

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 JULY 7, 2011

3 The Owensboro Metropolitan Board of Adjustment
4 met in regular session at 5:30 p.m. on Thursday, July
5 7, 2011, at City Hall, Commission Chambers, Owensboro,
6 Kentucky, and the proceedings were as follows:

7 MEMBERS PRESENT: C.A. Pantle, Chairman
8 Ward Pedley, Vice Chairman
9 Ruth Ann Mason, Secretary
10 Madison Silvert, Attorney
11 Marty Warren
12 Sean Dysinger
13 Shannon Raines
14 Brian Howard

15 * * * * *

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

22 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

23 CHAIRMAN: Again, I want to thank you and
24 welcome you to the meeting this evening. If you have
25 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.

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1 With that the first item on the agenda is the
2 minutes of the last meeting on June 2nd. They're on
3 record in the office. I don't think we've found any
4 problems or anything.

5 MR. HOWARD: No.

6 CHAIRMAN: Entertain a motion to dispose of
7 the minutes.

8 MR. PEDLEY: Motion for approval.

9 MS. MASON: Second.

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

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Next item.

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

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

20 MR. WARREN: Second.

21 CHAIRMAN: Any comments or discussion?

22 (NO RESPONSE)

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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1 CHAIRMAN: Motion passes.

2 Next item, please, sir.

3 -----

4 CONDITIONAL USE PERMIT

5 ITEM 2

6 5050 Highway 144, zoned A-U

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

10 Reference: Zoning Ordinance, Article 8, Section 8.2J1

11 Applicant: Owensboro Memorial Garden Corporation

12

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

15 MS. STONE: Becky Stone.

16 (BECKY STONE SWORN BY ATTORNEY.)

17 ZONING HISTORY

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

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

27 The applicant currently owns this subject
28 property and the adjoining property to the south. It

1 appears this expansion is all contained on the subject
2 property, but if further expansion is necessary to the
3 south the properties would need to be consolidated.

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

9 LAND USE IN SURROUNDING AREA

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

17 ZONING ORDINANCE REQUIREMENTS

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

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

22 CHAIRMAN: Thank you.

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

25 MR. HOWARD: No.

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

3 (NO RESPONSE)

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

6 APPLICANT REP: No.

7 CHAIRMAN: Board members have any questions of
8 the applicant?

9 (NO RESPONSE)

10 CHAIRMAN: Staff have any other comments?

11 MR. HOWARD: No, sir.

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

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

20 MR. DYSINGER: Second.

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

24 (NO RESPONSE)

25 CHAIRMAN: Staff have anything else?

1 MR. HOWARD: No.

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

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion carries.

6 Next item, please, sir.

7 -----

8 VARIANCE

9 ITEM 4

10 2202 Sheffield Court, zoned R-1B

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

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

19 Applicant: Joe and Vicki Mills

20

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

26 The applicant is requesting the rear street
27 yard building setback line along Fieldcrest Drive
28 to be reduced from 25 feet from the property line to
29 21 feet from the property line in order to construct
30 an in-ground swimming pool. The applicant states that

1 they are requesting this reduction so that the pool
2 will not interfere with the use of their existing
3 pergola and patio.

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

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

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

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

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

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

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

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

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

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

13 Have there been any comments made in the
14 office?

15 MR. HOWARD: No, sir.

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

18 (NO RESPONSE)

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

21 Please come forward and state your name,
22 please.

23 MR. MILLS: Joe Mills.

24 (JOE MILLS SWORN BY ATTORNEY.)

25 MR. MILLS: We have wrestled with this for

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

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

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

23 MR. DYSINGER: I have a question.

24 Staff placed into evidence that there is 5.5
25 feet from the pergola and patio. Would you like to

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1 address that at all, why you're not just moving five
2 feet closer to the pergola as opposed to the setback?

3 MR. MILLS: One reason is our back door comes
4 out of our garage right there. If we move it, then it
5 blocks the access from the back door of the house all
6 the way around the pool. Then we would just not like
7 the pool that close to where we sit and eat and all of
8 those type of things. That's the reason.

9 CHAIRMAN: Come forward and state your name,
10 please.

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

13 (VICKI MILLS SWORN BY ATTORNEY.)

