house will be seven feet from that right-of-way. So the closer they widen it could at some point be seven feet from the road.

MS. MASON: How far will the fence be from that then?

MR. WILLIAMS: It would be right on their property line which will be the right-of-way. I do not know exactly where the boundary of that road will be.

MS. MASON: But the fence will not --
MR. WILLIAMS: The fence will not be in the roadway, no. It's on the property. Presume to be on the property I should say.

CHAIRMAN: Thank you, Mr. Williams.

Anyone here would like to speak in opposition or have any questions or concerns about this item?

MR. CARROLL: Tom Carroll.

CHAIRMAN: You represent the applicant?

MR. CARROLL: I'm Tom Carroll for Mr. and Mrs. Padgett. I didn't know that was going to happen what he just said.

As you see the plat that we presented, the proposed building would be 22 feet from the property line. There is no outlet on the back, in or out on Old Hartford Road. He's already I think recommended the fence. The reason we need that we didn't realize that that was facing on the road. They have two streets that this lot is facing on.

This highway that he's talking about, as far as future right-of-way, I had no idea about that. The building itself will not in any way encroach upon any future expansion of Old Hartford Road, and I think Zack said that.

The proposed building line that we're talking about would be 22 feet from the property line as is
shown on the plat. I guess I'm just amazed that there
would be a statement that this would be an improper
use of the property because of the 50 foot building
setback line that was initiated from the original deed
of dedication. That's an awful big setback line for a
rear lot. This is the rear lot, but it does face on
Old Hartford Road. It just so happens that the
original developers of this back in 1957 chose to put
50 foot setback line there rather than a normal 25
setback line. All I can do is ask you to approve it.
I see no reason to deny it. I really don't see what
the statement meant that he just said. That it would
be an improper use of this property. It's very simple
to think about it and look at it. I would ask that
you please approve it. There's no opposition to it.
There's no one here opposing it. No one has called me
and there's no adjoining property owners in this. I
don't understand why that it would be denied with this
small amount of variance that we're asking for.

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

(NO RESPONSE)

CHAIRMAN: Mr. Noffsinger.

MR. NOFFSINGER: Mr. Chairman, I do need to
state for the record that the prescribed setback along
Old Hartford Road is 75 feet from the center line prescribed by ordinance. That is the setback line that's applied to all properties along that classification of Old Hartford Road. So it wasn't a setback that was put on by the developer.

MR. CARROLL: You're right.

MR. NOFFSINGER: It's prescribed by the zoning ordinance.

MR. CARROLL: You're right. I'm sorry about that. It is 75 feet. It's 75 and 50 feet from the property line. It's actually 50 feet from the property line, which you can see from the usage of the property that there's a great restriction of the use of this property to start with. That they needed to build the pool house on that location other than down at the end of the pool which would be an improper location of the pool house for the use of the property.

The fence I think is going to be okay from what I'm hearing here, but that's something that was contractual problem that the owner didn't know about because of facing on Old Hartford Road.

CHAIRMAN: Mr. Williams, you have any comments on that?

MR. WILLIAMS: I would just like to add or
remind the board that when viewing the area there were
found to be no other buildings encroached upon that
building setback of 75 feet from the center line.

CHAIRMAN: Board member have any questions of
Mr. William or Mr. Carroll?

MR. WARREN: I do.

Zack, it's hard to tell from this drawing
where exactly the pool is going and where the pool
house -- it's hard for me to tell exactly. Did you
discuss with the -- there you go. Thank you.

So you've discussed with the applicants
different areas and different places they could put
the pool house or is this just the only place that it
could absolutely go?

MR. WILLIAMS: I have not had extended
discussion with the applicants. I'm just stating that
they have a lot of property and width. They could
relocate that pool house to one side of the pool as
opposed to behind it. It's not diagramed on there
where the pool intends to be. I'm just arguing they
could use the rear of their property in such a way
that they can conform to the building setback.

