

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 MAY 7, 2009

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

7 MEMBERS PRESENT: C.A. Pantle, Chairman
8 Ward Pedley, Vice Chairman
9 Ruth Ann Mason, Secretary
10 Gary Noffsinger, Director
11 Madison Silvert, Attorney
12 Judy Dixon
13 Marty Warren
14 Sean Dysinger
15 Clay Taylor

16 * * * * *

17 CHAIRMAN: Call the Owensboro Metropolitan
18 Board of Adjustment to order. Welcome you this
19 evening. We start our program with a prayer and then
20 the pledge to allegiance. We ask you to join us.
21 Gary will lead us at this time.

22 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

23 CHAIRMAN: Again, I want to welcome all of you
24 here. If you have any comments or questions on any
25 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

1 corrections or anything.

2 MR. NOFFSINGER: No, sir.

3 CHAIRMAN: Entertain a motion to dispose of
4 the item.

5 MS. DIXON: Move to approve.

6 MR. DYSINGER: Second.

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

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries.

11 Next item, please, sir.

12

13 -----
CONDITIONAL USE PERMITS

14 ITEM 2

15 2525 French Street, zoned R-4DT
16 Consider request for a Conditional Use Permit in order
17 to install a Class 2, 14 foot by 80 foot manufactured
18 home in an R-4DT zone.

Reference: Zoning Ordinance, Article 8,
Section 8.2A10B

Applicant: Harold Dennis; Jean Dennis

19 MR. SILVERT: State your name, please.

20 MS. EVANS: Melissa Evans.

21 (MELISSA EVANS SWORN BY ATTORNEY.)

22 ZONING HISTORY

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

1 property.

2 OMPC records indicate that seven Conditional
3 Use Permits have been approved for manufactured homes
4 along French Street; 2401 French Street - April 1986,
5 2402 French Street - April 2007, 2403 French Street -
6 September 1986, 2406 French Street - April 1999, 2508
7 French Street - December 1996, 2510 French Street -
8 November 1989, and 2521 French Street - February 1995.

9 LAND USES IN SURROUNDING AREA

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

13 ZONING ORDINANCE REQUIREMENTS

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

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

1 three trees;

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

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

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

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

14 CHAIRMAN: Thank you.

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

17 (NO RESPONSE)

18 CHAIRMAN: Is the applicant here?

19 APPLICANT REP: Yes.

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

22 APPLICANT REP: No.

23 CHAIRMAN: Staff have any comments to add?

24 MR. NOFFSINGER: No, sir. Just to make sure
25 that the applicant is aware and state for the record

1 that they will be responsible for the installation of
2 the sidewalk along French Street.

3 CHAIRMAN: Board members have any comments or
4 questions?

5 MR. PEDLEY: I have a question.

6 Are there curbs on French Street?

7 MR. NOFFSINGER: Yes, I believe so.

8 MR. PEDLEY: There are curbs there?

9 MS. EVANS: Yes.

10 CHAIRMAN: Any other questions or comments
11 from the board?

12 (NO RESPONSE)

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

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

21 MR. WARREN: I'll second that.

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

24 MR. NOFFSINGER: No, sir.

25 CHAIRMAN: Any other questions or comments

1 from the board?

2 (NO RESPONSE)

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

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries.

7 Next item, please.

8 ITEM 3

9 2224 Herr Avenue, zoned R-4DT
10 Consider request for a Conditional Use Permit in order
11 to install a class-2, 16 foot by 80 foot, manufactured
12 home in an R-4DT zone.

13 Reference: Zoning Ordinance, Article 8,
14 Section 8.2A10B

15 Applicant: Larry Griffith

16 ZONING HISTORY

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

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

26 Upon inspection of the area we found it to be
27 true that there are no curb/gutters in the area and
28 the lot is dramatically sloped from the street edge in

1 the front toward the back of the lot.

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

6 LAND USES IN SURROUNDING AREA

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

10 ZONING ORDINANCE REQUIREMENTS

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

- 14 1. A concrete or asphalt parking pad to
15 accommodate two 9'x18' spaces is required;
- 16 2. A minimum 10'x10' deck or patio is
17 required;
- 18 3. A concrete sidewalk is required, but may
19 be waived along rural roads (without curbs);
- 20 4. The driveway apron shall not exceed 40
21 percent of the lot width;
- 22 5. The property is required to have at least
23 three trees;
- 24 6. The manufactured home shall be permanently
25 installed on a permanent foundation. A poured

1 concrete or masonry block skirting wall shall be
2 constructed beneath and along the entire perimeter of
3 the manufactured home;

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

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

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

11 CHAIRMAN: Thank you.

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

14 (NO RESPONSE)

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

17 (NO RESPONSE)

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

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

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

1 CHAIRMAN: Staff.

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

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

11 CHAIRMAN: Any other questions or comments
12 from the board?

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

15 CHAIRMAN: Is the applicant here this evening?

16 MR. GRIFFITH: Yes, I am.

17 CHAIRMAN: You understand the comments made?

18 MR. GRIFFITH: Yes, I do.

19 CHAIRMAN: Come forward and state your name,
20 please.

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

23 MR. GRIFFITH: My name is Larry Griffith.

24 (LARRY GRIFFITH SWORN BY ATTORNEY.)

25 MR. GRIFFITH: One comment I would like to

1 make.

2 There's an alley that circles around behind
3 the property and ties into West First Street. That's
4 the way that I enter the property. So the driveway
5 would be going in from the rear. I already have
6 concrete driveway there in the rear.

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

14 CHAIRMAN: Staff have any other comments?

15 MR. NOFFSINGER: No, sir.

16 CHAIRMAN: Board member have any other
17 comments or questions?

18 (NO RESPONSE)

19 CHAIRMAN: Entertain a motion to dispose of
20 the item.

21 MR. PEDLEY: Mr. Chairman, I make a motion for
22 approval based on the findings that it is compatible
23 with the existing neighborhood. It will not have an
24 adverse influence on future development and the
25 applicant shall meet zoning ordinance requirement 1

1 through 8, except Item 3. Sidewalks may be waived.

2 CHAIRMAN: Is there a second?

3 MR. DYSINGER: Second.

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

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: Board members have any other
8 comments?