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

21 I just want to elaborate a little bit more
22 about the way our house sits on our lot. The front of
23 our house faces Sheffield Court. The back of our
24 house faces Fieldcrest Drive, but our back door is
25 actually at the side of our home. So what appears to

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1 be what would be our side lot, if you're looking at
2 the front of our house, the left side of our home is
3 actually our backyard. So you see our backyard
4 whether you're on Fieldcrest or you're on Sheffield.
5 We have no backyard but for privacy. We have to fence
6 it in because we've lived there long enough we've had
7 kids and grandkids. We definitely need a fence.
8 That's why we're kind of wanting to just gain a little
9 bit more. The 28 foot pool is quite small. We have
10 five children and we're big people so we just need a
11 little bit more pool than the 28 foot. Thank you.
12 That's all.

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

15 MR. DYSINGER: Not at this time.

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

20 CHAIRMAN: Staff, please.

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

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

4 MRS. MILLS: Yes.

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

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

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

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

15 CHAIRMAN: Okay.

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

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

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

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

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

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

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

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

23 MS. STONE: No. The reason we brought -- you
24 may have been confused about the planned development.
25 They entered evidence with their application that

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

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

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

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

14 MRS. MILLS: Vicki Mills.

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

24 CHAIRMAN: Any other questions from the board
25 members?

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1 (NO RESPONSE)

2 CHAIRMAN: Staff have anything else?

3 MR. HOWARD: No, sir.

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

6 (NO RESPONSE)

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

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

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

21 It will not alter the essential character of
22 the general vicinity by allowing an encroachment and
23 setting a precedent for the area and could encourage
24 other property owners to seek Variances resulting in
25 other encroachments. If they did, it would only be

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1 for an in-ground swimming pool. They couldn't seek a
2 variance for a structure.

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

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

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

16 MS. MASON: Second.

17 CHAIRMAN: A motion has been made and a
18 second.

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

23 MR. PEDLEY: The application refers to a
24 particular lot. It has the address on Sheffield. It
25 is a particular lot.

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1 MR. DYSINGER: Mr. Pedley certainly doesn't
2 have to.

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

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

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

16 MR. DYSINGER: It was.

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

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

21 MS. MASON: Second.

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

25 MR. DYSINGER: We already have, Mr. Chairman.

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1 MR. PEDLEY: It has been seconded so now we
2 have to amend it.

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

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

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

12 (NO RESPONSE)

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

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries.

17 Now we'll go to the original motion as amended
18 and vote on it. All in favor of the original motion
19 as amended.

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

22 MR. SILVERT: No, sir.

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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1 CHAIRMAN: Motion carries as amended.

2 Next item.

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

9 The applicant is seeking to extend an existing
10 6 foot high white vinyl fence 33.4 feet along the rear
11 yard along Fieldcrest Drive and 37.2 feet along their
12 side yard along Sheffield Court. The applicant states
13 that they are requesting the Variance to create more,
14 safe useable space in their backyard. The applicant
15 states that the two properties directly to the south
16 of them have existing 8 foot high privacy fences along
17 their rear yards along Fieldcrest Drive; these likely
18 predate the zoning ordinance requirements.

19 Granting this variance will not alter the
20 essential character of the general vicinity because
21 there are other properties that also have privacy
22 fences at this height or higher along their rear
23 yards, along Fieldcrest Drive and this is an extension
24 of an existing fence which will be similar to fences
25 already in the neighborhood. It will not adversely

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1 affect the public health, safety or welfare or cause a
2 hazard or nuisance to the public because the fence
3 extension will not be expanded to a point that
4 it causes site triangle and traffic obstruction.
5 Granting this variance will not be an unreasonable
6 circumvention of the requirements of the zoning
7 ordinance because this is an extension of an
8 existing fence and there are other fences in the area,
9 along Fieldcrest Drive that are higher than
10 the proposed extension.

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

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

17 CHAIRMAN: Thank you.

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

20 (NO RESPONSE)

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

23 MR. MILLS: No.

24 CHAIRMAN: Staff have any other comments of
25 this item?

1 (NO RESPONSE)

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

4 MR. WARREN: Move to grant the variance based
5 on the findings that it will not adversely affect the
6 public health, safety and welfare because it is an
7 extension of an existing fence and according to the
8 staff record it will not impact traffic vision.

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

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

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

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

22 CHAIRMAN: Is there a second to the motion?

23 MS. RAINES: Second.

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

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1 board?

2 (NO RESPONSE)

3 CHAIRMAN: Staff have any other comments?

4 MR. HOWARD: No.

5 CHAIRMAN: The applicant have any other
6 comments at this time?

7 MR. MILLS: No.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries.

12 Next item, please.

13 ITEM 3

14 319 Frederica Street, zoned B-2 (Historic Core Overlay
District)

15 Consider a request for a Variance in order to allow a
16 proposed access point to the subject property in
conflict with the required 500 foot spacing between
access points on a principal arterial street.

