The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, May 7, 2009, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

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CHAIRMAN:  Call the Owensboro Metropolitan Board of Adjustment to order. Welcome you this evening. We start our program with a prayer and then the pledge to allegiance. We ask you to join us.

(GINVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  Again, I want to welcome all of you here. If you have any comments or questions on any item, please come to the podium and state your name and be sworn in and we'll go from there.

With that the first item of business is the minutes of the last meeting on April 9th. They're filed in the office. I don't think there's any
corrections or anything.

MR. NOFFSINGER: No, sir.

CHAIRMAN: Entertain a motion to dispose of the item.

MS. DIXON: Move to approve.

MR. DYSINGER: Second.

CHAIRMAN: A motion has been made and a second. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

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CONDITIONAL USE PERMITS

ITEM 2

2525 French Street, zoned R-4DT
Consider request for a Conditional Use Permit in order to install a Class 2, 14 foot by 80 foot manufactured home in an R-4DT zone.
Reference: Zoning Ordinance, Article 8, Section 8.2A10B
Applicant: Harold Dennis; Jean Dennis

MR. SILVERT: State your name, please.

MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is currently zoned R-4DT Inner-City Residential. OMPC records indicate there have been no Zoning Map Amendments for the subject

LAND USES IN SURROUNDING AREA

All the surrounding property is zoned R-4DT and is occupied by single-family residences including several manufactured homes.

ZONING ORDINANCE REQUIREMENTS

The class-2 manufactured home site standards based on the requirements of the Zoning Ordinance are as follows:

1. A concrete or asphalt parking pad to accommodate two 9'x18' spaces is required;
2. A minimum 10'x10' deck or patio is required;
3. A concrete sidewalk is required, but may be waived along rural roads (without curbs);
4. The driveway apron shall not exceed 40 percent of the lot width;
5. The property is required to have at least
three trees;

6. The manufactured home shall be permanently installed on a permanent foundation. A poured concrete or masonry block skirting wall shall be constructed beneath and along the entire perimeter of the manufactured home;

7. All wheel, trailer-tongue and hitch assemblies shall be removed upon installation;

8. The manufactured home shall be permanently connected to an approved water and sewer system when available.

MS. EVANS: We would like to enter the Staff Report into the record as Exhibit A.

CHAIRMAN: Thank you.

Is there anyone in the audience wishing to speak in opposition to this item?

(NO RESPONSE)

CHAIRMAN: Is the applicant here?

APPLICANT REP: Yes.

CHAIRMAN: Are there any comments you would like to make?

APPLICANT REP: No.

CHAIRMAN: Staff have any comments to add?

MR. NOFFSINGER: No, sir. Just to make sure that the applicant is aware and state for the record
that they will be responsible for the installation of
the sidewalk along French Street.

CHAIRMAN: Board members have any comments or
questions?

MR. PEDLEY: I have a question.

Are there curbs on French Street?

MR. NOFFSINGER: Yes, I believe so.

MR. PEDLEY: There are curbs there?

MS. EVANS: Yes.

CHAIRMAN: Any other questions or comments
from the board?

(NO RESPONSE)

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

MR. DYSINGER: Mr. Chairman, given the
findings that the use is compatible with existing uses
in the neighborhood, and further granting the permit
will be in keeping with other actions taken on similar
applications in the immediate area. Move to grant the
Conditional Use Permit.

MR. WARREN: I'll second that.

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

MR. NOFFSINGER: No, sir.

CHAIRMAN: Any other questions or comments
from the board?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 3

2224 Herr Avenue, zoned R-4DT
Consider request for a Conditional Use Permit in order to install a class-2, 16 foot by 80 foot, manufactured home in an R-4DT zone.
Reference: Zoning Ordinance, Article 8, Section 8.2A10B
Applicant: Larry Griffith

ZONING HISTORY

The subject property is currently zoned R-4DT Inner-City Residential. OMPC records indicate there have been no Zoning Map Amendments for the subject property.

The applicant is asking for waiver of the sidewalk requirements due to the topography of the lot, the location of the water meter, as shown on the site plan, and the absence of curb/gutters in the area.

Upon inspection of the area we found it to be true that there are no curb/gutters in the area and the lot is dramatically sloped from the street edge in
the front toward the back of the lot.

There are two other manufactured homes in the area at 2211 Herr Avenue and 2232 Herr Avenue. There was a Conditional Use Permit approved in 1988 for 2232 Herr Avenue.

LAND USES IN SURROUNDING AREA

All the surrounding property is zoned R-4DT and is occupied by single-family residences including several manufactured homes.

ZONING ORDINANCE REQUIREMENTS

The class-2 manufactured home site standards based on the requirements of the Zoning Ordinance are as follows:

1. A concrete or asphalt parking pad to accommodate two 9'x18' spaces is required;
2. A minimum 10'x10' deck or patio is required;
3. A concrete sidewalk is required, but may be waived along rural roads (without curbs);
4. The driveway apron shall not exceed 40 percent of the lot width;
5. The property is required to have at least three trees;
6. The manufactured home shall be permanently installed on a permanent foundation. A poured
concrete or masonry block skirting wall shall be constructed beneath and along the entire perimeter of the manufactured home;

7. All wheel, trailer-tongue and hitch assemblies shall be removed upon installation;

8. The manufactured home shall be permanently connected to an approved water and sewer system when available.

MS. EVANS: We would like to enter the Staff Report into the record as Exhibit B.

CHAIRMAN: Thank you.

Is there anybody wishing to speak in opposition of this item?

(NO RESPONSE)

CHAIRMAN: Is the applicant here and do you have any comments you would like to add at this time?

(NO RESPONSE)

CHAIRMAN: Hearing none does the board have any comments or questions?

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

It's in the record that the other locations on the street don't have sidewalk either. My question is: Is this because they received waiver of this or they just didn't do it or they predate?
CHAIRMAN: Staff.

MR. NOFFSINGER: Mr. Dysinger, there's no curb or gutter on that street. Typically where you have a street with no curb and gutter you're not going to have a sidewalk. It's likely that a sidewalk was not an issue at that time.

We'll remind the applicant that although Staff recommends that this board waive requirement of the sidewalk, that the applicant will be required to pave either asphalt or concrete their driveway.

CHAIRMAN: Any other questions or comments from the board?

MR. WARREN: The applicant is aware of all the requirements?

CHAIRMAN: Is the applicant here this evening?

MR. GRIFFITH: Yes, I am.

CHAIRMAN: You understand the comments made?

MR. GRIFFITH: Yes, I do.

CHAIRMAN: Come forward and state your name, please.

MR. SILVERT: We need to swear you in, sir. Could you state your name, please.

MR. GRIFFITH: My name is Larry Griffith.

(LARRY GRIFFITH SWORN BY ATTORNEY.)

MR. GRIFFITH: One comment I would like to
There's an alley that circles around behind the property and ties into West First Street. That's the way that I enter the property. So the driveway would be going in from the rear. I already have concrete driveway there in the rear.

MR. NOFFSINGER: Mr. Griffith, that's important to know because you will be required to develop the site as per your site plan. The site plan I have shows a 10 by 40 foot parking area. Well, I guess it is off the alley. So you're fine. Usually the street is located south and the lot north, but I see. You're fine.

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board member have any other comments or questions?

(NO RESPONSE)

CHAIRMAN: Entertain a motion to dispose of the item.

MR. PEDLEY: Mr. Chairman, I make a motion for approval based on the findings that it is compatible with the existing neighborhood. It will not have an adverse influence on future development and the applicant shall meet zoning ordinance requirement 1
through 8, except Item 3. Sidewalks may be waived.

CHAIRMAN: Is there a second?

MR. DYSINGER: Second.

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

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board members have any other comments?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 4

7601 Iceland Road, zoned I-2
Consider request for a Conditional Use Permit in order to construct an additional grain bin at a barge loading/unloading facility in a floodway.

Reference: Zoning Ordinance, Article 8, Section 18, Section 8.2G5/28, 18-4(b)3, 18-5(b)4, 18-6(b)3
Applicant: DeBruce Grain; Kinder Morgan Bulk Terminal

ZONING HISTORY

The subject property is located west of US Highway 60 East adjacent to the Ohio River and is currently zoned I-2 Heavy Industrial. OMPC records indicate there have been no Zoning Map Amendments for the subject property.
OMPC records indicate that five similar Conditional Use Permits have been approved for the subject property; September 1998, December 2001, April 2003, June 2006 and October 2008.

All other permits as may be required by the Army Corps of Engineers or the Kentucky Division of Water must be obtained prior to the issuance of a conditional use permit as per Article 18-4(b)(3)(c).

Certification from a registered professional engineer must be provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge as required by Article 18-5(b)(4)(a) of the Zoning Ordinance. A Stream Construction Permit from the Division of Water, a letter from the Army Corps of Engineers and a letter of no impact from a registered professional engineer were all submitted with the application.

LAND USES IN SURROUNDING AREA

The property to the north is zoned A-R Rural Agriculture. The properties to the south and east are zoned I-2 Heavy Industrial. The property to the west is the Ohio River.

ZONING ORDINANCE REQUIREMENTS

1. Parking requirements - Heavy Industrial
uses, conditional - 1 space per every 2 employees on maximum shift (minimum 5) - total required 5 shown on approved Conditional Use Permit site plan dated October 2008.