9 (NO RESPONSE)

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

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Next item, please.

15 ITEM 4

16 7601 Iceland Road, zoned I-2
17 Consider request for a Conditional Use Permit in order
18 to construct an additional grain bin at a barge
19 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

20 ZONING HISTORY

21 The subject property is located west of US
22 Highway 60 East adjacent to the Ohio River and is
23 currently zoned I-2 Heavy Industrial. OMPC records
24 indicate there have been no Zoning Map Amendments for
25 the subject property.

1 OMPC records indicate that five similar
2 Conditional Use Permits have been approved for the
3 subject property; September 1998, December 2001, April
4 2003, June 2006 and October 2008.

5 All other permits as may be required by the
6 Army Corps of Engineers or the Kentucky Division of
7 Water must be obtained prior to the issuance of a
8 conditional use permit as per Article 18-4(b)(3)(c).
9 Certification from a registered professional engineer
10 must be provided demonstrating that encroachments
11 shall not result in any increase in flood levels
12 during the occurrence of the base flood discharge as
13 required by Article 18-5(b)(4)(a) of the Zoning
14 Ordinance. A Stream Construction Permit from the
15 Division of Water, a letter from the Army Corps of
16 Engineers and a letter of no impact from a registered
17 professional engineer were all submitted with the
18 application.

19 LAND USES IN SURROUNDING AREA

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

24 ZONING ORDINANCE REQUIREMENTS

25 1. Parking requirements - Heavy Industrial

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

5 2. Landscaping requirements - none

6 SPECIAL CONDITIONS

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

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

11 CHAIRMAN: Thank you.

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

14 (NO RESPONSE)

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

17 (NO RESPONSE)

18 CHAIRMAN: Staff have any comments to add?

19 MR. NOFFSINGER: No, sir.

20 CHAIRMAN: Board members have any questions or
21 comments?

22 (NO RESPONSE)

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

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

1 based on the findings that there has not been any
2 opposition to this application, there's been five
3 similar conditional use permits approved, it's
4 compatible to the land use in the area, and it is
5 subject to obtaining all the permits that were
6 mentioned earlier, and with the special condition that
7 the approval of the minor subdivision plat creating a
8 lot for lease area.

9 CHAIRMAN: Is there a second?

10 MR. PEDLEY: Second.

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

14 MR. NOFFSINGER: No, sir.

15 CHAIRMAN: Board members have any other
16 comments or questions?

17 (NO RESPONSE)

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

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries.

22 Next item, please.

23 ITEM 5

24 2700 Rinaldo Road, zoned I-2
25 Consider a request for a Conditional Use Permit in
order to construct a 418'x222' offload and storage

1 facility for dry fertilizer and micro nutrients.
Reference: Zoning Ordinance, Article 8,
2 Section 8.2G4/27
Applicant: Miles Farm Supply, LLC; Owensboro
3 Riverport Authority

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

8 CHAIRMAN: So stated for the record.

9 Go ahead.

10 ZONING HISTORY

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

15 OMPC records indicate that three similar
16 Conditional Use Permits have been approved for the
17 subject property in 1983, 1986 and July 2008.

18 This is an amendment to the Conditional Use
19 Permit approved in July 2008. The previous site plan
20 showed parking and an oval drive to be paved in front
21 of the building. The new site plan eliminates the
22 paved oval drive but still shows the appropriate
23 parking.

24 LAND USES IN SURROUNDING AREA

25 All the surrounding property is zoned I-2

1 Heavy Industrial and used for industrial purposes.

2 ZONING ORDINANCE REQUIREMENTS

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

7 2. Landscaping requirements - none.

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

10 CHAIRMAN: Thank you.

11 MR. NOFFSINGER: Mr. Chairman, I would like to
12 add to that as a description, this is this coming back
13 before you to eliminate some paving that was shown on
14 the previous site plan. Keep in mind that this is the
15 Owensboro Riverport Authority's property and they are
16 exempt from meeting the requirements of the zoning
17 ordinance which means they would not have to pave the
18 site. The area that's not being paved proposed to be
19 paved is already an existing gravel area which extends
20 onto this property and other properties in the area.
21 The applicant is proposing to make an improvement at
22 the end of Rinaldo Road and will pave all the way to
23 their scale system in an area where their employees
24 and any customers might park. So it does come to you
25 as a rehearing or as an amendment to their previously

1 approved conditional use permit, but given the fact
2 that the ownership of the land by a public facility,
3 as well as the existing situation, it does warrant an
4 additional review by this board.

5 CHAIRMAN: Thank you.

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

8 (NO RESPONSE)

9 CHAIRMAN: Is the applicant here?

10 APPLICANT REP: Yes.

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

13 APPLICANT REP: No.

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

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

23 (NO RESPONSE)

24 CHAIRMAN: Hearing none then I'll entertain a
25 motion to dispose of the item, please.

1 MR. WARREN: Motion to approve the conditional
2 use permit with the findings that there have already
3 been three previously approved conditional use permits
4 for the subject property. That this is an amendment
5 to a previously approved conditional use permit.
6 There is no opposition noted and all the parking
7 requirements, etcetera, are being met. That it is in
8 keeping with the general use of the vicinity.

9 CHAIRMAN: Is there a second?

10 MR. TAYLOR: Second.

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

13 MR. NOFFSINGER: No, sir.

14 CHAIRMAN: Any questions or comments from the
15 board?

16 (NO RESPONSE)

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

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries.

21 Next item, please.

22 ITEM 6

23 1564 River Road, zoned I-2
24 Consider a request for a Conditional Use Permit in
25 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

1 automobile and truck parts.
Reference: Zoning Ordinance, Article 8
2 Section 8.2G4/27
Applicant: N.T.N. Properties, LLC
3

4 ZONING HISTORY

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

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

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

21 This is an amendment to the Conditional Use
22 Permit approved in December 2008. The previous site
23 plan proposed a 16'x20' building with parking. The
24 new site plan proposes a 16'x30' building and a
25 reconfiguration of the parking.

