The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, July 7, 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
Madison Silvert, Attorney
Marty Warren
Sean Dysinger
Shannon Raines
Brian Howard

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CHAIRMAN:  Let me call the Owensboro Metropolitan Board of Adjustment to order.  Want to welcome you at this time.  We start our program each evening with a prayer and pledge of allegiance.  We invite you all to join us if you would.  Shannon Raines will have the prayer this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  Again, I want to thank you and welcome you to the meeting this evening.  If you have any comments on any item, please come to one of the podiums, state your name because we'll have a record of it.  Then direct the chairman and we'll find out information if you need some at that time.
With that the first item on the agenda is the minutes of the last meeting on June 2nd. They’re on record in the office. I don't think we've found any problems or anything.

MR. HOWARD: No.

CHAIRMAN: 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. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item.

Before we start I'll entertain a motion to change the agenda on Item Number 3 to put that 4 and 4 to Number 3. Entertain a motion.

MR. PEDLEY: Mr. Chairman, I make a motion we move Item Number 4 in place of 3 and 3 in place of 4.

MR. WARREN: Second.

CHAIRMAN: Any comments or discussion?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion passes.

Next item, please, sir.

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CONDITIONAL USE PERMIT

ITEM 2

5050 Highway 144, zoned A-U

Consider a request for a Conditional Use Permit in order to construct an expansion to an existing mausoleum.

Reference: Zoning Ordinance, Article 8, Section 8.2J1

Applicant: Owensboro Memorial Garden Corporation

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

MS. STONE: Becky Stone.

(BECKY STONE SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is currently zoned A-U Urban Agriculture. OMPC records indicate there have been no Zoning Map Amendments for the subject property.

There have been two previous Conditional Use Permits approved for the subject property; in 1981 for the construction a crematorium on the property with an existing cemetery and in 1998 to construct a mausoleum on the property with an existing cemetery.

The applicant currently owns this subject property and the adjoining property to the south. It
appears this expansion is all contained on the subject property, but if further expansion is necessary to the south the properties would need to be consolidated.

The applicant is asking to construct an approximately 1,300 square foot expansion to an existing mausoleum on the property. They are also showing a 24 foot paved loop around the mausoleum on the site plan to provide access to the expansion.

LAND USE IN SURROUNDING AREA

The properties to the north are zoned R-1A Single Family Residential, A-U Urban Agriculture and I-1 Light Industrial. The properties to the south are zoned A-U Urban Agriculture. The properties to the west are zoned I-1 Light Industrial and A-U Urban Agriculture. The properties to the east are zoned MPH Manufactured Housing Park and A-U Urban Agriculture.

ZONING ORDINANCE REQUIREMENTS

1. Parking - None required.
2. Landscaping - None required.

MS. STONE: We would like to enter the Conditional Use Permit Staff Report as Exhibit A.

CHAIRMAN: Thank you.

Have we had any comments or questions at the office on this item?

MR. HOWARD: No.

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CHAIRMAN: Is anyone wishing to speak in opposition of this?

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything you would like to add at this time?

APPLICANT REP: No.

CHAIRMAN: Board members have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. HOWARD: No, sir.

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

MS. MASON: Mr. Chairman, I move for approval with the findings of fact that it's consistent two previously approved Conditional Use Permits and it's compatible with the land use in the area and there's no opposition and it needs to meet the zoning ordinance requirements.

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?
MR. HOWARD: No.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

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VARIANCE

ITEM 4

2202 Sheffield Court, zoned R-1B

Consider request for a Variance in order to reduce the rear, street yard building setback line from 25 feet from the property line to 21 feet from the property line and to extend the existing 6 foot high fence along Fieldcrest Drive 33.4 feet and along Sheffield Court 37.2 feet.

Reference: Zoning Ordinance, Articles 3 and 8, Section 3-7(g)(3) and 8.5.6c

Applicant: Joe and Vicki Mills

MS. STONE: We have two separate Staff Reports for this item. There is two variance requests on the same application so I will start with the Staff Report for the variance to reduce the rear street yard setback from 25 to 21 feet.

The applicant is requesting the rear street yard building setback line along Fieldcrest Drive to be reduced from 25 feet from the property line to 21 feet from the property line in order to construct an in-ground swimming pool. The applicant states that
they are requesting this reduction so that the pool
will not interfere with the use of their existing
pergola and patio.

The applicant has submitted photographs of a
property located at 2207 Ford Avenue, suggesting that
the pool located on this property is an encroachment
into the 25 foot street yard setback along Ford
Avenue. The property located at 2207 Ford Avenue is
part of Fieldcrest Crossing, which is a Planned
Residential Development. A Planned Residential
Development has specified building envelopes in which
the setbacks are approved on a Subdivision Plat.
Setbacks in a Planned Residential Development may be
less than the prescribed setbacks for a regular
subdivision in that zone. Once established, those
setbacks within a Planned Residential Development
could only be altered through a new revised
Subdivision Plat requiring signatures of all persons
within that development. Other requirements are
applied in a Planned Residential Developments that are
not required in regular subdivisions, such as
spill-over parking. The presence of building setbacks
within the Planned Residential Development, which are
less than the setbacks applied to the subject
property, is not a justification for encroachment on a

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lot in the vicinity where the prescribed zoning
setback is applied.

The site plan the applicant submitted with
their application shows a distance of 5.5 feet.
between the proposed site for the swimming pool and
the existing pergola and patio.

There is no building code requirement limiting
how close an in-ground swimming pool can be from a
pergola or patio. There is adequate room on the
property for the applicant to construct the proposed
pool meeting the 25 foot setback as required and not
interfere with the pergola or patio. Additionally,
the applicant would have the option to reduce the size
of the pool by 4 feet and choose to place it the 5.5
feet from the pergola and patio.

There are no other encroachments into the
prescribed street yard setback along Fieldcrest Drive.
Approving this Variance would set a precedent for this
area allowing property owners to possibly seek
Variances as well, altering the character of the area.
Granting the variance would alter the essential
class of the general vicinity by setting a
precedent in the area and allowing other property
owners to also seek Variances to reduce required
setbacks. Granting the variance will be an

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unreasonable circumvention of the requirements of the zoning ordinance because there is adequate room on the property to construct the proposed in-ground swimming pool and meet the required setbacks.

The proposed in-ground swimming pool could be constructed meeting the setbacks.

Staff recommendation would be for denial on the setback variance request.

Do you want to go ahead and act on this one before we go to the fence variance?

CHAIRMAN: Let's just take one at a time, please.

Have there been any comments made in the office?

MR. HOWARD: No, sir.

CHAIRMAN: Is there anyone wishing to speak in opposition on this first item, the variance setback?

(NO RESPONSE)

CHAIRMAN: Does the applicant have any comments they wish to make at this time?

Please come forward and state your name, please.

MR. MILLS: Joe Mills.

(JOE MILLS SWORN BY ATTORNEY.)

MR. MILLS: We have wrestled with this for Ohio Valley Reporting

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quite some time. We want to put in what's called a sports pool where it's shallow on the ends and deeper in the middle. In order to do that and keep the slope of the pool to where it's not very steep and it's where you don't hit your feet and just drop off in there, we need at least a 32 foot swimming pool. In order to do that, we need to get the 4 foot variance. That's what it is. We could put in a smaller pool, but at the expense of the pool and with the fact that we couldn't get the type of pool we want, it's why we're here. There you go.

We do have very a unusual shape lot in the fact that we have streets on three sides of our property. There's hardly any lots in Owensboro quite like it. That really gives us a lot of limiting conditions on what we can do and what we can't do. The fact that we live on a busy street is our back area, it's our backyard. For that reason that's why we're wanting to do what we presented here tonight. I have nothing else.

CHAIRMAN: Any board members have any comments of Mr. Mills?

MR. DYSINGER: I have a question.

Staff placed into evidence that there is 5.5 feet from the pergola and patio. Would you like to
MR. MILLS: One reason is our back door comes out of our garage right there. If we move it, then it blocks the access from the back door of the house all the way around the pool. Then we would just not like the pool that close to where we sit and eat and all of those type of things. That's the reason.

CHAIRMAN: Come forward and state your name, please.

MRS. MILLS: My name is Vicki Mills and I also live at 2202 Sheffield Court.

(VICKI MILLS SWORN BY ATTORNEY.)

MRS. MILLS: I think it would only allow us to have a 1 1/2 foot walkway between -- the pergola sits on some concrete that is elevated from the rest. So we would have to elevate all of the concrete. What I understand for a walkway you need at least 3 feet for a good traffic flow. That's why we need the extra footage.

I just want to elaborate a little bit more about the way our house sits on our lot. The front of our house faces Sheffield Court. The back of our house faces Fieldcrest Drive, but our back door is actually at the side of our home. So what appears to
be what would be our side lot, if you're looking at the front of our house, the left side of our home is actually our backyard. So you see our backyard whether you're on Fieldcrest or you're on Sheffield. We have no backyard but for privacy. We have to fence it in because we've lived there long enough we've had kids and grandkids. We definitely need a fence. That's why we're kind of wanting to just gain a little bit more. The 28 foot pool is quite small. We have five children and we're big people so we just need a little bit more pool than the 28 foot. Thank you. That's all.

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

MR. DYSINGER: Not at this time.

Mr. Chairman, I would ask the applicant has testified that the unique nature of their yard makes this variance necessary. I wonder if Staff could address that at all.

CHAIRMAN: Staff, please.

MS. STONE: They do have a lot that has three street frontages. So a front street setback is applied by the ordinance to each of those streets. If the lots were back to back, that could be reduced, but they have lots in-between them and the end of the

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other block that also have a 25 foot setback. So on
this side of Fieldcrest, I think those are their
backyards; is that correct?

MRS. MILLS: Yes.

MS. STONE: Their backyards that would be
fronting on Fieldcrest as well that have that 25 foot
applied to them adjoining lots.

MR. DYSINGER: So the uniqueness of the lot
doesn't necessarily convey any hardship?

MS. STONE: In our opinion, the setback could
still be met, but it is a characteristic of the lot
that's not characteristic of the other lots in the
area.

MS. RAINES: Mr. Chairman, I have a question.

CHAIRMAN: Okay.

MS. RAINES: If we were to do some sort of
compromise and maybe allow them to have a 3 foot
walkway and a foot and a half, reducing their setback
by a foot and a half, would they have to go and get a
signature by all persons in that development in order
to get that approved as well?

MS. STONE: No. Their particular lot is
actually not part of a Planned Residential
Development. Adjacent lots are. You could reduce the
amount of variance that you approve for them, if you

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decide you want to approve a variance and they
wouldn’t have to go back through and do advertisement
or anything like that. You couldn't increase the
amount, but you could reduce it if you chose to do
that.

MR. DYSINGER: Mr. Chairman, that would
however be still setting a precedence that may affect
the zoning appearance of the neighborhood moving
forward, would it not, or perhaps Staff should answer
that?

CHAIRMAN: Staff answer that, please. I think
it would, but I'll leave it up to them.

