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

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

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CHAIRMAN: Call the Owensboro Metropolitan
Board of Adjustment meeting to order. You can join us
in prayer and pledge of allegiance.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

Again, I want to welcome all of you here this
evening. If you have any comments on any item, please
come before the podium. State your name and be sworn
in so we can get you on record. With that we'll
proceed with our meeting.

The first thing is the minutes of the May 7th
meeting. They're on record in the office. I don't
think there's any problem. Unless somebody has
something to add to it I'll entertain a motion to
MS. DIXON: Move to approve.

MR. DYSINGER: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

VARIANCES

ITEM 2

5488 Ridge Pointe Court, zoned A-U
Consider a request for a Variance in order to reduce the side street building setback line along Covington Ridge Drive from 35' from the right-of-way line to 25' from the right-of-way line.
Reference: Zoning Ordinance, Article 8, Section 8.5.2(c)
Applicant: Michael G. Ballard and Brent A. Ballard, d/b/a Ballard's Development, LLP

MR. SILVERT: State your name, please.

MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

MS. EVANS: The applicant is requesting a reduction in the side street building setback line because there was an error during construction which caused the house and detached garage to encroach into the side street building setback line. The subject property is zoned A-U Urban Agriculture and there have
been no other variance requests in this neighborhood.

A building permit was issued for the
construction of the house and a detached garage on
March 16, 2009 with a site plan showing the proposed
building meeting the required side street setback.

On a March 17, 2009 field inspection, there
were no property pins spotted and the foundation
inspection was failed. Upon a follow-up inspection,
it was determined the foundation was too close to call
and the inspector requested the applicant get a survey
of the property to ensure the buildings were not in
the setback and the second foundation inspection was
failed.

The applicant continued to proceed with the
construction of the house and detached garage.

On April 29, 2009, the applicant requested an
electrical rough-in inspection and was refused this
inspection because the foundation inspection had never
passed. At that time the applicant submitted a letter
acknowledging the mistake of the encroachment and
their intention to apply for a variance. The
applicant states that around April 15, 2009, they
realized the building encroached into the setback.
Also, with this letter, the applicant acknowledged
that if they continued with construction after the
date of this letter, they were doing so at their own
risk.

Granting this variance will alter the
essential character of the general vicinity because
this house and detached garage will be considerably
closer to Covington Ridge Drive than the rest of the
houses on that street. It will allow an unreasonable
circumvention of the requirements of the zoning
regulations because the applicant did not follow the
recommendations of the field inspector and even after
realizing there may have been a problem continued with
construction. It may impact the site visibility on
Covington Ridge Drive for the property south of the
subject property.

Granting this Variance will adversely affect
the public health, safety or welfare because the
proposed buildings may impact the site visibility on
Covington Ridge Drive; it will alter the essential
character of the general vicinity because the house
and detached garage will be considerably closer to the
street than the rest of the structures in the area; it
will cause a hazard or a nuisance to the public
because it may impact the site visibility on Covington
Ridge Drive for the property south of the subject
property; it will allow an unreasonable circumvention
of the requirements of the zoning regulations because
the applicant continued with construction even after
realizing there may have been a problem.

Staff recommends denial.

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

CHAIRMAN: Thank you.

Is the applicant here and ready?

MR. SILVERT: State your name, please.

MR. BALLARD: Mike Ballard.

(MIKE BALLARD SWORN BY ATTORNEY.)

MR. BALLARD: Dennis inspected the footer.

When we staked it off, I was 100 percent sure the
footer was right. He said it was too close to call,
but the footer was okay to do. So we continued on
with the process.

He said we had to have it surveyed. We knew
that was okay to do. I called Bryant Engineering
sometime in the next few days and told them to do it,
but it was no rush because I knew for 100 percent sure
that our setback was good.

The next thing I knew was the electric
inspection came and they turned it down because the
survey was not complete. So that's the day, I guess,
we got into a bigger rush to get the survey done.
Then we submitted it here.

By that time the frame was up, the brick was on, the electrical was in, the HVAC was done and everything was proceeding right along because it was a presold house. That was the end of the story.

That's just a mistake was made. I had nine or ten feet on the other side of the house that I could have moved it easily. Didn't have any idea the mistake was happening. When we did, we corrected it the best we could. That's it. I don't have any reason other than I just made a dumb mistake. Just did.

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

MR. PEDLEY: Yes.

Mike, as you well know I'm a foundation contractor. Probably put in 3,000 foundations.

MR. BALLARD: Several hundred over the years.

This is the first one.