1 LAND USES IN SURROUNDING AREA

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

4 ZONING ORDINANCE REQUIREMENTS

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

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

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

13 CHAIRMAN: Thank you.

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

16 (NO RESPONSE)

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

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

23 CHAIRMAN: State your name.

24 MR. KAMUF: Charles Kamuf.

25 MR. SILVERT: That's fine, Mr. Kamuf. Again,

1 I always recognize your oath as an attorney.

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

4 (NO RESPONSE)

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

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

14 MR. DYSINGER: Second.

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

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: Any questions or comments from the
19 board?

20 (NO RESPONSE)

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

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries.

25 Next item, please.

1 ITEM 7

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

9 ZONING HISTORY

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

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

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

23 Upon inspection of the subject property we
24 found there is an existing garage on the subject
25 property that was an accessory to the previous
26 manufactured home and an existing setup for
27 manufactured home placement. There is an existing
28 septic tank system on the property. The garage is on

1 a concrete pad and meets the requirements of the paved
2 parking area. There are no sidewalks or paved
3 residential driveways in the area and there is a ditch
4 running between the subject property and the road that
5 would make it difficult to install a sidewalk.

6 LAND USES IN SURROUNDING AREA

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

13 ZONING ORDINANCE REQUIREMENTS

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

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

1 three trees;

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

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

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

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

14 CHAIRMAN: Thank you.

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

17 (NO RESPONSE)

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

20 APPLICANT REP: No. She covered it.

21 CHAIRMAN: Staff have any questions or
22 comments?

23 MR. NOFFSINGER: No, sir.

24 CHAIRMAN: Board have any questions of the
25 applicant?

1 (NO RESPONSE)

2 CHAIRMAN: Entertain a motion to dispose of
3 the item.

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

11 MR. TAYLOR: Second.

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

14 MR. NOFFSINGER: No, sir.

15 CHAIRMAN: Board members have any questions or
16 comments?

17 (NO RESPONSE)

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

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries.

22 Next item, please.

23 ITEM 8

24 4815, 50001 US Highway 60 East, zoned I-2
25 Consider a request for a Conditional Use Permit in
order to construct and operate an elevated pipeline

1 extending from an existing barge unloading facility to
2 a proposed tank farm facility in a floodway.
3 Reference: Zoning Ordinance, Article 8,
4 Section 8.2G4/27, 18-4(b)3, 18-5(b)4, 18-6(b)3
5 Applicant: Yager Materials

6 ZONING HISTORY

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

10 There was a Conditional Use Permit approved at
11 the March 2009 meeting to construct and operate a
12 storage and handling facility for liquid petroleum
13 products, by-products and various derivative products,
14 and other liquid materials at 4815 US Highway 60 East.
15 A condition of that Conditional Use Permit was to
16 apply for an additional Conditional Use Permit to
17 build a pipeline connecting that facility to the barge
18 unloading facility in the floodway.

19 All other permits as may be required by the
20 Army Corps of Engineers or the Kentucky Division of
21 Water must be obtained prior to the issuance of a
22 conditional use permit as per Article 18-4(b)(3)(c).
23 Certification from a registered professional engineer
24 must be provided demonstrating that encroachments
25 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

1 Ordinance. Also in accordance with the Kentucky
2 Environmental and Public Protection Cabinet, Office of
3 Housing, Buildings, and Construction a permit for
4 above ground storage facilities including associated
5 piping will need to be obtained. A Stream
6 Construction Permit from the Division of Water, a
7 letter from the Army Corps of Engineers, a letter of
8 no impact from a registered professional engineer, and
9 a permit from the Kentucky Environmental and Public
10 Protection Cabinet, Office of Housing, Buildings, and
11 Construction were all submitted with the application.

12 LAND USES IN SURROUNDING AREA

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

16 ZONING ORDINANCE REQUIREMENTS

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

21 2. Landscaping requirements - none.

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

24 CHAIRMAN: Thank you.

25 Is there anyone wishing to speak in opposition

1 on this?

2 (NO RESPONSE)

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

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

7 CHAIRMAN: Thank you.

8 Any further other comments from the Staff?

9 MR. NOFFSINGER: No, sir.

10 CHAIRMAN: Boards members have any questions?

11 (NO RESPONSE)

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

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

21 MR. DYSINGER: Second.

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

24 MR. NOFFSINGER: No, sir.

25 CHAIRMAN: Any other comments or questions

1 from the board?

2 (NO RESPONSE)

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

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries.

7 Next item, please.

8 -----

9 VARIANCES

10 ITEM 9

11 10015 Main Street, zoned P-1
12 Consider a request for a Variance in order to reduce
13 the front building setback line from 75' from the
14 centerline of the road to 63' from the centerline of
15 the road.

16 Reference: Zoning Ordinance, Article 8,
17 Section 8.5.12(c)
18 Applicant: Joe & Dianna Birkhead

19 MS. EVANS: The applicant proposes to build a
20 medical office building on the subject property with
21 parking and landscaping as required by the zoning
22 ordinance. The subject property is located in the
23 City of Whitesville within one block of the Central
24 Business District where many structures are built
25 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.

1 The request will not be an unreasonable
2 circumvention of the Zoning Ordinance or alter the
3 essential character of the general vicinity because
4 the subject property is adjoining the Central Business
5 District across Highway 54 and Highway 764 where
6 structures are built to the property line. Locating
7 the proposed building close to the street would be in
8 keeping with the character of the adjoining Central
9 Business District immediately to the east and south.
10 It will not adversely affect the public health, safety
11 or welfare, instead it will benefit the health and
12 welfare because the applicant proposes to build a
13 medical office building to serve the citizens of
14 Whitesville.

15 FINDINGS OF FACT

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

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

24 3. It will not cause a hazard or a nuisance
25 to the public because the building is positioned on

1 the property to allow appropriate site distance at the
2 intersection and should not block light and air on
3 adjacent residential property.

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

8 STAFF RECOMMENDATION

9 Conditions:

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

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

17 CHAIRMAN: Thank you.

18 Is anyone wishing to speak in opposition on
19 this item?

20 (NO RESPONSE)

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

23 (NO RESPONSE)

24 CHAIRMAN: You understand the conditions that
25 were stated by the Staff and accept them?

1 APPLICANT REP: Yes, sir.

2 CHAIRMAN: Any other comments from the Staff?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Board members have any comments or
5 questions?