17 Reference: Zoning Ordinance, Article 13,
Section 13.21

18 Applicant: First Security Bank

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

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

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

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

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

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

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

21 The proposed access point is approximately 115
22 feet from the existing access point to the north and
23 90 feet from the existing access point to the south.

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

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1 proposed point.

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

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

13 As evidenced by the applicant's proposed site
14 plan, access is available to this parking lot from a
15 local street from the adjoining property located at
16 310 St. Ann Street. Shared access has historically
17 been required to meet the intent of the access
18 standards for adjoining lots and is encouraged by the
19 Access Standard Manual. The subject property is an
20 existing parking lot that has functioned for many
21 years with access from St. Ann Street.

22 Pictures 4 and 5 will show the access from St.
23 Ann Street to the proposed site. The character of the
24 area and the recommended development standards for the
25 Historic Core Character District will be compromised

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1 by the approval of this access point which encourages
2 a suburban rather than pedestrian friendly urban
3 development.

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

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

13 In summary the location of this access point:

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

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

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

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

24 * Conflicts with the historical downtown
25 development patterns within the central business

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1 district which should be preserved.

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

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

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

9 CHAIRMAN: Thank you.

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

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

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

17 (NO RESPONSE)

18 CHAIRMAN: Anybody speaking in opposition of
19 this?

20 (NO RESPONSE)

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

23 MR. KAMUF: Mr. Chairman, Charles Kamuf. I
24 represent First Security concerning this variance.

25 Thank you for the opportunity to be here and I

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1 want to thank your attorney for giving me my 20 year
2 award on the new pointer. Thank you, Madison. I hope
3 to use it well tonight.

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

7 Now, the purchase included four separate lots.

8 For the record, Brian, have we got all of the
9 documents that I introduced before the Owensboro
10 Preservation Board in the record? I want to be sure
11 that's in the file.

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

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

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

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

24 MR. KAMUF: I submitted it.

25 MR. SILVERT: -- isn't a review of the

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1 decision of the Historic Preservation.

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

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

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

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

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

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

22 MR. SILVERT: That's correct.

23 MS. STONE: Yes, they do.

24 MR. KAMUF: I'm trying to do this where it
25 progresses quickly. I have a copy of the deed where

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1 First Security got that property at 313 and the rest
2 of the property in 2010. I'll leave that up there and
3 be sure we got it in the record or I can pass it
4 around right now. Whichever one you want to do,
5 Audie. I've got the exhibits and many of these
6 exhibits have been previously introduced. I can just
7 lay them there. If somebody has any questions, we can
8 go into it or however you all want to do it.

9 CHAIRMAN: That sounds good.

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

13 MR. KAMUF: There will be other ones.

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

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

24 The property at 307 Frederica Street is an
25 individual and separate lot. This is going to be

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1 important as far as my presentation. It was very
2 important before the Preservation Board.

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

8 The lot that we have there, it's important
9 that we have on lot -- this is the next lot which is
10 319. That's the blue one. That's where we're asking
11 for the access point. This is a separate and
12 individual lot. Has no access to Frederica Street.
13 For First Security to have successful banking
14 operations, they must have access from this lot from
15 Frederica to their parking lot which is in the rear
16 where their drive-in is located. You can see the pink
17 area back there in the back. In the back there are
18 three tellers, drive-in tellers and that's why it's so
19 important as we come through here to have this
20 particular lot where we'll have other parking because
21 in preparing this exhibit and preparing this site plan
22 we had to use a large part of our property that we
23 were going to use for parking for these tellers.

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

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

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

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

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

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

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1 purpose of buying this property was to move their
2 headquarters from 300 Frederica Street across the
3 street. First Security has offices in Bowling Green.
4 They have offices in Evansville. We could have put
5 their headquarters anyplace, but because of this
6 Article 21 and everything developing in Downtown
7 Owensboro they chose Owensboro. The bank would have
8 50 to 60 employees, and I might say 23 new employees.

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

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

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

24 It's our position that since 319 Frederica
25 Street has no feasible access, it was found by the

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1 Preservation Board that it didn't, we're entitled to
2 an access from 319 Frederica Street.

3 The key word is "feasible."

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

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

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

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

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

25 These are the photographs that I introduced at

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

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

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

20 So the question comes up, is there any other
21 access? This is an easy answer. We don't have any
22 access to any other street from the property at 319
23 Frederica Street. That is a separate lot. Only
24 access from Fourth Street to this little line that you
25 see are from the rear, and that's impassible.