MR. PEDLEY: I'm just confused and concerned why, what measurements you might have been using to get that setback. It's your subdivision. You know the setback is 35 feet. Ninety-five percent of our subdivisions setback is 25 feet. It's easy to make that mistake. Mentally, you know, thinking 25. I
don't really realize what measurement you might have been using to be off as much as ten feet in places. Pretty much concern why. I really do think that you made an honest mistake. I know you have a great subdivision. It looks good. I know you're proud of it. I don't think that you did this intentionally because I know how you are about your development. It's a great development. It does look good. I don't know if you can even explain how or why that you made a mistake to that extent. I would like to hear that, if you could tell me.

MR. BALLARD: Well, I will say this: If you would look at the plat of that lot, it has a 35 foot setback marked out on the front of the lot. On the side of the lot it has a 35 and a 25 within about a quarter of an inch of each other on that same plat. One of them is the setback for a proposed sewer use that, you know, we gave to the RWRA when we developed the subdivision. Definitely knew it was 35 foot. Just read the wrong number and made the wrong mistake. That was just it. Can't do anything about that now.

MR. PEDLEY: So were you using the 25 feet? Were you --

MR. BALLARD: I used the 25 feet and I allowed myself 2 1/2 feet to be wrong. At the time that
Dennis came, I just absolutely knew for sure we had two feet four inches to spare. It just didn't happen. I will say this, and I've been promoting this for a long time. On corner lots where the curbs and radius all the way around, had every pin pulled up and marked, he still couldn't have measured it from that angle.

I don't know if Dennis will remember or not, but I measured the 9 foot 6 setback and put a string up. I measured the 25 foot setback all the way around that whole lot and put a string up so he would have something to measure by. They're not allowed to measure from the curb, which I think is an insane thing that happens, you know. I know today is not a good day to discuss that, but had we measured from the curb we would have caught that mistake before the footer got poured. I was 100 percent sure I was right when he came there the second time.

MR. PEDLEY: Looking at this plat I can only assume that you thought the setback was 25 feet.

MR. BALLARD: That's what I thought.

MR. PEDLEY: It appears that on the garage. It appears that on the front corner of the house. For some reason you was thinking the setback was 25 feet. Am I correct on that?
MR. BALLARD: Yes, you're correct. Had the 25
foot been right, I would have been 2 foot past the
setback, and that's what I thought I was.

MR. PEDLEY: I really believe you're telling
us right. There was no reason for you to -- you had
another ten feet on the side lot. You could have
easily moved back. There's no reason for you to do
this.

MR. BALLARD: No.

MR. PEDLEY: Absolutely no reason. I think
it's an honest mistake, but this is major, you know.

MR. BALLARD: I understand that. Again, it
was a mistake. I had all kinds of room to move it so
there was no reason for me to do it intentionally. I
mean that would have been insane. To be here
intentionally and to do all this stuff you've got to
go through to get here is insane, if you don't have
to. Absolutely it was an honest mistake.

MR. PEDLEY: I drove down there this afternoon
and took a look. The house itself visually doesn't
have a major impact being close. It's hard to tell
that it really is close. In fact, at one point it is
about 33, 34 feet in that radius, and a cul-de-sac is
common mistake is made. But the garage does jump out
at you. You can clearly see it's out of character with
the neighborhood.

MR. BALLARD: Again, like I said it's an honest mistake. That's the best I can tell you.

Brent lives right next-door. He didn't know it either. Nobody in the neighborhood knew it or said anything about it. We just got by. But the garage is 26 foot off the setback from what I thought was right. So it was a foot over what I thought I needed, you know.

MR. PEDLEY: The garage is 26.25. It just appears that you were using 25 foot setback.

MR. BALLARD: That's what I did. I just knew 100 percent sure it was the right one.

MR. PEDLEY: That 25 foot setback, is that a sewer easement?

MR. BALLARD: Yes. It's for future sewer easement. I even went to RWRA and got a letter saying it was okay to do that. Our septic tank is going to be on some of that easement. Before we got started, we got them to say it was okay to get on that future sewer easement. There's no plan, as far as I know of, to ever using it. Some day probably will be. They didn't have a problem with it either.

MR. PEDLEY: We have Dean Behnke's signature. He's okay with the encroachment into --
MR. BALLARD: I can't hardly hear you, Ward.

MR. PEDLEY: Dean Behnke's signature, he okayed encroaching into the sewer easement?

MR. BALLARD: Yes, he did.

MR. PEDLEY: So he's okay with it?

MR. BALLARD: He is. Again, that happened even before I thought I -- when I thought it was right, he was okay with doing it before we found out there was a mistake.

MR. PEDLEY: From the time you put the foundation in, the footer and the block, how much time passed before you had that house under roof?

MR. BALLARD: Fourteen days.

MR. PEDLEY: I know how quick you move.

MR. BALLARD: How long what?

MR. PEDLEY: Getting the house under roof, from the time of the foundation.

