The Owensboro Metropolitan Board of Adjustment

met in regular session at 5:30 p.m. on Thursday, January 6, 2011, 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
Rev. Larry Hostetter
Marty Warren
Sean Dysinger

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CHAIRMAN:  Let me call the Owensboro Metropolitan Board of Adjustment meeting to order. We start our program each evening with a prayer and pledge of allegiance. We invite you to join us at this time.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  I want to vary just a little bit from the agenda and ask Mr. Clay Taylor to come forward, please, and get Mr. Noffsinger to make a presentation please, sir.

(PRESENTATION TO CLAY TAYLOR.)

CHAIRMAN:  Next item I'll turn the floor over
to Madison to handle our elections at this time, please.

MR. SILVERT: Thank you, Mr. Chairman.

Every January we traditionally have the election of officers for the Owensboro Metropolitan Board of Adjustment. We'll be electing three officers today; Chair, Vice-Chair and Secretary.

I'll open it up for nominations for the role of Chair for 2011.

MR. PEDLEY: I nominate Audie Pantle.

MS. MASON: Second.

MR. SILVERT: I have nomination and a second. Are there any other nominations?

(NO RESPONSE)

MR. SILVERT: Is there a motion that the nomination cease?

MR. WARREN: Motion for the nomination to cease.

MR. DYSINGER: Second.

MR. SILVERT: A motion and a second. All in favor that the nomination cease say aye.

(BOARD MEMBERS MARTY WARREN, SEAN DYSINGER, WARD PEDLEY, RUTH ANN MASON AND FATHER LARRY HOSTETTER RESPONDED AYE.)

MR. SILVERT: The nomination is for Mr. Audie
Pantle. Everyone who is in favor of Audie Pantle remaining as Chair for 2011 signify by raising your hand and say aye.

(BOARD MEMBERS MARTY WARREN, SEAN DYSINGER, WARD PEDLEY, RUTH ANN MASON AND FATHER LARRY HOSTETTER RESPONDED AYE.)

MR. SILVERT: Thank you, Mr. Chair.

Next is for the office of Vice-Chair. Do I hear any nominations for the office of Vice-Chair?

MS. MASON: I nominate Ward Pedley for Vice-Chair.

MR. WARREN: Second.

CHAIRMAN: Mr. Silvert, I move that nomination cease and that he be elected by acclamation.

MR. WARREN: Second.

MR. SILVERT: All opposed?

(NO RESPONSE)

MR. SILVERT: All in favor of the motion that nomination cease and that Ward Pedley be elected as Vice-Chair signify by saying aye.

(BOARD MEMBERS MARTY WARREN, SEAN DYSINGER, C.A. PANTLE, RUTH ANN MASON AND FATHER LARRY HOSTETTER RESPONDED AYE.)

MR. SILVERT: Congratulations, Mr. Pedley.

Finally the office of Secretary. Are there Ohio Valley Reporting

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nominations for the office of Secretary?

MR. DYSINGER: I nominate Ruth Ann Mason as Secretary.

MR. WARREN: And I'll second that.

MR. SILVERT: There was a nomination and a second.

CHAIRMAN: Mr. Silvert, I move that nomination cease and she be elected by acclamation.

MR. DYSINGER: Second.

MR. SILVERT: We have a motion that the nomination cease and a second. All in favor of the motion signify by saying aye.

(BOARD MEMBERS MARTY WARREN, SEAN DYSINGER, WARD PEDLEY, C.A. PANTLE AND FATHER LARRY HOSTETTER RESPONDED AYE.)

MR. SILVERT: Congratulations, Mrs. Mason. I'll turn it back over to you, Mr. Chairman.

CHAIRMAN: Thank you. I appreciate re-election and hopefully I can do the job that needs to be done.

With that, again, I want to welcome each one of you to our meeting this evening. If you have any comments, please come to one of the podiums. State your name and be sworn in so we'll have a permanent record if some problems develop or something like Ohio Valley Reporting

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Again, welcome to have you with us and good to have you with us evening.

First item is to consider the minutes of our December 2nd meeting. They're on record in the office. There's no problems with it I don't think. Hearing none entertain a motion to dispose of the minutes.

MR. PEDLEY: Motion for approval.

MS. MASON: Second.

CHAIRMAN: A motion has been made and a second for approval of the minutes. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 2

9924 Delaware Ferry Lane, zone A-U

Consider a request for a Variance in order to reduce the street yard building setback line from 45 feet from the centerline of the road, as approved by Variance dated July 1, 2010, to 40 feet from the centerline of the road.

Reference: Zoning Ordinance, Article 8, Section 8.5.2(c)

Applicant: Susan L. Calhoun

MR. SILVERT: State your name, please.

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MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

MS. EVANS: The subject property is a corner lot at the intersection of Delaware Ferry Lane and Highway 258. This Variance is to reduce the street yard building setback line along Delaware Ferry Lane from 45 feet from the centerline of the road as approved by Variance dated July 1, 2010, to 40 feet from the centerline of the road or 10 feet from the property line.

The previous Variance was granted to allow the applicant to build the then proposed structure out of the flood plain and the special circumstances of the topography and flood area were considered at that time.

Since the previous Variance was approved in July of 2010, the applicant has changed the size and configuration of the structure, making it wider, and also found that the existing septic system would be located under a corner of the new structure.

The applicant is requesting an additional Variance in order to avoid costly excavation and fill in the area below the flood plain and the cost of relocating the existing septic system to accommodate the newly proposed structure.

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The newly proposed structure could be built meeting the approved setback of 45 feet from the centerline of the road if the septic system was moved. There is no evidence from the Health Department that prohibits the septic system from being located somewhere else on the property.

Additionally, ten feet from the property line on any side street is the minimum distance allowed by the zoning ordinance for a structure to be built. The 10 foot street yard setback is reserved for redeveloping properties within existing neighborhoods using setback averaging or in planned residential developments where setbacks are flexible. Both situations are in more densely populated areas with typically lower traffic speeds than a rural county road without curb and gutter. Allowing this structure to be located only ten feet from the property line on this rural county road could cause safety concerns with vehicles more likely to veer off the road.

Granting this Variance will adversely affect the public safety by allowing this structure to be so close to a rural county road. It will allow an unreasonable circumvention of the requirements of the zoning regulations because a variance has already been granted for this property allowing the originally

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proposed structure to be built outside of the flood plain. The newly proposed house could fit in the allowed area if the septic system was moved.

Staff recommends denial and we would like to enter the Staff Report into the record as Exhibit A.

CHAIRMAN: Is anyone wishing to speak against this item?