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1 On May 18th, the Owensboro Historical
2 Preservation Board unanimously approved this project.

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

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

10 CHAIRMAN: Minutes of the 18th?

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

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

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

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

25 This is the point I'm getting at because down

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1 the road I'm going to say, basically because this lot
2 is an individual lot we qualify under Article 4, Page
3 5 of the Access Manual.

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

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

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

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

25 2) Strict application of the Code under these

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1 circumstances would deprive First Security of
2 reasonable use of their property and impose an
3 unnecessary hardship upon them. The proposed access
4 point is necessary for the vitality and success of
5 First Security as it expands through other customers.

6 What else did they say?

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

17 4) The proposal fits with the overall design.

18 That's what Article 21 is for the Preservation
19 Board. It's an article to preserve downtown and get
20 to growth downtown. What does it say?

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

25 We've agreed to follow everything in Article

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1 21 as far as landscaping, as far as benches. That all
2 came out at that hearing and we bring it out again.

3 Additionally, First Security agreed to allow
4 for shared parking.

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

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

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

24 So they specifically find. This is just not
25 saying, hey, this is a conglomeration of four lots.

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1 Each lot is a stand alone lot.

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

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

11 Now, I think the question that you'll say is:
12 Who is on this Preservation Board? Who is on this?

13 Ted Lolley is chairman, and he signed those.
14 Who is Ted Lolley? Ted Lolley is the mayor's
15 appointment for downtown Owensboro. For all the
16 development of downtown Owensboro. He's a
17 geotechnical engineer. He thinks this is a good idea.

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

25 The other one was a lady by the name of Kim

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1 Johnson. She's a citizen appointee.

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

5 These are the type of people that voted
6 unanimously. Terry Woodward asked one question after
7 we presented all the case. Do you mean to tell me
8 that if First Security come up here without this
9 application that they can sell that property at 307
10 Frederica Street? Without a doubt. Without a doubt.
11 In other words, we could sell it any time we wanted
12 to.

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

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

20 Here is a picture of the employee parking lot.
21 You heard all that Becky talked about of all the
22 traffic problems that you're going to created there.
23 What we're talking about here is 11 parking places for
24 employees that will leave. That will come in in the
25 morning and leave at night. You look at that and it

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1 says -- you can see the alley to the rear that we
2 talked about and that I presented evidence about.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 requirement.

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

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

23 I will present to you a document in a few
24 minutes where we have counted -- it will be a huge
25 document. Where we have counted every access point

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1 from Frederica and Main to Ninth Street. Guess what?
2 There's not a one of them in compliance. Not a one.

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

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

16 319 Frederica Street is a type A access point.
17 Access to said tract is limited like we talked about
18 with the Raines' situation. Don Raines advised me
19 that he thinks he owns that property or the family.
20 In other words, you can't get to it from this property
21 and you can't get to it from the other side.

22 310 St. Ann, and in going over 310 St. Ann the
23 problem that we had with parking is that we thought we
24 had sufficient parking, but you can see with these
25 three tellers that we have, drive-in tellers, we just

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1 don't have the parking.

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

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

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

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1 the plan and use the Access Manual, you'll have one
2 access point per block.

3 The Access Manual has been in existence for
4 20 years. None of these driveways that we showed you
5 are in compliance. Basically the present Access
6 Manual does not address the unique traffic issues of
7 downtown Owensboro.

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

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

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

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

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

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

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

3 Bill, if you will.

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

6 MR. HAYS: Bill Hays.

7 (BILL HAYS SWORN BY ATTORNEY.)

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

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

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

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1 the change of the bank going from one side of the
2 street to the other.

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

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

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

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

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

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

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

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1 than I anticipated.

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

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

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

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

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

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

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

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

17 One of the things we did in the study was to
18 take a look at what roughly how many trips is this
19 site going to generate if they all go into one access
20 point, in and out of one location. We took the counts
21 we had that we observed and we looked at national
22 studies and typically the national study count many
23 bank sites all over the country. If you take the
24 hours that we counted and project them forward, the
25 peak hours are generally about a quarter of total site

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1 traffic for the day. There were a lot of people
2 coming in and out of the bank opening and closing on
3 an average weekday. Not on Friday, but average
4 weekday. So we looked at that. We projected that
5 forward and we found that the site was going to
6 generate a rather low number of vehicles, 250. Add
7 additional employees. Obviously that would generate
8 some additional trips. Even then you're talking about
9 well less than 500 a day. Clearly within the
10 standards of the Access Manual, this site would be one
11 that would generate 1,000 vehicle trips or less.
12 Because Frederica is now classified as urban minor
13 arterial, if you look at the chart you'll see that for
14 sites of 1,000 or less vehicles a day, then you're
15 spacing is 250 feet now rather than 500. So 500 was
16 correct under the old classification system, but under
17 the new one the Cabinet adopted we now be at 250.