MR. HOWARD: Any time a variance is granted
it, does change what could happen in that
neighborhood, yes.

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

MR. WARREN: This lot is actually not part of
the planned development so it's kind of unique in that
nature as well. It's not really setting a precedence
within the neighborhood. It's setting precedence on
that lot.

MS. STONE: No. The reason we brought -- you
may have been confused about the planned development.

They entered evidence with their application that

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there were lots that had less of a setback that were adjacent to them. The reason they have less of a setback is because they're a Planned Residential Development. This lot and adjoining lots are part of a regular subdivision. So if you granted a variance on this lot, the precedence you would be setting would be that other lots within that regular subdivision could also ask for a variance.

MS. MASON: But the Planned Residential Development is within the area though, correct?

MS. STONE: It's within the area, yes.

CHAIRMAN: Come forward and state your name again, please.

MRS. MILLS: Vicki Mills.

I would venture to say, I'm not 100 percent sure of this, but I don't think there's another lot in our subdivision that has the physical characteristics that ours has. I think that alone would stand out as a reason where you could say this lot is different than the other lots; therefore it could be granted. I think you could go forward with that comfort. That there wouldn't be everybody necessarily wanting to do the same thing. Thank you.

CHAIRMAN: Any other questions from the board members?

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CHAIRMAN: Staff have anything else?

MR. HOWARD: No, sir.

CHAIRMAN: The applicants have anything else you want to add at this time?

(No response)

CHAIRMAN: Entertain a motion to dispose of this particular item of this variance, please.

MR. PEDLEY: Mr. Chairman, I'm going to make a motion to approve the variance based on the findings of fact this variance is strictly for an in-ground swimming pool. It will not allow a structure to be built; a pump house, a bathhouse or anything, now or in the future. Strictly for an in-ground swimming pool. That will be a condition put on this variance approval.

It will not adversely affect the public health, safety or welfare because it is inside of a fenced lot. No one can get to it and no one can see it.

It will not alter the essential character of the general vicinity by allowing an encroachment and setting a precedent for the area and could encourage other property owners to seek Variances resulting in other encroachments. If they did, it would only be...
for an in-ground swimming pool. They couldn't seek a variance for a structure.

It will not cause a hazard or a nuisance to the public because it is fenced and you cannot see it.

It will not allow an unreasonable circumvention of the requirements of the zoning regulations because the proposed in-ground pool can be constructed on the property meeting the 25 foot setback. If it's an in-ground pool, it's not an above ground pool. It will not set a precedence for a variance for someone to construct a garage or an out-building or anything. The condition is strictly for an in-ground swimming pool.

CHAIRMAN: You heard the motion. Is there a second?

MS. MASON: Second.

CHAIRMAN: A motion has been made and a second.

MR. DYSINGER: Mr. Chairman, I wonder if Mr. Pedley would consider adding as a finding of fact that it's a unique nature of this particular lot that makes this warranted.

MR. PEDLEY: The application refers to a particular lot. It has the address on Sheffield. It is a particular lot.
MR. DYSINGER: Mr. Pedley certainly doesn't have to.

CHAIRMAN: I think that's stated in the application. Are we correct, Mr. Attorney?

MR. SILVERT: I believe what he was trying to say was that he believed that the finding of fact needed to be, in his opinion, added that there's a peculiar nature to this particular lot. As it was discussed in the testimony, peculiar nature of this particular lot that's not found in other lots in the area might be another finding of fact that you may want to adopt. You may, but that's at your discretion.

MR. PEDLEY: Is that what you were referring to?

MR. DYSINGER: It was.

MR. PEDLEY: I amend my motion to allow Mr. Dysinger's addition to as stated by Mr. Silvert.

MR. SILVERT: And that would have to be second now that your motion has been amended.

MS. MASON: Second.

CHAIRMAN: Why don't we start over and make it simpler. Entertain a motion, a total motion and then second that and not have to add an amendment.

MR. DYSINGER: We already have, Mr. Chairman.
MR. PEDLEY: It has been seconded so now we have to amend it.

CHAIRMAN: I'm saying let's start over and make it simpler. We can if you withdraw your motion and make it again.

MR. PEDLEY: No. I'm not going to do that. We have a second and I've amended my motion. Let's vote on it.

CHAIRMAN: We've had the motion and the second on the amendment. Any other comments on the amendment?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries. Now we'll go to the original motion as amended and vote on it. All in favor of the original motion as amended.

MR. PEDLEY: Does that need to be read into the record?

MR. SILVERT: No, sir.

CHAIRMAN: Now, all in favor of the original motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries as amended.

Next item.

MS. STONE: The second part of this Variance request is to consider a variance to extend the existing 6 foot high fence along Fieldcrest Drive 33.4 feet and along Sheffield Court 37.2 feet. The subject property is bordered on three sides by streets limiting the privacy of their outdoor space.

The applicant is seeking to extend an existing 6 foot high white vinyl fence 33.4 feet along the rear yard along Fieldcrest Drive and 37.2 feet along their side yard along Sheffield Court. The applicant states that they are requesting the Variance to create more, safe useable space in their backyard. The applicant states that the two properties directly to the south of them have existing 8 foot high privacy fences along their rear yards along Fieldcrest Drive; these likely predate the zoning ordinance requirements.

Granting this variance will not alter the essential character of the general vicinity because there are other properties that also have privacy fences at this height or higher along their rear yards, along Fieldcrest Drive and this is an extension of an existing fence which will be similar to fences already in the neighborhood. It will not adversely
affect the public health, safety or welfare or cause a hazard or nuisance to the public because the fence extension will not be expanded to a point that it causes site triangle and traffic obstruction. Granting this variance will not be an unreasonable circumvention of the requirements of the zoning ordinance because this is an extension of an existing fence and there are other fences in the area, along Fieldcrest Drive that are higher than the proposed extension.

The applicant could still fence their yard at a lower height.

The Staff's recommendation is for approval of this variance with the condition to assure that the fence is located on the subject property and not within the public right-of-way.

CHAIRMAN: Thank you.

Any board members have any questions at this time of this item?

(NO RESPONSE)

CHAIRMAN: Does the applicants have anything else you want to add to this one at this time?

MR. MILLS: No.

CHAIRMAN: Staff have any other comments of this item?

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CHAIRMAN: Hearing none I'll 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 and welfare because it is an extension of an existing fence and according to the staff record it will not impact traffic vision.

It will not alter the essential character of the general vicinity. There are other fences in the area that are taller than this one.

It will not cause a hazard or a nuisance to the public because of it's a fence and there are several already there.

It also will not allow an unreasonable circumvention of the requirements of the zoning regulations. Like I said, there are other eight foot tall fences in the vicinity.

With the condition that the fence must be located on the subject property, not in the public right-of-way.

CHAIRMAN: Is there a second to the motion?

MS. RAINES: 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. HOWARD: No.

CHAIRMAN: The applicant have any other comments at this time?
MR. MILLS: No.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 3

319 Frederica Street, zoned B-2 (Historic Core Overlay District)
Consider a request for a Variance in order to allow a proposed access point to the subject property in conflict with the required 500 foot spacing between access points on a principal arterial street.
Reference: Zoning Ordinance, Article 13, Section 13.21
Applicant: First Security Bank

MS. RAINES: Mr. Chairman, I need to recuse myself.

CHAIRMAN: So noted. She needs to be excused of this item.

MS. STONE: This is a rather lengthy Staff Report. I've given the applicant a copy of that. You've all received copies in your packet. I'm going

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to summarize that and then if you have additional
questions feel free to ask.

The subject property is located in the
Downtown Overlay District, the Historic Core Character
District which has the most specific design criteria.
The access point on a Type A Street in this character
district is not allowed. Frederica Street is a Type A
street. The applicant has sought a sign exception
from the Historic Preservation Board. The Historic
Preservation Board has granted the design exception
and the minutes and findings of that meeting are
included in your packet.

The design of parking lots, including access
points must meet the defined criteria in Article 13
which requires that the spacing standards between
access points be met from the Access Standards Manual.

The spacing standard for redeveloping lots on
Frederica Street, a principal arterial, is 500 feet.
Access standards have historically identified within
the urban service area along Frederica Street.

The proposed access point is approximately 115
feet from the existing access point to the north and
90 feet from the existing access point to the south.

Photos 1, 2 and 3 in your packet show the
existing access points that are adjoining this

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proposed point.

In photo Number 3 at the access point to the south, you'll notice that there's a no left turn sign that's been placed at the access point to that south point toward Fourth Street. The proposed access point is also located in close proximity to the intersection of Fourth Street and Frederica Street, both principal arterial streets.

The proposed access point will create an additional point where traffic conflict and pedestrian conflict may occur and will negatively impact public safety.

As evidenced by the applicant's proposed site plan, access is available to this parking lot from a local street from the adjoining property located at 310 St. Ann Street. Shared access has historically been required to meet the intent of the access standards for adjoining lots and is encouraged by the Access Standard Manual. The subject property is an existing parking lot that has functioned for many years with access from St. Ann Street.

Pictures 4 and 5 will show the access from St. Ann Street to the proposed site. The character of the area and the recommended development standards for the Historic Core Character District will be compromised.
by the approval of this access point which encourages a suburban rather than pedestrian friendly urban development.

While there are some existing access points within this block the pattern of downtown development which the Overlay District is intended to preserve is pedestrian oriented design with buildings built to build two lines without on-site parking requirements.

Approving this access point will alter the essential character of the area and the character of the Historic Core Character District that the Overlay District attempts to preserve.

In summary the location of this access point:

* Grossly exceeds the access standard of 500 foot spacing between access points.

* Has not been necessary in the past for the use of the property as a parking lot.

* Creates a safety issue by allowing an additional access point near two existing access points and a major intersection.

* Inhibits pedestrian friendly development that is one of the purposes of Article 21, Downtown Overlay District.

* Conflicts with the historical downtown development patterns within the central business
district which should be preserved.

* Promotes suburban type development which should be discouraged in the downtown area.

* Sets a precedent for approval of non-compliant access points on other redeveloping properties in the general vicinity.

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

CHAIRMAN: Thank you.

Has there been any comments put into the office that we need to bring up at this time?

MR. HOWARD: We've had a few calls, but no official request for information to be entered into the record.

CHAIRMAN: For information only is there anyone wishing to speak in opposition of this item?

(NO RESPONSE)

CHAIRMAN: Anybody speaking in opposition of this?

(NO RESPONSE)

CHAIRMAN: The applicant, you ready to present your case?

MR. KAMUF: Mr. Chairman, Charles Kamuf. I represent First Security concerning this variance. Thank you for the opportunity to be here and I
want to thank your attorney for giving me my 20 year
award on the new pointer. Thank you, Madison. I hope
to use it well tonight.

On August 16, 2010, First Security bought the
Harrington business. Many of you know where that is.
That's 313 Frederica Street.

Now, the purchase included four separate lots.
For the record, Brian, have we got all of the
documents that I introduced before the Owensboro
Preservation Board in the record? I want to be sure
that's in the file.