(NO RESPONSE)

CHAIRMAN: Is there any comments in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is the applicant here and you want to come forward and state your case?

MR. SILVERT: Would you state your name, please.

MR. BRUCE: Mike Bruce.

(MIKE BRUCE SWORN BY ATTORNEY.)

MR. BRUCE: The ten foot setback is common for side yards. The comment about the rural road, this is a dead end road with only a couple of properties past it. It ends up at the Green River. We provided some pictures of the surrounding area. There's almost no traffic on this road because it dead ends and there's only one other house past. Well, one other trailer that is residential past this property.
The county engineer when we first started working on this didn't have any concerns about the traffic or any plans to upgrade the highway. So we figured this is pretty low volume and really not much of an impact to the setback.

CHAIRMAN: Staff have any comments at this time?

MR. NOFFSINGER: No, sir.

MS. EVANS: I would like to add that the application did say that there were pictures attached, and there were no pictures attached to the application that was received in the office. We called JDQ to request those photos, if there were some, and there were never any brought down to the office. That's why you don't have them in your packets.

CHAIRMAN: Any other comments from the Staff?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Does any board member have any questions of the applicant at this time?

MR. BRUCE: I have the pictures here.

MR. DYSINGER: Mr. Chairman, I would like to see the photos.

MR. SILVERT: Would it be acceptable to you that we enter those into evidence and give them to our court reporter?
MR. BRUCE: Certainly.

MR. SILVERT: Thank you.

CHAIRMAN: I'm going to number these 1 through 4, if you have any comments on each one.

Any comments on these pictures you want to state or tell us, 1, 2, 3, 4?

MR. BRUCE: No. They describe the area.

CHAIRMAN: I didn't know if you wanted to make a comment on any of them, sir.

Any board members have any comments or questions of the applicant at this time?

MR. DYSINGER: I would ask the Staff, they may have known beforehand. I'm sure they did. Does it change their opinion of the safety consideration at all with the knowledge it's a dead end street?

MS. EVANS: No. We drove out to the site and looked at the site and it does not change our opinion. We feel that even though it is a dead end down there it's still a very narrow road and there are no curb and gutters to protect anything from veering off the road and that would be pretty close to the road where they want to build the house.

MR. DYSINGER: Thank you, Mr. Chairman.

CHAIRMAN: Any other questions or comments from the board?
CHAIRMAN: Anybody else have any other comments that they have?

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Hearing no other comment from anyone or questions, either one of you have any comments?

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

MS. MASON: Mr. Chairman, I move to grant the Variance and my findings are it will not adversely affect the public health, safety or welfare because it's on a road with limited traffic or not much traffic at all, it's in a rural area; and it will not alter the essential character of the general vicinity, as it will not be noticeable due to the rural nature of the general vicinity; and it will not cause a hazard or a nuisance to the public because the small distance will not affect travel on this rural dead end road; and it will not allow an unreasonable circumvention of the requirements of the zoning because the variances is for only five feet.
CHAIRMAN: We have a motion. Is there a second?

MR. WARREN: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

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

(BOARD MEMBERS MARTY WARREN, WARD PEDLEY, RUTH ANN MASON AND FATHER LARRY HOSTETTER RESPONDED AYE.)

CHAIRMAN: All opposed.

(BOARD MEMBER SEAN DYSINGER RESPONDED NAY.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 3

6045 Highway 54, zoned B-4, I-1

Consider request for a Variance in order to eliminate the required 6 foot high solid fencing around an outdoor storage area, to allow the existing Highway 54 entrance at the intersection of Winkler Road and Highway 54 to be located 0 feet from the intersection right-of-way rather than 50 feet as required and to waive the screening element from the intersection of Highway 54 and Winkler Road to the east 188 linear feet.

Reference: Zoning Ordinance, Article 8, 13 and 17, Section 8.5.3(1), 13.22, 17.312, Table 17.312(5a)

Applicant: Bluegrass Truck, Trailer & Equipment, LLC; Carl & Linda Boarman

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MR. SILVERT: Would you state your name, please.

MS. STONE: Becky Stone.

(BECKY STONE SWORN BY ATTORNEY.)

MS. STONE: There are three separate variances that are being considered for this one site. So what I will do is just kind of give a brief overview of the site and then we'll take the variances one at a time. So we can do a Staff Report per variance and then the applicant will have an opportunity to present their evidence and we'll take those one at a time.

This property has been, we've been trying to accomplish zoning ordinance compliance on this property for several years.

Prior to 2009 the property was being developed with a number of businesses. Some of those businesses were being located in zones that were not appropriate zones.

Under the advice of the Staff, the applicants submitted a zoning change to the Planning Commission. There is now split zoning on the property with B-4 zoning and light industrial zoning to allow those business occupations to occur on that site.

With numerous businesses they were also required to submit and have approved a final

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development plan.

It went before the Owensboro Metropolitan Planning Commission in January of 2009 and at that time, as is allowed in zoning ordinance, several variances were requested. You can request a variance in conjunction with the zoning change. The Owensboro Metropolitan Planning Commission heard and acted on those variances that were requested.

There were some approved and some were denied. There were various site development improvements that we required on the final development plan.

In January of 2009, the final development plan was approved. Those site development requirements were noted on that development plan and they had their zoning approval and their final development plan approval.

Since that time the property has not complied with those requirements of the final development plan and the zoning ordinance. A violation notice was issued. The property is still not in compliance and there is court action regarding that noncompliance.

At this time the applicants are again requesting some variances from the Board of Adjustment. They're asking for three separate
variances from those requirements.

So the first one is to waive the 6 foot high solid fencing around an outdoor storage area.

One of the pieces of evidence we would like to submit is that there have been other properties in that vicinity that have had to comply with the zoning ordinance. Those are listed in your Staff Report.

We have not had any complete waiver of screening on outdoor storage in Daviess County or the City of Owensboro since this ordinance came into affect. There have been some limited waivers, but only where topography or natural elements provided the intent of that ordinance and provided that screening element.

There are no topographical or lot constraint issues with the property to prevent the screening from being installed as required where that outdoor storage is located on the site.

While the intent of the ordinance includes the esthetic screening of stored materials from public view, it may also act as a safety feature to prevent hazard or nuisance to the public. Screening provides an additional safety factor for material storage, particularly during periods when unattended by the owners or operators of the business.

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Additionally, KRS 100.243 Section 2 says that if the actions taken by the applicants are willful violations of the zoning ordinance, that the Board should deny that application.

The Staff's opinion is that the applicant did take willful actions in violation of the zoning regulation. The variance requested for the waiver of this screening requirement has been heard once already by the Owensboro Metropolitan Planning Commission. It was denied. They did have a final development plan approved with that screening requirement shown on the development plan and they have made the decision not to install that screening.