6 (NO RESPONSE)

7 CHAIRMAN: Entertain a motion to dispose of
8 the item..

9 MR. TAYLOR: Mr. Chairman, move to grant the
10 Variance. It's been found that there are special
11 circumstances of this situation simply noted in the
12 Staff Report stating that the shallow shape and depth
13 of the lot reduces the ability to develop the lot
14 meeting setback and providing required parking, and
15 locating the proposed building close to the street
16 will be in keeping with character of the adjoining
17 Central Business District, and in doing this it will
18 not adversely affect the public health, safety or
19 welfare because the proposed location of the building
20 will not block site visibility; it will not alter the
21 essential character of the general vicinity; and it
22 will not cause a hazard or a nuisance to the public;
23 and it will not allow an unreasonable circumvention of
24 the requirements of the zoning regulations. The one
25 condition that we do put on this variance is that one

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

5 CHAIRMAN: Is there a second?

6 MR. DYSINGER: Second.

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

9 MR. NOFFSINGER: No, sir.

10 CHAIRMAN: Any other comments from the board?

11 (NO RESPONSE)

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

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries.

16 Next item, please.

17 ITEM 10

18 1004 Penninsula Court, zoned R-1A
19 Consider a request for a Variance in order to reduce
20 the front building setback line from 25' from the
21 front property line to 17.72' from the front property
22 line.

Reference: Zoning Ordinance, Article 8,
Section 8.5.5(c)
Applicant: Randall S. & Sherry E. Hayden

23 MS. EVANS: The applicant proposes to build a
24 pool house on the subject property. A building permit
25 was issued for the construction of this pool house on

1 March 30, 2009, with a site plan showing the proposed
2 building meeting the required front setback. However,
3 upon field inspection it was found that the building
4 encroached upon the front building setback.

5 Granting this Variance would not alter the
6 essential character of the general vicinity as it
7 appears there are other cases of encroachments into
8 the building setback line in the area at 1001, 1005,
9 1011, 1025 and 1066 Peninsula Court. Although OMPC
10 records indicate none of the before mentioned were
11 issued Variances for those encroachments likely
12 because they predate the Zoning Ordinance. There is a
13 70 foot watershed/drainage easement for the Kentucky
14 Department of Fish and Wildlife Resources located
15 along the east side of the subject property. A letter
16 from the Fisheries Division of the Kentucky Department
17 of Fish and Wildlife Resources states that
18 construction of the pool was allowed within that 70
19 foot easement as long as the structure is located 30'
20 from the waters edge. A similar letter has been
21 requested for the construction of the pool house.

22 FINDINGS OF FACT

23 1. It will not adversely affect the public
24 health, safety or welfare because the proposed
25 building will not impact the traffic visibility and is

1 appropriately separated from other buildings in the
2 area to provide adequate fire protection.

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

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

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

15 STAFF RECOMMENDATION

16 Condition

17 1. Pool house shall be located a minimum of
18 30' from the waters edge as stated in the letter from
19 the Fisheries Division.

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

22 CHAIRMAN: Thank you.

23 Is anyone wishing to speak in opposition of
24 this item?

25 (NO RESPONSE)

1 CHAIRMAN: Is the applicant here and do you
2 have any comments you want to state?

3 APPLICANT REP: No.

4 CHAIRMAN: You understand the conditions the
5 Staff has made?

6 APPLICANT REP: Yes.

7 CHAIRMAN: Any other questions or comments
8 from the Staff?

9 (NO RESPONSE)

10 CHAIRMAN: Board members have any comments or
11 questions?

12 (NO RESPONSE)

13 CHAIRMAN: Entertain a motion to dispose of
14 the item.

15 MR. TAYLOR: Mr. Chairman, move to grant the
16 Variance. There are special circumstances involved
17 here. There is very limited space where the pool
18 house could be constructed. There are also other
19 cases of encroachment in the area, so it won't alter
20 the essential nature of the neighborhood. They have
21 met all requirements specifically from the Kentucky
22 Department of Fish and Wildlife Resources. It will
23 not adversely affect the public health, safety or
24 welfare; it will not alter the essential character of
25 the general vicinity; it won't cause a hazard or a

1 nuisance to the public; and it will not allow an
2 unreasonable circumvention of the requirements. The
3 only condition that I stipulate is that the pool house
4 shall not be located within 30 feet from the water
5 edge.

6 MR. PEDLEY: Second.

7 CHAIRMAN: A motion has made and a second.

8 Any other comments from the Staff?

9 (NO RESPONSE)

10 CHAIRMAN: Any comments or questions from the
11 board?

12 (NO RESPONSE).

13 CHAIRMAN: All in favor raise your right hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries.

16 Next item, please.

17 -----

18 ADMINISTRATIVE APPEAL

19 ITEM 11

20 927 Old Hartford Road, zoned B-4
21 Consider a request for an Administrative Appeal
22 concerning the proposal to change from one
23 non-conforming use to another non-conforming use with
24 regards to landscaping along Old Hartford Road and
25 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

1 ZONING HISTORY

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

6 To the Staff's knowledge the subject property
7 has not been used for commercial purposes since 1999.
8 According to the applicant Delbert J. Glenn Funeral
9 Home has owned the subject property since 1999 during
10 which time the building has been used primarily for
11 storage of goods and antiques for the funeral home
12 located across the street, which is not a principally
13 permitted use in this zone. Storage as a principal
14 use requires an I-1 Light Industrial zoning
15 classification and if used as such since 1999, the use
16 of the property has been in violation of the current
17 zoning ordinance requirement since that time.
18 Accessory retail storage would be a permitted use in
19 the B-4 General Business zone; however, there is not a
20 principal use for the storage to be incidental,
21 accessory or ancillary to - the business that utilizes
22 the storage is located on a different lot. Furniture
23 re-sale, another use listed by the applicant would be
24 a permitted use within this zone, but should have
25 required conformance to the parking supply, landscape

1 requirements and building codes in accordance with
2 Section 3.3 of the Owensboro Metropolitan Zoning
3 Ordinance, which states:

4 "3-3 CONVERSION OF BUILDINGS. The
5 conversion of any building or buildings, either
6 residential or nonresidential, so as to accommodate an
7 increased number of dwelling units or families or to
8 accommodate another permitted use shall be permitted
9 only within a zone in which a new building for similar
10 occupancy would be permitted under this Zoning
11 Ordinance. The resulting occupancy shall comply with
12 the requirements governing new construction in such
13 zone with respect to building codes, parking supply
14 and landscape buffers. If the conversion involves no
15 expansion of principal building volume or no
16 conversion of an accessory building into a principal
17 building, the resulting occupancy shall be exempt from
18 the following requirements: Minimum lot size, maximum
19 floor area, lot coverage, dimensions of yards and
20 minimum open space. Any conversion that involves
21 changes other than those stated above shall be subject
22 to all site requirements stated above, and such
23 further requirements as may be specified hereinafter
24 applying to such zone."