MR. BALLARD: It took 14 days from the day Dennis turned it down it was under roof. Had 18 guys on it and it took 14 days to do the whole thing.

Again, all the time we realized that we was going to have to get a survey done, but I was 100 percent sure that it was right so I wasn't worried about a survey. I knew it was a formality because of the radius street. You know, it's just hard to deal
well those sometimes. I didn't have a problem doing
the survey and I had already called Bryant to do it.
I told them no big rush. We've got plenty of time
because I know it's right.

MR. PEDLEY: On the second inspection, the
follow-up inspection, at what point did you call for
that?

MR. BALLARD: What point did I do what?

MR. PEDLEY: The second follow-up inspection,
where were you with your construction?

MR. BALLARD: Hadn't done anything when he
come back. It was the next day. I think the next day
so hadn't anything been done. He told me that day, I
had all the pins dug up and located and strung up, but
he said it was too close to call. You'll have to get
a survey. I knew that. He said, the footer is okay.
So we just poured the footer an hour after he was
there, you know, and we started doing everything we
normally do. It wasn't okay is the only thing I can
tell you. It wasn't okay.

MR. PEDLEY: I'm just trying to clarify all
the things that happened, everything that took place.

MR. BALLARD: Again, we didn't do anything
intentionally. There would have been no gain for us
to do it intentionally. We had ten foot to spare on
the other side of the house.

MR. PEDLEY: That's exactly what I'm trying to clarify. If you intentionally did it.

MR. BALLARD: No.

MR. PEDLEY: And I don't believe you did because you had no reason to. That's all the questions I have for you, Mike. I just wanted to clarify all the issues and things.

Maybe Dennis might like to fill us in on anything that might have been different to what you heard here.

Dennis.

CHAIRMAN: Dennis, before you start, are there any other questions from the board members of the applicant?

MR. DYSINGER: I would, Mr. Chair.

Sir, at what point did you find out the setback should be 35 as opposed to 25?

MR. BALLARD: When I got turned down for the electrical inspection. Not because it failed, but because Dennis hadn't okayed it and the survey had not been completed. I was setting in my office ten miles away and it just, the light come on and it was a dumb mistake.

MR. DYSINGER: So on or about April 29th you
realized that the error was made?

MR. BALLARD: Yes. Way long time after we
done it all.

MR. DYSINGER: I am not in construction so
some of the questions I'll ask you will appear dumb to
you so be patient with me.

The survey, were you notified on the 18th that
the survey should be done? Is that the point in which
it was decided it was too close to call by Dennis?

MR. BALLARD: Yes.

MR. DYSINGER: And at that time he informed
you that you should have a survey done?

MR. BALLARD: Yes. I knew that we were going
to have to do it. I'm not sure what day I called
Bryant. I'm not even sure what date, if the 18th is
the correct date. I didn't look at the calendar. I
don't know.

As soon as I realized I had to do it, I called
Bryant and they were real busy. I said, don't worry
about it. We don't have to, you know, we've got to
get it some day before we close the house out, but
otherwise it's not a big rush. They done everything
else prior to, I guess. Waiting on me, you know, for
them to get time. I didn't really see a problem at
all and why we had to get it done in two days. I
didn't know there was a problem.

MR. DYSINGER: So it's your testimony you did 
contact the engineer to have a survey done, but did 
not schedule a survey?

MR. BALLARD: Right. I told him to do it when 
he got time.

MR. DYSINGER: Mr. Chairman, unless Bryant is 
here to question, then I would be interested in what 
Dennis had to say.

That's all I have right now, sir. Thank you.

CHAIRMAN: Any other questions by the board?

(NO RESPONSE)

MR. SILVERT: State your name, please.

MR. THURMAN: Dennis Thurman.

(DENNIS THURMAN SWORN BY ATTORNEY.)

MR. PEDLEY: Dennis, normally when you say 
it's -- I know you do inspections for me. Normally 
when you say it's too close to call, we're talking 
about six inches or maybe one foot. When you 
inspected this, did you think that was a 25 foot 
setback or did you know it was a 35 foot setback?

MR. THURMAN: Mr. Pedley, when I did the 
initial inspection on the 17th there were no property 
pins visible. I cannot do a setback inspection 
without property pins. So I informed Mr. Ballard that
I needed the property pins. He indicated he would call when he got them.

According to the inspection sheet here, on the 19th I went back and Mr. Ballard had the property pins exposed. There was no string line. I can't measure it without a string line. So I turned it down and called it too close to call. I can't measure without a string line on the property pins.

MR. PEDLEY: What did you think the setback was there? Did you think it was 35 or 25 when you were out there and you had the plat?