MS. STONE: The minutes and the findings of
the meeting are in the file. Are the deeds in the
file? They introduced the deeds as evidence about an
alley. I don't know that we included those.

MR. KAMUF: I've got copies. I want to be
sure that record is straight. That we've got
everything.

I think, Madison, you would tell them that
whatever before the Preservation Board and also what
we include here tonight.

MR. SILVERT: If you submitted it, because
this is --

MR. KAMUF: I submitted it.

MR. SILVERT: -- isn't a review of the
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decision of the Historic Preservation.

MR. KAMUF: I understand, but I've submitted it at that board just for clarification. Yes or no?

MS. STONE: He submitted it to the Historic Preservation Board. Not to us.

MR. SILVERT: Yes. Not to the Planning Commission.

MS. STONE: But I did include a copy of the approval of the Historic Preservation with the minutes and the findings.

MR. SILVERT: Mr. Kamuf, if there were exhibits that were submitted to the Historic Preservation Review Board, their record doesn't transfer to us in total. So if there were exhibits entered during your issue with the Historic Preservation Review Board those will have to be --

MR. KAMUF: I'll reintroduce them tonight. In other words, the findings of the Owensboro Preservation Board are introduced. I filed that as far as my application. Does each member of the board have a copy of that?

MR. SILVERT: That's correct.

MS. STONE: Yes, they do.

MR. KAMUF: I'm trying to do this where it progresses quickly. I have a copy of the deed where Ohio Valley Reporting (270) 683-7383
First Security got that property at 313 and the rest of the property in 2010. I'll leave that up there and be sure we got it in the record or I can pass it around right now. Whichever one you want to do, Audie. I've got the exhibits and many of these exhibits have been previously introduced. I can just lay them there. If somebody has any questions, we can go into it or however you all want to do it.

CHAIRMAN: That sounds good.

MS. STONE: The deed that shows the record ownership was submitted with the application. Now, if there's other deeds, then he needs to submit those.

MR. KAMUF: There will be other ones.

Now, this exhibit that I show you is an exhibit of the property that was purchased by First Security on that date. There are four tracts of property. This exhibit is the site exhibit that was prepared by Bryant Engineering. So we had four separate tracts of ground. I call them and I think lawyers call them stand alone properties.

For example, I can sell any one of those properties individually and that deed specifically sets out four parcels of ground.

The property at 307 Frederica Street is an individual and separate lot. This is going to be
important as far as my presentation. It was very
important before the Preservation Board.

To presently it's being used as a parking lot.
As we proceed First Security intends to use it only
for an employee parking lot. The property, the orange
is 313. It's a separate and individual lot and it's
where the building is.

The lot that we have there, it's important
that we have on lot -- this is the next lot which is
319. That's the blue one. That's where we're asking
for the access point. This is a separate and
individual lot. Has no access to Frederica Street.

For First Security to have successful banking
operations, they must have access from this lot from
Frederica to their parking lot which is in the rear
where their drive-in is located. You can see the pink
area back there in the back. In the back there are
three tellers, drive-in tellers and that's why it's so
important as we come through here to have this
particular lot where we'll have other parking because
in preparing this exhibit and preparing this site plan
we had to use a large part of our property that we
were going to use for parking for these tellers.

Now, none of the lots have been consolidated.
First Security, if we wanted tomorrow to sell that lot

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that is in green, I can assure you we can sell it because it's a separate lot.

   It's important to note, because we're getting ready to tell you that we're in compliance with the comprehensive plan, that we're in compliance with Article 4 Page 5 of this your access manual. Our position tonight is that we are in compliance.

   Number 7, the -- I'm going to go over this. The best case that I have for you tonight is for you to read the findings that were prepared by the Preservation Board which was entered sometime in June. We ask you to look at those. I'll go over them with you. We ask you to adopt those.

   Who is the Preservation Board? Who is this Owensboro Preservation Board? If you look through the United States most Preservation Boards are more restricted than a board like you. It's made up of citizens of Owensboro/Daviess County. They unanimously approved this project as we're presenting. This is the first time I've ever come before Planning & Zoning or the Board of Adjustment in 40 years where somebody has previously approved everything that I'm going to ask for.

   The purpose of buying this property, and I think Nick Brake might be interested in this. The

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purpose of buying this property was to move their
headquarters from 300 Frederica Street across the
street. First Security has offices in Bowling Green.
They have offices in Evansville. We could have put
their headquarters anyplace, but because of this
Article 21 and everything developing in Downtown
Owensboro they chose Owensboro. The bank would have
50 to 60 employees, and I might say 23 new employees.

As far as this application under Article 21,
since First Security did not have access to 319, and
that's this one that we see here, we asked the board
for an exception to allow access. We asked the
Owensboro Preservation Board. They approved it.

Here is what Article 21 says. I've been
quoting it. "Driveways shall not be located on"
Becky brought this up. Our position on this case is
totally different than what she said. We're going to
present expert testimony to show that in just a few
minutes.

It says, "Driveway shall not be located on a
Type A street" - Frederica Street is a Type A street -
"unless the property has no feasible access to either
a Type B street or a vehicular alley."

It's our position that since 319 Frederica
Street has no feasible access, it was found by the
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Preservation Board that it didn't, we're entitled to an access from 319 Frederica Street.

The key word is "feasible."

At that time if we had that hearing, Don Raines, I see Ms. Raines here tonight. I didn't point out to the rear of this property there is an alley. This alley that you see there to the rear of the property comes from over at Fourth Street. I'm trying to put it where you can see. Let's put it this way.

This little alley that you see here in red, that is a private alley. We presented evidence, and I have a copy of the deed which, Mr. Chairman, I'll give you in a few minutes. Was given to me by Don Raines where he says his family claims access to that alley and they claim ownership to that alley. That's this alley that you see to the rear.

The question will come in, what about this alley? Is that feasible access?

John Bickel from that law firm called me the other day and he said, we object to First Security using this alley.

So the issue comes, do we have feasible access from Frederica Street to any other street or alley, and the answer is no.

These are the photographs that I introduced at Ohio Valley Reporting

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the previous hearing. Here are two that show this
alley. If you can see this picture, and I'll pass it
around now. There's a dumpster that blocks that alley
off. I have it in red. This is a dumpster. You
can't get through alley. Here is another copy of the
dumpster that you see from another vantage point.
Then the next question is: Is lot 307, does that have
access or do we have access to 319 from any other way?
You can see this line. This is a red line. That's
what I've tried show as what an alley looks like.
Here is a picture of it. That's what it looks like.

These alleys are impassible. The Preservation
Board specifically find it and made a finding that it
was impassible on both of them, when they found
specifically that we did not have a feasible access.
I'll go into that in just a few minutes.

I'll try not to get boring which I probably
am. I'll keep the rest of it and introduce them at
one time, if that's okay.

So the question comes up, is there any other
access? This is an easy answer. We don't have any
access to any other street from the property at 319
Frederica Street. That is a separate lot. Only
access from Fourth Street to this little line that you
see are from the rear, and that's impassible.
On May 18th, the Owensboro Historical Preservation Board unanimously approved this project.

I would like to do this, if I could, without being boring. Can I refer you to your findings that you have in your record from the Preservation Board because I think that's critical.

I don't know whether you have those in front of you, but I will read from them. I have copies if you would like them. Anybody need a copy?

CHAIRMAN: Minutes of the 18th?

MR. KAMUF: Not the minutes. There will be a findings right behind the minutes.

Here is what it says: "Whereas, First Security Bank appeared at the meeting and presented testimony by and through Charles Kamuf, Dave Weaver, of Bryant Engineering, and Mr. Lynn Cooper, President of First Security."

Here is what they found: Having considered the appeal, the Board finds as follows:

1) The property lacks feasible access to a Type B street or vehicular alley. While First Security owns the adjoining property at 310 St. Ann Street with access to said street, the Board must consider the Property individually.

This is the point I'm getting at because down

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the road I'm going to say, basically because this lot is an individual lot we qualify under Article 4, Page 5 of the Access Manual.

Individually and apart from said property in order to promote the future opportunities for higher intensity downtown development. For the same reason, the Board cannot consider the access point currently existing on the property located at 313 Frederica.

Additionally, what did I tell you about Mr. Raines? What did I tell you about Thacker?

Additionally, the short alley existing on 313 Frederica Street is too narrow for vehicular traffic and existing impediments from adjoining properties in said alley render the its use impossible and impractical. Alley does service the property to the south from Fourth Street. However, evidence presented shows this to be a private alley which the current owners thereof object to the use as proposed by First Security. Additionally, the width of this alley poses a potential hazard to the motoring public and pedestrian.

Now, what else did they find? This is a finding, of course, that I have to put in my application.

2) Strict application of the Code under these
circumstances would deprive First Security of reasonable use of their property and impose an unnecessary hardship upon them. The proposed access point is necessary for the vitality and success of First Security as it expands through other customers.

What else did they say?

3) The proposed access point is generally consistent with the goals and intent of the Downtown Master Plan. First Security proposes to construct a new bank in downtown Owensboro on the property located at 313 Frederica Street at a time when the downtown economic growth must be encouraged. The new bank will service its existing customers and increase the workforce in downtown Owensboro by an estimated 23 persons. Such customers and employees are the most vital to downtown Owensboro.

4) The proposal fits with the overall design. That's what Article 21 is for the Preservation Board. It's an article to preserve downtown and get to growth downtown. What does it say?

By allowing appropriate transitions and creating pedestrian areas such as sidewalk bump-outs along Frederica Street and bench seating similar to that utilized at Smothers Park.

We've agreed to follow everything in Article
21 as far as landscaping, as far as benches. That all came out at that hearing and we bring it out again.

Additionally, First Security agreed to allow for shared parking.

Downtown Owensboro, it's so important about this shared parking because what's getting ready to take place? I own one-half of the building at 221 West Second Street called the Kamuf Yewell Building. We purchased a little property from behind from the city. As a result we have an agreement with the city. When we're not using the property Monday through Friday or at nights, the city is entitled to use it.

What First Security has agreed to allow shared parking on its property during non-banking hours to accommodate the needs of businesses and events downtown such as in the best interest of the public considering what? All this affected about the health and welfare. We'll get into traffic in a few minutes.

5) The access point promotes future opportunity for higher intensity downtown development on all of the lots owned by First Security Bank should it decide to sell or further develop any individual lot.

So they specifically find. This is just not saying, hey, this is a conglomeration of four lots.
Each lot is a stand alone lot.

In conclusion what do they say? This is signed by the Owensboro Historic Preservation Board, Ted Lolley, Chairman.

Based upon the above findings, and upon a unanimous vote, with one member abstaining, of the members of the Board present at the meeting, the Board approves what? The design exception. They have approved just what the Staff has denied. Exception to allow an access point at Frederica street.

Now, I think the question that you'll say is: Who is on this Preservation Board? Who is on this? Ted Lolley is chairman, and he signed those. Who is Ted Lolley? Ted Lolley is the mayor's appointment for downtown Owensboro. For all the development of downtown Owensboro. He's a geotechnical engineer. He thinks this is a good idea.