2. Landscaping requirements - none

SPECIAL CONDITIONS

1. Approval of Minor Subdivision Plat creating a lot for the lease area.

MS. EVANS: We would like to enter the Staff Report into the record as Exhibit C.

CHAIRMAN: Thank you.

Is there anyone wishing to speak in opposition of this item?

(NO RESPONSE)

CHAIRMAN: Is the applicant here and do you have any comments you would like to add?

(NO RESPONSE)

CHAIRMAN: Staff have any comments to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board members have any questions or comments?

(NO RESPONSE)

CHAIRMAN: Entertain a motion to dispose of the item, please.

MS. MASON: Mr. Chairman, I move for approval
based on the findings that there has not been any
opposition to this application, there's been five
similar conditional use permits approved, it's
compatible to the land use in the area, and it is
subject to obtaining all the permits that were
mentioned earlier, and with the special condition that
the approval of the minor subdivision plat creating a
lot for lease area.

CHAIRMAN: Is there a second?

MR. PEDLEY: Second.

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

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board members have any other
comments or questions?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 5

2700 Rinaldo Road, zoned I-2
Consider a request for a Conditional Use Permit in
order to construct a 418'x222' offload and storage
facility for dry fertilizer and micro nutrients. Reference: Zoning Ordinance, Article 8, Section 8.2G4/27
Applicant: Miles Farm Supply, LLC; Owensboro Riverport Authority

MR. DYSINGER: Mr. Chairman, as in the past, I feel it necessary to state for the record that my wife does work for Miles Farm Supply; however, I feel I can hear the application and decide fairly.

CHAIRMAN: So stated for the record.
Go ahead.

ZONING HISTORY

The subject property is currently zoned I-2 Heavy Industrial. OMPC records indicate there have been no Zoning Map Amendments for the subject property.

OMPC records indicate that three similar Conditional Use Permits have been approved for the subject property in 1983, 1986 and July 2008. This is an amendment to the Conditional Use Permit approved in July 2008. The previous site plan showed parking and an oval drive to be paved in front of the building. The new site plan eliminates the paved oval drive but still shows the appropriate parking.

LAND USES IN SURROUNDING AREA

All the surrounding property is zoned I-2
Heavy Industrial and used for industrial purposes.

ZONING ORDINANCE REQUIREMENTS

1. Parking requirements - Heavy Industrial uses, conditional - 1 space per every 2 employees on maximum shift (minimum 5) - total required 5, total provided 5 with 1 handicapped.

2. Landscaping requirements - none.

MS. EVANS: We would like to enter the Staff Report into the record as Exhibit D.

CHAIRMAN: Thank you.

MR. NOFFSINGER: Mr. Chairman, I would like to add to that as a description, this is this coming back before you to eliminate some paving that was shown on the previous site plan. Keep in mind that this is the Owensboro Riverport Authority's property and they are exempt from meeting the requirements of the zoning ordinance which means they would not have to pave the site. The area that's not being paved proposed to be paved is already an existing gravel area which extends onto this property and other properties in the area. The applicant is proposing to make an improvement at the end of Rinaldo Road and will pave all the way to their scale system in an area where their employees and any customers might park. So it does come to you as a rehearing or as an amendment to their previously
approved conditional use permit, but given the fact
that the ownership of the land by a public facility,
as well as the existing situation, it does warrant an
additional review by this board.

CHAIRMAN: Thank you.

Again, anyone in there anyone in the audience
against this item?

(NO RESPONSE)

CHAIRMAN: Is the applicant here?

APPLICANT REP: Yes.

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

APPLICANT REP: No.

MR. SILVERT: Mr. Chairman, I'd also like to
ask if there's anyone that feels like their affected
by this request for the conditional use permit that
also has any objection to Mr. Dysinger hearing this as
he stated earlier, that his wife does work for Miles
Farms Supply? If they anyone has an objection to
that, if they would also bring that forward.

CHAIRMAN: Does anyone feel that he can't be
safe?

(NO RESPONSE)

CHAIRMAN: Hearing none then I'll entertain a
motion to dispose of the item, please.
MR. WARREN: Motion to approve the conditional use permit with the findings that there have already been three previously approved conditional use permits for the subject property. That this is an amendment to a previously approved conditional use permit. There is no opposition noted and all the parking requirements, etcetera, are being met. That it is in keeping with the general use of the vicinity.

CHAIRMAN: Is there a second?

MR. TAYLOR: Second.

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

MR. NOFFSINGER: No, sir.

CHAIRMAN: Any questions or comments from the board?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 6

1564 River Road, zoned I-2 Consider a request for a Conditional Use Permit in order to operate an automobile and truck parts storage and salvage business which includes the storage and dismantling of disabled vehicles and the recycling of
automobile and truck parts.
Reference: Zoning Ordinance, Article 8
Section 8.2G4/27
Applicant: N.T.N. Properties, LLC

ZONING HISTORY

The subject property is currently zoned I-2 Heavy Industrial. OMPC records indicate there was a Zoning Map Amendment application approved for the subject property in 1990 rezoning it from I-1 and A-U to I-2.

OMPC records indicate that two similar Conditional Use Permits have been approved for the subject property, July 1990 and December 2008.

There was a Variance application approved for the subject property at the January 2009 OMBA meeting eliminating the 8 foot solid fence screening required along the south and west property lines, eliminating the 10 foot landscape easement and perimeter trees required along the south and west property lines, and eliminating the 100-foot buffer required along the south and west property lines.

This is an amendment to the Conditional Use Permit approved in December 2008. The previous site plan proposed a 16'x20' building with parking. The new site plan proposes a 16'x30' building and a reconfiguration of the parking.
LAND USES IN SURROUNDING AREA

All the surrounding property is zoned I-2 Heavy Industrial and used for industrial purposes.

ZONING ORDINANCE REQUIREMENTS

1. Parking requirements - Heavy Industrial uses, conditional - 1 space per every 2 employees on maximum shift (minimum 5) - total required 5, total provided 7 with one handicapped.

2. Landscaping requirements - As required by the Variance application approved January 2009.

MS. EVANS: We would like to enter the Staff Report into the record as Exhibit E.

CHAIRMAN: Thank you.

Is there anyone wishing to speak in opposition of this item?

(NO RESPONSE)

CHAIRMAN: Is the applicant here and have any comments you would like to add?

MR. KAMUF: We're here, Mr. Chairman, to answer any question that you have. This was approved in December. We just want to expand the building and change the site plan. It's that simple.

CHAIRMAN: State your name.

MR. KAMUF: Charles Kamuf.

MR. SILVERT: That's fine, Mr. Kamuf. Again,
I always recognize your oath as an attorney.

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

(NO RESPONSE)

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

MR. TAYLOR: Mr. Chairman, move to approve the conditional use permit. There is no opposition. It is compatible with the previous site plan that was approved with the conditional use permit. It's just kind of some reconfiguring. I don't feel that it will affect the use of the land. It is also generally permitted in that zone.

MR. DYSINGER: Second.

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

MR. NOFFSINGER: No, sir.

CHAIRMAN: Any questions or comments from the board?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.
ITEM 7

1134 Yelvington-Knottsville Road
Consider request for a Conditional Use Permit in order
to install a class-2, 16 foot by 70 foot, manufactured
home in an R-1A zone.
Reference: Zoning Ordinance, Article 8,
Section 8.2A10B
Applicant: Ricky T. & Margie S. Duncan

ZONING HISTORY

The subject property is currently zoned R-1A
Single-Family Residential. OMPC records indicate
there have been no Zoning Map Amendments for the
subject property.

There was a Minor Subdivision Plat approved
for the subject property in December 2008.

The applicant is asking for waiver of the
sidewalk requirement, the paved driveway requirement,
and the paved parking requirement. The applicants
states the subject property is in a rural area with a
ditch in front of the property joining a county road.
Also none of the surrounding properties have
sidewalks, paved driveways or paved parking areas.

Upon inspection of the subject property we
found there is an existing garage on the subject
property that was an accessory to the previous
manufactured home and an existing setup for
manufactured home placement. There is an existing
septic tank system on the property. The garage is on
a concrete pad and meets the requirements of the paved parking area. There are no sidewalks or paved residential driveways in the area and there is a ditch running between the subject property and the road that would make it difficult to install a sidewalk.

LAND USES IN SURROUNDING AREA

The property to the north is zoned A-U and is occupied with single-family residences. The properties to the east, south and west are zoned R-1A and are occupied by the Yelvington Fire Department to the east and single-family residences to the south and west.

ZONING ORDINANCE REQUIREMENTS

The class-2 manufactured home site standards based on the requirements of the Zoning Ordinance are as follows:

1. A concrete or asphalt parking pad to accommodate two 9'x18' spaces is required;

2. A minimum 10'x10' deck or patio is required;

3. A concrete sidewalk is required, but may be waived along rural roads (without curbs);

4. The driveway apron shall not exceed 40 percent of the lot width;

5. The property is required to have at least
three trees;

6. The manufactured home shall be permanently installed on a permanent foundation. A poured concrete or masonry block skirting wall shall be constructed beneath and along the entire perimeter of the manufactured home;

7. All wheel, trailer-tongue and hitch assemblies shall be removed upon installation;

8. The manufactured home shall be permanently connected to an approved water and sewer system when available.

MS. EVANS: We would like to enter the Staff Report into the record as Exhibit F.

CHAIRMAN: Thank you.