MR. NOFFSINGER: Excuse me, Ms. Stone. You will need to read the Staff Report into the record in its entirety.

MS. STONE: The subject property was recommended for rezoning from A-U Urban Agriculture to B-4 General Business and I-1 Light Industrial with the zoning change final on February 8, 2009. This portion of the property that contains the outdoor storage area is zoned I-1 Light Industrial. The applicants applied for a variance to waive the required six foot high screening on January 8, 2009, in conjunction with the zoning change. The OMPC denied the variance request.
to eliminate the required screening. A final development plan was approved at the same OMPC meeting. Changes were needed on the plan to record the action of the OMPC on several requested variances and the OMPC approved the development plan to be signed by the Executive Director provided the changes were appropriately noted on the plat. The final development plan was approved on January 16, 2009, and was in compliance with the zoning ordinance and variances as approved by the OMPC.

Other properties in this vicinity have been brought into conformance with the requirements of the zoning ordinance upon redevelopment and there is no special circumstance to allow the subject property to continue in violation of the zoning ordinance requirements.

6192, 6200 Highway 54 was rezoned in May of 2008. As a result of that zoning change, a final development plan was required. Vehicular use areas had to be paved, appropriate screening in compliance with the zoning ordinance and access in compliance with the access standards was required.

6028 Highway 54 was rezoned in July of 2001. That zoning change required that landscaping and land use buffers be installed and provided that no access
be provided to Highway 54, a major roadway. The property was in use as a post office and the applicants, Joseph and Linda Boarman, were proposing to develop the back of the property as a car lot. No site plan for the car lot development was proposed and the zoning requirements were not implemented. If there is a proposal for the lot to develop at a future date, the landscaping and land use buffers and the access requirements will be applied.

In December of 1999, 6235 changed occupancy of an existing building and all vehicular use areas were required to be paved with outdoor storage required to be screened with minimum six foot high solid wall or fence.

In 1997 there was a condition on property located in the 5500 block of Highway 54 being rezoned to B-4. That there would be no direct access onto Highway 54 or Old Highway 54. This property was consolidated to property to the east located at 5600 Highway 54 and no additional access was permitted other than the access point that existed on 5600 to Old Highway 54. It currently complies with the access requirements.

Since the zoning change in 2008 of the subject property and the denial of the variance request, the Ohio Valley Reporting
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site has continued to operate as a gravel storage yard for Bluegrass Natural Stone. The latest zoning violation regarding the subject property was sent in August 2010 and has resulted in action in circuit court because the violation has not been corrected.

Screening of outdoor storage yards has not been waived in its entirety on any property in Daviess County since this screening requirement was adopted in the zoning ordinance. Partial waivers have occurred only where topographical or other natural elements have effectively provided the screening of the outdoor storage from public view. Approval of this variance request would be an unreasonable circumvention of the adopted zoning ordinance requirements as this requirement applies to all outdoor storage in Daviess County.

The approval of this variance could alter the essential character of the vicinity as there are no other storage yards in the immediate vicinity and approval of this variance will set a precedent for future storage yards in the area.

There are no topographical or lot constraint issues with the property to prevent the screening from being installed as required. While the intent of the ordinance includes the aesthetic screening of stored Ohio Valley Reporting

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materials from public view, it may also act as a safety feature to prevent hazard or nuisance to the public. Outdoor storage such as pallets of stone may be considered an "attractive nuisance." Screening provides an additional safety factor for the material stored, particularly during periods when unattended by the owners or operators of this business.

The subject property can be used as proposed under the requirements of the zoning ordinance and the approved final development plan.

Are the circumstances from which relief is sought a result of the applicant's willful actions taken after adoption of the zoning regulation?

It is the Staff's opinion that the applicant took willful actions in violation of the zoning regulation. The Variance requested for the waiver of this screening requirement was denied by the OMPC. The applicants did not appeal the OMPC decision. The applicants presented and signed the final development plan in accordance with zoning regulations and failed to implement the zoning requirement to screen the outdoor storage area. The applicants decided to ignore the approved development plan, the regulations of the zoning ordinance, and the notice of violation sent to them regarding this item resulting in pending

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court action.

The Findings would be that it will adversely affect the public health, safety or welfare by allowing unscreened outdoor storage that is aesthetically unattractive and may pose a hazard or nuisance to the public during periods where the owners/operators are not present on the site.

It will alter the essential character of the general vicinity by allowing unscreened storage areas in an area where there is no outdoor storage in the immediate vicinity and may set a precedent for unscreened outdoor storage for future proposed activities in the area.

It may cause a hazard or a nuisance to the public during periods where owners/operators are not present on the site to police potential trespassing.

It will allow an unreasonable circumvention of the requirements of the zoning regulations because the screening of outdoor storage has been consistently applied in Daviess County with waivers only considered where topography or natural elements provide comparable screening to the six foot high element.

The Staff's recommendation is for denial.

CHAIRMAN: Thank you.

The first item we're going to take into

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consideration is the 6 foot solid fence around the
outdoor storage area.

Is there anyone with information wishing to
speak in opposition to this?

(NO RESPONSE)

CHAIRMAN: Applicant have any comments at this
time?

MR. SULLIVAN: Opposition to?

CHAIRMAN: I'm asking: Is there any
opposition. Now to the applicant if they have
anything to add.

MR. SULLIVAN: My name is Ron Sullivan. I'm
an attorney. I represent the applicants.

I do not wish to speak in opposition to it.

CHAIRMAN: Excuse me, Mr. Sullivan. I asked
was anyone in opposition for information.

(NO RESPONSE)

CHAIRMAN: Now we'll have your presentation at
this time.

MR. NOFFSINGER: There may be a gentleman
right here that wishes to speak. I don't know what
order you want to take that in.

CHAIRMAN: Sir, let me take the applicant
first and then we'll hear from you. I just want
information if there was someone objecting.
Mr. Sullivan, present your case.

MR. SULLIVAN: Thank you.

The current matter under consideration is to waive the 6 foot fence around the outdoor storage area.

What the applicants are looking hopefully to accomplish is to, based upon topography, to relocate the outdoor storage of their stone to part of their real estate that is physically lower by several feet than where it is presently being stored.

The development plan showed the outdoor storage area to be located basically on the front of the property adjacent to the building on the adjacent lot. Realizing the opposition of the Staff to the granting of a variance to do away with the 6 foot fence that would surround the stone storage, the objective of the parties, of the applicants is to move the storage area to the back of the property, which is several feet lower in elevation, and store the stone there where the topography will prevent a view of the stored stone from the traffic on Highway 54.