The next one that's on there is Terry Blake. Terry, as you know, he was the one abstained because he done the work for First Security before. Terry Blakes writes history books about Owensboro. I can go in Walgreen's and pick up one of Terry Blake's books and find all about Owensboro. He's got two or three of them.

The other one was a lady by the name of Kim

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Johnson. She's a citizen appointee.

The other guy is a guy you read about in the paper all the time developing downtown Owensboro and pushing for Bluegrass is Terry Woodward.

These are the type of people that voted unanimously. Terry Woodward asked one question after we presented all the case. Do you mean to tell me that if First Security come up here without this application that they can sell that property at 307 Frederica Street? Without a doubt. Without a doubt.

In other words, we could sell it any time we wanted to.

In June 2011 -- let me just say this. This is a big jump for us to be here today to argue that the Preservation Board. Most Preservation Boards are more restricted than you ever thought about or than the Staff.

On June we filed this application. Let me point this one out.

Here is a picture of the employee parking lot. You heard all that Becky talked about of all the traffic problems that you're going to created there.

What we're talking about here is 11 parking places for employees that will leave. That will come in in the morning and leave at night. You look at that and it
says -- you can see the alley to the rear that we
talked about and that I presented evidence about.

The other one that I would like to show you
right now is that you could see -- I did a bad job on
this, but it wasn't on the plat.

If you lay this property like this, you could
see that we laid it out 919 Frederica Street where you
could have -- it was in line with Thompson's building
across the street. So if this alley here is shooting
across the street, standing at the property at 919
Frederica looking directly over at Thompson's
building, and this lines up with it. That was a good
point and the engineer will tell you that in just a
few minutes.

These other pictures that I showed you, we
introduced those at the hearing. What they show -- I
haven't got them marked, but I'm sure we'll get them
marked.

These pictures show the rear of the property.
All of the rear of the property we're going to leave
that up along that brick work to the rear of 310 St.
Ann. We're going to leave that up and qualify in
every way that you want us to under Article 21 which
is the article for the development of downtown
Owensboro.

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I would like to pass, again, each one of you this. We're going to start talking about this Access Manual. Here is a copy, if I can give you. This is important. We're saying we're in accord with the comprehensive plan. I'll give you three pages.

Since 319 Frederica Street is a separate lot, that's why this document and this exhibit is so important. Is a separate individual lot and does not have sufficient frontage on Frederica Street to qualify the spaces. We're entitled to a single access point. I refer you to go over. Let us talk about the first page because I'm sure that this will save a little time when Bill Hays gets up here.

We are on Page 1 right from the bottom. We're in a PB1 minus, which is driveways and professional businesses or industrial zones with traffic volumes less than 1,000 vehicles a day.

We take issue completely with the fact that there are 500 foot spacing requirements. When Bill gets through I think you'll agree with that.

We take issue with the fact that Frederica Street is a major arterial street. It was. Several months ago it was changed. I think I'm right on that.

On Page 2 you'll see at the top where we talk about minor arterial, the existing lots. This shows Ohio Valley Reporting

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where the PBI minus. You come down. It's 250 feet.

Let's go over to Page 5, Number 4. This is a critical part of my argument.

"Driveway widths will be in accordance with the design standards listed in the table below.

"Whenever new development or redevelopment is proposed for a property or assembled properties, and sufficient frontage is NOT available to allow application of the spacing standards in the adjoining table, not more than one access point will be permitted."

What does it say? When we meet that, we're entitled to one access point. That will be our position on that issue.

In addition there, the purpose of the Access Manual -- I'm sure you've heard a lot about that, but the Access Manual is to minimize traffic conflicts and accidents. That's stated on Page 1.

The traffic engineer, we have employed a subcontractor to make counts on the existing building at 300 Frederica Street on the new building as proposed with and without the access point at 319 Frederica Street. The traffic study found that they were less, significant less than 1,000 vehicles per day. Therefore we qualify under the 250 foot spacing.
requirement.

He also made additional findings. He looked at the safety, the traffic and capacity. From the traffic count and the review of the Access Manual, he will tell you, the traffic engineer, he concluded that the access point at 319 Frederica Street met the requirements of the Access Manual. This is not one where we're not in compliance. But he will tell that we meet the requirements of the Access Manual and found it was prudent from a traffic engineer's viewpoint. All this study, all of the things that he did, that it was access point at Frederica street qualified.

I'll will review these shortly about my findings that I prepared. Our findings will show that the health and welfare will not have a problem. We will not alter the essential character of the neighborhood. We will not cause a hazard or a nuisance because the proposed access is in character with the existing access points in the general vicinity that do not meet the requirements of the Access Manual.

I will present to you a document in a few minutes where we have counted -- it will be a huge document. Where we have counted every access point.
from Frederica and Main to Ninth Street. Guess what?
There's not a one of them in compliance. Not a one.

Let's go back to, if we can, to 307 Frederica.
Let's talk this just for a short time. 307 Frederica
Street, and during discussions the possibility of
eliminating access point at 307 Frederica was
discussed. However, eliminating access the point
would create and landlocked piece of property and
would result in losing 11 parking places.

Here is where we are. We've got 50 to 60
employees. We'll have 36 parking places. We would
have had 47 without these. So it would create not
only a landlocked property. We wouldn't have any
parking not only for our employees, but we wouldn't
have any parking for the customers.

319 Frederica Street is a type A access point.
Access to said tract is limited like we talked about
with the Raines' situation. Don Raines advised me
that he thinks he owns that property or the family.
In other words, you can't get to it from this property
and you can't get to it from the other side.

310 St. Ann, and in going over 310 St. Ann the
problem that we had with parking is that we thought we
had sufficient parking, but you can see with these
three tellers that we have, drive-in tellers, we just
don't have the parking.

This is the big exhibit that I've been promising you. I'm sure you can't wait for it.

Now, this exhibit as I show it to you, of course, it's our contention that the spacing requirements are 250 spaces for volume less than 1,000. Bill Hays will talk about that in just a few minutes. Let's count these. This is Main and Frederica. Our office that I talked to you about is on this corner. Let's count them. We've got 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31. There are a total of 31 access points along Frederica street, from Main to Ninth Street. None of them are in compliance. The only one, if you require this, the only one that will be in compliance will be at 319 Frederica Street.

Now, if you use this Access Manual in the way the Staff wants you to do it today, in other words, there will probably just eliminate downtown Owensboro development. Given the distance between the property and the vicinity of 319 Frederica Street, there will be no block that you'll have with downtown Owensboro that you can have more than one access point. In other words, if you develop downtown Owensboro under
the plan and use the Access Manual, you'll have one
access point per block.

The Access Manual has been in existence for
20 years. None of these driveways that we showed you
are in compliance. Basically the present Access
Manual does not address the unique traffic issues of
downtown Owensboro.

The question that I have. Could it be
possible that the restrictions on the Access Manual
are hampering downtown development? We ask you to
adopt the Preservation Board's opinion on those
particular points.

I would like to introduce you to our engineer.
He's Bill Hays. He's from Nashville, Tennessee. He
has his professional degree from the University of
Vanderbilt magnum cum laude. He's had 36 years in
traffic and municipal engineering and holds the
highest national certification in the field of traffic
engineer. He has prepared 100 traffic impact studies.
Served as project manager for two championship level
golf courses and overseen construction of those
projects.

While I pass these out I'll give you a copy of
his report. This is a copy of his resume and here is
a copy of his report.

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As you can see, he has impressive credentials. I might point out to you that if you look at the top of the second page it shows his latest accomplishment. Traffic Impact Study: Western Kentucky University Block 12 Multi-Purpose Site Traffic Impact Study. Collected and analyzed traffic data for four intersections at the edge of the major university campus as part of a determination of the impact on multi-model traffic of multi-purpose campus site including a 400-space parking garage, 100-room motel, a campus bookstore, apartments, offices, and future business school.

More important look down at Number 3. This guy, we just didn't pick this guy off the street. He is instrumental in the Owensboro Medical Health System Traffic Impact Study. When he had the case before the Planning & Zoning Board, I think we came before the Board of Adjustment here for a variance when he was here. This guy, he's been around the block. We didn't get him off the latest pumpkin wagon. We got him because we wanted him to explain exactly what was taking place and why these findings are not appropriate here today to deny the project.

I'll let him testify and then I have some things to say. We'll also have the president of First Ohio Valley Reporting

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Security to say a few words. He said some words that were important at the last hearing.

Bill, if you will.

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

MR. HAYS: Bill Hays.

(BILL HAYS SWORN BY ATTORNEY.)

MR. HAYS: I appreciate the opportunity to speak with you. I am generally here speaking before the Planning Commission, but I certainly appreciate the opportunity to speak before your board.

Let me correct one thing for the record. I did not graduate magnum cum laude. I came off a Tennessee tobacco farm and I just was glad to get in school and out of the tobacco patch.

This is an interesting case we have tonight. I started looking at this site. We started out with the idea that we were going to count three locations, and we did that. We counted traffic during the morning peak hour which is 7 to 9 a.m., then the afternoon peak hour which is from 4 p.m. to 6 p.m., at two of your signalized intersections. One of those was Third and Frederica and the other one was Fourth and St. Ann. Those are the two corners of this block. They were the ones that we felt to be most impacted by
the change of the bank going from one side of the
street to the other.

The other thing we did, the second time during
those counts we collected -- the counts that we
observed the vehicles going into and out of the main
parking lot. The initial parking lot is at the corner
of St. Elizabeth and Third. To observe what the
number of vehicles turn in, what direction they were
coming from, and then going out. That give us an idea
of how many people were going to the site.

Now, this would not include all of the
employees. It would include the employees who
presently park on the bank site in that corner. If
they have other parking, leased parking somewhere else
we would not pick those up. It is somewhat limited,
but I think it's also somewhat applicable, certainly
within the range of the customers. We got those, and
some of the employees. So we could take that
information and transfer it to across the street.

The first concern I had in looking at this
was, okay, what are the standards. Of course, I was
familiar with your Access Management Manual. We've
dealt with it in various traffic impact study cases,
but I did get a copy to read through to be sure I
understood it.

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The spacing in there is pretty typical of what you see in suburban access management cases across the country. Access management has become a very important element that cities are looking at. We certainly don't take any issue with those spacing requirements as they sit down at the table. Everything was just basically what I would anticipate and what I'm used to from dealing with things here before.

The difficulty comes as you get into the central business district. Two things.

First, the distance between intersections that you might see out on say Kentucky 54 or out on Carter Road. You may have 1,000 feet between public intersections. In this case downtown, I was actually surprised to see how narrow they were. On the block we talking about on Frederica, the distance curb to curb is 375 feet. On the Third Street and Fourth Street side is even narrow than that. It's 275 feet. So these are small city blocks.

I was city engineer in Bowling Green for 20 years and the city blocks there were closer to 450. We had exceptions, small ones like these, but not -- this is a different size and actually kind of through me when I picked up my scale because they were shorter.
than I anticipated.

When you go look at standards like 500 feet
and 250 feet, obviously you get into difficulty just
in general trying to apply those type of standards
that you except in suburban area to get down to
central business district. So we looked at that.