25 It is the Staff's opinion that the

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

22 Although the access to Old Hartford Road may
23 predate the community's access standards, this does
24 not legalize the access point of this property for a
25 permitted use on the property. As on any reuse of a

1 property, the access standards are addressed as a
2 method to achieve conformity to the extent possible
3 with the current standards in order to provide safer
4 access points for the transportation system of the
5 community. In this case, Old Hartford Road is
6 classified as a minor arterial street and the Street
7 Access Limits Intersection and Driveway Spacing
8 Standards allow for one driveway every 500 feet on
9 this type of street. The applicant has proposed to
10 reduce the existing access to a 20 foot one way access
11 to the subject property. The resulting access point
12 would be located only approximately 12 feet from the
13 right-of-way line of Hathaway Street. The existing
14 standards require a minimum of 50 feet from a street
15 intersection for a commercial access, even on less
16 traveled local roads. This access point should be
17 closed, and if access from Old Hartford Road is
18 desired, the property could be accessed from the
19 adjoining property access at 921 Old Hartford Road,
20 which is also owned by the applicant and already has a
21 paved drive to the subject property. With the closure
22 of the access point, a three foot landscape element
23 with one tree per 40 linear feet should be installed
24 along the Old Hartford Road frontage and landscaping
25 should also be provided between the vehicular use area

1 and Hathaway Street. The property can be utilized for
2 the permitted use as proposed meeting the parking
3 requirements, with the access closed and function
4 properly. There is no compelling reason to allow the
5 access to remain as it is not in compliance with the
6 standards and could pose a safety hazard to the
7 motoring public given its near proximity to the street
8 intersection. Even absent of the ability to provide
9 access from the adjoining property under same
10 ownership, the Staff would still recommend that the
11 Old Hartford Road access point be closed and access be
12 provided from the lower classification street,
13 Hathaway Street. The access point to the funeral home
14 is directly in line with Hathaway Street. The funeral
15 home intends to operate this comfort house for the
16 families that it serves. The traffic movement from
17 the funeral home to the site should be encouraged to
18 cross from the existing access point to Hathaway
19 Street and then access the site from Hathaway, instead
20 of encouraging a left turning movement onto Old
21 Hartford Road to access the site. The standards were
22 developed based on sound practices to reduce potential
23 conflict points, have been applied to numerous
24 properties in the community for both new and existing
25 proposals and are a sound and basic planning tool that

1 should be implemented to provide safe and accessible
2 transportation systems within the community.

3 With the closure of the access point on Old
4 Hartford Road and installation of the landscaping, the
5 subject property would meet the requirements of the
6 ordinance. The provision in the zoning ordinance for
7 the conversion of existing building should be applied
8 and the Staff recommends that the OMBA find, based on
9 the information provided by the applicant, that the
10 non-conforming status has been lost and the approval
11 of a permitted use as proposed within this existing
12 building must conform to the provisions of Section 3.3
13 of the Zoning Ordinance and that the OMBA does not
14 have the discretion to alter that provision.
15 Additionally, the Staff recommends that the existing
16 access to the subject property be closed for
17 compliance with the access standards and for the
18 protection of the public safety. The site can be
19 developed for the proposed use and meet the
20 requirements of the zoning ordinance. There is no
21 topographical hardship or special circumstance that is
22 different from other properties within the same zone
23 and no basis for allowing the site to waive standard
24 development requirements applicable to other lots
25 within the same zone.

1 LAND USES IN SURROUNDING AREA

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

10 AUTHORITY FOR CHANGE IN NON-CONFORMING USE

11 Under Section 4.53 of the Zoning Ordinance the
12 OMBA is given the authority to approve a change in any
13 non-conforming use of a structure, or structure and
14 premises if the proposed use is in the same or more
15 restrictive classification. Section 7.34 of the
16 Zoning Ordinance requires that in approving an appeal
17 concerning non-conforming structures and uses, the
18 Board must additionally find that the change would not
19 increase the non-conformity in scope or area of
20 operation, that it would not have an adverse effect on
21 existing or future development of subject property or
22 adjoining area. The Board may require appropriate
23 conditions to ensure the health, safety and welfare of
24 the community and to protect the essential character
25 of the surrounding area. The Board would have to find

1 that the current property is non-conforming in order
2 to have the authority to change the use to another
3 non-conforming use. As stated, the proposed use is a
4 permitted use in the B-4 zone and the Staff is of the
5 opinion that the non-conforming status does not apply.

6 A motion to approve would allow the premises
7 to be used as proposed without installing the required
8 landscaping and allowing the applicant to continue to
9 use both the access on Old Hartford Road and the
10 access on Hathaway Street and should include findings
11 that the use of the premises is more restrictive than
12 the previous one, that the use is a continuance of a
13 non-conformity and is not increased in scope or area,
14 and that the use would not have an adverse effect on
15 existing or future development. The Board may impose
16 conditions as recommended to ensure protection of the
17 character of the surrounding area. The current use of
18 the property, as stated by the applicant, is a storage
19 use, which is not a principally permitted use in the
20 B-4 zone and would be in violation of the current
21 zoning ordinance. The proposed use of the property is
22 a principally permitted use in the B-4 zoning
23 district, and therefore the conversion of the existing
24 building for a permitted use should comply with
25 Section 3.3 of the zoning ordinance.