MR. THURMAN: Mr. Pedley, I can't answer that question right at the moment. On my inspection sheet I have the setbacks printed for me. I don't recall what they were at this time, but they were on my sheet.

MR. PEDLEY: Just trying to clarify. Normally when we say "too close to call" we're talking about 6 inches to a foot.

MR. THURMAN: Yes, sir.

MR. PEDLEY: Not ten feet.

MS. EVANS: Here is the setbacks right here.

MR. THURMAN: Yes, sir. It's showing me setbacks on the left side is 10 feet. On the right side is 35 feet and the rear 20.
MR. BALLARD: Can I say something?

MR. THURMAN: Sure.

MR. BALLARD: On corner lots, had every pin been exposed there was still nothing for him to measure from. We measure from the curb because, you know, if any of you have ever located -- I think you have a plat there. The pins are 20, 30 feet around the corner from anywhere he could have measured from on that house. I measured from the curb myself 34 foot 6 because that's what the setback was. I give myself 2 more feet and 6 inches just to be safe. When I did put the pins up, I put the string up and I measured the string from the curb because there's no way to measure a radius lot and be accurate at all. He can't do it either, you know. I'm not saying he's wrong. I made the mistake.

MR. PEDLEY: I'm trying to determine why he saying too close to call or you could be saying you thought you were right when you're 10 feet off. I don't understand why the 10 feet. Setback is 35. I can only assume that you thought it was 25 and that's what you were using.
MR. BALLARD: Yes, I thought it was 25 plus 9 foot 6 from the pin to the curb. I went that far plus 2 more feet and 6 inches just to cover my butt. If you look at the plat, it's got 25 right at the corner of the house line. It's on the plat 25, but the 25 somewhere else on that line says future sewer easement. I put 57 on the things in there and none of them have been wrong. It's just one of those mistakes. Everywhere I built in Sorgho the setback is 25 feet and we put 30, 40 in there and they're all right. First time we've made a mistake on a setback on 300 houses or so. It's not like we had a reason to do it, you know.

MS. MASON: I'm showing my stupidity because I don't know much about building. Is it 35 feet throughout your whole subdivision?

MR. BALLARD: Yes, it is. Corner lots are the unusual situation. Anybody that's ever built knows corner lots are just sometimes a nightmare. We actually had the engineer give us a 70 foot envelope inside of that house and upon the plat so we know how big of a house we can put in there. We give ourselves 10 more feet for that. Still it was wrong. I just made a mistake.

CHAIRMAN: Do you have any other comments you
want to make?

MR. THURMAN: No, sir.

CHAIRMAN: Board members have any other questions of the inspector?

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. DYSINGER: Mr. Chairman, I'm sorry. Dennis, when you failed the inspection on the 19th and you put "too close to call," and I know almost as much about inspection as I do about construction so my questions are going to seem pretty dumb to you too.

When you fail an inspection, does it matter why you fail it? Insomuch as to the applicant, should it have mattered that you said to close to call or are there specific things that you guys -- should you have, in other words, said, I can't measure it because there's no strings or does that matter?

MR. THURMAN: That was my mistake. I should have indicated on the report, no string lines and I could not measure it. I think the reason I put too close to call was because of the utility easement that Mr. Ballard had laid out and it was pretty close.

MR. DYSINGER: You guys do a great job in a lot of tough situations.
I think that's the only question I have for Dennis right now, Mr. Chairman. Thank you.

MR. PEDLEY: That's all I have, Dennis. Thank you very much.

MR. THURMAN: Thank you.

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: I've heard Mr. Ballard state that he didn't know it was a problem at the time, but I'm just wondering if he sees that it's a problem now. I'm just wondering if he sees it's a problem in the future. I'm really concerned about that because our inspectors did not pass that inspection and Mr. Ballard moved forward with the inspection failing. After our inspector asked for a survey and said, whether he said it was too close to call or what, he moved forward. How does that affect us in the future? Where do we go? I understand the mistake was made, but what about the next time? And the next time the inspector comes out and says, it's too close to call or passes it, are we going to continue to build or what do we do?

MR. BALLARD: I'm pretty sure we'll have a different opinion next time. Pretty sure we will.

MR. PEDLEY: Being a builder and also a foundation contractor, I definitely think we need to
take a look at how that's handled, you know. We can't keep having this. We don't want builders or contractors or foundation contractors thinking that, well, I'll go ahead with it and then I'll go get a variance. That puts this board in a bad situation. That's not what we're here for. We're here for the remedy, situation like this, but we also have guidelines that we have do go by. Findings that we must make to approve this variance.