Is there anyone wishing to speak in opposition of this item?

(NO RESPONSE)

CHAIRMAN: Is the applicant here and would like to make any comments or questions?

APPLICANT REP: No. She covered it.

CHAIRMAN: Staff have any questions or comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board have any questions of the applicant?
CHAIRMAN: Entertain a motion to dispose of the item.

MR. PEDLEY: Mr. Chairman, I make a motion to approve based on the findings it is in compatible use in rural areas. It will not have an adverse influence on the future development. The applicant shall meet the zoning ordinance requirements 1 through 8, except Item 1 and Item 3, paved driveway, parking and sidewalks may be waived.

MR. TAYLOR: Second.

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

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board members have any questions or comments?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 8

4815, 50001 US Highway 60 East, zoned I-2
Consider a request for a Conditional Use Permit in order to construct and operate an elevated pipeline
extending from an existing barge unloading facility to a proposed tank farm facility in a floodway.

Reference: Zoning Ordinance, Article 8, Section 8.2G4/27, 18-4(b)3, 18-5(b)4, 18-6(b)3

Applicant: Yager Materials

ZONING HISTORY

The subject property is currently zoned I-2 Heavy Industrial. OMPC records indicate there have been no Zoning Map Amendments on the subject property.

There was a Conditional Use Permit approved at the March 2009 meeting to construct and operate a storage and handling facility for liquid petroleum products, by-products and various derivative products, and other liquid materials at 4815 US Highway 60 East.

A condition of that Conditional Use Permit was to apply for an additional Conditional Use Permit to build a pipeline connecting that facility to the barge unloading facility in the floodway.

All other permits as may be required by the Army Corps of Engineers or the Kentucky Division of Water must be obtained prior to the issuance of a conditional use permit as per Article 18-4(b)(3)(c).

Certification from a registered professional engineer must be provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge as required by Article 18-5(b)(4)(a) of the Zoning
Ordinance. Also in accordance with the Kentucky Environmental and Public Protection Cabinet, Office of Housing, Buildings, and Construction a permit for above ground storage facilities including associated piping will need to be obtained. A Stream Construction Permit from the Division of Water, a letter from the Army Corps of Engineers, a letter of no impact from a registered professional engineer, and a permit from the Kentucky Environmental and Public Protection Cabinet, Office of Housing, Buildings, and Construction were all submitted with the application.

LAND USES IN SURROUNDING AREA

The property to the north, south and west are zoned I-2 Heavy Industrial with existing industrial activity. The property to the east is the Ohio River.

ZONING ORDINANCE REQUIREMENTS

1. Parking requirements - Heavy industrial uses, conditional - 1 for every 2 employees on maximum shift (minimum 5) - Requirements met on previous application approved March 2009.

2. Landscaping requirements - none.

MS. EVANS: We would like to enter the Staff Report into the record as Exhibit G.

CHAIRMAN: Thank you.

Is there anyone wishing to speak in opposition
on this?

(NO RESPONSE)

CHAIRMAN: Is the applicant here and have any comments he would like to add?

MR. WILSON: No comments. We're here to answer any questions.

CHAIRMAN: Thank you.

Any further other comments from the Staff?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Boards members have any questions?

(NO RESPONSE)

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

MS. MASON: Mr. Chairman, I move for approval based on the findings that we've heard no opposition on this application. It is compatible land use in an I-2 Heavy Industrial zone and it is a logical expansion of the previous conditional use permit. That all permits be gotten before it is done and also the zoning ordinance requirements be met.

MR. DYSINGER: Second.

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

MR. NOFFSINGER: No, sir.

CHAIRMAN: Any other comments or questions
from the board?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

VARIANCES

ITEM 9

10015 Main Street, zoned P-1
Consider a request for a Variance in order to reduce the front building setback line from 75' from the centerline of the road to 63' from the centerline of the road.
Reference: Zoning Ordinance, Article 8, Section 8.5.12(c)
Applicant: Joe & Dianna Birkhead

MS. EVANS: The applicant proposes to build a medical office building on the subject property with parking and landscaping as required by the zoning ordinance. The subject property is located in the City of Whitesville within one block of the Central Business District where many structures are built right up to the property line. The topography of the subject property and its shallow shape and depth reduces the ability to develop the lot meeting setbacks and providing required parking.
The request will not be an unreasonable circumvention of the Zoning Ordinance or alter the essential character of the general vicinity because the subject property is adjoining the Central Business District across Highway 54 and Highway 764 where structures are built to the property line. Locating the proposed building close to the street would be in keeping with the character of the adjoining Central Business District immediately to the east and south. It will not adversely affect the public health, safety or welfare, instead it will benefit the health and welfare because the applicant proposes to build a medical office building to serve the citizens of Whitesville.

FINDINGS OF FACT

1. It will not adversely affect the public health, safety or welfare because the proposed location of the building will not block site visibility at the intersection of Main Street and Highway 764.

2. It will not alter the essential character of the general vicinity because many structures in the area are built to the property line.

3. It will not cause a hazard or a nuisance to the public because the building is positioned on
the property to allow appropriate site distance at the
intersection and should not block light and air on
adjacent residential property.

4. It will not allow an unreasonable
circumvention of the requirements of the zoning
regulations because it is located next to the Central
Business District in Whitesville.

STAFF RECOMMENDATION

Conditions:

1. One tree every 40 feet of the vehicular
use area boundary and a three foot high continuous
element along the north and south sides of the
vehicular use area adjoining residential property and
the public right-of-way.

MS. EVANS: We would like to enter the Staff
Report into the record as Exhibit H.

CHAIRMAN: Thank you.

Is anyone wishing to speak in opposition on
this item?

(NO RESPONSE)

CHAIRMAN: Is the applicant here and have any
comments you'd like to add?

(NO RESPONSE)

CHAIRMAN: You understand the conditions that
were stated by the Staff and accept them?
APPLICANT REP: Yes, sir.

CHAIRMAN: Any other comments from the Staff?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board members have any comments or questions?

(NO RESPONSE)

CHAIRMAN: Entertain a motion to dispose of the item.

MR. TAYLOR: Mr. Chairman, move to grant the Variance. It's been found that there are special circumstances of this situation simply noted in the Staff Report stating that the shallow shape and depth of the lot reduces the ability to develop the lot meeting setback and providing required parking, and locating the proposed building close to the street will be in keeping with character of the adjoining Central Business District, and in doing this it will not adversely affect the public health, safety or welfare because the proposed location of the building will not block site visibility; it will not alter the essential character of the general vicinity; and it will not cause a hazard or a nuisance to the public; and it will not allow an unreasonable circumvention of the requirements of the zoning regulations. The one condition that we do put on this variance is that one
tree every 40 feet of the vehicular use area boundary
and a three foot high continuous element on the north
and south sides of the vehicular use area adjoining
residential property and the public right-of-way.

CHAIRMAN: Is there a second?

MR. DYSINGER: Second.

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

MR. NOFFSINGER: No, sir.

CHAIRMAN: Any other comments from the board?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Notion carries.

Next item, please.

ITEM 10

1004 Penninsula Court, zoned R-1A
Consider a request for a Variance in order to reduce
the front building setback line from 25' from the
front property line to 17.72' from the front property
line.
Reference: Zoning Ordinance, Article 8,
Section 8.5.5(c)
Applicant: Randall S. & Sherry E. Hayden

MS. EVANS: The applicant proposes to build a
pool house on the subject property. A building permit
was issued for the construction of this pool house on
March 30, 2009, with a site plan showing the proposed building meeting the required front setback. However, upon field inspection it was found that the building encroached upon the front building setback.

Granting this Variance would not alter the essential character of the general vicinity as it appears there are other cases of encroachments into the building setback line in the area at 1001, 1005, 1011, 1025 and 1066 Penninsula Court. Although OMPC records indicate none of the before mentioned were issued Variances for those encroachments likely because they predate the Zoning Ordinance. There is a 70 foot watershed/drainage easement for the Kentucky Department of Fish and Wildlife Resources located along the east side of the subject property. A letter from the Fisheries Division of the Kentucky Department of Fish and Wildlife Resources states that construction of the pool was allowed within that 70 foot easement as long as the structure is located 30' from the waters edge. A similar letter has been requested for the construction of the pool house.

FINDINGS OF FACT

1. It will not adversely affect the public health, safety or welfare because the proposed building will not impact the traffic visibility and is
appropriately separated from other buildings in the area to provide adequate fire protection.

2. It will not alter the essential character of the general vicinity because there are other similar encroachments in the area.

3. It will not cause a hazard or a nuisance to the public because there is no evidence of detriment to the public and the building is positioned providing adequate fire separation from neighboring structures.

4. It will not allow an unreasonable circumvention of the requirements of the zoning regulations because the topography of the lot limits the building area.

STAFF RECOMMENDATION

Condition

1. Pool house shall be located a minimum of 30' from the waters edge as stated in the letter from the Fisheries Division.

MS. EVANS: We would like to enter the Staff Report into the record as Exhibit I.

CHAIRMAN: Thank you.

Is anyone wishing to speak in opposition of this item?

(NO RESPONSE)
CHAIRMAN: Is the applicant here and do you have any comments you want to state?

APPLICANT REP: No.

CHAIRMAN: You understand the conditions the Staff has made?

APPLICANT REP: Yes.

CHAIRMAN: Any other questions or comments from the Staff?