If you look at the development plan which was approved, one will see that the elevations are to 424 to 430 feet on the front of the property and they are 418 to 413 feet from the back of the property. That's
shown on the approved development plan.

It's the desire of the applicant to have a waiver of areas that is of the 6 foot fencing requirement because the topography will prevent a view of the storage area, if the storage area is removed to the back of the lot, which is Number 6071, isn't it? The easternmost of the property. So that's where they are in that regard.

They would like a variance based on the fact that they will have an outdoor storage area which is not viewable from vehicles traveling on 54 because of the topography. That will require a development plan change, which will have to be approved, that will implement this variance.

Now, there are photographs. There are some photographs of the property. They really don't show the elevation except perhaps one of these photographs that I'll put in evidence and we'll mark it as Exhibit 1.

The Exhibit 1 photograph that I would like to show you, it shows the way the terrain, shows the way the terrain drops to the low elevation to the back of the property.

What we want this Board of Adjustment to do hopefully is to grant the Variance on the condition
that the outdoor storage area is not viewable from the
traveling public on Highway 54 by relocation of the
outdoor storage area for the stone to the lower
elevation at the rear of the lot.

Concerning some of the observations, some of
the comments of Staff. My clients are small business
people who are trying to do something to increase the
economic development of our county during a time when
we have all been suffering with what happened in 2008,
immediately before they were at the OMPC two years
ago.

Since that time, as you know, the economic
situation of this county has been bad and they have
not had an opportunity to get things put together and
to accomplish the directives of the development plan;
although they have been working on it.

During all of that time, they've been in
communication with the county fathers; particularly
the county judge executive, in an attempt to comply
with the law, in an attempt to get this thing worked
out. They actually had specific directions from the
county judge executive to hold off on doing certain
things because he thought the matter would be worked
out. It didn't get worked out.

You talk about willful. It is not a matter of
willful. It's a matter of a couple of young people trying to get something going in our county who have been unable to get it put together because of the financial constraints created by the development plan and by the zoning ordinance requirements that they have been trying to comply with, but have not yet been able to comply with.

I would like to ask for an opportunity for Mrs. Boarman to address what they have been trying to do and why they have not complied with the previous requirements.

Now, as far as the litigation that's ongoing, there is some litigation. We have answered that litigation. We know we're going to have to bite the bullet and face up to that. Some of the violations that are cited in the litigation have been remedied. These small business people have been working on it. They have put in screening. They have closed Winkler Road entrance as was one of the requirements. They are putting in pavement for parking and for vehicular use on the property. They've done many things and expended many dollars in their attempt to get right with the planning authorities of this county. They are going to continue to do that until they get this thing worked out. They've got to get it worked out.

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Either that or throw up their hands and let the thing
go to foreclosure, which hopefully, we hope does not
happen.

CHAIRMAN: Mr. Sullivan, let me interrupt you.
When was this picture made?

MR. SULLIVAN: Today, I think, Mr. Chairman.
The elevations are clearly shown on the
development plan, as I indicated. The elevations in
the front are 424 to 430 feet, and in the back they're
418 to 413 feet, and then they go on down to a ditch
of 409 feet, 407 feet. So there's plenty of room for
the outdoor storage area to be put away from view of
the traveling public by the topography.

It was mentioned by Staff that for tographical
reasons in the past they have been variances granted.
This is an instance where there should be a variance
granted to eliminate the six foot fence around the
outdoor storage area, on the condition that the
outdoor storage area is located in an area that the
terrain of the property, the elevation of the property
will prevent the view of the storage stone from the
traveling people traveling on the highway. This board
has the power to grant variances with the conditions.

I would like for Mrs. Boarman to address the
matter from her standpoint as to what they've been
trying to do.

MR. SILVERT: Could you state your name, please.

MRS. BOARMAN: Linda Boarman.

(LINDA BOARMAN SWORN BY ATTORNEY.)

MRS. BOARMAN: This is the second time I've addressed the board. I'm a little more nervous this time.

As was said, this has been going on for about, I don't know, three years. It's been a few years. I just wanted to have an opportunity to let you know how we ended up here and how we ended up being sued by Planning & Zoning.

It makes us sound very criminal when you hear the description.

My husband and I bought this property several years ago at the courthouse steps. At that time our property was pretty run down. The prior owners had several businesses at that location. It even had a residence upstairs. It had Harper Trailer Sales, Harper Amusements, a residences, Carousel Gift Shop, four things. A tax shop, five things. Actually there was five or six businesses were operating out of this location for several years before we bought the property.

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We bought the property and immediately put our car lot, our little car lot because my husband and I both have full-time careers. He’s a full-time farmer and I am a nurse practitioner. We both have full-time jobs. This business was a side business that we were hoping to build up really for our kids.

So a small car lot. An individual out of Madisonville was wanting to open up a stone yard in the Owensboro area. So we ended up consigning some stone, never thinking that we were doing anything against the law.

So we opened up two businesses. At the same time Integrity Nursery went in the stone business the same time that we did. Both of us brought stone to Owensboro. They have a similar display area that has not been cited.

We immediately rented out to Estes Electronic. So we had three businesses right up front. Then a few months later Jeff Estes’s wife opened up a gift shop. So we had four businesses there. Never realizing that we were doing anything against the law, as you can imagine. We bought it from -- the prior owners had more businesses than we and never cited for years.

Our property, the building was built back in the 1970s. Crabtree Equipment built it as a big

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tractor sales service. It's always had a lot of
things going on there.

Anyway, so we operated fine for several years
No citations. Then Estes Electronics moved out. It
was just us, our two businesses. Then an individual
approached us who had rented the property from the
prior owner to open up a paint and body shop. So we
started renting out to them in the back of the
building.

The way we ended up getting under the wrath of
Planning & Zoning was that we were initially cited
because the people who owned the body shop were
painting without a paint booth. So that's how this
all started. We were told that a competitor paint
shop called and reported them for painting without a
paint booth.

Those individuals bought their paint booth,
but it went on nine months. It's just like it
snowballed into this huge thing. Because once they
were cited and we got Planning & Zoning onto our
property, then it was multiple businesses, you need it
rezoned. It went on and on until it became this
monstrosity or big snowball. We ended up having to do
a development plan, which is very expensive. I just
can't tell you. It's like over $100,000 worth of

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things that are required from this development plan.

It's probably close to $15,000 for us just to come here to see you folks. In attorneys fees, and then the surveyor, and then the fees that we have to pay to come to these meetings. That's before we even put concrete and shrubs and dig up things.