I'm going to bring it up to the Homebuilders Board meeting. I'm also going to ask Gary and Jim to meet with us and come up with something more. I'm not wanting to restrict us any more so we can't continue on, but at the same time I do not want for builders or foundation contractors to continue doing these things and going, if I'm wrong I'll go get a variance. That's not the purpose of this board; although we grant a lot of variances on mistakes like yours. That's one of the things we do. That's one of the purposes of the board of adjustment. That's what the board of adjustment is all about.

I've made this mistake three times. I've never been here. Last year I made this mistake. I was in a rush. Was going to Wisconsin with the ball team. Staked out a foundation and told them to go
ahead and pour it. Building inspector, we only had
two inches on each side. It's too close to call.
I'll get an engineer. I get back the footer is
poured. I found out I was wrong. I had it wrong. I
tore the footer out and poured another one. I didn't
come down here. It's not the first time I've done
that. It's three times I've done that.

Another time I did it at Stone Gate. The
foundation was wrong. Rear property pin. It was an
honest mistake. But the only remedy that I could do
is buy five feet off of the lot from Melvin Pagan.
That cost me $7,000 to buy that lot. I did a
consolidation and a lot division, but I didn't come
down here. I did one other time. I tore the footer
out.

Mike, you've got a situation here that's very
devastating to you if you have to tear that house
down.

MR. BALLARD: Yes. About $300,000 worth.

MR. PEDLEY: Yes, and I understand that. This
is a tough one. This is one of the toughest ones I've
had to deal with, but a 10 foot mistake that's major.
It's not one foot. It's 10 feet. It's major.

I drove down there this afternoon. The house
itself doesn't have a visual impact on that
development. Even with my trained eye I can see the
difference, but it doesn't have a major impact. The
garage itself does. It is totally out of character
with that subdivision.

MR. BALLARD: Well, the garage was lined up
exactly straight line with the side of the house.
That's why it's that way. We wanted it to look
straight with the house and that's the way it looks.

MR. PEDLEY: Still the garage itself is what
has the major impact on it and out of character.
That's the things that we must find. We have four
things. That's one of them. It does alter the
essential character of the neighbored. It does.

MS. MASON: I also drove by and I could tell.
The house was hard for me to tell, but the garage I
could definitely tell it was a lot closer.

I have a question. Has there been any letters
received in the office from other property owners? I
didn't hear any.

MR. NOFFSINGER: We have two gentlemen in the
audience, and I'm not sure why they're here. We
haven't heard from them, but Mr. Mischel in the office
did have a call from one or two folks that lived out
there. He can share with you what conversations he
might have had just in general. Yes, we have had some
contact from people that lived or own properties out there.

CHAIRMAN: Jim, before you start.
You gentlemen have any comments you want to add at this time, either one of you?

(NO RESPONSE)

CHAIRMAN: Jim.

MR. SILVERT: State your name, please.

MR. MISCHEL: Jim Mischel.

(JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I had two calls, but it was from the same gentleman. He voiced some concerns about the setback and allowing it to occur. I got the impression that he wanted this house to meet the 35 foot setback. That was about it.

CHAIRMAN: Any questions of Jim from the board?

(NO RESPONSE)

CHAIRMAN: Mr. Ballard, do you have anything new that would help us any in our decision?

MR. BALLARD: I don't know. No, not in your decision, no, I don't have anything new on that. It was just an honest mistake and first one I've made in 300 houses. Just something happened sometime.

I can say this for some advice. Had Dennis
been allowed to measure from the curb he and I
together would have caught this mistake before the
footer got poured, but I was 100 percent sure I was
right. He didn't know. He's not allowed to measure
from the curb so we couldn't have caught the mistake
until the survey was done. That's no excuse, but that
would have alleviated this problem before the footer
got poured had he been allowed to measure from the
curb. Anybody looks at radius lots, if you've got the
plat in front of you, can see where the pins are and
it's impossible to measure from both and get a
setback.

Again, I say it was an honest mistake. I
didn't it on purpose. It's just the way it is. I
didn't do it.

CHAIRMAN: Thank you.

You other two gentlemen have anything you to
add?

MR. B. BALLARD: Yes, I would like to speak.

CHAIRMAN: Come forward.

MR. SILVERT: State your name, please.

MR. B. BALLARD: Brent Ballard.

(BRENT BALLARD SWORN BY ATTORNEY.)

MR. B. BALLARD: I live right next-door to
this house, which is south of the house that we're
talking about. I look at it every day and I didn't 
even know that it was off until he caught it. 

The lady was talking earlier about south of 
the house. I live south of the house and I'm the only 
one that does and it's a dead end right past me. I 
live on the dead end. Scott Duvall and Jim Schwartz 
also live south to the house. They're across the 
street. None of us even realized that this happened. 
Once we realized it, we had talked to them and they 
don't have a problem with it. That's why they're not 
here tonight. Me personally, it may be a conflict of 
interest because I'm a partner with Dad in this 
building business, but I just happen to live next-door 
to it, but it doesn't bother me. I don't think it 
sticks out like a sore thumb. The owner of the house 
doesn't have a problem with it. I think if a lot of 
people had a problem with it they'd be here tonight. 