1 A motion to deny would prevent the building
2 and premises from being used as proposed and should
3 include findings demonstrating that the use has not
4 maintained its non-conforming status, that the
5 permitted use in an existing building is regulated
6 under Section 3.3 Conversion of Buildings, that the
7 access closure is appropriate to comply with the
8 community's standards and for public safety, and that
9 the requirements of the zoning ordinance are
10 applicable to this site. If the board agrees with the
11 recommendations of the Staff that the property has
12 lost any non-conforming status it may have had years
13 ago, then the OMBA does not have the authority to
14 approve a change in a non-conforming use.

15 SPECIAL CONDITIONS

- 16 1. Access be limited to Hathaway Street and
17 the existing access to Old Hartford Road be closed.
- 18 2. Required vehicular use area landscaping of
19 a three (3) foot continuous element and one (1) tree
20 every 40 feet be installed along the right-of-way of
21 Old Hartford Road and Hathaway Street.

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

24 CHAIRMAN: Thank you.

25 Does the applicant have any comments about the

1 Administrative Appeal?

2 MR. KAMUF: Yes, sir, we do.

3 MR. SILVERT: State your name, please.

4 MR. KAMUF: Charles Kamuf.

5 I might point out that I represent Glenn
6 Funeral Home. This lot is a single lot. It has been
7 a lot that has been approved by Planning and Zoning in
8 1970. The lot has always, always had access from the
9 Old Hartford Road and from Hathaway Street. This is
10 an appeal basically, we're contesting the fact that if
11 we use the property as it's been used for the last 30
12 or 40 years, that we do not have an access point on
13 the Old Hartford Road.

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

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

21 This certainly, as I'll explain to you, will
22 have no affect, adverse affect on the neighborhood.
23 In other words, since I've been coming to these
24 Planning and Zoning meetings, and also the Board of
25 Adjustment, I've never heard anybody make such a big

1 to do about this issue that I'm going to explain to
2 you.

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

13 The history of the property: This property in
14 1970 or about that time was used as a convenient
15 store. They've always had access to Hathaway and
16 always had access to Old Hartford Road.

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

22 This is a picture of the convenient store as
23 it existed in 1970. We're just asking for a small
24 entrance into Old Hartford Road. As you see this,
25 this photograph shows a complete entrance across the

1 entire front of the convenient store as to Hartford
2 Road. It also shows that there is access point on
3 Hathaway. I would like to pass, and I don't know that
4 I have got a copy for everybody.

5 That picture speaks for itself.

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

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

13 The Glenn Funeral Home purchased this
14 property. Here's what it looks like. I'll show that
15 to you. I'll pass this around. This is what it looks
16 like today. There hasn't been one change to the
17 exterior of that building since they purchased it.
18 They bought the property in 1999. There has been a
19 continual use of that property for retail storage and
20 ancillary use to Glenn Funeral Home since they
21 purchased it. It has been used commercially as a
22 casket display equipment for Glenn Funeral Home, a
23 retail storage, storage of antiques and a resale of
24 furniture by David Taylor who is Glenn Taylor's
25 brother.

1 The property has never been vacant. Never
2 been vacant since 1970. They've always had access to
3 Old Hartford Road.

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

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

17 As you can see, this drawing is prepared by an
18 engineer. You can see the pink area is the comfort
19 house. You can see the directional drive that we
20 have. It's a lot smaller than what is there now from
21 the Old Hartford Road. It would make no sense to us
22 to develop this from Hathaway Street because if we
23 drive in Hathaway Street you drive in and you have to
24 back all the way out into Hathaway Street because you
25 can't get out on Old Hartford Road. In other words,

1 if we're going to have the comfort house there, the
2 only way to have the traffic is the way the surveyor
3 prepared it. Showing the angle parking and there
4 would be 13 parking places including the one to the
5 rear.

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

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

17 Here is the problem that you have there. We
18 have no idea what we intend to use the other property
19 for. In other words, for us to say now that we would
20 give you access points from some other lots that we
21 have would really create a financial hardship because
22 we don't know what we're going to do with the
23 property. The only thing that we know is that we want
24 to have a comfort house here. We want to use that
25 house in accordance with what I told you with Delbert

1 Glenn Funeral Home. I cannot tell you that I would
2 agree -- let's just say that I told you that we would
3 agree to a shared access, which is what I think Jim
4 probably wants done.

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

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

1 has something to do with it, with the funeral home.

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

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

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

18 What we're saying is it's our contention that
19 these access points have been there. They've been
20 there since that time. They've been used continually
21 since that time. The property has never been vacant.
22 That they exist and that it's a non-conforming access.
23 There has never been anybody up here to testify or any
24 neighbor that it's not, has not been continually used.
25 You'll hear what Kristi has to say.

1 There's no objection from the neighbors. How
2 could this have any adverse affect on anybody? How
3 could it?

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

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

10 MR. KAMUF: All right.

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

13 MR. NOFFSINGER: Let him --

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

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

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

20 All I'm saying is, what is the big deal?
21 We're going to do something to better that
22 neighborhood, it will be a benefit to the
23 neighborhood. They're going to refurnish the
24 building. They will not change, nothing will be
25 changed. In the event that any of the property later

1 on is developed to the west, that's the time that we
2 talk about these access points here and on the other
3 property.

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

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

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

12 MR. SILVERT: State your name, please.

13 MS. CHANEY: Kristi Chaney.

14 (KRISTI CHANEY SWORN BY ATTORNEY.)

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

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

25 It will be beneficial to the community

1 absolutely. If you look across the street at the
2 funeral home, as far as landscape, we're above code
3 there. We would gladly go above code on this one too.
4 We love landscape. We like to make the outside look
5 good.

6 CHAIRMAN: Any questions from the board or
7 Staff?

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

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

22 CHAIRMAN: Staff.

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

25 MS. EVANS: We have prepared a site plan

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

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

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

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

13 MR. SILVERT: State your name.

14 MR. MISCHEL: Jim Mischel.

15 (JIM MISCHEL SWORN BY ATTORNEY.)

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

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

1 we have on this property and the property owned
2 next-door there's three access points. On a major
3 road that's very important. Now, these three access
4 points are connected to an inner road that connect all
5 three of those properties. So we thought at this time
6 it would be easy. It's already paved. There will not
7 be a problem if they closed up the one on the corner,
8 use one of the other two, and they wouldn't have to
9 pave any more. It's just a direct. You turn in and
10 go over to that property. It's there. It's already
11 paved.