(NO RESPONSE)

CHAIRMAN: Board members have any comments or questions?

(NO RESPONSE)

CHAIRMAN: Entertain a motion to dispose of the item.

MR. TAYLOR: Mr. Chairman, move to grant the Variance. There are special circumstances involved here. There is very limited space where the pool house could be constructed. There are also other cases of encroachment in the area, so it won't alter the essential nature of the neighborhood. They have met all requirements specifically from the Kentucky Department of Fish and Wildlife Resources. It will not adversely affect the public health, safety or welfare; it will not alter the essential character of the general vicinity; it won't cause a hazard or a
nuisance to the public; and it will not allow an
unreasonable circumvention of the requirements. The
only condition that I stipulate is that the pool house
shall not be located within 30 feet from the water
edge.

MR. PEDLEY: Second.

CHAIRMAN: A motion has made and a second.

Any other comments from the Staff?

(NO RESPONSE)

CHAIRMAN: Any comments or questions from the
board?

(NO RESPONSE).

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

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ADMINISTRATIVE APPEAL

ITEM 11

927 Old Hartford Road, zoned B-4
Consider a request for an Administrative Appeal
concerning the proposal to change from one
non-conforming use to another non-conforming use with
regards to landscaping along Old Hartford Road and
Hathaway Street and to continue to allow access to Old
Hartford Road
Reference: Zoning Ordinance, Article 4, 7,
Section 4.53, 7.34
Appellant: Delbert J. Glenn Funeral
ZONING HISTORY

The subject property is currently zoned B-4 General Business. OMPC records indicate there have been no Zoning Map Amendment applications approved for the subject property.

To the Staff's knowledge the subject property has not been used for commercial purposes since 1999. According to the applicant Delbert J. Glenn Funeral Home has owned the subject property since 1999 during which time the building has been used primarily for storage of goods and antiques for the funeral home located across the street, which is not a principally permitted use in this zone. Storage as a principal use requires an I-1 Light Industrial zoning classification and if used as such since 1999, the use of the property has been in violation of the current zoning ordinance requirement since that time.

Accessory retail storage would be a permitted use in the B-4 General Business zone; however, there is not a principal use for the storage to be incidental, accessory or ancillary to - the business that utilizes the storage is located on a different lot. Furniture re-sale, another use listed by the applicant would be a permitted use within this zone, but should have required conformance to the parking supply, landscape
requirements and building codes in accordance with Section 3.3 of the Owensboro Metropolitan Zoning Ordinance, which states:

"3-3 CONVERSION OF BUILDINGS. The conversion of any building or buildings, either residential or nonresidential, so as to accommodate an increased number of dwelling units or families or to accommodate another permitted use shall be permitted only within a zone in which a new building for similar occupancy would be permitted under this Zoning Ordinance. The resulting occupancy shall comply with the requirements governing new construction in such zone with respect to building codes, parking supply and landscape buffers. If the conversion involves no expansion of principal building volume or no conversion of an accessory building into a principal building, the resulting occupancy shall be exempt from the following requirements: Minimum lot size, maximum floor area, lot coverage, dimensions of yards and minimum open space. Any conversion that involves changes other than those stated above shall be subject to all site requirements stated above, and such further requirements as may be specified hereinafter applying to such zone."

It is the Staff's opinion that the
non-conforming status relative to the access and landscaping on these premises has been lost since there has not been commercial activity on the site for more than 18 months and the Staff was under the impression that the property was vacant. In fact, according to the applicant, the property has been used in violation of the current ordinance since the assertion that the property has been used for storage since 1999 provides evidence that the use has been in violation of the zoning ordinance for the past ten years. Records in the OMPC office show no approvals for the occupancy of this building for storage purposes. A non-conforming use or use and premises in combination lose that status if discontinued for a period of 18 months and thereafter must conform to the requirements of the current zoning ordinance and the access management policies. As stated previously, conversion of existing buildings is allowed for uses permitted within that zone if parking supply, building codes and landscaping buffers are addressed in conformance with the zoning ordinance.

Although the access to Old Hartford Road may predate the community's access standards, this does not legalize the access point of this property for a permitted use on the property. As on any reuse of a
property, the access standards are addressed as a
method to achieve conformity to the extent possible
with the current standards in order to provide safer
access points for the transportation system of the
community. In this case, Old Hartford Road is
classified as a minor arterial street and the Street
Access Limits Intersection and Driveway Spacing
Standards allow for one driveway every 500 feet on
this type of street. The applicant has proposed to
reduce the existing access to a 20 foot one way access
to the subject property. The resulting access point
would be located only approximately 12 feet from the
right-of-way line of Hathaway Street. The existing
standards require a minimum of 50 feet from a street
intersection for a commercial access, even on less
traveled local roads. This access point should be
closed, and if access from Old Hartford Road is
desired, the property could be accessed from the
adjoining property access at 921 Old Hartford Road,
which is also owned by the applicant and already has a
paved drive to the subject property. With the closure
of the access point, a three foot landscape element
with one tree per 40 linear feet should be installed
along the Old Hartford Road frontage and landscaping
should also be provided between the vehicular use area
and Hathaway Street. The property can be utilized for
the permitted use as proposed meeting the parking
requirements, with the access closed and function
properly. There is no compelling reason to allow the
access to remain as it is not in compliance with the
standards and could pose a safety hazard to the
motoring public given its near proximity to the street
intersection. Even absent of the ability to provide
access from the adjoining property under same
ownership, the Staff would still recommend that the
Old Hartford Road access point be closed and access be
provided from the lower classification street,
Hathaway Street. The access point to the funeral home
is directly in line with Hathaway Street. The funeral
home intends to operate this comfort house for the
families that it serves. The traffic movement from
the funeral home to the site should be encouraged to
cross from the existing access point to Hathaway
Street and then access the site from Hathaway, instead
of encouraging a left turning movement onto Old
Hartford Road to access the site. The standards were
developed based on sound practices to reduce potential
conflict points, have been applied to numerous
properties in the community for both new and existing
proposals and are a sound and basic planning tool that
should be implemented to provide safe and accessible transportation systems within the community.

With the closure of the access point on Old Hartford Road and installation of the landscaping, the subject property would meet the requirements of the ordinance. The provision in the zoning ordinance for the conversion of existing building should be applied and the Staff recommends that the OMBA find, based on the information provided by the applicant, that the non-conforming status has been lost and the approval of a permitted use as proposed within this existing building must conform to the provisions of Section 3.3 of the Zoning Ordinance and that the OMBA does not have the discretion to alter that provision.

Additionally, the Staff recommends that the existing access to the subject property be closed for compliance with the access standards and for the protection of the public safety. The site can be developed for the proposed use and meet the requirements of the zoning ordinance. There is no topographical hardship or special circumstance that is different from other properties within the same zone and no basis for allowing the site to waive standard development requirements applicable to other lots within the same zone.
LAND USES IN SURROUNDING AREA

All property surrounding the subject property is zoned B-4 General Business and is owned by Delbert J. Glenn Funeral Home. The property to the north is vacant. The property to the west appears to be a vacant building. The property to the east, across Hathaway Street, appears to be a vacant building, and the property to the south, across Old Hartford Road, is Glenn Funeral Home.

AUTHORITY FOR CHANGE IN NON-CONFORMING USE

Under Section 4.53 of the Zoning Ordinance the OMBA is given the authority to approve a change in any non-conforming use of a structure, or structure and premises if the proposed use is in the same or more restrictive classification. Section 7.34 of the Zoning Ordinance requires that in approving an appeal concerning non-conforming structures and uses, the Board must additionally find that the change would not increase the non-conformity in scope or area of operation, that it would not have an adverse effect on existing or future development of subject property or adjoining area. The Board may require appropriate conditions to ensure the health, safety and welfare of the community and to protect the essential character of the surrounding area. The Board would have to find
that the current property is non-conforming in order to have the authority to change the use to another non-conforming use. As stated, the proposed use is a permitted use in the B-4 zone and the Staff is of the opinion that the non-conforming status does not apply.

A motion to approve would allow the premises to be used as proposed without installing the required landscaping and allowing the applicant to continue to use both the access on Old Hartford Road and the access on Hathaway Street and should include findings that the use of the premises is more restrictive than the previous one, that the use is a continuance of a non-conformity and is not increased in scope or area, and that the use would not have an adverse effect on existing or future development. The Board may impose conditions as recommended to ensure protection of the character of the surrounding area. The current use of the property, as stated by the applicant, is a storage use, which is not a principally permitted use in the B-4 zone and would be in violation of the current zoning ordinance. The proposed use of the property is a principally permitted use in the B-4 zoning district, and therefore the conversion of the existing building for a permitted use should comply with Section 3.3 of the zoning ordinance.
A motion to deny would prevent the building and premises from being used as proposed and should include findings demonstrating that the use has not maintained its non-conforming status, that the permitted use in an existing building is regulated under Section 3.3 Conversion of Buildings, that the access closure is appropriate to comply with the community's standards and for public safety, and that the requirements of the zoning ordinance are applicable to this site. If the board agrees with the recommendations of the Staff that the property has lost any non-conforming status it may have had years ago, then the OMBA does not have the authority to approve a change in a non-conforming use.

SPECIAL CONDITIONS

1. Access be limited to Hathaway Street and the existing access to Old Hartford Road be closed.

2. Required vehicular use area landscaping of a three (3) foot continuous element and one (1) tree every 40 feet be installed along the right-of-way of Old Hartford Road and Hathaway Street.