Anyway, in the process the guys who had this paint and body shop were never allowed to have a permit to put in their paint booth. They bought it. It was in a crate for months and months because there were so many issues with our place. Those guys ended up leaving. So we lose our renters.

Then because of the economy -- we had a development plan where we had another business was going to rent from the back. He couldn't make it for various reasons, economic. You know, the economy as well as his health. So we had lost all of our renters. So now we're down to just us there.

The stone yard, while we're talking about this fence. We did come before the board and ask not to have the 6 foot tall fence around our Bluegrass Natural Stone. It's a decision made by Planning & Zoning that our stone is considered outdoor storage versus display. That was a decision that they made.

For us as just a small business owner, it's

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hard for us to comprehend that the other competitor is
allowed to have stone on pallets, on gravel, inside
the city limits with no problem, but yet our business,
which was initially cited for a paint booth that those
people are already gone. We have to put a 6 foot tall
fence around the stone and our argument has always
been that it's not brick. It's stone. It's what you
put on your patios, what you put on your fireplace.
People come in and they don't just say, I want some
brown rock to put on my patio. It's just how people
are. They like to choose. It's natural. Every
pallet is different. Some people pick from different
pallets.

We have support from our neighbors. At that
meeting, those on the board it was my impression at
that meeting that they had sympathy for our argument,
but the concern was if you allow us to put a fence
around a light industrial zoning that maybe my husband
and I, if we die and someone else bought the property
and had a junk yard, if that were granted that there
was no fence, then maybe the next people wouldn't have
to put a fence either.

After that meeting it was understood that we
could possibly go before your board after we were
cited and ask for your decision that it actually an

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outdoor display rather than outdoor storage.

Well, after the meeting that we went to, we thought it was over. Then within the week after that different individuals from Planning & Zoning came.

I can't emphasize how hard this has been on us. I'm not talking $10,000. We're talking over $100,000, and we've already lost our renters. It's like where does it end?

After that meeting, I was just so frustrated because someone else from Planning & Zoning comes and says we have a storage building that's 6 inches off of our property line down a bank to the street where we mow. Like nitpicking.

Then someone else came and said our back building needs a bathroom. Well, with a bathroom we need an extra septic system; although we already had two bathrooms in our front building. It's like it never ends.

Then the electrical inspector comes. Then he nitpicks.

The picture that you have of the slope that we have already entered as an exhibit, it shows the slopped grass that's been mowed. Well, someone from Planning & Zoning sent the county engineer out because it was all rough. We had filled it in. We were just
hauling in dirt so we could mow it. They were getting
onto us about that. Had the county engineer there.
We just felt like, good grief. When is it ever going
to end? I'm crying here, but I'm telling it's
horrible. No business should have to go through what
we've had to go through.

We were just so frustrated. We didn't know
who to go to. Someone mentioned Reid Haire. Go to
him. So we go and Mr. Haire was so gracious. He
immediately just -- I had just been to Planning &
Zoning office just banging my head against the wall
for months and months.

It's like you have to do a development plan.
You have to do this and do that. All these laws.
You're breaking the law. You have to do all of these.
Even though when you drive from Planning & Zoning
office to our property you drive down Leitchfield Road
and there are dozens of businesses that have stone
right on the road. You have somebody selling
buildings on the road and no fence around it.
Somebody else that has trucks and trailers everywhere.
No solid fence around it. I mean you can't help but
feel really picked on.

Anyway, Mr. Haire listened to us. I just felt
so relieved that he was going to give us some relief.

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He actually wrote a letter saying, we didn't have to do what they said. We would deal with fiscal court. Fiscal court said we didn't have to do that. So that's why we didn't do it. We were so relieved to have what we thought was help.

Well, come to find out we have learned that fiscal court has no legal say so on it. They are wonderful. He was wonderful to listen to us and he had his heart in it, but we ended up now because we're so criminal we're now getting sued on top of everything else.

So I am begging you that anything our attorney ask they're really small. We still have a lot of other things that we're doing. I'm just begging you to have a little mercy on a small business and help us get up going again. That's it.

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

MR. DYSINGER: Mr. Chairman.

You referenced a letter from the judge executive. Was that put into evidence?

MR. SULLIVAN: I have a letter dated September 15, 2010, to Gary Noffsinger, from Judge Haire, which I'll have marked as Exhibit 2. That's not the only correspondence.
MS. MASON: Can that be read into the record?

MR. NOFFSINGER: It can, but please know that this case is under litigation. You have this letter, but you also have my response to that letter and other correspondence that you're not reading. Certainly it can be read into the record, but there's other evidence to be presented that would be a response to Judge Haire.

MR. SULLIVAN: I think the question was could it be read into the record. I think the answer is, yes, correct?

MR. SILVERT: That's what he said.

MR. NOFFSINGER: That's what I said.

MR. SULLIVAN: Exhibit 3 is a May 1 letter from Reid Haire to Gary Noffsinger concerning these matters.

MR. NOFFSINGER: If we're going to read these letters --

MR. SULLIVAN: It is in the record having been filed. It's certainly not necessary that it be read in the record. That's up to you. Otherwise, each board member can look at it or copies could be made and handed to each board member in order to facilitate the time reading it.

The gist of the letters, the one letter says,
one says, don't bother to do which.

MRS. BOARMAN: Everything we're asking for tonight.

MR. SULLIVAN: Everything we're asking for tonight Reid Haire said, don't do that. Essentially we're going to work this out for you people so we get you into business. That's the gist of the matter. It takes all the willfulness right out of this thing.

These are people that kind of remind me of that Gladiator that was buried up to his neck in the field and all he had was his teeth to work with. That's the way these people feel about their situation with the OMPC because of the restrictions that have been imposed.

I have a couple of other things I would like to file in the record.

One is an Affidavit or a statement signed by most of the neighbors to this property saying, we don't want a fence out there. I ask that to be marked as Exhibit 4. That was filed previously, two years ago, in the other proceeding. At the same time one or two of the members who signed this testified that they thought it would interfere with their view. They didn't want the neighborhood changed. They thought what my our clients were doing was a great improvement.

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to the neighborhood. They signed this petition, which
is Exhibit 4. I would ask that the members take a
look. Each page is the same. The only difference is
all of the signatures are on several pages.

MR. DYSINGER: Mr. Chairman, if I may while
we're all reviewing these.

My interest in these letters has no bearing on
any litigation that may be taking place. It does not
even have any bearing on to whether or not who has got
the authority to do what.

However, with this particular variance, the
first one we're looking at, the 6 foot screen, there
seems to be two issues. One of which is primary, and
that is willfulness.