The other question I had was who owns
Frederica Street? Who has jurisdiction over it?
Maintains it I should say. Right-of-way is not owned,
but it is a jurisdiction. Who has the jurisdiction
and what is the functional classification?

So I went to the Kentucky Transportation
Cabinet website. They update their records at least
once a week. So I checked within the last two weeks.
The section from Second to Fifth is now classified as
a city maintained street. It's functional
classification is a minor arterial.

Now, I've always known it as US 231 and known
as principal arterial. So that change was apparently
made pretty recently. Now, the maps that I had on my
desk still refer to in '08, but switches have occurred
fairly recently.

I got an idea of why the Cabinet would have
done that once we looked at the traffic counts.
Because the highest count in a peak hour on Frederica

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in the 300 block was only 600 vehicles in the peak hour. That transfers to roughly 6,000 vehicles a day. That's relatively a low volume. You cannot adhere in your Access Management Manual there are 11 templates in the back which show you how to apply access control techniques. Of those 11 that give an example, 10 of them are shown, say they apply to streets of 10,000 vehicles a day or more.

So you kind of see the orientation of where you would normally apply access management technique in general.

We also noted that Fourth Street between Frederica and St. Ann carries in the peak hour, p.m. peak hour, 700 vehicles a day. So that put it at as a high volume street, Frederica, which I would not have anticipated even before we did the count.

One of the things we did in the study was to take a look at what roughly how many trips is this site going to generate if they all go into one access point, in and out of one location. We took the counts we had that we observed and we looked at national studies and typically the national study count many bank sites all over the country. If you take the hours that we counted and project them forward, the peak hours are generally about a quarter of total site
traffic for the day. There were a lot of people coming in and out of the bank opening and closing on an average weekday. Not on Friday, but average weekday. So we looked at that. We projected that forward and we found that the site was going to generate a rather low number of vehicles, 250. Add additional employees. Obviously that would generate some additional trips. Even then you're talking about well less than 500 a day. Clearly within the standards of the Access Manual, this site would be one that would generate 1,000 vehicle trips or less. Because Frederica is now classified as urban minor arterial, if you look at the chart you'll see that for sites of 1,000 or less vehicles a day, then you're spacing is 250 feet now rather than 500. So 500 was correct under the old classification system, but under the new one the Cabinet adopted we now be at 250.

The question that then want to look at is, okay, from a practical standpoint what happens to traffic when you have no access on Frederica for the customer or you have? What's the difference?

This chart shows you what happens without the Frederica Street access. It's oriented. Here is your existing bank. These are the existing drive-in windows, traffic going in and out here and here.
Existing employee park. This is where we counted the
bank traffic itself.

This is Third and Frederica. This is Fourth
and St. Ann. Site is here. This is your existing
building. This building has about 28,000 square feet
they're moving into. Here is your 11 space lot here.
Here is the lot that you make reference to at 319. We
would have the access point. Here is the access to
the teller, the drive-thru teller and the ATM on St.
Ann.

If you notice here, there's diagonal parking.

It's about 60 degree parking here. When you're
backing out of there, it's very difficult to see. You
would hope that St. Ann continues to be a relatively
low volume street because of that difficulty there.

If there is no access here, then a customer
coming in is going to have to go around to here or
here or to here. Then when they leave, of course,
because St. Ann is a one-way street, you've got to
come up here, get on Third, go here, here. A lot of
traffic will be wanting to go to Third to Frederica.

It doesn't show on here, but that is a very short left
turn lane. Maybe two at most, three vehicles can
stack up there. There's no separate left turn phase.
So they're going to have to against traffic there.

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Not a lot of storage there now. Our count shows there are 70 vehicles per hour in the afternoon peak hour there already. So any additional would be added to that. So that's the traffic flow without the access.

Come over to this chart. Very same chart, but now you see the access going into and out of here. You're still going to have access to people coming from St. Ann coming in there and going out and continue as they were, but the big difference is you don't have the volume of Fourth as you do in this concept.

Remember I said that Fourth already carries a lot of traffic. It's only two lanes. Frederica has four lanes and carries less traffic. So obvious from a capacity standpoint, even though you're going in one direction, you still have less capacity on Fourth than you do on Frederica.

So finally we took the information and we looked at some basic findings. I will do this very quickly.

We talked about Frederica having now a relatively low volume. I could not find traffic counts from the state or anyone else historically along that block. Certainly now will be considered modest volume.

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We talked about the number of vehicles. The total number that we observed in the morning and afternoon peak hours, one hour in the morning and one in the afternoon, is 58 vehicles going into and out of the bank. So that's not a lot of traffic compared to a lot of other sites.

The bank is basically moving across. The customer base it's not going to dramatically jump. We are going to have additional employees, but as I understand this is regional headquarters here. They're going to add one drive-in window. So if we took that into account, we're still well under 1,000.

We talked about the portion of bank traffic occurs in the peak hour. Remember that the 11 space lot is restricted to bank employees only. Even if it wasn't, let's just say we'll use that as access to the bank. Not enough turning radius there. You can't drive in there and turn your car around. Maybe if you had a Mini Coup or something you could. I couldn't with my car because I turn around use the drive-thru window. Wouldn't be too keen on getting out and go to the ATM machine at night there. The drop off from that alley to that lot is fairly severe. It's not 4 feet. If you apply ADA standard, you have a ramp of 50, 60 feet long with a landing you would have to put
in to get people up through there. That would
basically -- they have parking spaces right there. So
as a primary access point for this building is simply
not useable.

The last point is basically what I just said
there. There's not room for customers to come in and
functionally use that access at 307 whether the bank
keeps it or not. It's not access that provide the
full function, full access that you need for a bank or
a similar type of land use that has a significant
customer drive-thru and function. So essentially a
secondary access with very limited function. I
suppose can be used by people in adjoining buildings
for employee parking. Customer might be able to walk
around the block. It's a long way. I don't think it
would be very functional. So it has some limited use.

The conclusion we came to and recommendation
was that relocating the bank to the other side of the
street to this new location, that the proper way to
provide the access for the customer base, the way it's
going to function, is to provide the access at 319
Frederica. Line it up as been proposed with the
adjoining access on the other side of the street.
That way you don't have left turns and conflict, that
type of thing. You do offsets.
The pedestrian walk along there will have a clear parking lot rather than the building and the building corner. So pedestrian has a much better visibility of the vehicle. The vehicle has much better visibility of the pedestrian.

In consideration of capacity, safety and general traffic flow, we felt the appropriate access to the bank site. Unless there's a question --

MR. KAMUF: Tell us again about the access point at 307 Frederica Street. Kind of describe that real quickly if you will because I have a question about it.

MR. HAYS: The small parking lot and the access now on 307 has 11 parking spaces. Basically there's a single aisle beside it. If you have a very large vehicle and you're trying to get that one available parking space, it can be a pretty tough squeeze to go in there. If you're -- I drove around to try this when I got here.

When you turn on there to Frederica to make that turn, I go past it both times before I saw it. Maybe I'm old and cranky, but I was not able to visually see that access in time to get into without slamming on my brakes. Even if I did, I would have to look to see the space to get in there because you put...
in amount of available space, really a tough
situation. You can't use the drive-thru window.
Really couldn't, I guess you could locate an ATM
machine there somewhere, but it certainly wouldn't be
very use friendly.

The only way you can get to any part of the
block from there is to walk up a steep non-compliant
ramp to point where you're confronted with air
conditioning ducts, garbage cans, that type of thing,
and work your way around into the parking lot. You
cannot drive through there. You might possibly get a
motorcycle bike through there.

MR. KAMUF: I have a question for you
concerning that particular access point.

Do you have an opinion based upon a reasonable
degree of certainty or probability as a traffic
ingineer and based upon your education, experience and
all of the findings that you've talked about as to
whether the access point, what we call access point at
307 Frederica Street, is truly an access point?

MR. HAYS: It may be an access point in the
secondary road. It is not the primary access point
that can provide full service to a 28,000 square foot
building. Certainly not one whose main use to public
going in and out performing functions after hours with

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the ATM or other type of 24-hour banks, that type of
thing. The space is available. Eleven is nowhere
close to the 50 or so spaces that will be required for
a site like this. On a stand-alone basis by itself it
would not be considered a primary access for the site.

MR. KAMUF: So if this board would find that
that's not an access point, everything goes away; is
that right? In other words, we qualify at 319
Frederica Street because there's no -- if this board
would decide that there is not an access point at 307
Frederica and that's your opinion, right?

MR. HAYS: Yes.

MR. KAMUF: At 319, we qualify unquestionably
at 319 Frederica; is this correct?

MR. HAYS: For 319 Frederica Street in terms
of having access, assuming all four parcels can and
could be sold at any time, then in my opinion they
will be access directly on 319 would be the priority
and primary access for the bank building.

MR. KAMUF: Thank you.

Lynn.

MR. SILVERT: Please state your name.

MR. COOPER: Lynn Cooper.

(LYNN COOPER SWORN BY ATTORNEY.)

MR. COOPER: I apologize first of all for
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taking so much of your personal time away from family
to hear this application that we presented before you
this evening.

Obviously we consider it very important and
that's why many of our senior officers and our board
of directors are here today.

It's important to us in our growth. We were
fortunate, the Lord blessed us with good people and
good opportunity to where we've grown from 150 million
to 350 million in a little over four years. During
that time we've grown from 30 employees to 100
employees. So that's really a good thing. This has
causèd us to look for opportunities to expand and
continue our growth and to move our headquarters
across the street.

When we first looked at that location, I
thought it would be great if we could just make 309 or
whatever the 11 parking lot is, whatever that number
is. If we could do something special for downtown.
Then after we got the design back with drive-in lanes
and the other things that we had to use to accommodate
our bank, we lost from 76 spaces down to 36. So we
lost 40 spaces without this 11 space parking lot. It
was an issue for us. It's important for us if we can
to keep that. That's why we have applied for a
Variance. As you've heard this evening, our consultant believes that it may not even be a true access point. We may give you an opportunity to vote for us from that perspective.

We appreciate the time that you've given to us and we certainly hope and ask that you vote in accordance with our application. Any questions?

MR. DYSINGER: I have a couple. Certainly feel free to hand off to somebody else if they can answer it better. I'm sure most of this was touched on and I just want to clarify for my own understanding as we reach this point.

Currently where does the lot get access? How do cars currently get into? Is it just the 307, this little 307, 309 passageway here, as well as, marked on this photograph, Number 7 in packet 333 as well?

MR. COOPER: Well, it's just from St. Ann, I think. Yes, St. Ann is the only way to access this parking, if that's what you're talking about.

MR. DYSINGER: To access the 319?

MS. STONE: That's correct. It accesses from St. Ann. There is an alley, but as Mr. Kamuf alluded to, there's some evidence that that's a private alley and right now that is blocked by the dumpster.

MR. DYSINGER: Right. Okay. That's all I'm
going to ask right now.

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

MR. PEDLEY: Yes, I have some questions.

Mr. Kamuf, would you step back up.