MS. EVANS: We would like to enter the Staff Report into the record as Exhibit J.

CHAIRMAN: Thank you.

Does the applicant have any comments about the
MR. KAMUF: Yes, sir, we do.

MR. SILVERT: State your name, please.

MR. KAMUF: Charles Kamuf.

I might point out that I represent Glenn Funeral Home. This lot is a single lot. It has been a lot that has been approved by Planning and Zoning in 1970. The lot has always, always had access from the Old Hartford Road and from Hathaway Street. This is an appeal basically, we're contesting the fact that if we use the property as it's been used for the last 30 or 40 years, that we do not have an access point on the Old Hartford Road.

There will be no changes or alterations to the building that I'll show you a photograph in just a few minutes. No changes or alterations from that building as it's been since 1970.

We have no objections. We've talked with the neighbors. There are two neighbors that had to be notified. They have no objection.

This certainly, as I'll explain to you, will have no affect, adverse affect on the neighborhood.

In other words, since I've been coming to these Planning and Zoning meetings, and also the Board of Adjustment, I've never heard anybody make such a big
to do about this issue that I'm going to explain to
you.

The use of the property, let's talk about the
use of the property. Glenn Funeral Home plans to use
this property as a comfort house. A comfort house is
no more than just an area across the street. The
property is across the street from Glenn Funeral Home.
They want to have a place there for people who can
meet with their family individually outside of the
funeral home just to talk to them, the family,
arrangements and also their problems. It's a lot
that's been approved previously.

The history of the property: This property in
1970 or about that time was used as a convenient
store. They've always had access to Hathaway and
always had access to Old Hartford Road.

I've been very fortunate in that I went back
through the records of the courthouse, and you very
seldom ever see this, but I went back and I found a
picture of the property. I'll show each one of you
this.

This is a picture of the convenient store as
it existed in 1970. We're just asking for a small
entrance into Old Hartford Road. As you see this,
this photograph shows a complete entrance across the
entire front of the convenient store as to Hartford Road. It also shows that there is access point on Hathaway. I would like to pass, and I don't know that I have got a copy for everybody.

That picture speaks for itself.

In 1970 you had complete broad access to Old Hartford Road. Nothing has changed since that time.

The River Valley Health used this property from 1986 until 1999. They always had access. The River Valley used the property for occupational therapy and for training of developmental challenged adults. They used it also commercially.

The Glenn Funeral Home purchased this property. Here's what it looks like. I'll show that to you. I'll pass this around. This is what it looks like today. There hasn't been one change to the exterior of that building since they purchased it. They bought the property in 1999. There has been a continual use of that property for retail storage and ancillary use to Glenn Funeral Home since they purchased it. It has been used commercially as a casket display equipment for Glenn Funeral Home, a retail storage, storage of antiques and a resale of furniture by David Taylor who is Glenn Taylor's brother.
The property has never been vacant. Never been vacant since 1970. They've always had access to Old Hartford Road.

To quality the issue is, and I don't think it was pointed out, but Jim Mischel can tell you. That if we're going to develop this as a comfort house, we have to have approximately 13 parking places. If we do it the way that Jim wants us to do, we've got six parking places. We can't do it. It will not be a very highly trafficked area; in other words, we anticipate that maybe two or three times a year there will be individuals over there. We hope never more than 13 cars.

One other plat I would like to show you. This is a plat that I had the surveyor prepare showing exactly what we intend to do with the property.

As you can see, this drawing is prepared by an engineer. You can see the pink area is the comfort house. You can see the directional drive that we have. It's a lot smaller than what is there now from the Old Hartford Road. It would make no sense to us to develop this from Hathaway Street because if we drive in Hathaway Street you drive in and you have to back all the way out into Hathaway Street because you can't get out on Old Hartford Road. In other words,
if we're going to have the comfort house there, the only way to have the traffic is the way the surveyor prepared it. Showing the angle parking and there would be 13 parking places including the one to the rear.

As far as the landscaping, we have no problem about the landscaping. We agree to do any type of landscaping that's necessary. The reason that we don't show it on there is that you see if we come in from the Old Hartford Road and we turn out the one way traffic; in other words, there would have to be a hole between the landscaping area, but we will agree to it. No problem about the landscaping.

As you recall in the report, they said that the property to 921 Old Hartford Road could be used as an access point to get to the subject property.

Here is the problem that you have there. We have no idea what we intend to use the other property for. In other words, for us to say now that we would give you access points from some other lots that we have would really create a financial hardship because we don't know what we're going to do with the property. The only thing that we know is that we want to have a comfort house here. We want to use that house in accordance with what I told you with Delbert
Glenn Funeral Home. I cannot tell you that I would agree -- let's just say that I told you that we would agree to a shared access, which is what I think Jim probably wants done.

One, I can't agree to the shared access because at the point where they would require it, if it would be right next to the other lot, there's a big sewer. There's a telephone pole with guy wires. So I can't put it there. The real reason I can't is because if we develop the other property, and I use this access point, it might be completely different by the time that we develop the property.

I point out to you that in the event, and I'll even go on the record and tell you, that in the event that the property to the west, this is where 921 Old Hartford Road is, but if it's ever developed, at the time that it's developed we will agree that we will waive or give away this access point that I'm requesting if it's necessary to jointly develop the rest of that property. But we don't want to do that now because we do not have any plan. The reason it concerns me about what was said, this is just a simple deal. This is not a complex deal. The question that you all have defined, and Kristi Chaney will tell you. Her father -- I don't really know who owns it, but she
has something to do with it, with the funeral home.

But her father, Glenn Taylor, is one of the owners.

Since they've owned that property and full
knowledge -- Glenn can't be here tonight. He's
someplace out of town, but she will tell you there's
never been any time that that property wasn't vacant.
It's being used at the present time. It doesn't show
necessarily from the outside because Glenn's brother
sells furniture there and that type of thing. You
don't see it all the time.

We will agree that in the event the other
property is developed, at that time is the time to
decide where any access points would be. You
understand there are three access points. There's one
on this lot. There's another one on 721, and there's
another one down the road. It's to early to make that
distinction at the present time.

What we're saying is it's our contention that
these access points have been there. They've been
there since that time. They've been used continually
since that time. The property has never been vacant.
That they exist and that it's a non-conforming access.
There has never been anybody up here to testify or any
neighbor that it's not, has not been continually used.
You'll hear what Kristi has to say.
There's no objection from the neighbors. How could this have any adverse affect on anybody? How could it?

When you're talking 13 parking place across from Delbert Glenn. Delbert Glenn owns most of the property around it except two houses, and those neighbors don't have any objection.

CHAIRMAN: Mr. Kamuf, let's listen to the Staff now and you can come back and present more.

MR. KAMUF: All right.

CHAIRMAN: Staff, do you have any comments you want to make?

MR. NOFFSINGER: Let him --

MR. KAMUF: I'll hear what he's go to say and then I'll rebut.

CHAIRMAN: Go ahead and finish what you had to present, please.

MR. KAMUF: Well, I'm pretty well waiting to hear what they've got to say.

All I'm saying is, what is the big deal? We're going to do something to better that neighborhood, it will be a benefit to the neighborhood. They're going to refurnish the building. They will not change, nothing will be changed. In the event that any of the property later
on is developed to the west, that's the time that we
talk about these access points here and on the other
property.

In conclusion I guess that's it. It just
seems that in my humble opinion that the argument is
making a big deal out of something that is really,
really simple.

Now, Kristi would like to talk, but we can
hear what they've got to say.

CHAIRMAN: Let's listen to Kristi quickly and
then we'll go from there.

MR. SILVERT: State your name, please.

MS. CHANEY: Kristi Chaney.

(KRISTI CHANEY SWORN BY ATTORNEY.)

MS. CHANEY: I'm here to talk about the
property across the street.

We have owned it since '99. I know it has
been full the whole time. That's when I started to
work there. We wanted to convert it into a comfort
house. When we have a large funeral the family can't
get away. There's nowhere for them to go. So this
would be a nice time for them to go across the street
and have a few moments together and gather their
thoughts.

It will be beneficial to the community
absolutely. If you look across the street at the
funeral home, as far as landscape, we're above code
there. We would gladly go above code on this one too.
We love landscape. We like to make the outside look
good.

CHAIRMAN: Any questions from the board or
Staff?

MR. NOFFSINGER: Mr. Chairman, just for the
record. The proposed use as a comfort house is a
permitted use in that zone. We certainly hope that
you're successful in that. Tonight the question is
not about the use of the property as a comfort house.
Tonight the question is whether or not the access to
Old Hartford Road should be closed and whether or not
you should screen the vehicular use area from the
public right-of-way. So the use as a comfort house is
not an issue.

MR. KAMUF: I might say this: There's no
issue about the landscaping. We're willing to do it.
Whatever landscaping that's necessary and required, we
will do that. So the only issue is the access point.

CHAIRMAN: Staff.

MR. NOFFSINGER: I think they have additional
testimony and information to present.

MS. EVANS: We have prepared a site plan
ourselves of this site showing that they can meet the
required parking, which is actually one parking space
per 400 square feet. Say that they have 2,280 square
feet. So they only actually are required to have six
parking spaces. I have a copy for everyone and the
applicant and their attorney. I'm just going to pass
these out.

We would also like to put this site plan into
the record.