If it was a willful violation, we are directed
by statute, we have no choice regardless of how
sympathetic we may be. That issue does seem -- these
letters do seem to apply there. I'm not saying
whether it does not. We're just all reviewing at this
point. I thought it might he helpful, Mr. Chair, if I
were to say a few words as to why I asked to them at
all.

CHAIRMAN: Appreciate it.

MR. SULLIVAN: Another thing that, and I don't
want to file. This is my only copy. I would like to

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show the development plan to confirm the elevations that I mentioned. They're written right on here.

The property is described and the elevations are shown. The front elevations are shown here and these lines indicate the elevations, where they go back to 412 feet back here and then 424 feet up in the front.

FATHER HOSTETTER: Where is the proposed new storage area?

MR. SULLIVAN: The new storage area will be back here. The current storage area is here. That's why the development plan would have to be changed. The current storage is right smack dab in the middle front and the proposed storage area would be back in the lower elevation. Anyone care to see the elevations?

MS. STONE: I just wanted to mention that while topography is certainly an issue that can be considered in alleviating the screening requirement, we don't have a site plan that shows the boundary of that screening. While a final development plan would be required if the board decided to waive the requirement if it were in that change in elevation, you still don't know really what that boundary is and I would suggest maybe that you would want to see the
boundary of that prior to acting on the variance.

MR. SULLIVAN: Additionally, I would like to point out that the property that we're dealing with here is five miles outside of the belt line in rural Daviess County. The situation that exists there is one that has existed before, from before the time when the zoning ordinance became applicable in Daviess County which was around '77 or '78. It's almost a situation of a grandfather situation here. That these people should be allowed to operate on the property. However, it does not qualify as a grandfather situation, but the situation has been there for many, many, many years.

Finally, I would like to say that the variance will not adversely affect the public health, safety or welfare that we've asked for. The variance will not alter the essentially character of the general vicinity. The variance will not cause a hazard or nuisance to the public. They're simply trying to run a business. It has not done so to this point. The variance will not allow an unreasonable circumvention of the requirements of the zoning ordinance. What we submit that this Board of Adjustment should find with respect to this variance, again, at a relocated area on the property where the topography would prevent its
visibility from traveling public on Highway 54.

CHAIRMAN: Mr. Sullivan, have you got a
diagram showing where the rock?

MR. SULLIVAN: Proposed. I have a photograph,
an aerial photograph of the area.

CHAIRMAN: Distance and everything listed?

MR. SULLIVAN: No. No, not as such, but we
have an aerial photograph we'd like to submit.

This is the property in the middle. On the
backside of the property and basically the property
lines are drawn in with a pen around the Boarman
property. In the back she has placed a rectangular
square and put stone. And that's where they would
like to have the stone located. I would like that to
be marked as Exhibit 5.

MR. NOFFSINGER: Mr. Chairman, the Staff is
not necessarily opposed to what Mr. Sullivan is
explaining; however, we do not have a site plan, a
detailed site plan that describes exactly what's going
to be done. We would recommend that a variance not be
considered or granted until such time as we have a
specific development plan revise that we could show
this board what they intend to do. That's what we've
wanted all along, is a detailed plan of what is
intended to be done and that that plan be met. At
this point in time we do not have that.

Again, we're not necessarily opposed to what
Mr. Sullivan is proposing, but we want to know
definitely what is being proposed and it meets the
requirements.

MR. SULLIVAN: We understand that a
development plan has to be approved that implements
the variance. I'm trying to get the cart and the
horse set up here.

MR. NOFFSINGER: Exactly, Mr. Sullivan.

Realize we don't, Staff, we don't want to be in the
situation where we're having to deal with you and your
clients in terms of approving the development plan.
We want this board to see it and say, okay, this is
what we're approving this variance based upon. Not
what Mr. Noffsinger or Mrs. Stone is requiring. We
want it done before this board. Not before the
Planning Staff. Now, we will approve the development
plan, but we want to make sure that we know what
you're proposing and its in concrete and that's what
you intend to do.

MR. SULLIVAN: You're using a magic word, the
word "development plan" which to me means that
document which you ultimately approve.

MR. NOFFSINGER: Yes.

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MR. SULLIVAN: I think we're talking about a plat that would be submitted with a variance application.

MR. NOFFSINGER: You don't even have that.

MR. SULLIVAN: Not a development plan, but a plat that would be submitted with the application that would show what we're talking about.

MR. NOFFSINGER: That's fine, but you still have to amend that development plan, if it's granted.

MR. SULLIVAN: If it's granted.

MR. NOFFSINGER: And that's fine.

MR. SULLIVAN: We can't get the development plan until we get the variance, but we can submit a map or plat that shows what variance we're seeking and we have not done that.

MR. NOFFSINGER: Right. I agree.

MR. SULLIVAN: Now, can this board defer ruling on this matter until that is submitted and take it up at the next meeting?

MR. NOFFSINGER: At the next meeting I would think so, yes.

MR. SULLIVAN: Because I think that we are lacking in not having presented a map that shows you where we're going to put that stone, where that stone, outdoor storage area would be located within the
elevations that would protect it from view of the highway.

MR. NOFFSINGER: And then what that area is going to be used for that's being used for storage now.

MR. SULLIVAN: In that regard, we're proposing agricultural sales use for that area. Either that or just an open space. One or the other. It's not going to be something we need to concrete or pave. That's the point I'm getting at. We don't know if we're going to be able to use that area that we're taking the stone out of until we get another tenant or something.

MR. NOFFSINGER: Which would require the revised development plan if you make changes to that.

MR. SULLIVAN: Anything change, you know.

MR. DYSINGER: Mr. Chairman, for me the primary issue was a question of willfulness. I think the testimony we've heard here tonight cast at least enough doubt on that issue that we can look beyond that. We can proceed beyond that just a little bit.

It seems to me also that it's not unreasonable to ask for a site development plan in advance of a decision so we can make a decision.

I'm prepared to make a motion for postponement.

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for 30 days.

  Counsel, I'm not cutting you off or anything.

  I just want to let everybody know that the
willfulness issue I think there's been enough doubt
cast on that with the testimony Mrs. Boarman gave.
There's been nothing to refute that testimony. Given
my knowledge of some of the players, I'm incline to
give it credence. That's where I'm at this moment,
Mr. Chairman.

  MR. PEDLEY:  Mr. Chairman, I have a couple of
questions for Staff.

  CHAIRMAN:  Okay.

  MR. PEDLEY:  This site plan that was
submitted, given to us in our packet, is that the
approved development plan by the Planning Commission?

  MS. STONE:  No. That was just a site plan
that they submitted with their variance application to
show the variance request that they --

  MR. PEDLEY:  This is totally inadequate for me
to make any kind of a decision. I would like to see
the approved development plan that was approved in
January of 2009. If they intend to amend another
development plan, I want to see it.