CHAIRMAN: Any questions of the applicant? 
MR. PEDLEY: You haven't had anyone complain? 

Any of the neighbors, they haven't complained to you 
about it? 

Mike, you or Brent either one? 
MR. B. BALLARD: No. 
MR. M. BALLARD: No. 
MR. PEDLEY: They were mailed a notice of this
meeting.

MR. M. BALLARD: Nobody has contacted me period. Boots Norris contacted me and said, what's this letter all about? I told him. He said, I'm not going to that damn meeting. That's crazy. That's the only comment that I've got.

MR. NOFFSINGER: And that's the issue Staff has. Is whether or not we're taking this whole process serious.

I can tell you these inspectors do and our Staff do. I want to make sure the process is taken serious because it's a serious situation. To say that you couldn't tell that that building is off.

Brent, how close is your house built to the setback line? Is it right on the setback line? If you couldn't tell that that garage was 10 foot out in front of your house? I mean you can see that with your eye. When my Staff went out there, the Planning Staff, they could easily see that that garage was sticking out further. If we were to measure it from the curb, we don't know if that curb was put in the way the plan show. But when you identify property pins, we have something and you put a string line there, we have something to measure off of. But that curb is not a stake. We've got to go off the property
pins. If we measure, what would the distance be if we measured from the curb? You've got 35 feet. Are we going to measure 42 feet or is it 40 feet? How do we know that that curb -- we've got an issue in the Locust Grove Estates right now that the curb was put in on the private property, on the lots. It was not put in, the street wasn't put in in the center of the right-of-way. So we can't just go off a curb.

That's why we need the property pins found and we need string lines put up and we all need to take the process very seriously.

MR. M. BALLARD: Can I say one more thing?

CHAIRMAN: Come forward.

MR. M. BALLARD: Had we put the string up on the existing property pins and we found every one of them, the string would have been like that, octagon or something shaped going around that lot. It would have been absolutely no way to measure from anywhere except the pin where the dimension is actually accurate. The only way to do it, and we did that. We painted a line from the back of the curb, 9 foot 6, with every pin we measure was at 9 foot 6. We painted that line and pulled a string off that line. We done everything humanly possible other than get a GPS system or something to spot the house on the lot. Again, we did
not do it on purpose. We had no reason to do that.

MR. DYSINGER: Mr. Chairman, sorry to interrupt.

The pins that you put, the lines that you put in, sir, were for 25 foot setback; is that correct?

MR. M. BALLARD: They were 9 foot 6 plus the 25 foot because at that time I still was 100 percent sure 25 foot was right.

MR. DYSINGER: You did intentionally put the lines in the wrong place. You just thought it was the right place?

MR. M. BALLARD: I thought the string was exactly where it was supposed to have been. There was no way in the world I would have built the house having 10 feet on the other side of that house. That I could have moved it with no trouble at all. That would have been insane to build that house close to that setback line knowing it was 35 foot. I built a lot of houses. I've built in Sorgho. Everywhere. The setback is not the same everywhere.

MR. DYSINGER: I understand, sir, and I agree. I think it's important to point out that however this board decides there is a difference between a willful action and doing something with malice. I can't speak for the rest of the board. I don't think you
intentionally did the wrong thing here, sir. I don't think that at all.

I do think that this could have been avoided, and it's unfortunate for everybody, but you intentionally set those lines at 25 feet plus what you mentioned, which is not correct. The correct setback is 35 feet.

MR. M. BALLARD: That's correct.

MR. DYSINGER: The fact that it's 25 feet intentionally I'm afraid, sir, indicates that you willfully, to me, and I'm not making a motion at this point, but you willfully violated the zoning ordinance perhaps without knowing it, but it did happen on purpose.

Further, it could have been avoided with a survey and maybe some better communication all the way around.

As I see it, and absolutely if I said anything that is not factual feel free to correct me, but as I see it those lines were put 25 feet on purpose, plus the addition, on purpose which is not correct and is in the setback.

MR. M. BALLARD: That's correct. I put them at 25 foot on purpose because in my brain I was 100 percent sure that the 25 foot was the correct setback
when I did that.

MR. DYSINGER: Thank you, sir.

MR. B. BALLARD: Can I say one more thing?

CHAIRMAN: State your name.

MR. B. BALLARD: Brent Ballard.

We didn't notice that the mistake was made and
the neighbors that I mentioned earlier didn't notice
the mistake was made until they got the letter.