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

22 This chart shows you what happens without the
23 Frederica Street access. It's oriented. Here is your
24 existing bank. These are the existing drive-in
25 windows, traffic going in and out here and here.

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1 Existing employee park. This is where we counted the
2 bank traffic itself.

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

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

16 If there is no access here, then a customer
17 coming in is going to have to go around to here or
18 here or to here. Then when they leave, of course,
19 because St. Ann is a one-way street, you've got to
20 come up here, get on Third, go here, here. A lot of
21 traffic will be wanting to go to Third to Frederica.
22 It doesn't show on here, but that is a very short left
23 turn lane. Maybe two at most, three vehicles can
24 stack up there. There's no separate left turn phase.
25 So they're going to have to against traffic there.

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

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

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

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

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

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

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

13 We talked about the portion of bank traffic
14 occurs in the peak hour. Remember that the 11 space
15 lot is restricted to bank employees only. Even if it
16 wasn't, let's just say we'll use that as access to the
17 bank. Not enough turning radius there. You can't
18 drive in there and turn your car around. Maybe if you
19 had a Mini Coup or something you could. I couldn't
20 with my car because I turn around use the drive-thru
21 window. Wouldn't be too keen on getting out and go to
22 the ATM machine at night there. The drop off from
23 that alley to that lot is fairly severe. It's not 4
24 feet. If you apply ADA standard, you have a ramp of
25 50, 60 feet long with a landing you would have to put

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1 in to get people up through there. That would
2 basically -- they have parking spaces right there. So
3 as a primary access point for this building is simply
4 not useable.

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

17 The conclusion we came to and recommendation
18 was that relocating the bank to the other side of the
19 street to this new location, that the proper way to
20 provide the access for the customer base, the way it's
21 going to function, is to provide the access at 319
22 Frederica. Line it up as been proposed with the
23 adjoining access on the other side of the street.
24 That way you don't have left turns and conflict, that
25 type of thing. You do offsets.

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1 The pedestrian walk along there will have a
2 clear parking lot rather than the building and the
3 building corner. So pedestrian has a much better
4 visibility of the vehicle. The vehicle has much
5 better visibility of the pedestrian.

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

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

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

20 When you turn on there to Frederica to make
21 that turn, I go past it both times before I saw it.
22 Maybe I'm old and cranky, but I was not able to
23 visually see that access in time to get into without
24 slamming on my brakes. Even if I did, I would have to
25 look to see the space to get in there because you put

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1 in amount of available space, really a tough
2 situation. You can't use the drive-thru window.
3 Really couldn't, I guess you could locate an ATM
4 machine there somewhere, but it certainly wouldn't be
5 very use friendly.

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

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

15 Do you have an opinion based upon a reasonable
16 degree of certainty or probability as a traffic
17 engineer and based upon your education, experience and
18 all of the findings that you've talked about as to
19 whether the access point, what we call access point at
20 307 Frederica Street, is truly an access point?

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

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

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

12 MR. HAYS: Yes.

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

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

20 MR. KAMUF: Thank you.

21 Lynn.

22 MR. SILVERT: Please state your name.

23 MR. COOPER: Lynn Cooper.

24 (LYNN COOPER SWORN BY ATTORNEY.)

25 MR. COOPER: I apologize first of all for

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1 taking so much of your personal time away from family
2 to hear this application that we presented before you
3 this evening.

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

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

16 When we first looked at that location, I
17 thought it would be great if we could just make 309 or
18 whatever the 11 parking lot is, whatever that number
19 is. If we could do something special for downtown.
20 Then after we got the design back with drive-in lanes
21 and the other things that we had to use to accommodate
22 our bank, we lost from 76 spaces down to 36. So we
23 lost 40 spaces without this 11 space parking lot. It
24 was an issue for us. It's important for us if we can
25 to keep that. That's why we have applied for a

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1 Variance. As you've heard this evening, our
2 consultant believes that it may not even be a true
3 access point. We may give you an opportunity to vote
4 for us from that perspective.

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

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

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

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

20 MR. DYSINGER: To access the 319?

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

25 MR. DYSINGER: Right. Okay. That's all I'm

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1 going to ask right now.