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

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

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

23 Now, the purpose they want now as a comfort
24 house is permitted, but storage by itself is not a
25 permitted use in a B-4 zone. It should have been I-1.

1 When you take those items into consideration,
2 I think you have to go back to the Staff Report under
3 Conversion of Buildings, 3.3. That's the only guide
4 we have. I mean we have to go by something and that
5 is the guide set, that's set to us to go by.

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

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

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

22 MR. MISCHEL: As I stated before, basically
23 it's lost that non-conformity in the past through it's
24 inactivity and also the change of use. When it went
25 to a storage lot, that was a change of use. It should

1 have been really an I-1 zone and not a B-4.

2 MR. PEDLEY: It has changed use four times.
3 Was there an appeal for one non-conforming use to
4 another non-conforming use? Was there ever an appeal?

5 MR. NOFFSINGER: No, sir. There is not an
6 appeal of record. In fact, with the convenient store,
7 that use would have been permitted even though the
8 site development requirements may have been
9 non-conforming. When the property was used by I think
10 they said maybe River Valley Behavioral Health, most
11 likely that use would have been conforming. When it
12 was used for the retail sale of furniture, that use
13 would have been conforming. That was a temporary use
14 and no site improvements were required at that time.
15 Since the time it was used for retail sales, we have
16 no indication of any change in use on that property.
17 So we believed that the property was vacant. However,
18 the applicant is here tonight saying it was used for
19 storage, which would be a violation of the zoning
20 ordinance. So tonight Staff is of the opinion that
21 you're not here to consider whether or not the use
22 comfort house, that type of use is non-conforming or
23 not. That's a permitted use. The non-conformity or
24 the appeal here tonight would be whether or not they
25 should have to comply with the site development

1 standards that new construction and other developments
2 in the community have to meet.

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

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

15 Now, the Staff has provided you a site plan
16 showing how it could work to where you only had access
17 to Hathaway Street. You're not going to have to back
18 out into Hathaway Street because you're going to have
19 a landscape buffer there. We also believe that
20 there's a possibility for a connection to the
21 adjoining property. It's my understanding there's a
22 connection, a vehicular use connection to that
23 adjoining property now. We don't believe that will
24 change. We think they'll still have access if they
25 want access to Old Hartford Road. We do think that it

1 creates an unsafe situation where you have vehicles
2 leaving Glenn Funeral Home and making a left turn and
3 then an immediate right turn to get to the comfort
4 house, when if they didn't have that choice they would
5 automatically go straight across Old Hartford Road
6 onto Hathaway Street and then turn in to a defined
7 entrance on Hathaway Street.

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

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

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

24 If you find contrary to that and you say,
25 well, it's non-conforming but we disagree with the

1 zoning administrator's interpretation, then you would
2 find in favor of the appellant that the access point
3 should remain.

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

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

15 MR. TAYLOR: Right. Where I get confused is
16 because it seems like that we're getting thrown a lot
17 of, you know, it's used for storage, it's used for
18 retail, and exactly when it got cut off and used for
19 storage and when it got cut off to use for retail,
20 whether we're something saying it was used a permitted
21 use in B-4, whether they're a non-conforming use in
22 B-4. It seems like we're weighing a lot of those
23 things. It's kind of hard for me, I see what the
24 headline says and I kind of understand what you say,
25 but it seems to me that it boils down to is that

1 entrance way, do we feel if that entrance way can be
2 still be used? It seems to me that that's a question.
3 I'm just wondering how we formulate a ruling on which
4 way or the other.

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

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

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

21 MR. TAYLOR: That's what I'm wondering. It
22 seems like everybody is telling me that it's not a
23 non-conforming use. Do you understand what I'm
24 saying? It's saying what's the authority for the
25 change in non-conforming use, but at the same point

1 you're telling me it's not a non-conforming use. So
2 it doesn't seem like I have --

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

20 MR. TAYLOR: I completely understand what
21 you're saying. What I'm saying is at one point I'm
22 saying, don't look at the use. The use is permitted
23 in that, but then at the same point you're saying,
24 look at the use because of the site plan for it. It
25 seems to me if there is not a non-conforming use or a

1 conditional use for non-conforming, for whatever they
2 were using it for, and I don't know how we would
3 determine that, that I don't understand why it would
4 have to go before us for the change if it's going from
5 a B-4 use to a B-4 use again and it's under the same
6 ownership as to what it was before.

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

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

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

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

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

24 MR. TAYLOR: I'm just wondering at what point
25 did that site change?

1 MR. NOFFSINGER: In 1977 with the adoption of
2 the Zoning Ordinance. The new requirements would have
3 kicked in.

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

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

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

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

1 don't have anything but Article 3.3.

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

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

25 MR. DYSINGER: Mr. Chairman, it seems to me

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

20 MR. PEDLEY: To me the applicant has not
21 demonstrated proof that it has maintained this
22 non-conforming status. I've used that Hathaway
23 Street. My shop is on Hall Street, construction shop.
24 From 1965 to 1994 I passed that every day. There were
25 things there. That was place was empty for several

1 long periods. There was a restaurant in there, B.J.
2 Fulkerson restaurant for quite a time. No one said
3 anything about that. You haven't demonstrated, you
4 haven't shown to me that it's maintained its
5 non-conforming status.

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

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

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

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

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

25 MS. DIXON: I agree with Mr. Dysinger and Mr.

1 Pedley. That this is our opportunity to bring that
2 traffic situation into compliance now.

3 CHAIRMAN: Any other board members have any
4 comments?

5 (NO RESPONSE)

6 CHAIRMAN: Mr. Kamuf.

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

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

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

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

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

1 now or they would have kept the convenient store.

2 That's just my argument.

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

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

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

24 Now, I might go a little more because I know
25 about permits and things, but I don't think that Glenn

1 Taylor and them when they used it thought that they
2 were violating any laws or when they allowed somebody
3 temporarily to use that property. Was that a
4 violation?

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

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

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

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

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

25 MR. KAMUF: But this way with a site plan --

1 I'm arguing a tough case.

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

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

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

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

24 MR. KAMUF: Certainly that's a big issue for
25 the board. Safety.

1 MR. PEDLEY: The non-conforming status you
2 haven't demonstrated, you haven't showed us it's
3 maintained its non-conforming status. You haven't
4 demonstrated it that it has. There's nothing that you
5 can show us that it has maintained its non-conforming
6 status.