Now that we know that and when I look over I
can see that it's a little bit closer to the line now
that it's brought to everybody's attention, but before
that nobody knew. The neighbors didn't know. I don't
think that it sticks out that much where, I mean if it
was that bad I think people would have came to us and
said, hey, this don't look right, but nobody did that.
That's what I was referring to earlier when I didn't
realize it. You said you had drove by and seen that
it was that way. I just don't think that anybody
would have seen it if they didn't -- it's one of those
things when you know and you have it on paper that
it's wrong and then you go look at it and you already
know it's wrong before you get there, but the people,
including myself, that live right next to it didn't
even know it was that way until we got the letter.
The neighbors anyway. I mean we knew before we got
the letter.

CHAIRMAN: Thank you.

The other gentleman state your name.

MR. SILVERT: State your name, please.

MR. WEAVER: David Weaver.

(DAVID WEAVER SWORN BY ATTORNEY.)

MR. WEAVER: I'm David Weaver. I'm employed with Bryant Engineering.

I can tell you that we did not stake the foundation of this house. We typically do not stake foundations of houses which is real typical with what's typically done with the exception of regular houses and houses that you're real close on setback lines.

Mike is correct in several of the statements that he made. The house itself, you could not possibly have strung a line between the pins and made a determination on the setback. Mike wasn't aware that he had a problem until after we did our field work and called Mike and explained to him where the house was in relationship to the setbacks.

MR. DYSINGER: What date was that, sir?

MR. WEAVER: I don't know the exact dates. He's correct. He did tell us that there wasn't a rush.
I can tell you that we did stake the curb in Mike's subdivision. The curb is, you know, I'm sure it's accurate within a few inches. That's all I know.

CHAIRMAN: Any one of the three of you have any new information that would help us at this time? New information.

(NO RESPONSE)

CHAIRMAN: Any more questions from the board?

MR. TAYLOR: I've got a question and it's mainly for the Staff.

I'm with Ward and Sean on this, obviously he did not do that intentionally.

What I'm wondering is, and I'm kind of with Ward too --

MR. DYSINGER: I'm sorry. For the record I think it is intentional. Just not malicious.

MR. TAYLOR: Didn't intentionally maliciously violate it. I'm sorry.

I'm with Ward, again, that this is probably the greatest decision I've made on this board, especially financially to an individual. Not to think that it would help any more. I mean I can kind of tell which direction everybody is pointing and what way we're kind of supposed to have to vote on this if we follow by the letter. But is there any way since
the way the house is structured and kind of on somewhat of an irregular lot. The house is not noticeable. Not that this is not going to be a financial burden, which it would be.

Number one, is there any way to just address the garage and let the house be, even though it's 2.72 feet, I guess, out or are we just one ruling on the whole matter? I assuming I know what the result will be if we deny this variance.

MR. NOFFSINGER: Mr. Taylor, you have the option of approving the variance as is or you can approve it only for the location of the existing home and not for the garage. You do have some leeway and opportunity there.

CHAIRMAN: Any more comments or questions?

MR. PEDLEY: I would like to clarify with Dennis. He did his job. I want to make it very clear.

Dennis, I want to clarify. You did your job. You did exactly what you were supposed to do. I didn't bring you up there to try to find you wrong. You did your job. That's all I want to say. Thank you very much.

MR. THURMAN: Thank you.

CHAIRMAN: Any other comments from the board?
MS. DIXON: I guess I just have a problem with somebody proceeding after two failed inspections. Because if the builder is going to say, I'm 100 percent sure I'm right, we really wouldn't need inspections.

CHAIRMAN: Thank you.

Staff have anything else to add at this time?

MR. NOFFSINGER: No, sir.

MR. PEDLEY: I would like to say I don't have a problem with the house the way it's sitting. Again, I went down today and inspected it. It doesn't have a visual impact. I do have a problem with the garage.

MR. TAYLOR: My only question would be in response to Judy, and I'm assuming it's a common trait, and Ward can correct me or Mr. Ballard can.

I'm not trying to point blame in any direction, but if somebody said, you know, that it's too close to call, and you were sure and somebody said it was too close, then I would say commonly you do proceed with some work from there knowing that it may be in or out. I'm kind of with Ward. Kind of reiterating, you know, how the house sits on somewhat of an irregular lot, there's no way you could notice the house. I kind of see where he's saying on the garage, but the home, the two feet that it may be over
I don't see how. You know, even if you got a tape out how you would be able to tell.

MR. PEDLEY: Mike, would you step back up. How would you feel about scooting the garage straight back eight feet?

MR. M. BALLARD: Of course, I don't want to. It's going to cost me 17, $18,000.

MR. PEDLEY: I know you don't want to do it. MR. M. BALLARD: Sir?