MR. KAMUF: Yes, sir.

MR. PEDLEY: You're telling us that 319 Frederica Street does not have access to St. Ann Street, a B street?

MR. KAMUF: That's correct. It doesn't have feasible access.

MR. PEDLEY: You give us a development plan showing that it does have access and you will be accessing if you get your Frederica Street access. So if that can function, it can also function access from St. Ann Street to that parking lot if you don't have Frederica. What you're saying this won't work. You're proposed plan, your traffic pattern will not work because you're saying you don't have access to St. Ann Street and you're saying Mr. Bickel says, at the Thacker's office says they don't want you using that.

If this will function what you propose, then you can access that parking lot from St. Ann Street and it's been done. It's been done for years. That's
what they've been doing.

MR. KAMUF: That's correct. I'm talking about, in other words, when you deal with -- it was specifically found by the Preservation Board that each one of those lots are individually. You can sell those. They're stand-up lots. Any time that you have -- let's just say this: What if you sold one of those lots off, sold one of them? They're individual. I don't disagree that, in other words, on my exhibit, I'll call it the Don Raines easement from Fourth Street. I think my pictures will show you, Ward, that you can't use that.

MR. PEDLEY: Okay. Let me finish.

If you sold one of those lots, then your traffic plan and your plan will not work. If they close, if Mr. Bickel, if they closed that, it will not work. What you're proposing here will not work. Then you do, at that point you do have a landlocked lot. You would have to access that lot to Frederica Street. At this point, as long as you can do what you're proposing on your plan and then that lot, 319 parking lot can be accessed to St. Ann Street.

Now, should you sell that lot or should you not be able to cross that private property, then you've got a landlocked lot. Then you could apply for
a variance. You would meet the criteria because it is
landlocked. Today according to what you're proposing
to do it is not a landlocked lot and it accesses St. Ann Street.

MR. KAMUF: If you'll help me a little bit. I think the plat that you have is the same plat that I have here. It's just --

MR. PEDLEY: I have your plat.

MR. KAMUF: That's the same plat.

MR. PEDLEY: Both ways.

MS. STONE: They have a site plan that shows the proposed ATM machine and the access from 310 to the 319.

MR. KAMUF: That's right.

MR. PEDLEY: As long as you can do what you're proposing, that 319 lot can be accessed on St. Ann Street. So you do have it.

MR. KAMUF: If we sold -- when each one of those lots, and that's the point that I was making from the start. We got a deed.

MR. PEDLEY: If you sold it, then your plan will not work. Then at that point you could ask for a variance for an access point on Frederica Street for Lot 319 because it is landlocked. You can apply for variance at that point.

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MR. KAMUF: Mr. Pedley, in answer to that question, the Preservation Board specifically found, if you look at those minutes, that each lot had to be separately considered. That's been our position. If you consider it as a separate lot, and that's what the deed says for, that's what it says, then my argument I believe is correct.

MR. PEDLEY: Then how do you use it as you're proposing here? If that's correct, you can't do what you're saying here.

MR. KAMUF: We can if there's an agreement as to the rest of the lot. We own all four lots.

MR. PEDLEY: That's right.

MR. KAMUF: By the fact that that deed is a separate deed; in other words, it's separate. It's a stand-off lot. It doesn't rely on 310 St. Ann.

MR. PEDLEY: But today it's been used accessing St. Ann Street. It is not landlocked. They do not have an access to Frederica Street. They've been functioning that way for several years.

MR. KAMUF: But it's landlocked if you consider it a separate lot. Ward, that's the reason that deed is so important. I would not be down here tonight if that deed didn't have a special -- it has an individual description for each one of those lots.

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and they have -- and 319 Frederica Street, the only way that you can get to 319 Frederica Street is through this Thacker Bickel easement or the Raines easement or come over there, and it's been testified to Mr. Hays that you can't -- I know the you one. The far one, you can't get a motorcycle through it. On the other one of Thacker, people don't want you to use it.

MR. PEDLEY: So what happens to your plan if the Thacker office says that you can no longer cross that. Evidently they quitclaim her office says we close. You no longer cross that. Evidently they quitclaim that. Evidently they own it.

MR. KAMUF: All I can tell you is that Don Raines, I went in to get my shoes fixed and he said, Charlie, that easement that Thacker thinks he owns, I've got a deed to it. Did I present that deed? If not, I want to be sure and get it in the record.

MR. PEDLEY: I certainly don't agree with you.

MR. KAMUF: I understand.

MR. PEDLEY: Also you said you had 31 points on Frederica Street. How many of those points was created after the adoption of Article 21 of the Downtown Overlay? Probably none.

MR. KAMUF: I don't know.
MR. PEDLEY: Probably none was created before the adoption of the Zoning Ordinance.


MR. PEDLEY: You're counting 31 points there that --

MR. KAMUF: What about the access point over to Thompson's parking lot which is directly across from this. Our building used to be next to it where Tom Thompson's office is, but there's a parking lot over there. The parking lot was there in '96 when we moved, but I don't know when that parking lot. I'm just saying I can't give you an exact answer.

MR. PEDLEY: Let me tell you this: I poured that parking lot.

MR. KAMUF: I don't know when it was.

MR. PEDLEY: It was long before that. Many many years. Thompson didn't own it.

Anyway, I cannot agree that 319 Frederica Street does not have access at this point to St. Ann Street. If it loses access and then this plan doesn't work, this traffic cannot go through there. Then at that point you have it landlocked and then you have legitimate to meet the criteria for a variance to access Frederica Street. You can do that at that time.
if you lose this.

MR. KAMUF: What about the issue that was just explained by Mr. Hays? Is that if you consider that there's not an access point, qualified as an access point, he said it wasn't truly an access point at 307 Frederica, then we're entitled to one at 319. Would you agree with that?

MR. PEDLEY: I don't agree that all of those lots should have two access points. You've got an opportunity to consolidate these lots. You've got an opportunity to do several different things to protect what you want to do. This is a technical thing you're using. In my opinion, it's very technical.

The Planning Staff did a review. They get it out to us a week or two so we can review and do our study. I've been down to that site four times in the past week. I went to the Zoning Ordinance. Here it is. Article 21, Article 13.21. I went to the Access Manual.

We had an opportunity to study what the zoning ordinance says. These ordinances are adopted by the city and county of this community. Article 21 there was much, much, much work. Many hours put in Article 21 by a lot of people.

MR. KAMUF: I agree.

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MR. PEDLEY: One of the main things is accessing A street. You can read through Article 21, I bet it says 20 times access A street. Pedestrian unfriendly. And it clearly states in there that it should be pedestrian friendly and it should protect and promote pedestrian.

MR. KAMUF: Not to argue with you --

MR. PEDLEY: That is very unsafe when you access that for pedestrians on Frederica Street, it's unsafe. You've got people in automobiles trying to turn in and out. You've got people walking and it's very, very unsafe.

MR. KAMUF: I might point out, that's your opinion, but when we had the Preservation Board, they looked in all of that and they unanimously.

Then we had Bill Hays has told you that that's not issue, but there were specific findings by that Preservation Board who is more restricted than you are. These guys, they're supposed to take care of issues downtown. They unanimously looked over that and it was their opinion that that wouldn't be an issue. Then you heard the traffic engineer say what his opinion was. We're where we are, Ward.

MR. PEDLEY: Mr. Hays is very qualified. His resume is outstanding. But I've heard him come into
this community several times and change the rules and
change classifications for arterial street to major
collector. Someone else has already been living by
this rule and spent hundreds and thousands of dollars.
They change the rules for his client. I don't go
along with this. I won't. You can stand up there and
talk all day, Charlie.

I'm here for this community and not the
individual. That's my conviction. That's the way it
will always be. I'm going to look at it. We've got a
zoning ordinance. We've got the Highway Access
Manual. I have developed much land, a lot of land. I
live by the rules. I believe in the rules. I believe
in this community. I'm going to do what's right for
this community.

Now, we have Planning & Zoning. We have a
Planning Staff that's absolutely supper. We have had
the last 38 to 40 years excellent planning. They look
at this community. They know this community. I know
this community. I've been in business 50 years. I've
worked every structure in every street in every
subdivision in this town. I know. I see the
problems. I believe in our Staff, our Planning Staff.
I believe Becky and Gary and Roger Anderson, I believe
they've done a great job for this community.

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Another thing is the Staff gets their review out to us for us to review and we know what we're reviewing. We sit down here in two hours and this whole stack is thrown at us. We're suppose to analyze this? No, you can't do it. I'm not going to vote on it until I review the Access Manual and several other things. Until I get the minutes so I can review and see what was said here tonight, I won't vote. I won't make a decision. Not tonight.

Mr. Kamuf: Along that same line, you know when I received, when I first received as to what that three or four page document was about when this minute started. I was handed -- I never saw. Ward, I didn't know what the other side was going to say until tonight when I received that. So both of us --

Mr. Pedley: You don't sit on this board.

Ms. Stone: We were going to say what the zoning ordinance required.

Mr. Kamuf: My point is, Ward, I didn't have a chance to rebut that. I didn't have a chance to read it until I sat down here.

Mr. Pedley: I've had one hour to review everything you've thrown at us tonight.

Mr. Kamuf: Sure. I don't take issue with it.

Ms. Stone: I do have a clarification to make.
on the classification.

Mr. Hays said that the functional classification of this street had changed from a principal arterial to a minor arterial and that that was on the state's website. That has not locally been changed through the Transportation Committee, as far as I know. It's still listed as a principal arterial locally.

Now, it has changed from state to local maintenance. So it's possible that that functional classification will change, but it has not as yet. I just wanted to make that clarification.

MR. PEDLEY: That's information we do not have.

MS. STONE: As far as we know, it's still a principal arterial locally. The state has apparently downgraded that to a minor arterial because they have handed over the maintenance from the state to the city, but the local transportation planning has not changed that yet.

MR. PEDLEY: Is that a minor arterial, is that 250 feet spacing?

MS. STONE: If it were a minor arterial; is that right, Brian? Would it be 250?

MR. HOWARD: Based on the Access Management Ohio Valley Reporting

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Manual, yes. If it's a minor arterial with less than 1,000 trips per day, it looks like it would be 250.

But as Becky pointed out, the GRADD Transportation Advisory Committee is the group that changes the local access management requirements. There was an update done '05, a few years back. To my knowledge even with the state downgrading the classification, the TAC Committee from GRADD has not changed any of the local Access Management Classification at this point.

MS. STONE: The proposed point would still not meet the 250 standard even if you applied that.

MR. DYSINGER: Mr. Chairman, I have a couple of questions just for clarity. I'm not exactly sure who would be the best to answer, but I'm going to throw them out there and we'll see who jumps on it first.

While I intend to agree with Mr. Pedley that if 319 currently has access from St. Ann it has reasonable access. However, I want to make sure I'm looking at exactly the same thing.

The Raines alley we'll call it, that is the alley stretching south to north from Fourth Street; is that correct?

MR. KAMUF: That's correct.