CHAIRMAN: Mr. Kamuf, you want this in the
record too?

MR. KAMUF: Please. All three if you would.

MR. SILVERT: State your name.

MR. MISCHEL: Jim Mischel.

(JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I just have a few comments to
add.

Essentially when Mr. Kamuf was showing the
photographs of the convenient store back in the '70s,
I would say that that was what we would call legally
non-conforming use. It met the standards at that
time. But you have to realize as far as this access
point, back in the '70s Old Hartford Road was not a
major road. Right now we call it a minor arterial.

Back then it was more of a local street. At this time
we have on this property and the property owned
next-door there's three access points. On a major
road that's very important. Now, these three access
gpoints are connected to an inner road that connect all
tree of those properties. So we thought at this time
it would be easy. It's already paved. There will not
be a problem if they closed up the one on the corner,
use one of the other two, and they wouldn't have to
pave any more. It's just a direct. You turn in and
go over to that property. It's there. It's already
paved.

When the Staff does report, you have to
remember that we have to go by this as a guideline,
the Zoning Ordinance. To be fair to everyone that
comes into this chamber we have to apply the same
rules and regulations to be fair to everyone.

Typically what they proposed under the Staff
Report it shows that there's inactivity. We don't
show any activity or anything for over 18 months.

Also the use that the applicant had stated in
their application, it shows that they used it for
storage, which is not a permitted use in a B-4.

Now, the purpose they want now as a comfort
house is permitted, but storage by itself is not a
permitted use in a B-4 zone. It should have been I-1.
When you take those items into consideration, I think you have to go back to the Staff Report under Conversion of Buildings, 3.3. That's the only guide we have. I mean we have to go by something and that is the guide set, that's set to us to go by.

Then there's a couple, there's a few main points. One says if you have a conversion of nonresidential use to accommodate another permitted use, such as a comfort house, that you shall be permitted as the same as a new building. It goes on further to say the new occupancy shall comply with the building codes, the parking, landscape buffers and access.

So when that use was changed, we don't have any alternative. We have to apply these standards. That's all we have to go by is Article 3.3. Whether this is a comfort house or a Wal-Mart or in-between, I mean that's the guidelines we have.

MR. PEDLEY: Mr. Mischel, if this comfort house is permitted, why is it necessary for to us find it's non-conforming use?

MR. MISCHEL: As I stated before, basically it's lost that non-conformity in the past through it's inactivity and also the change of use. When it went to a storage lot, that was a change of use. It should
have been really an I-1 zone and not a B-4.

MR. PEDLEY: It has changed use four times.

Was there an appeal for one non-conforming use to another non-conforming use? Was there ever an appeal?

MR. NOFFSINGER: No, sir. There is not an appeal of record. In fact, with the convenient store, that use would have been permitted even though the site development requirements may have been non-conforming. When the property was used by I think they said maybe River Valley Behavioral Health, most likely that use would have been conforming. When it was used for the retail sale of furniture, that use would have been conforming. That was a temporary use and no site improvements were required at that time. Since the time it was used for retail sales, we have no indication of any change in use on that property. So we believed that the property was vacant. However, the applicant is here tonight saying it was used for storage, which would be a violation of the zoning ordinance. So tonight Staff is of the opinion that you're not here to consider whether or not the use comfort house, that type of use is non-conforming or not. That's a permitted use. The non-conformity or the appeal here tonight would be whether or not they should have to comply with the site development
standards that new construction and other developments in the community have to meet.

It's an interpretation of the zoning administrator that Article 3-3 of the Zoning Ordinance says they have to meet the site development requirements as if for new construction. That's cited and stated verbatim in the Staff Report. That's why Mr. Mischel said the access point on New Hartford Road does not meet the standards of the access management manual or the Zoning Ordinance and that you need to provide the vehicular screening along Hathaway Street.

The applicant is here tonight to tell you that they're willing to do the screening, but the remaining issue would be the access point.

Now, the Staff has provided you a site plan showing how it could work to where you only had access to Hathaway Street. You're not going to have to back out into Hathaway Street because you're going to have a landscape buffer there. We also believe that there's a possibility for a connection to the adjoining property. It's my understanding there's a connection, a vehicular use connection to that adjoining property now. We don't believe that will change. We think they'll still have access if they want access to Old Hartford Road. We do think that it
creates an unsafe situation where you have vehicles
leaving Glenn Funeral Home and making a left turn and
then an immediate right turn to get to the comfort
house, when if they didn't have that choice they would
automatically go straight across Old Hartford Road
onto Hathaway Street and then turn in to a defined
entrance on Hathaway Street.

MR. PEDLEY: Again, my question is: We have
to find it's a non-conforming for them to claim
non-conforming access point?

MR. NOFFSINGER: I think if you find that the
use is non-conforming, which I don't think based upon
the evidence you would find that, then you would get
beyond the use being non-conforming and you would only
look at the premises. It's the premises that's
non-conforming. Not the comfort house use. The
premise. The parking, the landscaping and the access
is non-conforming and does not meet today's standards.

So if you find that, yes, they're in fact
non-conforming and then Article 3-3 of the Zoning
Ordinance says they shall comply, then you may require
that the access point be eliminated on Old Hartford
Road and that they install the screening.

If you find contrary to that and you say,
well, it's non-conforming but we disagree with the
zoning administrator's interpretation, then you would find in favor of the appellant that the access point should remain.

MR. TAYLOR: The only ruling to which we find for them to keep that access point would be us deeming that they're going to a non-conforming use; is that correct?

MR. NOFFSINGER: No. You would find that the site is non-conforming. The site. Not the use. Forget the use. The site is non-conforming and that the use of the premises, the parking area, would be non-conforming and they would not have to close the driveway because it's not increasing the non-conforming.

MR. TAYLOR: Right. Where I get confused is because it seems like that we're getting thrown a lot of, you know, it's used for storage, it's used for retail, and exactly when it got cut off and used for storage and when it got cut off to use for retail, whether we're something saying it was used a permitted use in B-4, whether they're a non-conforming use in B-4. It seems like we're weighing a lot of those things. It's kind of hard for me, I see what the headline says and I kind of understand what you say, but it seems to me that it boils down to is that
entrance way, do we feel if that entrance way can be
still be used? It seems to me that that's a question.
I'm just wondering how we formulate a ruling on which
way or the other.

If I said, yes, I do feel that they should
still use that entrance, how would I formulate my
movement? Do you understand what I'm saying? It's
very confusing saying that it was in violation of the
Zoning Ordinance. That it should have been used
industrial. It should have been non-conforming use.
It is a permitted use in B-4. What I'm trying to
understand is if I do say or if I don't say that they
need that, you know, how should my motion be directed?

MR. NOFFSINGER: Well, you might look at the
Staff Report under Authority for Change in
Non-Conforming Use, a motion to approve and then
there's a motion to deny.

For example, in the motion to deny, "it would
prevent the building on the premises from being used
as proposed."

MR. TAYLOR: That's what I'm wondering. It
seems like everybody is telling me that it's not a
non-conforming use. Do you understand what I'm
saying? It's saying what's the authority for the
change in non-conforming use, but at the same point
you're telling me it's not a non-conforming use. So it doesn't seem like I have --

MR. NOFFSINGER: The use is allowed in that zone. Zoning is not the issue. It's the site development requirements. That if you determine that, okay, the use is a permitted use and the zoning administrator says that once a use is superceded by a permitted use, which this one it's a permitted use, and the historical use of the property was a Stop-N-Go, whatever it might be, was a permitted use. Then once you get beyond that, then you look at the site. The site is non-conforming in nature. Any time there's a change in use, Article 3 states that they're to comply with the building codes, parking supply and landscape. That's what Jim Mischel is saying. In order to comply, here's what you must do. Close the accession point down because it doesn't meet the standards in accordance or access manual and you must screen. Hearing that interpretation --

MR. TAYLOR: I completely understand what you're saying. What I'm saying is at one point I'm saying, don't look at the use. The use is permitted in that, but then at the same point you're saying, look at the use because of the site plan for it. It seems to me if there is not a non-conforming use or a
conditional use for non-conforming, for whatever they
were using it for, and I don't know how we would
determine that, that I don't understand why it would
have to go before us for the change if it's going from
a B-4 use to a B-4 use again and it's under the same
ownership as to what it was before.

MR. NOFFSINGER: Generally it wouldn't. But
the applicant chooses not to do as the zoning
administrator feels is necessary in terms of the site
development requirements.

Again, the use is not the issue. The zoning
is not the issue. It's site itself.

Typically when you consider these you're
looking at the use. It's the actual use. Generally
the applicant is agreeable.

I think you had one last month where they were
required to do some landscaping and whatnot.

Here's a somewhat different situation in that
the use is a permitted use in that zone, but they're
not meeting the requirements for new construction as
defined in the Zoning Ordinance. In order to meet
that, they would need to close the access point down
and do landscape.

MR. TAYLOR: I'm just wondering at what point
did that site change?
MR. NOFFSINGER: In 1977 with the adoption of the Zoning Ordinance. The new requirements would have kicked in.

MR. TAYLOR: I'm wondering why prior to now that has never been an issue.

MR. NOFFSINGER: They didn't ask for one thing. When the retail sale of the furniture went in, they did ask. We gave temporary approval because it was an emergency situation. They needed a place to store the materials. We did not figure that we should get into site improvements for a nine month period of time. It was an accommodation.