MR. CARROLL: The pool would be between the
proposed pool house and the concrete that you show
which is right there at the rear of the house. So you
have concrete leaving out from the rear of the house and the garage out into the patio area. The pool would be from where you see "conc.," which is concrete area. From there the pool would be between there and the property line, the building line. Then you would have to put -- there would be no other place to put the pool house except down at the end of the property, quite a distance down at the end of the pool, which is down where it says "existing fence." There's really not enough room down there to put a pool house without moving the fence, having to move the fence. You're talking about putting the pool further down away from the house because you can't do it with the existing structures that are there and that have been there for many years because of the existing setback line, 50 foot existing setback line. This is really a much more proper use of the property and more esthetic and best for the use of the property and for the people who own the property than to have to put it to the left toward that existing fence and move the fence.

The pool is right in the area where you see 43.9 written on there and where in says "proposed one story brick pool house," where that's typed, that's where the pool is. That's the only place for the pool.

MR. PANTLE: Mr. Chairman, a question of Mr.
Noffsinger.

MR. NOFFSINGER: Yes, sir.

MR. PANTLE: When this Stone Creek planning plat was filed it showed all these setbacks in there?

MR. NOFFSINGER: Yes, sir.

MR. PANTLE: And every deed showed all these plat setbacks on it, correct?

MR. NOFFSINGER: Well, I hope that it did. I can't speak to that.

MR. PANTLE: But it is in a plat in the office?

MR. NOFFSINGER: Yes.

MR. CARROLL: Yes, it is.

MR. PANTLE: In other words, the gentleman that bought it, when he bought this property knew that this setback were there?

MR. CARROLL: Yes, sir.

MR. PANTLE: Now he's wanting to over-build the planning?

MR. CARROLL: I don't know what you mean by "over-build."

MR. PANTLE: He's going into the setback so he's over planning in the plan.

MR. CARROLL: This is not anything that's detrimental to the adjoining property owner, to a
front street ingress and egress or anything damaging or detrimental to anyone other than a variance use to build a small building for his pool. If you deny it, he doesn't get to use his property. If it's granted, then it's a better use of his property.

MR. PANTLE: But he knew about it before?

MR. CARROLL: Yes, sir.

MR. WARREN: But he could still build the pool. He just wouldn't have a pool house.

MR. CARROLL: Right.

MR. WARREN: I have a pool and I don't have a pool house.

MR. CARROLL: Right.

MR. WILLIAMS: Mr. Chairman, I just would like to remind the board that the granting of the variance would place this building seven feet from the roadway buffer. That's the plan expansion area of the roadway right now. The reason to have the building setback much further, 75 feet from the centerline, is in the future if our community expands and years down the road we pass to someone else, that they may have the option of buy up land and expand the roadway as necessary. That's the reason for the setback.

CHAIRMAN: Any board members have other questions for Mr. Carroll or Mr. Williams?
MS. MASON: You're saying that there's not any space to move the pool house over some?

MR. CARROLL: No. The only place they can move it is to the end of the pool which is towards the existing fence.

MS. MASON: But it's not actually showing the diameter or the particular pool.

MR. CARROLL: No. The pool is not drawn on there. That's the only place they can put the pool, is right in the area, the pool house and the back of the house.

If you deny it and they elect to build a pool house, then they will have to put it down to the end of the property, down at the end of the pool.

CHAIRMAN: Mr. Carroll, why couldn't they put the pool house behind the garage? The pool house is 28 by 30 and you have 43 feet there.

MR. CARROLL: The existing concrete and patio structure they could put it there if they chose to.

CHAIRMAN: Behind the garage?

MR. CARROLL: Behind the garage is where I'm talking about. Behind the garage would be down at the end of the pool. I see what you're saying. If you went right straight behind the garage, that would be at the end of the pool.
CHAIRMAN: Where are they proposing the pool now? Behind the walk area?

MR. CARROLL: Yes, behind the concrete area behind the house.

MS. MASON: Where it says, "proposed pool."

CHAIRMAN: Then why wouldn't you put the pool house behind the garage?

MR. CARROLL: That's the only place they could put it. They'll probably have to move the fence some more and build it right in that area.

CHAIRMAN: But they could put it there. There's plenty of room to put it there and be out of the setback.

MR. CARROLL: Yes, sir.

CHAIRMAN: Okay. Thank you.

Any board members have any additional questions?

(NO RESPONSE)

CHAIRMAN: Mr. Noffsinger?

(NO RESPONSE)

CHAIRMAN: Zack?

MR. WILLIAMS: That's all.