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

4 MR. PEDLEY: Yes, I have some questions.

5 Mr. Kamuf, would you step back up.

6 MR. KAMUF: Yes, sir.

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

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

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

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

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1 what they've been doing.

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

13 MR. PEDLEY: Okay. Let me finish.

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

23 Now, should you sell that lot or should you
24 not be able to cross that private property, then
25 you've got a landlocked lot. Then you could apply for

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1 a variance. You would meet the criteria because it is
2 landlocked. Today according to what you're proposing
3 to do it is not a landlocked lot and it accesses St.
4 Ann Street.

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

8 MR. PEDLEY: I have your plat.

9 MR. KAMUF: That's the same plat.

10 MR. PEDLEY: Both ways.

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

14 MR. KAMUF: That's right.

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

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

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

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

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

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

13 MR. PEDLEY: That's right.

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

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

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

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

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

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

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

20 MR. KAMUF: I understand.

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

25 MR. KAMUF: I don't know.

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1 MR. PEDLEY: Probably none was created before
2 the adoption of the Zoning Ordinance.

3 MR. KAMUF: You mean 1990 with the Access
4 Manual.

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

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

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

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

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

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

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1 if you lose this.

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

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

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

20 We had an opportunity to study what the zoning
21 ordinance says. These ordinances are adopted by the
22 city and county of this community. Article 21 there
23 was much, much, much work. Many hours put in Article
24 21 by a lot of people.

25 MR. KAMUF: I agree.

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

7 MR. KAMUF: Not to argue with you --

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

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

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

24 MR. PEDLEY: Mr. Hays is very qualified. His
25 resume is outstanding. But I've heard him come into

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1 this community several times and change the rules and
2 change classifications for arterial street to major
3 collector. Someone else has already been living by
4 this rule and spent hundreds and thousands of dollars.
5 They change the rules for his client. I don't go
6 along with this. I won't. You can stand up there and
7 talk all day, Charlie.

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

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

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

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

16 MR. PEDLEY: You don't sit on this board.

17 MS. STONE: We were going to say what the
18 zoning ordinance required.

19 MR. KAMUF: My point is, Ward, I didn't have a
20 chance to rebut that. I didn't have a chance to read
21 it until I sat down here.

22 MR. PEDLEY: I've had one hour to review
23 everything you've thrown at us tonight.

24 MR. KAMUF: Sure. I don't take issue with it.

25 MS. STONE: I do have a clarification to make

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1 on the classification.

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

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

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

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

21 MR. PEDLEY: Is that a minor arterial, is that
22 250 feet spacing?

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

25 MR. HOWARD: Based on the Access Management

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1 Manual, yes. If it's a minor arterial with less than
2 1,000 trips per day, it looks like it would be 250.
3 But as Becky pointed out, the GRADD Transportation
4 Advisory Committee is the group that changes the local
5 access management requirements. There was an update
6 done '05, a few years back. To my knowledge even with
7 the state downgrading the classification, the TAC
8 Committee from GRADD has not changed any of the local
9 Access Management Classification at this point.

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

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

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

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

24 MR. KAMUF: That's correct.

25 MR. DYSINGER: On both the plan that I have

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1 and the photograph that I have, it appears to me that
2 the Raines alley extends all the way back to the
3 southeast corner of 313. Is that not correct?

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

12 MR. DYSINGER: Becky, do you have something?

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

24 MR. DYSINGER: Does this alley, regardless of
25 the disposition that we finally have for it. Whether

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1 it's deeded all the back. Whether it's public. Does
2 it not bisect these two pieces of property or does it
3 just look that way on the stuff that we're looking at?
4 I'm trying to differentiate what these lines that are
5 put on a picture are and what the realty is,
6 especially if there's a deed involved.

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

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

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

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

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

24 MS. STONE: This is a separate issue. What
25 the Historic Preservation Board is charged with are

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1 design exceptions from Article 21. This was
2 considered a design exception, if you will. There's
3 also a Zoning Ordinance requirement to meet the
4 spacing standards and design parking lots in
5 accordance with Article 13. The Board of Adjustment
6 is dealing with the spacing standard variance under
7 Article 13. The Historical Preservation Board has
8 said it's okay to have the access there under Article
9 21.

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

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

23 MR. KAMUF: That's correct.

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

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

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

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

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

16 MR. KAMUF: I think that's correct.

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

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

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

24 Mr. Pedley and my experience with the expert
25 testimony noted because I share those sentiments. We

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1 have seen this expert testify in a number of cases.
2 Taking that as it may be, where are we with that?
3 Does that just hang out there as a assertion? Does
4 Staff need to rebut that? What is that?