After that no one asked. We thought the property, and Jim Mischel is here to testify, we thought the property was vacant. There was no signage on the property.

MR. MISCHEL: In the past few years if you go by there, there was no signage, no activity. How we tried to determine what uses was there we'll go back over old permits. There were no old permits. We go back over business license. We couldn't find a business license for that location. Everything we tried to prove that something was there or use or whatever, we couldn't find any. They haven't given us any except for what they've testified tonight. We
don't have anything but Article 3.3.

MR. TAYLOR: I understand. I'm just kind of looking at it as if my perspective. What if it was me and I owned this property and I felt like I was doing something that was fine there and all of a sudden I wanted to make it better and then now I have to use my other property, which I may sell or completely cut the value of my property off because I'm cutting off a main entrance going into the main road, which is an extreme plus to my property if I was to ever sell it or, you know, use my other property to where I tie it up where I couldn't sell it. I'm just looking at it and just to try to get a grasp on it like if I was using it and what change to me when I said, finally I'm going to kind of make this better.

MR. MISCHEL: You've got to realize that this would not be an issue if we were on a piece of property that had two local streets, but being on a minor arterial this is pretty important. Just as we talked about traffic flow. Making a left-hand turn and then trying to go back right and you've got traffic right behind you or whatever. You have three access points right there. It's just not a good situation.

MR. DYSINGER: Mr. Chairman, it seems to me
and either party can comment on this if they'd like.

It seems to me that even if Staff were to stipulate
the non-conforming use issue, which there doesn't
appear to be enough evidence to support that, but even
if we were to stipulate that, the very fact that
they're changing to a conforming use requires that we
apply 3-3, which would require them to meet the access
point requirements as they stand today. I don't know
that you can carry over non-conforming access even if
non-conforming use was unbroken. Which, again, I
don't think there's evidence to support that. To me
that's the issue. Mr. Taylor mentions these use
issues and access issues and all that's going on. The
very fact of changing the uses, even if non-conforming
use was stipulated, it seems to me requires the
application of 3-3. I don't believe this board has
the authority to not apply it. This is the part of
the game where I say what I'm thinking right now and
let somebody try to talk me out of it.

MR. PEDLEY: To me the applicant has not
demonstrated proof that it has maintained this
non-conforming status. I've used that Hathaway
Street. My shop is on Hall Street, construction shop.
From 1965 to 1994 I passed that every day. There were
things there. That was place was empty for several
long periods. There was a restaurant in there, B.J. Fulkerson restaurant for quite a time. No one said anything about that. You haven't demonstrated, you haven't shown to me that it's maintained its non-conforming status.

Because, again, I've seen some very severe accidents there of vehicles pulling out of that restaurant. Saw a lady make a left turn in front of a motorcycle one day. Man and his son was on it. Very, very seriously injured. I was pulled into court as a witness on it. So it is a very dangerous place.

Now when I go through there a lot of times if you've got four or five vehicles stacked up on Hathaway trying to get on Old Hartford, it's very busy, they cut through that lot and they turn right. It's very dangerous.

That's one of the things that this board must look at is safety. It's probably the number one thing is safety.

So until you've demonstrated to me that that's maintained its non-conforming status, I can't go along with it.

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

MS. DIXON: I agree with Mr. Dysinger and Mr.
Pedley. That this is our opportunity to bring that
traffic situation into compliance now.

CHAIRMAN: Any other board members have any
comments?

(NO RESPONSE)

CHAIRMAN: Mr. Kamuf.

MR. KAMUF: Jim does a good job. He's got a
tough job to do. He does it in an excellent way. I
just disagree with him.

We continue to use the property as we always
have. That's been so since 1999. I can't get you any
more evidence up here.

Ward, I understand your issues. You by there
every day and I understand that.

But I can't get you any more issues than what
I can get from my client, and she's told me these
things. I don't know of any reason to disagree.

One reason we're talking about Old Hartford
Road being busy, well, that's why they put a
convenient store on than corner is because it was
busy. At that time I would think that if it continued
to be busier than it was then they would have kept the
convenient store there. I might be wrong. I don't go
by there every day. If it's a major arterial road
now, it looks like it was busier then than it would be
now or they would have kept the convenient store.
That's just my argument.

Now, we can't live with that parking with
closing of the Old Hartford Road. In other words, if
you require, if you approve this plat, and those are
six parking places. We've got to have more than that.
It looks like to me that is -- well, that is
inadequate for us to use the comfort house and have
that type of parking. We can't agree to that.

What my case is about is those access points
have always been used. I haven't been out there to
see whether every day somebody was in that building.
I don't know. I rely on what Kristi and Glenn Taylor
told me. That's all I can rely on.

In other words, those access points have been
there. They've never been changed. As far as the use
of the property, in line with what Clay said, if I
owned that property and -- let's assume that we had a
non-conforming use until '99. I would assume that I
could use it. It's been used. Why would I not be
able to use it as it's been used as long as there was
never a discontinuation of the use of that property,
if I owned it.

Now, I might go a little more because I know
about permits and things, but I don't think that Glenn
Taylor and them when they used it thought that they were violating any laws or when they allowed somebody temporarily to use that property. Was that a violation?

MR. NOFFSINGER: No, sir. We approved that. They did come in and ask.

MR. KAMUF: Ordinary people would think that if you could use it commercially, you could continue to use it commercially. If you didn't have a continuation as long as, what 18, months. I think that would be --

MR. PEDLEY: If you discontinue for a period of 18 months, you lose your non-conforming status.

MR. KAMUF: I don't disagree with that. I agree with that.

MR. PEDLEY: I know that that building was empty for a long period of time. Again, my shop is all Hall Street. I moved in there in 1965. I lived on Fairview Drive until 1995. That's 30 years. I passed it every day. That's my route. Again, several times there'd be cars stacked up on Hathaway getting on to Old Hartford. Vehicles run through that parking lot and get around and going down the other way. It's a very, very dangerous thing.

MR. KAMUF: But this way with a site plan --
I'm arguing a tough case.

If you have a site plan there, you won't have anybody cutting through it. If you see my site plan, in other words, people will have to abide by the site plan. It shows one-way traffic going in and coming out on Hathaway Street. It looks like to me that's pretty safe.

MR. PEDLEY: If you're going east on Old Hartford Road and you're turning into your site and you've got oncoming traffic, and then 50 feet away people are trying to turn into Hathaway Street or come out of Hathaway Street, they're running head on. Somebody is coming out of Hathaway Street turning right. Somebody is coming down east on Old Hartford Road turn left. They're going to hit head on.

MR. KAMUF: Basically, Ward, you're talking about something that maybe two or three times a month that you'll have people over there. It's not a traffic deal just to have people over there for a short period of time periodically.

MR. PEDLEY: It only takes one time. I saw those two people nearly get killed. They were laid up for a long period of time.

MR. KAMUF: Certainly that's a big issue for the board. Safety.
MR. PEDLEY: The non-conforming status you haven't demonstrated, you haven't showed us it's maintained its non-conforming status. You haven't demonstrated it that it has. There's nothing that you can show us that it has maintained its non-conforming status.

If it has not, then it goes back to that's B-4 zone and what you want to do is permit it. You have go to do requirements. Requirement is you can't have that entrance to Old Hartford Road. That's where I am on it.

MR. KAMUF: I understand.

MR. PEDLEY: I'm not trying to create a problem.

MR. KAMUF: Sure. Everybody is trying to come up with something here.

When you have an access point, if I buy a piece of -- I know you're getting tired of me and I'm ready to go home too.

Think of all the property along -- I can name you -- I've researched it. Look at Arby's out on Frederica Street. Look at the property that Bob Steele developed there where Franey's is. Most of the time when I come before the Planning & Zoning Board, it's not a Planning & Zoning Board any more. It's an
access board.

Why is it to have that access point? Because it's so critical if you ever sell that lot or if you use it. It's called a convenient store so they can come in.

I'm saying we have three access points out there. It's unusual for a board to take away an access point, especially where we have access points on Hathaway and access points on Old Hartford Road. It's unusual for -- it's non-conforming. It's pre-existing and it certainly should be a strong consideration for the board before they ever take the main entrance from a lot. Because that lot will go, that cuts it in less than half price. I'm telling you that when you take that access point away from that property, it doesn't have much left. He had a whole lot left when he had a convenient store.

MR. PEDLEY: But it does remove the safety issue, hazard and safety issue. Two other places has the same thing and has major problems. Highway 54 at Old South Barbecue. They've got an access point on the front of that lot, 70 feet east of that stoplight. I mean almost every day there's a near head-on collision there.

Go back down to Fairview Drive you've got the
same thing. CVS. People are jumping in that left
turn lane and turn left in that drive. People going
west jump in left and their running head on. You've
got almost the same thing here.

MR. KAMUF: I understand.

One issue is that you're talking about a
little deal. We're talking about somebody coming
across the street maybe two or three times a month to
go to the comfort house. We're not talking about,
Ward, on 54 or one of those heavily travelled
situations. I'm not out there every day. I might be
wrong. You're talking about just a few people.

Anyway, thank you all.

CHAIRMAN: Do you have anything else to add,
Mr. Kamuf?

MR. KAMUF: No.

CHAIRMAN: Staff have anything new to add?

MR. NOFFSINGER: Only that the site plan that
we drew up and gave to the board member would have 8
parking spaces on it and the one that the applicant
provided has 13.