MR. PEDLEY: I said I realize it's not something you want to do.

MR. M. BALLARD: I know that.

MR. PEDLEY: But you can pour a foundation straight in line, get your blocks. You can raise that garage, you can slide it straight back.

MR. M. BALLARD: I don't know how I can slide it straight back. I'll just have to tear it down and move it.

MR. PEDLEY: You can take it back eight feet. The only thing you're going to lose is the brick on the front. I looked at that today. Only thing you're going to lose is the brick on the front. You extend your rear, your foundation straight back. Get your block laid. Get your anchor bolts loose. You slide that garage straight back. You won't effect it any
and it's not a major expense. I can assure it's not
as expensive as I've done to correct my mistakes.

MR. M. BALLARD: Again, that's possible. I've
not ever done one that way, but I'm sure it's
possible.

MR. PEDLEY: That's the main thing that I see
with my inspection today. The garage has a major
impact on that neighborhood. That's a great
neighborhood. It looks great. You guys have done a
great job. I know you're proud of it. I think it
looks great.

MS. MASON: It is a nice neighborhood.

MR. PEDLEY: I think that garage has a major
impact.

Mr. Chairman, if you're ready, I'll try a
motion here.

CHAIRMAN: I'm waiting.

MR. PEDLEY: I'll make a motion to approve the
variance on the position of the house. It's based on
the findings that one thing we've had no one down here
in opposition tonight. They've been mailed a notice.
They see it. They see the structure. They know what
it is. There are no surprises. So they know what it
is. So the neighbors know.

MR. M. BALLARD: Yes.
MR. PEDLEY: That's one of my findings. It will not adversely affect the public health, safety or welfare because 90 percent of our homes are set at 25 feet back. It's not a public health issue. It's not a safety issue. It has no bearing on that portion of it.

Number two, it does alter the essential character, especially with the position of the garage. So with the garage moved back 8 feet, then it will not essentially alter the essential character of the neighborhood.

It does not cause a hazard or nuisance to the public because, again, most of our developments are 25 foot setback. Those three items I don't find major impact with, if you move the garage back eight feet.

It does allow an unreasonable circumvention of the zoning ordinance, but that's one of the purposes of this board for remedy of a situation like this. Also, it would be a total devastation to your building company, the impact of 2 to $300,000 to move that house. Unreasonable circumvention of the zoning ordinance. I think that overrules that.

Now, the condition would be that you move that garage straight back eight feet.

MR. M. BALLARD: You have to show me how to do
MR. PEDLEY: I can show you how to do it.

It's not hard.

MR. TAYLOR: I second it.

MR. M. BALLARD: I guess my point is if that's what we have to do, that what we'll have to do. Not necessarily what I like, but if that's the board's decision. I know you have a job and I do too so we'll just do what we have to do.

MR. PEDLEY: One other thing. You must understand, this is not part of the motion. This sets the precedence in that neighbored. Somebody comes down here next week and wants to build a garage 25 feet off the street.

MR. M. BALLARD: I agree, but there's only two lots left in the neighborhood. I guess that's my thought. I am pretty happy with the neighborhood. I agree that it set a precedence.

MR. PEDLEY: Any one of those people down there might decide to build a garage.

MR. M. BALLARD: I don't have an opinion of what they think. Nobody has ever complained about anybody in the whole neighborhood.

CHAIRMAN: We've discussed it pretty well. He's made a motion. Is there a second to the motion?
MR. TAYLOR: Second.

CHAIRMAN: A motion has been made and a second. Is there any other comments from the board members?

MR. DYSINGER: The only thing I would say is it gives me no joy to say this, but passage of this motion is a mistake. I understand wanting to help people out. It would break my heart to make this gentleman do anything as devastating as that, but we either decide things on the evidence on the record or we don't. I would just ask each board member, with all due respect, sir, that you think about that before you vote.

CHAIRMAN: A motion has been made and a second. Staff have anything else?

MR. NOFFSINGER: No, sir.

CHAIRMAN: The applicant, do you understand that the motion was made, whether it passes or not, move the garage eight foot back?

MR. M. BALLARD: I do.

CHAIRMAN: Hearing that all in favor raise your right hand.

(BOARD MEMBERS MARTY WARREN, WARD PEDLEY, CLAY TAYLOR, JUDY DIXON AND RUTH ANN MASON RESPONDED AYE.)

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

CHAIRMAN: Motion carries.

Ward, being you're on the Housing Board be sure and stress when there's questions stop from now down the road.

With that I'll entertain one more motion.

MS. DIXON: Move to adjourn.

MR. DYSINGER: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

I, LYNNETTE KOLLER FUCHS, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Board of Adjustment meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 30 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 25th day of June, 2009.

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

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