CHAIRMAN: Chair is ready for a motion.

MR. DYSINGER: Mr. Chairman, given the findings that the pool house will alter the essential
character of the general vicinity and allow an
unreasonable circumvention of the requirements of the
zoning regulations, I move that we deny that part of
this variance.

Further, I find that the six foot fence
provides for a safety concern and is in keeping with
precedence that we approve that portion of the
variance.

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

MR. WARREN: Second.

CHAIRMAN: We have a motion and a second.

Comments or 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 8

4439 Wilderness Trace, zoned R-1B (Postponed at July
3, 2008, meeting)
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. WILLIAMS: Staff finds that there are some
special circumstances with regards to this property
and application.

The subject property and adjacent properties
were developed as a part of the Hillcrest Oaks
subdivision in 1988. The subject property has a
platted 40 foot building setback from the property
line. However, the zoning regulations were revised in
May of 1996 increasing that setback to 75 feet from
the center of Fairview Drive or 45 feet from the
property line.

The applicants seek a variance that will allow
them to build to 30 feet from the property line.
Survey information provided by the applicant
determines that the site to the immediate east of the
subject property, which is 2309 Fairview Drive, has a
principal dwelling that is situated 32 feet from the
Fairview Drive right-of-way. The adjoining lot has a
platted setback of 30 feet. The lot immediately to
the west of the subject property across Wilderness
Trace, which is 4440 Wilderness Trace, also has
frontage on Fairview Drive and has a principal
dwelling situated 41 feet from the Fairview Drive
right-of-way and has a platted setback of 40 feet.

Both of the adjoining homes encroach into the
prescribed zoning ordinance setback for Fairview
Drive, a major arterial roadway. All three sites were platted prior to the prescribed setback of 75 feet from the street centerline. Because the adjoining homes encroach into the setback, approval of this variance would not alter the essential character of the neighborhood. The roadway buffer of 50 feet from the street centerline will not be broached and the ability for future widening remains viable. A site visit verified that the adjoining homes are located much nearer the road than the subject property dwelling.

The applicant has submitted survey evidence to show that the character of the neighborhood can be maintained with the granting of this variance. Because the lots predate the zoning ordinance requirements for the greater 75 foot setback, special circumstances exist that warrant consideration of this variance request. The granting of the variance will not allow an unreasonable circumvention of the zoning ordinance because other structures in the vicinity also predate the setback requirements and encroach into the prescribed setback. However, should the variance be granted, the applicant must submit a new minor subdivision of the lot reducing the platted setback from 40 feet to 30 feet.
Staff finds that strict application of the regulations would not deprive the applicant of the reasonable use of the land because the applicants are able to use the residence as originally built without expanding their garage. The variance request states basically that they just want to expand the size of their garage so it will not affect their use. The applicants have not yet taken any action to 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 a nuisance to the public; and will not allow an unreasonable circumvention of the requirements of the zoning regulations.

Therefore, Staff recommends approval with the submittal and approval of a minor subdivision plat to change the platted setback from 40 feet to 30 feet. I would like to enter the Staff Report into the record as Exhibit G.

CHAIRMAN: Anyone here representing the applicant?

MR. MASON: Yes.

CHAIRMAN: Anyone have any questions of the
applicant?

(NO RESPONSE)

CHAIRMAN: Would you like to do a presentation, sir?

MR. MASON: No.

MR. TAYLOR: My name is Sepptimous Taylor, II and I represent Mr. and Mrs. Mason. Mr. Mason is here today.

CHAIRMAN: Do any board member have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Do you have any comments you would like to make?

MR. MASON: Thank you.

CHAIRMAN: Chair is ready for a motion.

MS. MASON: Mr. Chairman, I would make a motion for approval. I will say I'm not kin to the applicant in any way.

It will not adversely affect the public health, safety or welfare; it will not alter the essential character of the general vicinity; it will not cause a hazard or nuisance to the public; and it will not allow an unreasonable circumvention of the requirements of the zoning regulations. I do put the condition on it that submittal and approval of a minor
subdivision plat to change the platted setback from 40
feet to 30 feet.

MR. DYNSINGER: 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.

I need one more motion.

MS. MASON: 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, 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 91 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 26th day of August, 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