MR. KAMUF: That's correct.

CHAIRMAN: Does board members have any other
questions or comments?

(NO RESPONSE)
CHAIRMAN: Entertain a motion.

MR. DYSINGER: Build, Mr. Chairman, I move that we deny the appeal given the findings that a change, the requested change would require meeting the requirements of 3-3, especially with respect to building codes, parking spot, landscape buffers and access as it stands today. Further, I feel we must find that the current usage is in non-compliance based on the lack of evidence that the non-conforming use has been continuous. I think that needs to be in the record.

MR. TAYLOR: I mean that's not something that we're trying to make a move on right now, right?

MS. MASON: You're basically saying that you want do deny them to use it as a comfort house?

MR. DYSINGER: I don't think so, no. I'm denying this appeal.

MR. TAYLOR: But then you also added on the end of that that you were saying that they're not in conforming.

MR. DYSINGER: It is currently not in compliance. When they change to comfort house, when they change that usage, if you meet the requirements of the Zoning Ordinance, this goes away and I don't think we have anything further to say about the issue.
It is currently not in compliance. I think that's clearly in evidence. Further, when you do change the usage, you need to comply with the Zoning Ordinance. So my motion, if I can stick up for my own motion. My motion to deny the appeal does not effect whether or not they can do the comfort house. It does effect whether or not they can do the comfort house with the access with the way it stands, which is what the appeal was based on.

MS. DIXON: Second.

CHAIRMAN: A motion has been made and a second.

MR. KAMUF: Mr. Chairman, just a point of clarification, just to point this out.

My appeal has nothing to do with those other issues. When I filed this appeal I said one thing, this is an appeal from Delbert Glenn Funeral Home to the Board of Adjustment to allow the subject property to continue to have access to its property from the Old Hartford Road and from Hathaway Street. That's the only thing before the board today. There's no counter-claim or anything, Mr. Silvert. That's the only issue before the board. It sounds very complicated to the other side. You can't hear anything or decide anything other than my appeal and
that's all my appeal says.

What about it, Mr. Silvert?

MR. SILVERT: From what I heard from the motion, from Mr. Dysinger, is that since the appeal was requesting that you can continue access onto Old Hartford Road, there would have to be a determination from this board that the proposed now permitted use would not have to for some reason comply with Section 3.3 because 3.3 would require that the new permitted use brings that site to current new development standards. That location for that entrance point would not meet those requirements. I don't think he's saying anything about a counter-claim. He's just saying in order to find for you he'd have to find something that he doesn't believe he can find. That's all I heard.

MR. DYSINGER: Close enough.

MR. KAMUF: In other words, they can talk whether we should close or any of these things. That's not the issue before the board. It might be before the board later on, but the only issue is my appeal where I said, we have access to both streets. That's it.

MR. DYSINGER: My motion is to deny based on findings that we have seen here tonight. Those
findings being when change usage you must come up to current standards and further that it is currently a non-conforming use. It is not in compliance.

MR. KAMUF: Thank you.

CHAIRMAN: Second still under that?

MS. DIXON: I think so.

CHAIRMAN: Any other comments from the Staff?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Any other comments or questions from the board?

(NO RESPONSE)

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

(BOARD MEMBERS MARTY WARREN, SEAN DYSINGER, WARD PEDLEY AND JUDY DIXON ALL RESPONDED AYE.)

CHAIRMAN: Opposed like sign.

(BOARD MEMBERS CLAY TAYLOR AND RUTH ANN MASON RESPONDED NAY.)

CHAIRMAN: Motion is four to two.

Next item, please.

ITEM 12

6057, 6133 Highway 2830, zoned B-4
Consider a request for an Administrative Appeal concerning the proposal to relocate a non-conforming use from the existing site on the subject property to a new site on the subject property.
Reference: Zoning Ordinance, Article 4, 7, Section 4.53, 7.34
Appellant: Hawesway, Inc.

ZONING HISTORY

The subject property is currently zoned B-4 General Business. OMPC records indicate there have been no Zoning Map Amendment applications approved for the subject property.

The Commonwealth of Kentucky Transportation Cabinet, Department of Highways is acquiring right-of-way from the Applicant for the construction, extension, and relocation of the proposed US Highway 60 Bypass. This right-of-way acquisition will force the removal of the existing building as shown on the site plan submitted. The applicant proposes to rebuild the non-conforming building in a new location the same size as the existing building and replace the broken asphalt and hard packed rock around the proposed site with a new asphalt surface as shown on the site plan submitted.

A letter from the Kentucky Transportation Cabinet, Department of Highways is included with the application identifying the need for the right-of-way acquisition. Additionally, a letter from the Daviess County Judge Executive is included with the application asking the OMBA for favorable consideration.
LAND USES IN SURROUNDING AREA

The properties to the north and east of the subject property are zoned I-2 and used for industrial purposes. The properties to the south and west are zoned A-U and used for agricultural purposes.

AUTHORITY FOR CHANGE IN NON-CONFORMING USE

Under Section 4.43 of the Zoning Ordinance the OMBA is given the authority to approve the relocation of a non-conforming use or structure to another part of the same lot. Section 7.34 of the Zoning Ordinance requires that in approving an appeal concerning non-conforming structures and uses, the Board must additionally find that the change would not increase the non-conformity in scope or area of operation, that it would not have an adverse effect on the existing or future development of the subject property or adjoining area. The Board may require appropriate conditions to ensure the health, safety and welfare of the community and to protect the essential character of the surrounding area.

A motion to approve would allow the applicant to relocate the existing non-conforming building to a proposed new site on the subject property and should include findings that the non-conformity is not increased in scope or area, and that the use would not
have an adverse effect on existing or future
development. The Board may impose conditions as
recommended to ensure protection of the character of
the surrounding area.

A motion to deny would prevent the applicant
from relocating the existing non-conforming building
to the proposed new site on the subject property and
should include findings demonstrating that the
non-conformity has increased in scope or that the
change would have an adverse effect on existing or
future development of the subject property or
adjoining area, or that the existing non-conforming
status has been lost and the property should conform
to the current zoning requirements.

SPECIAL CONDITIONS

1. No access shall be granted to the proposed
US Highway 60 bypass.

2. The broken asphalt and hard packed rock
around the proposed new site shall be replaced with a
new asphalt surface.

MS. EVANS: We would like to enter the Staff
Report into the record as Exhibit K.

CHAIRMAN: Is the applicant here?

MR. SILVERT: State your name, please.

MR. POTEAT: Steve Poteat.
MR. SILVERT: Go ahead and present your case, Mr. Poteat.

MR. POTEAT: First of all, I know it's been a long evening for you all. If you've got any questions, I have with me Don Fuchs from the Transportation Cabinet and Kelly Divine from the Transportation Cabinet if you have any questions concerning how their access is going be bypass and then why they're requiring to us remove our repair shop. We also have Ms. Adams that can tell you exactly how that will impact us if we're not allowed to move that, to relocate that building as we've shown on our site plan. If you've got any questions we'll try to answer those.

MR. DYSINGER: Mr. Chairman, I would just ask: Is your client aware of the conditions that the Staff suggests and understand them?

MR. POTEAT: As far as asphalt and no direct access, yes, we are aware of that.

MR. DYSINGER: Thank you, Mr. Chairman.

MR. POTEAT: Any question we'll try to answer those.

CHAIRMAN: Staff have any?

MR. NOFFSINGER: No, sir. Mr. Poteat has done a fine job of addressing the situation and providing
the evidence in the application as to why this change of use non-conforming location to another is warranted. We would support the request.

MR. POTEAT: If I could point out one thing to you. The new building will be approximately 800 square feet smaller than the one that's there now. We're definitely not increasing it. It will in fact be smaller than the existing building.

CHAIRMAN: You have nothing else you want to add at this time?

MR. POTEAT: No.

CHAIRMAN: Thank you.

Entertain a motion.

MR. PEDLEY: Mr. Chairman, I make a motion in favor of the appellant on the appeal based on findings this burden is put on the applicant by the state highway to build that road and encroaching on his property. It's not an increase in scope. Use will not have an adverse effect on the future development. And with the conditions no access shall be granted to US 60 Bypass and the broken asphalt and hard packed rock around the proposed new site shall be replaced with new asphalt surface.

MR. DYSINGER: Second.

CHAIRMAN: A motion has been made and a
You understand the conditions?

MR. POTTEAT: Yes, sir, we do.

CHAIRMAN: And you accept them?

MR. POTTEAT: And we accept those, yes.

CHAIRMAN: Any other comments from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No.

CHAIRMAN: All in favor a raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Entertain one more motion.

MS. MASON: Motion to adjourn.

MS. DIXON: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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STATE OF KENTUCKY )
)SS: REPORTER'S CERTIFICATE

COUNTY OF DAVIESS )

I, LYNETTE KOLLER FUCHS, Notary Public in and
for the State of Kentucky at Large, do hereby certify
that the foregoing Owensboro Metropolitan Board of
Adjustment meeting was held at the time and place as
stated in the caption to the foregoing proceedings;
that each person commenting on issues under discussion
were duly sworn before testifying; that the Board
members present were as stated in the caption; that
said proceedings were taken by me in stenotype and
electronically recorded and was thereafter, by me,
accurately and correctly transcribed into the
foregoing 87 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the
26th day of May, 2009.

LYNETTE 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