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

9 MR. DYSINGER: But if it is determined that
10 319 does not have reasonable access, via 310 on St.
11 Ann, at this point basically pending the determination
12 of what that alley's dimensions are, 307 has no
13 bearing on 319's reasonable access standing. Is that
14 a fair statement?

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

19 MR. DYSINGER: Which is what the applicant --

20 MS. STONE: I don't think it extends to beyond
21 319, to the back portion of 319. If it's public, they
22 would have access across the public alley.

23 MR. DYSINGER: To me that's the jam I'm in
24 right now. Everything I have shows this alley
25 extending all the way to the southeast corner of 313,

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1 which bisects 310 St. Ann and 319. Which while I tend
2 to agree with your argument that 310 and St. Ann is
3 access for all these years, as well I know too, if we
4 have a deed situation which in reality bisects that,
5 then it does in my opinion and pending finding of that
6 does present some reasonable access issues for this
7 applicant moving forward. We kind of have to balance
8 it. The way things have always been and now we've got
9 new rules. If there's a deed situation on alley, to
10 me it throws all of this into a little bit of a
11 question mark.

12 That's my two cents at this point.

13 Please, counselor, shed light on that.

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

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

23 Done Raines, the Raines family claims that
24 they own the alley. I think, Beck, you said the
25 engineering people looked at it or whatever. I just

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1 put that in and the main reason, Sean, that I put that
2 in is because there was some question as to whether
3 they could stop us from using that alley, if they
4 wanted to.

5 MR. DYSINGER: That's a good question.

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

9 MS. STONE: If they can't use it from 310 to
10 319, then their site plan is in error because their
11 site plan shows access from 319 to 310. There's a
12 dumpster placed right at the end of the property line
13 where 310 is.

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

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

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

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

23 Their site plan shows access across that
24 public or private alley. If it's a public alley, they
25 would have access by right across it. If it's

1 private, I guess it needs to be determined how far
2 it's private.

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

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

13 MR. DYSINGER: Hold on.

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

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

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

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

25 You're showing 306. It's also saying --

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1 MR. KAMUF: I think what that shows, Audie, is
2 that on each side of that dumpster there is an area --
3 whoever put the dumpster up, put it up just to block
4 the alley.

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

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

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

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

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

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

25 CHAIRMAN: Can we make a decision without

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1 correct information?

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

5 CHAIRMAN: Thank you.

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

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

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

25 MR. KAMUF: I respect that.

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

6 MR. KAMUF: I understand.

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

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

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

17 MS. STONE: I have a question of Mr. Kamuf.

18 If the adjoining property owner is asserting
19 that they own the alley all the way to 313 or if they
20 were just asserting that they owned it to the point
21 where the dumpster is located.

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

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1 CHAIRMAN: Have you got that information?

2 MR. KAMUF: It's in the record.

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

6 MR. DYSINGER: We've got satellite technology.
7 Can somebody not tell us how far this deed goes back?

8 I'd be interested in what other board members
9 think or look for Staff input and legal counsel too.
10 I know this isn't where any of us wanted to be at this
11 point.

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

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

24 MR. SILVERT: I'm not going to make a
25 determination as to whether or not there's been

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1 adverse possession of the alley.

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

3 MR. KAMUF: Right. Not tonight.

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

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

16 MR. WARREN: Without a variance.

17 MS. STONE: Yes.

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

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

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1 MS. MASON: I have a question.

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

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

12 MR. KAMUF: That's correct.

13 MS. STONE: So he can't answer where he got
14 that information. Their proposed site plan shows them
15 to have access between 319 and 310 regardless of the
16 access points on St. Ann or on Frederica Street.
17 They're showing crossed access, you know, between
18 those two lots. That's what the applicant proposed on
19 their site plan. So if there's an issue about the
20 alley, we're not informed about what that problem
21 might be.

22 Now, an adjoining property owner could still
23 give them access across that alley, if they chose to
24 do that, but we could not make an adjoining property
25 owner give them access across that alley.

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1 MS. MASON: But they can still put it on their
2 site plan then if the property owners allow them to do
3 that?

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

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

12 MR. KAMUF: Right.

13 MR. DYSINGER: After this site plan was -

14 MR. KAMUF: That's right.

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

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

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

24 CHAIRMAN: And then an easement?

25 MR. DYSINGER: Unless they don't need it.

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1 Unless there's some of it that's public, in which case
2 they wouldn't need it.