MR. DYSINGER: On both the plan that I have
and the photograph that I have, it appears to me that
the Raines alley extends all the way back to the
southeast corner of 313. Is that not correct?

MR. KAMUF: There's some issue about that. I
didn't run the title on it. There's a little tract of
ground right in here where it doesn't go to the
street. There's a little tract of ground, it doesn't
show on the plat. That was brought up at the
Preservation meeting, but there's a little tract in
here that's part of 319 that does not go to Fourth
Street.

MR. DYSINGER: Becky, do you have something?

MS. STONE: Yes. We looked at that. We asked
the city engineer to look at the status of that alley.
It is paved all the way. They looked at the deeds
that were presented to the Historic Preservation
Board. There was a plat in '85 that showed it as a
public alley. They could not make a determination
based on that information and thought more research
was needed. However, the Planning Staff would not
recommend that alley for a primary access even if it
were public because it is narrow and would be
dangerous.

MR. DYSINGER: Does this alley, regardless of
the disposition that we finally have for it. Whether
it's deeded all the back. Whether it's public. Does
it not bisect these two pieces of property or does it
just look that way on the stuff that we're looking at?
I'm trying to differentiate what these lines that are
put on a picture are and what the reality is,
especially if there's a deed involved.

MS. STONE: We don't know if the alley bisects
the property or if that's private through there. The
city engineer was not able to determine that.

MR. DYSINGER: We need to know that, don't we?
How can we get this determined?

MS. STONE: We can't determine that. That
would have to be an attorney doing the title opinion
and presenting to the city and having the city accept
whether that was public or private.

MR. DYSINGER: Maybe we'll come back to that.
This may be for legal counsel or for Staff
either one.

Are we bound by the findings of the Historic
Preservation? Do they hold some authority over this
Board that I'm not aware of? I'm not saying they're
wrong or that we won't take them into account. I mean
are we bound by those findings?

MS. STONE: This is a separate issue. What
the Historic Preservation Board is charged with are
design exceptions from Article 21. This was
considered a design exception, if you will. There's
also a Zoning Ordinance requirement to meet the
spacing standards and design parking lots in
accordance with Article 13. The Board of Adjustment
is dealing with the spacing standard variance under
Article 13. The Historical Preservation Board has
said it's okay to have the access there under Article
21.

MR. DYSINGER: Right. The Historic
Preservation Board has made a determination that
regardless of ownership, 319 is to be regarded as a
stand alone lot. If that is this case, it does not
have reasonable access. It has zero access, if we
have to look at a stand alone lot. But that's a
determination of the Historic Preservation Board. If
I'm hearing everyone correctly, we do not necessarily
have to share.

MR. SILVERT: Yes. I'm sure Mr. Kamuf would
agree that the findings of the Historic Preservation
Review Board would be considered persuasive authority,
but not binding authority on this body.

MR. KAMUF: That's correct.

MS. STONE: Planning Staff has required shared
access between adjoining lots in cases trying to meet

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the access standards historically on many properties, even when they were under different ownerships. Like during a subdivision if you had, you know, property being divided, we've required shared access and shared easements on properties in order to try to meet the access standards.

MR. DYSINGER: Okay. One last thing. The applicant has with expert testimony made the assertion that the access, existing access point at 307, and I guess 309 too combined, serve as some sort of access point is not actually --

MR. KAMUF: I don't think there's a 309. I think there's just a 307, Sean.

MR. DYSINGER: I have a 307 and 309 nestled ever so delicately right behind it.

MR. KAMUF: I think that's correct.

MR. DYSINGER: It's on the site plan as well. Again, that's neither here nor there.

The applicant through expert testimony has made the assertion that 307 does in fact not even count as an actual access point.

Does Staff have an opinion on that? Is there a determination that can be made as to that?

Mr. Pedley and my experience with the expert testimony noted because I share those sentiments. We
have seen this expert testify in a number of cases.
Taking that as it may be, where are we with that?
Does that just hang out there as a assertion? Does
Staff need to rebut that? What is that?

MS. STONE: The access point at 307 could not
be used to access the parking lot at 310 St. Ann
Street or 319 Frederica Street; however, it is an
access point into an existing parking lot.

MR. DYSINGER: But if it is determined that
319 does not have reasonable access, via 310 on St.
Ann, at this point basically pending the determination
of what that alley's dimensions are, 307 has no
bearing on 319's reasonable access standing. Is that
a fair statement?

MS. STONE: That's correct. If the portion
that looks like an alley is private, they obviously
would have access over their private alley unless it's
under somebody else's deed.

MR. DYSINGER: Which is what the applicant --

MS. STONE: I don't think it extends to beyond
319, to the back portion of 319. If it's public, they
would have access across the public alley.

MR. DYSINGER: To me that's the jam I'm in
right now. Everything I have shows this alley
extending all the way to the southeast corner of 313,
which bisects 310 St. Ann and 319. Which while I tend
to agree with your argument that 310 and St. Ann is
access for all these years, as well I know too, if we
have a deed situation which in reality bisects that,
then it does in my opinion and pending finding of that
does present some reasonable access issues for this
applicant moving forward. We kind of have to balance
it. The way things have always been and now we've got
new rules. If there's a deed situation on alley, to
me it throws all of this into a little bit of a
question mark.

That's my two cents at this point.

Please, counselor, shed light on that.

MR. KAMUF: I didn't run the title. Bryant
Engineering prepared the plat. It's my understanding
that there is just a small little parcel back there
that private. The rest of it a public alley that
separates those two. That is me shooting from the hip
because I haven't had anybody to run that title.

There is a separation as far as that plat goes
that's been prepared by Bryant Engineering. I haven't
researched it.

Done Raines, the Raines family claims that
they own the alley. I think, Beck, you said the
engineering people looked at it or whatever. I just
put that in and the main reason, Sean, that I put that
in is because there was some question as to whether
they could stop us from using that alley, if they
wanted to.

MR. DYSINGER: That's a good question.

MR. KAMUF: Now, John Bickel me the other day
and said, hey, if you all get that approved are you
going to keep people from using that alley?

MS. STONE: If they can't use it from 310 to
319, then their site plan is in error because their
site plan shows access from 319 to 310. There's a
dumpster placed right at the end of the property line
where 310 is.

MR. DYSINGER: I'm looking at the site plan
now.

MS. STONE: Look at this aerial photograph,
Sean, that is on the back of your photograph.

MR. DYSINGER: Right. So it's like at the
very edge of the parking lot basically?

MS. STONE: Yes. You can see the pavement of
that parking lot is different in color than the
pavement of the other parking lot.

Their site plan shows access across that
public or private alley. If it's a public alley, they
would have access by right across it. If it's
private, I guess it needs to be determined how far
it's private.

MR. DYSINGER: Even on the site plan, and if
I'm looking at these red lines incorrectly by all
means let me know, but even on the site plan they seem
to not connect. I mean the alley is such that there's
no -- I know where you're coming from. That possibly
the site plan is in error, but if we don't know -- I
don't see how we could possibly determine whether or
not there's actual 310 St. Ann and 319 reasonable
access.

MR. KAMUF: Sean, I'll be glad to --

MR. DYSINGER: Hold on.

MS. STONE: We wouldn't be able to approve
their site plan if that's the case because we wouldn't
be able to -- if that's somebody else's property
extending there, then you're right. They wouldn't
have access across that.

MR. DYSINGER: I'm sorry, I didn't mean to
interrupt.

MR. KAMUF: For me to tell you unequivocally,
I can't answer that.

CHAIRMAN: Charlie, come here a minute, please
for my hard head. Clarify something.

You're showing 306. It's also saying --
MR. KAMUF: I think what that shows, Audie, is that on each side of that dumpster there is an area -- whoever put the dumpster up, put it up just to block the alley.

CHAIRMAN: You're showing behind 309 a red line showing over to there access to this lot from St. Ann.

MR. KAMUF: That's an engineering question and the engineer is not here. I can't answer that question. He prepared the plat.

CHAIRMAN: Essentially then we need information from him and more from you before we can consider making a decision correctly to you all, correct?

MR. KAMUF: Yes. The question you asked me I can't answer.

CHAIRMAN: When I asked you, before we can get clarification, before we can make a decision, we have to have correct information to make our decision. Are we correct? You've been on this board for years back.

MR. KAMUF: Audie, to be honest, I'm the other way on the opinion. Ward has his opinion and I respect it tremendously, but my opinion is entirely different. I can't honestly answer that.

CHAIRMAN: Can we make a decision without
correct information?

MR. KAMUF: If you're saying, can we make a
decision on information that's unavailable, I would
say that you can't.

CHAIRMAN: Thank you.

MR. DYSINGER: Mr. Chairman, from my part, at
this point it all hinges on the nature of this alley.
There is no, we have no determination of whether or
not it bisects those two properties or not. For me
that is the crux of this issue at this point. Until
we can get such a determination, I don't know that I
can make a decision on this matter. I know this board
is low in delaying issues, as we should be. The
applicant has the right to a speedy decision, but Mr.
Pedley makes a very strong case about access to 319,
but if the nature of this alley makes that not the
case, then it all goes the other direction in my
opinion at this point.

MR. KAMUF: I don't disagree. The other point
is if you decide that 307 does not have a true access
point, you can decide it without that. That's your
way out if you want to.

MR. DYSINGER: I'm not stuck. I just want to
make the right decision.

MR. KAMUF: I respect that.
MR. DYSINGER: The 307 issue is a little up in the air for me really. I've got a great report here to look over that might help me make that decision. I'm also not going to be able to do that with all of us taking everybody's time.

MR. KAMUF: I understand.

MR. DYSINGER: The alley issue to me seems more of canard in that if it's one thing, and this is what we have. If it's another thing, we've got 180 degrees. To me that's where it all comes down to at this point.

Mr. Pedley also referred to the evidence that's been placed before us tonight. I think we owe it that consideration.

Again, I'm not any happier about delay than anyone else, but that's where I'm at at this point.

MS. STONE: I have a question of Mr. Kamuf. If the adjoining property owner is asserting that they own the alley all the way to 313 or if they were just asserting that they owned it to the point where the dumpster is located.

MR. KAMUF: I didn't look at those deeds. When I went to get my shoes, he said, Charlie, I own that alley. I'm going to give you some information showing you that I own it. That's all I did.
CHAIRMAN: Have you got that information?

MR. KAMUF: It's in the record.

MS. STONE: The city engineer looked at that. He can't make a determination. So I doubt that we could on just reading over it.

MR. DYSINGER: We've got satellite technology. Can somebody not tell us how far this deed goes back? I'd be interested in what other board members think or look for Staff input and legal counsel too. I know this isn't where any of us wanted to be at this point.

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

MS. STONE: Only comment I would have about the use of that, to pass from 310 St. Ann to 319 Frederica Street, and I'm not an attorney so I'm not trying to presume, but that has been used for many years in that fashion. Whether that gives some type of legal standing, you know, the bank wants to continue to use that to access both of those lots in addition to the access point they're proposing on Frederica Street. So that may be a legal question that could be addressed or not.

MR. SILVERT: I'm not going to make a determination as to whether or not there's been
adverse possession of the alley.