  I drove by the site today and I drove by the
site yesterday. I can see from the road 90 percent of
this site. I didn't get out of my truck. I would
visit that site again. I want to see an amended
development plan. I want to see the approved
development plan.

When you look at this plat here, the
information is not here for us to make any kind of a
decision. You've got 6045. Where is 6071?

MS. STONE: It's actually all one lot. Now,
it was consolidated after the zoning change. So the
address of the property is 6045.

It is split zoned and there's a larger plan in
the file, Gary, if that would help him to do what he's
looking at.

If the board granted a variance, they would be
required to revise the final development plan to
reflect that. So at that point a development plan
would come in.

At this point they were doing a site plan to
try to identify those variances that were on the
property that they were seeking rather than revising
that whole development plan, not knowing what the
outcome of the variance request would be.

MR. PEDLEY: But this is totally confusing.
I have two addresses here, 6045, 6071. I have a site
plan here that doesn't show those boundaries.

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MS. STONE: It's one lot. It's 6045 as was advertised.

MR. PEDLEY: We don't have that information that it was consolidated.

MS. STONE: There's just one address that's advertised. It's all one piece of property.

There used to be two lots, 6045 and 6071. It's now all one tract of property. It was consolidated with the zoning change and the final development plan. There was a consolidation plat.

MR. PEDLEY: It has been consolidated?

MS. STONE: It has been consolidated.

MR. PEDLEY: But the applicant's statement here is talking about two different pieces of property. This thing has got to be cleared up.

MS. STONE: I think they're trying to describe the different activities that are taking place on the property by using the previous address of the property. The stone storage is on what used to be 6071 which is the eastern part of the property. The car business is on the western part of the property, of what used to be 6045, as is the body shop, what used to be an ornamental iron business on that, but it's all one piece of property. They had to do a development plan because there's multiple businesses
on that one piece of property. I think they were
using those addresses in an attempt to orient you to
which part of the property they were talking about on
that variance request.

CHAIRMAN: Mr. Sullivan.

MR. SULLIVAN: I thought I understood what
Staff just said. It sounded different from what was
said up here.

She said that the applicants need to provide a
site plan that shows what they're asking for. Locates
the outdoor storage area on that site plan, and also
perhaps shows elevations on that site plan. Then if
this variance were approved by this body a month from
now, then a new development plan would be drawn
incorporating that site plan information that was
approved as a variance here, if it were. Then that
development plan has to be approved by OMPC.

MS. STONE: I think that's correct.

MR. SULLIVAN: I just had a confusion between
the use of the word development plan and site plan. I
think I understand what we're being asked to do, if
that motion were passed, that the matter be deferred
for 30 days for the applicants to submit a site plan.

MS. STONE: If the board in 30 days approved
that variance request based on that new site plan

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submittal, then a condition of that variance should be
that the final development plan be revised.

MR. SULLIVAN: I understood that any variance
granted requires a new development plan approval.

MS. STONE: That’s correct.

MR. DYSINGER: Mr. Chairman, I’d also, whether
or not we postpone tonight or whether the Staff or the
applicant would speak to it, if necessary tonight,
that this concept of display versus storage, does it
bear at all on zoning ordinance?

MS. STONE: The applicants had the opportunity
to appeal that interpretation after the 2009 Planning
Commission meeting. They did not appeal it. Their
appeal time has run out.

MR. NOFFSINGER: Mr. Chairman, I need to get
this on the record because Mr. Sullivan has submitted
one letter from the judge executive to me that he
correctly stated that the judge basically said, you
don’t have to follow what Planning & Zoning tells you.
That was in error. That was totally wrong.

I immediately responded to Judge Haire as to
what they were required to do. If they were to do
something else, wanted to do something else, what the
process would be to go through the variance procedure.
I did that in a timely manner. Within just a few days
of each letter that was submitted to me. Out of respect to the Judge, I did not copy the Boarmans or anyone else, unless someone else was copied.

The first letter to me dated May 1 of 2009 was sent only to me. I did respond on May 5, 2009. It was a three-page letter going through all processes we had been through and what the requirements were. It went directly to Judge Haire.

The next letter came September 16th of 2009. Here we go again. The judge states in there, "This situation needs to be resolved. We could allow this controversy to drag on for many more months and the end result would be more hard feelings."

I can tell you we don't have any hard feelings. We're just looking for compliance as we ask of anyone else and no less.

My response dated September 16, 2009. Again, that letter was sent to all the county commissioners. My response was to the Judge and copied each county commissioner as to the process.

Another letter comes in on September 15, 2010. Going through the same thing.

Again, I respond on September 17, 2010 to the Boarmans and to the Judge, because they were copied on this letter, that here's the situation. Here's where
we've been. The next action is court action. Then the court action was filed I believe in -- when was it? December. Well, shortly after that letter court action was filed.

We were very clear in terms of processes and what needed to be done. I feel my Staff was very clear. I was very clear to the Judge and I have that in writing. The Judge did not effectively communicate that to the Boarmans. I hate that, but it was correctly sent to him and he new the process.

MR. SULLIVAN: I would like, if I may, say something. I would like the record to reflect that the Boarmans were without counsel at all until November of 2010. At that point they had counsel. Now, whether that counsel, the competency of that counsel is still in question here. That would be myself.

The Boarmans were meeting one morning in November with the attorney for this board and with Judge Haire. They called me at 9:00 and said, we've got a meeting with the Judge at 9:30. Can you go? I went to that meeting and became involved.

I think Staff said, Staff's attitude was, we're glad you now have counsel involved. I think it may help you. I hope that it ends up helping them.
They had no counsel before November of 2010.

Since that time we've been making every effort
to try to get right with the law.

CHAIRMAN: Mr. Sullivan, Mr. and Mrs. Boarman,
we are elected to run or be on the Board of Adjustment
and try to make decisions. We need evidence, footage,
diagrams, anything that we have that we can look at
for concrete to go by to make our decision. We have
none of that this evening. We're having your intent.
We respect that. We agree with you with that, but
that's not what we can make a decision by.

I would recommend if your attorney and you all
agree to postpone this for 30 days. Get your
information available to present to us and then we can
make a decision for or nay, but we can't do it on what
you've got here this evening. If your wish is to
postpone it, we'll entertain that motion.

MR. SULLIVAN: I don't get to make the motion,
but that's exactly what we are asking for. That is an
opportunity to provide that information to you by your
deferring this matter for 30 days. Not withdrawing
it.

CHAIRMAN: Postpone it for 30 days.