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

19 MS. STONE: There was an alley closure for a
20 portion of this alley going toward Third Street that
21 no longer exist physically on the site. It couldn't
22 be determined exactly which portion was closed and
23 which portion was open. There was also a plat done in
24 1985 that showed the portion that Mr. Kamuf submitted
25 evidence showing was private that it was public. We

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1 tried to get the city engineer to give us a
2 determination on that and he couldn't do it from the
3 information that we had.

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

6 MR. DYSINGER: How about our options?

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

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

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

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

22 MR. DYSINGER: Do we have any reason to
23 believe that a postponement of 30 days will allow us
24 to get the information that we need? Anybody chime in
25 on that. I mean have we exhausted our --

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1 MS. STONE: I don't think the Planning Staff
2 has the expertise to make the determination on the
3 property. It would have to be applicant's attorney or
4 an attorney --

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

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

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

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

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

19 MR. KAMUF: I have a question.

20 MR. PEDLEY: The issue is if that's a public
21 alley then everything changes. Because 319 does have
22 access to a B street, if that's a public alley.
23 That's my point. If it's not a public alley, then
24 whoever the owner is says you can't use it, then their
25 site plan won't work.

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1 MS. STONE: That's right. So regardless if
2 you deny the application or approve it, they're still
3 going to have to be held in terms of their site plan.

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

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

17 MR. KAMUF: I get the access at 319?

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

25 MR. KAMUF: I have a question probably go to

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1 you, Madison.

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

6 What if I withdraw the application and just
7 leave this project that we're talking about the
8 yellow, the blue and the pink and leave that lot at
9 307 out of the equation?

10 MR. DYSINGER: 307 is not really an issue.

11 MS. STONE: It's not in the equation other
12 than there's an existing access point that's too close
13 to the proposed access point. We're just looking at
14 319 tonight.

15 MR. DYSINGER: I don't consider 307 access to
16 319 in any case. It does not make 319 any more
17 accessible or any less accessible. The only way as I
18 understand it 307 comes into play tonight is if it's
19 determined that 319 already has reasonable access;
20 therefore, another access point is not allowable
21 because there's another access point to make make it
22 completely unrelated, but within 500 feet. So 307 is
23 a secondary issue as I understand it. I'm not going
24 to tell you how to handle your case. 307 is a
25 secondary issue. If 319 does have access, then 307

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1 comes into play because there's another access point
2 prohibiting one for 319, unless at some point down the
3 road we then determine that 307 is not really an
4 access point, but that to me even gets more into the
5 weeds than whether or not there's a deed and whose is
6 it. The deed is the thing at this point as far as I'm
7 concerned. If this deed says one thing, this site
8 plan is wrong.

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

13 MR. DYSINGER: Exactly.

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

16 MS. STONE: Right.

17 MR. PEDLEY: Another thing, the application
18 tonight is for a Variance for 319 Frederica Street.
19 That's all.

20 MR. KAMUF: That's it.

21 MS. STONE: That's right.

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

23 MR. DYSINGER: In fact, I did have the other
24 addresses on my original application, but all but 319,
25 I meant to bring this up earlier, have been crossed

1 out.

2 MR. KAMUF: I am willing to look that up and
3 to try to find the information that you've requested
4 as far as that -- I can't tell you if the city
5 attorney has tried to it look it up, but I have not
6 visited that issue, but I'll look it up and have it
7 ready for you at the next meeting if you want me to.

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

10 MR. DYSINGER: City engineer, right.

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

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

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

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1 approve the site plan, right?

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

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

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

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

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

20 MR. KAMUF: Yes, sir.

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

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

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

25 CHAIRMAN: With his information that he's

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1 given us we'd like to see it postponed and I'll
2 entertain a motion.

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

9 MR. KAMUF: I understand.

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

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

25 With that in mind I will second it.

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1 CHAIRMAN: A motion has been made and a
2 second. Any other comments?

3 (NO RESPONSE)

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

6 (ALL BOARD MEMBERS PRESENT - WITH THE
7 DISQUALIFICATION OF SHANNON RAINES - RESPONDED AYE.)

8 CHAIRMAN: Motion is postponed until the next
9 meeting.

10 One other motion.

11 MR. WARREN: Move to adjourn.

12 MR. DYSINGER: Second.

13 CHAIRMAN: All in favor raise your right hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: We are adjourned.

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STATE OF KENTUCKY)

)SS: REPORTER'S CERTIFICATE

COUNTY OF DAVIESS)

I, LYNNETTE KOLLER FUCHS, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Board of Adjustment meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 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

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