Charlie, I'm sure you don't want to either.

MR. KAMUF: Right. Not tonight.

MR. WARREN: Becky, if it is determined that the alley from Fourth all the way to 313 is owned completely by Mr. Rains or whoever, it's not public, it's not public, doesn't that make 319 landlocked and inaccessible? If it did, then do you have to have a variance to get the access?

MS. STONE: If it's not accessible, if the adjoining property owner who owns that property determines that they cannot use that property to access between 319 and 310, then yes, I would say 319 would be landlocked and an access point could be issued without --

MR. WARREN: Without a variance.

MS. STONE: Yes.

MR. WARREN: So it could be that we find out that this is totally landlocked and we don't even need the variance in first place?

MS. STONE: However, their proposal, their site plan is proposing access across those lots. The Staff's opinion was they have reasonable access to St. Ann Street based on the site plan that they submitted to us showing how that lot was going to function.
MS. MASON: I have a question.

If the property owner or whoever owns this alley that we're talking about, they can get permission for the bank to access from 310 to 319. So that's why they can put this on their site plan even though they don't own that particular piece of property?

MS. STONE: We don't know if they own it or not or if it's public or private. The engineer who prepared this site plan is not here tonight; is that correct?

MR. KAMUF: That's correct.

MS. STONE: So he can't answer where he got that information. Their proposed site plan shows them to have access between 319 and 310 regardless of the access points on St. Ann or on Frederica Street.

They're showing crossed access, you know, between those two lots. That's what the applicant proposed on their site plan. So if there's an issue about the alley, we're not informed about what that problem might be.

Now, an adjoining property owner could still give them access across that alley, if they chose to do that, but we could not make an adjoining property owner give them access across that alley.
MS. MASON: But they can still put it on their site plan then if the property owners allow them to do that?

MS. STONE: I assume so. They put it on their site plan I think assuming they had access across there by virtue of being either a public alley or part of their property. I don't know that they knew there was an issue beyond where the dumpster is about who had rights to that portion of property.

MR. DYSINGER: Because the deed issue only recently came up?

MR. KAMUF: Right.

MR. DYSINGER: After this site plan was -

MR. KAMUF: That's right.

MR. DYSINGER: Got you. We're right back to the deed. I mean if the site plan is in error right off the face, I mean the application is not in order.

CHAIRMAN: Madison, if we had a document showing who owns the alley, then that gives an easement to the bank then we have something to legally go from there, correct?

MR. SILVERT: If we had a title opinion as to who own that alley.

CHAIRMAN: And then an easement?

MR. DYSINGER: Unless they don't need it.
Unless there's some of it that's public, in which case they wouldn't need it.

MR. SILVERT: There's several questions here regarding that alley that seem to have come up tonight that any one answer is not going to give you. Is it going to tell you whether it's necessarily public or private? Is it going to tell you whether or not there's been adverse possession to part or a portion of the alley? Is it going to tell you whether some of the alley has been abandoned at some point? Is it going to tell you whether or not -- the only thing you can definitely know about that alley right now is whether or not there's ever been a public alley closure because that's going to be a matter of public record. Given the fact that the city engineer does not know whether this is public or private, it leads me to believe that there's never been a public alley closure, correct?

MS. STONE: There was an alley closure for a portion of this alley going toward Third Street that no longer exist physically on the site. It couldn't be determined exactly which portion was closed and which portion was open. There was also a plat done in 1985 that showed the portion that Mr. Kamuf submitted evidence showing was private that it was public. We
tried to get the city engineer to give us a
determination on that and he couldn't do it from the
information that we had.

CHAIRMAN: Mr. Attorney, advise us what we
should do this evening.

MR. DYSINGER: How about our options?

MR. SILVERT: Yes. Let me give you your
options. You have three options.

Your options are to make a motion to approve
the Variance; to make a motion -- let's say you've got
four options.

A motion to approve the Variance, a motion to
approve the Variance with conditions, a motion to deny
the Variance, and a motion to postpone your
determination which would have to be made at the next
meeting because there is a time limitation, unless
otherwise granted by the applicant in which you must
make a determination.

MR. KAMUF: At this stage I have to talk to my
client. That won't be an issue at this stage for the
next meeting I can tell you.

MR. DYSINGER: Do we have any reason to
believe that a postponement of 30 days will allow us
to get the information that we need? Anybody chime in
on that. I mean have we exhausted our --
MS. STONE: I don't think the Planning Staff has the expertise to make the determination on the property. It would have to be applicant's attorney or an attorney --

MR. DYSINGER: The deed in question has been submitted? It's in evidence at this point?

MS. STONE: There's several deeds. Apparently the language in the deed is difficult to decipher --

MR. DYSINGER: I'll take anything I can get.

MS. STONE: -- in terms of whether that alley is within a property boundary that's adjoining or whether it's not and there's some discrepancy in there, according to the city engineer. I haven't reviewed the deeds.

MR. DYSINGER: Well, they're in evidence so we have access to them and we can see them with our own eyes at least before we try to make some kind of determination.

MR. KAMUF: I have a question.

MR. PEDLEY: The issue is if that's a public alley then everything changes. Because 319 does have access to a B street, if that's a public alley. That's my point. If it's not a public alley, then whoever the owner is says you can't use it, then their site plan won't work.
MS. STONE: That's right. So regardless if you deny the application or approve it, they're still going to have to be held in terms of their site plan.

MR. KAMUF: As I understand, Ward, the issue that you are having a problem with is to whether that alley is a private alley going all the way through or whether it is a public alley? The point being if 319 is a separate entity, and I show that on a plat to be true, then you have a different opinion than what you told me tonight; am I right?

MR. PEDLEY: My opinion is if it has access to St. Ann Street or B street or an alley, according to Article 21, and then the criteria is not there for an access to Frederica Street. If it is landlocked, it does not have access to an alley or a B street, if it does not, you get to access according to the overlay.

MR. KAMUF: I get the access at 319?

MR. PEDLEY: Right. Because it is landlocked and you got the criteria form access to Frederica Street, but according to Article 21, the Downtown Overlay, if it has access by alley or a B street, Article 21 recommends strongly, strongly many times in there that it shall not access an A street. It says it shall not.

MR. KAMUF: I have a question probably go to Ohio Valley Reporting

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you, Madison.

If I withdraw, let's say tonight I would just withdraw, and I think you'll say that I can. If it's too much, you can withdraw, but if it's too little you can't withdraw.

What if I withdraw the application and just leave this project that we're talking about the yellow, the blue and the pink and leave that lot at 307 out of the equation?

MR. DYSINGER: 307 is not really an issue.

MS. STONE: It's not in the equation other than there's an existing access point that's too close to the proposed access point. We're just looking at 319 tonight.

MR. DYSINGER: I don't consider 307 access to 319 in any case. It does not make 319 any more accessible or any less accessible. The only way as I understand it 307 comes into play tonight is if it's determined that 319 already has reasonable access; therefore, another access point is not allowable because there's another access point to make it completely unrelated, but within 500 feet. So 307 is a secondary issue as I understand it. I'm not going to tell you how to handle your case. 307 is a secondary issue. If 319 does have access, then 307
comes into play because there's another access point
prohibiting one for 319, unless at some point down the
road we then determine that 307 is not really an
access point, but that to me even gets more into the
weeds than whether or not there's a deed and whose is
it. The deed is the thing at this point as far as I'm
concerned. If this deed says one thing, this site
plan is wrong.

MS. STONE: If the deed says that that's
private property, then the site plan is going to have
to be amended to show that there's not going to be
access across that property.

MR. DYSINGER: Exactly.

MR. PEDLEY: That's right. That's been my
exact point.

MS. STONE: Right.

MR. PEDLEY: Another thing, the application	onight is for a Variance for 319 Frederica Street.

That's all.

MR. KAMUF: That's it.

MS. STONE: That's right.

MR. PEDLEY: That's all we're considering.

MR. DYSINGER: In fact, I did have the other
addresses on my original application, but all but 319,
I meant to bring this up earlier, have been crossed
MR. KAMUF: I am willing to look that up and to try to find the information that you've requested as far as that -- I can't tell you if the city attorney has tried to look it up, but I have not visited that issue, but I'll look it up and have it ready for you at the next meeting if you want me to.

MS. STONE: It wasn't the city attorney. It was the city engineer.

MR. DYSINGER: City engineer, right.

I would definitely think that it behooves you on your client's behalf to do that and I would ask you to do that for us and that would be fantastic, but I would also ask Staff and paralegal whatever you guys can do to shine light on it. We need to know the status of this alley.

MS. STONE: I think that's going to have to be done before they can get an approved site plan because now that we know that there's an issue about the extension of that private alley, we're not going to be able to approve the site plan if they don't have the right to access across that private piece of property.

MR. DYSINGER: With that in mind, then does that bring this whole process back to you guys right from the get-go then? I mean you guys have to kind of
approve the site plan, right?

MS. STONE: We'll have to approve the site plan as well as the downtown development administrator.

MR. DYSINGER: If we don't know the status of this alley, how can we possibly?

MS. STONE: We looked at what was submitted to us as accurate, which showed the access across that property, but as Mr. Kamuf testified to, that was done before they realized the private nature perhaps of the alley and how far that extends, how far that private alley extends. You might assume it only extends adjoining property owner that has it.

MR. DYSINGER: In light of that evidence, this application may not even be in order at all. If the plan that's submitted isn't correct and we have some evidence to believe that it may not be.

MR. PEDLEY: In my opinion we need to postpone. Are you requesting a postponement?

MR. KAMUF: Yes, sir.

MR. PEDLEY: To do the research we're asking for?

MR. KAMUF: Yes, sir. I understand, Ward.

MR. PEDLEY: If you're ready for a motion.

CHAIRMAN: With his information that he's
given us we'd like to see it postponed and I'll entertain a motion.

MR. PEDLEY: I'm going to make a motion we postpone until the next meeting to allow the applicant to do the research on the title on any of the properties. The alley, is it private or is it a public alley? That's what we're asking you to bring back to us.

MR. KAMUF: I understand.

CHAIRMAN: Plus your surveyor and planner and get it to the office in time so we can get it and study before the meeting.

MR. DYSINGER: Mr. Chairman, and I know we're waiting on a second here. There's other evidence that depending on the determination that's made regarding that deed will come into play, especially with regards to 307 Frederica Street. This will all give us an opportunity to ensure that however hopefully we are able to make a determination regarding that alley, we'll be able to move forward and take care of this issue swiftly. The applicant I think has done a fantastic job putting evidence in front of us and I think it deserves our full attention. This will allow us to do that as well.

With that in mind I will second it.
CHAIRMAN: A motion has been made and a second. Any other comments?
(NO RESPONSE)
CHAIRMAN: Hearing none all in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT - WITH THE DISQUALIFICATION OF SHANNON RAINES - RESPONDED AYE.)
CHAIRMAN: Motion is postponed until the next meeting.

One other motion.
MR. WARREN: 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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Ohio Valley Reporting
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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 101 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 30th day of July, 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

Ohio Valley Reporting

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