MR. DYSINGER: Mr. Chairman, would the
applicant's counsel be amenable to posting all the
actions this evening and doing them all at the same
time next month?

MR. PEDLEY: I second that motion.

MR. DYSINGER: I've made no motion as of yet. I'm just asking if the applicant is amenable to
postponing action on all the motions tonight?

MR. SULLIVAN: Excuse me a moment. I need to
refresh myself as to what the other items are.

MRS. BOARMAN: Can I say one more thing, Mr.
Chairman?

CHAIRMAN: Yes.

MRS. BOARMAN: In regards to this fence, at
the time that we were cited, that place was really
doing well. Like they say the first five years of
business you're just under water. That first year we
above water. We had renters. Our stone business was
quadrupling. It was doing very well. We had a
full-time employee with health insurance.

After this citation and knowing the six foot
tall solid fence was looming over our shoulders, our
stone business has just -- I mean how do you run a
business when you think it's going to be closed.

You know, ever since this citation we've
pretty well been operating like, we don't know if
we're going to be closed or not. Basically you have
this expensive property on Highway 54 and you can't
display your product for sale.

Just like if you guys drive down J.R. Miller
Boulevard, can you imagine if the nursery had to put a
solid 6 foot fall fence around what they have for
sale.

Apparently, it's not an issue of is it
display, is it storage. That's already been decided.
We've lost that opportunity to argue display versus
storage because -- I'm sorry, I just got so upset
after that last meeting because it didn't look like it
was ever going to end. That's when I went to
Mr. Haire and that's when we lost any opportunity to
argue that.

We're just -- it's like we're at the end. We
can move our stone to the back of our farm. I mean
we're asking to move it out of sight. It's kind of
like we're keeping a dying business alive barely. I
mean what we're asking is just so little is how I
feel.

I don't know why you have to have all that
drawing and everything is what I'm saying.

We have neighbors support even if we had it
out on the highway without a fence.

MR. SULLIVAN: The applicant has no objection
to the whole matter being deferred to the next
meeting. Except I think that there was someone here
in opposition. I think you ought to hear that, in the
event that will satisfy him and he won't need to come
back again.

CHAIRMAN: Sir, come forward and state your
name. If you've got opposition, state it, please.

MR. SILVERT: State your name, please.

MR. CARDEN: Cebert Carden.

(CEBERT CARDEN SWORN BY ATTORNEY.)

MR. CARDEN: I just want to tell you that I've
lived across the road from this since January 4, 1964.
I've seen this property, and I see it from my house.
I also own a car lot that's straight across from it.
I was the one that got the petition going. The
neighbors does not want no fence. I've talked to
other people over the last two years and I haven't
found anybody that drives down 54 that wants to look
at this fence that you talk about. I know you all
have certain restrictions that you have to go by, but
you all need to work on that and get some of that
changed and think about the people, the neighbors out
there. Think about the people at Philpot. Try to get
the thing changed some way or the other. Think about
what is happening to these people right here. I mean
it's been completely chaos, and I know it.

So you all need to go home tonight and think
about this a little bit while you're sitting around.
Because Daviess County, I mean people is wanting to
move out of Daviess County on account of the
restrictions and stuff. I know people looking for
places to go to other counties. I just want to bring
that in front of you. I wanted you to know how the
neighbors feel. Anybody in sight of it don't want the
fence. We like looking at the rock. The rock is
beautiful. People buy it for decorations to go in
their yard. So why in the world would they care to
look at it? Don't make any kind of sense to me.

That's all I've got to say.

CHAIRMAN: Thank you.

I'll entertain a motion now.

MR. DYSINGER: Mr. Chairman, I move that we
postpone this matter until the next regularly
scheduled meeting.

MR. PEDLEY: Second.

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

(NO RESPONSE)

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

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ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries. Postpone that for 30 days.

Next item, please, sir.

ITEM 4

10201 Highway 1389, zoned A-R

Consider a request for a Variance in order to reduce the front yard building setback line from 60 feet from the centerline of the road to 58.5 feet from the centerline of the road.

Reference: Zoning Ordinance, Article B, Section 8.5.2(c)

Applicant: Paul M. Dujardin; Wendy S. Dujardin

MS. EVANS: The subject property is over 10 acres and is considered farm exempt, meaning no building permits are required for construction on the property, but electrical permits are required. There is an application for farm exemption that must be filled out in our office and at that time the applicant is informed of setbacks that must be met.

The applicant hired a contractor to build a pole barn, and the contractor told him that the property was farm exempt without filling out any of the required paperwork; therefore, the applicant was not informed of the setbacks for his property.

The pole barn was subsequently built too close to the front property line and encroaches approximately 1 foot into the front yard building.

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setback. When the applicant applied for an electrical
permit, the encroachment was found.

Granting this variance will not alter the
essential character of the general vicinity because
the variance is for such a small distance; it will not
be noticeable due to the rural nature of the area and
scattered structures not closely spaced; it will not
stand out as different from other properties in the
area. It will not allow an unreasonable circumvention
of the requirements of the zoning regulations because
this variance is only for 1.5 feet.

Staff would recommend approval of this item
and we would like to enter the Staff Report into the
record as Exhibit C.

CHAIRMAN: Any comments filed in the office?
MR. NOFFSINGER: No, sir.
CHAIRMAN: Does the applicant have anything
you would like to add at this time, please?
APPLICANT REP: No, sir.
CHAIRMAN: Any board members have any
questions of the applicant?
(NO RESPONSE)
CHAIRMAN: Staff have any other comments to
add on?
MR. NOFFSINGER: No, sir.

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CHAIRMAN: Entertain a motion to dispose of the item.

MR. WARREN: Move to grant the Variance based on the findings that it will not adversely affect the public health, safety or welfare because it's only an encroachment of a foot and a half and will not affect travel along the highway or disturb surrounding properties.

It will not alter the essential character of the general vicinity because the variance is for such a small distance it will not be noticeable due to the rural nature of the area and scattered structures not closely spaced, it will not stand out as different from the other properties in the area.

It will not cause a hazard or a nuisance to the public because the small distance will not affect travel on the highway.

It will not allow an unreasonable circumvention of the zoning requirements since it's only a 1.5 foot variance.

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

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MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

One more motion.

MR. WARREN: Move to adjourn.

MS. MASON: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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)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 60 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 30th day of January, 2011.

LYNNETTE KOLLER FUCHS
NOTARY ID 433397
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
OWENSBORO, KENTUCKY  42303

COMMISSION EXPIRES:   DECEMBER 16, 2014
COUNTY OF RESIDENCE:  DAVIESS COUNTY, KY

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