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

12 MR. KAMUF: I understand.

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

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

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

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

1 access board.

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

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

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

25 Go back down to Fairview Drive you've got the

1 same thing. CVS. People are jumping in that left
2 turn lane and turn left in that drive. People going
3 west jump in left and their running head on. You've
4 got almost the same thing here.

5 MR. KAMUF: I understand.

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

13 Anyway, thank you all.

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

16 MR. KAMUF: No.

17 CHAIRMAN: Staff have anything new to add?

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

22 MR. KAMUF: That's correct.

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

25 (NO RESPONSE)

1 CHAIRMAN: Entertain a motion.

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

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

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

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

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

21 MR. DYSINGER: It is currently not in
22 compliance. When they change to comfort house, when
23 they change that usage, if you meet the requirements
24 of the Zoning Ordinance, this goes away and I don't
25 think we have anything further to say about the issue.

1 It is currently not in compliance. I think that's
2 clearly in evidence. Further, when you do change the
3 usage, you need to comply with the Zoning Ordinance.
4 So my motion, if I can stick up for my own motion. My
5 motion to deny the appeal does not effect whether or
6 not they can do the comfort house. It does effect
7 whether or not they can do the comfort house with the
8 access with the way it stands, which is what the
9 appeal was based on.

10 MS. DIXON: Second.

11 CHAIRMAN: A motion has been made and a
12 second.

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

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

1 that's all my appeal says.

2 What about it, Mr. Silvert?

3 MR. SILVERT: From what I heard from the
4 motion, from Mr. Dysinger, is that since the appeal
5 was requesting that you can continue access onto Old
6 Hartford Road, there would have to be a determination
7 from this board that the proposed now permitted use
8 would not have to for some reason comply with Section
9 3.3 because 3.3 would require that the new permitted
10 use brings that site to current new development
11 standards. That location for that entrance point
12 would not meet those requirements. I don't think he's
13 saying anything about a counter-claim. He's just
14 saying in order to find for you he'd have to find
15 something that he doesn't believe he can find. That's
16 all I heard.

17 MR. DYSINGER: Close enough.

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

24 MR. DYSINGER: My motion is to deny based on
25 findings that we have seen here tonight. Those

1 findings being when change usage you must come up to
2 current standards and further that it is currently a
3 non-conforming use. It is not in compliance.

4 MR. KAMUF: Thank you.

5 CHAIRMAN: Second still under that?

6 MS. DIXON: I think so.

7 CHAIRMAN: Any other comments from the Staff?

8 MR. NOFFSINGER: No, sir.

9 CHAIRMAN: Any other comments or questions
10 from the board?

11 (NO RESPONSE)

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

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

16 CHAIRMAN: Opposed like sign.

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

19 CHAIRMAN: Motion is four to two.

20 Next item, please.

21 ITEM 12

22 6057, 6133 Highway 2830, zoned B-4
23 Consider a request for an Administrative Appeal
24 concerning the proposal to relocate a non-conforming
25 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

1 Appellant: Hawesway, Inc.

2 ZONING HISTORY

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

7 The Commonwealth of Kentucky Transportation
8 Cabinet, Department of Highways is acquiring
9 right-of-way from the Applicant for the construction,
10 extension, and relocation of the proposed US Highway
11 60 Bypass. This right-of-way acquisition will force
12 the removal of the existing building as shown on the
13 site plan submitted. The applicant proposes to
14 rebuild the non-conforming building in a new location
15 the same size as the existing building and replace the
16 broken asphalt and hard packed rock around the
17 proposed site with a new asphalt surface as shown on
18 the site plan submitted.

19 A letter from the Kentucky Transportation
20 Cabinet, Department of Highways is included with the
21 application identifying the need for the right-of-way
22 acquisition. Additionally, a letter from the Daviess
23 County Judge Executive is included with the
24 application asking the OMBA for favorable
25 consideration.

1 LAND USES IN SURROUNDING AREA

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

6 AUTHORITY FOR CHANGE IN NON-CONFORMING USE

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

21 A motion to approve would allow the applicant
22 to relocate the existing non-conforming building to a
23 proposed new site on the subject property and should
24 include findings that the non-conformity is not
25 increased in scope or area, and that the use would not

1 have an adverse effect on existing or future
2 development. The Board may impose conditions as
3 recommended to ensure protection of the character of
4 the surrounding area.

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

15 SPECIAL CONDITIONS

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

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

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

23 CHAIRMAN: Is the applicant here?

24 MR. SILVERT: State your name, please.

25 MR. POTEAT: Steve Poteat.

1 MR. SILVERT: Go ahead and present your case,
2 Mr. Poteat.

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

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

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

20 MR. DYSINGER: Thank you, Mr. Chairman.

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

23 CHAIRMAN: Staff have any?

24 MR. NOFFSINGER: No, sir. Mr. Poteat has done
25 a fine job of addressing the situation and providing

1 the evidence in the application as to why this change
2 of use non-conforming location to another is
3 warranted. We would support the request.

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

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

11 MR. POTEAT: No.

12 CHAIRMAN: Thank you.

13 Entertain a motion.

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

24 MR. DYSINGER: Second.

25 CHAIRMAN: A motion has been made and a

1 second.

2 You understand the conditions?

3 MR. POTEAT: Yes, sir, we do.

4 CHAIRMAN: And you accept them?

5 MR. POTEAT: And we accept those, yes.

6 CHAIRMAN: Any other comments from the board?

7 (NO RESPONSE)

8 CHAIRMAN: Staff have anything else?

9 MR. NOFFSINGER: No.

10 CHAIRMAN: All in favor a raise your right

11 hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Entertain one more motion.

15 MS. MASON: Motion to adjourn.

16 MS. DIXON: Second.

17 CHAIRMAN: All in favor raise your right hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: We are adjourned.

20 -----

21

22

23

24

25

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

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

16 WITNESS my hand and notary seal on this the
17 26th day of May, 2009.

18

19

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

22

COMMISSION EXPIRES: DECEMBER 19, 2010

23

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

24

25