

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT  
2 SEPTEMBER 1, 2011

3 The Owensboro Metropolitan Board of Adjustment  
4 met in regular session at 5:30 p.m. on Thursday,  
5 September 1, 2011, at City Hall, Commission Chambers,  
6 Owensboro, Kentucky, and the proceedings were as  
7 follows:

- 8 MEMBERS PRESENT: C.A. Pantle, Chairman
- Ward Pedley, Vice Chairman
- 9 Ruth Ann Mason, Secretary
- Gary Noffsinger, Director
- 10 Madison Silvert, Attorney
- Rev. Larry Hostetter
- 11 Shannon Raines
- Sean Dysinger

12 \* \* \* \* \*

13  
14 CHAIRMAN: Let me call the meeting of the  
15 Owensboro Board of Adjustment to order this evening.  
16 I want to welcome you at this time. We start our  
17 meeting each evening with a prayer and then the pledge  
18 of allegiance. We invite you all to join us at this  
19 time. Ruth Ann will have our prayer.

20 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

21 CHAIRMAN: Again, I want to welcome you to the  
22 meeting this evening. If you have any comments on any  
23 item, please to come one of the podiums. State your  
24 name so we'll have record of it on transcript.

25 With that the first item is to consider the  
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1 minutes of the August meeting. They're in the office.  
2 We haven't found any problems that I know of.

3 Is that correct, sir?

4 MR. NOFFSINGER: That is correct.

5 CHAIRMAN: Hearing no additions I'll entertain  
6 a motion to dispose of the item.

7 MR. PEDLEY: Motion for approval.

8 MR. DYSINGER: Second.

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

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries.

13 Next item, please, sir.

14 -----

15 CONDITIONAL USE PERMIT

16 ITEM 2

17 111 Carlton Drive, zoned B-4

Consider a request for a Conditional Use Permit in  
18 order to construct and operate an outdoor recreational  
19 facility consisting of one baseball field and one  
20 partial practice field.

Reference: Zoning Ordinance, Article 8,  
21 Section 8.2K7/42

Applicant: Danco Construction, Inc.; Greg Roby, as  
22 Executor under the Last Will of James C. (Sam) Roby

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

25 MR. HOWARD: Brian Howard.

(BRIAN HOWARD SWORN BY ATTORNEY.)

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1 ZONING HISTORY

2 The subject property is currently zoned B-4  
3 General Business. OMPC records indicate there have  
4 been no zoning map amendments for the subject  
5 property.

6 The outdoor recreational uses on the subject  
7 property will be used in conjunction with the indoor  
8 recreational uses principally permitted on the  
9 adjoining property at 105 Carlton Drive. Parking is  
10 proposed for both sites on 105 Carlton Drive as shown  
11 on the site plan submitted and there will be a Final  
12 Development Plan submitted showing both lots and both  
13 uses. Per Section 13.17 of the Zoning Ordinance,  
14 parking requirements in a Business zone can be met on  
15 a separate lot with approval of a Final Development  
16 Plan by the OMPC if they are within 200 feet of the  
17 lot the parking spaces are required to serve.

18 LAND USE IN SURROUNDING AREA

19 All surrounding properties are zoned B-4  
20 General Business.

21 ZONING ORDINANCE REQUIREMENTS

22 1. Parking - Outdoor Recreational Use - 1 for  
23 each employee on maximum shift, plus 1 for every 3  
24 participants, plus 1 for every 3 spectator seats.  
25 Total Required = 25 spaces. The site plan proposes 89

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1 total spaces, exceeding the requirement for the two  
2 uses proposed on adjoining lots.  
3 2. Landscaping - Vehicular use area  
4 landscaping with a 3 foot high continuous element and  
5 1 tree every 40 feet, as shown on the site plan  
6 submitted.

7 SPECIAL REQUIREMENTS

8 Approval of a Final Development Plan to allow  
9 required parking on the adjoining lot.

10 MR. HOWARD: We would like to enter the Staff  
11 Report into the record as Exhibit A.

12 CHAIRMAN: Thank you.

13 Any comments filed at the office?

14 MR. NOFFSINGER: No, sir.

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

17 (NO RESPONSE)

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

20 (NO RESPONSE)

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

23 (NO RESPONSE)

24 CHAIRMAN: Staff have any other comments?

25 MR. NOFFSINGER: No, sir.

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

3 MR. PEDLEY: Mr. Chairman, I make a motion for  
4 approval based on we've heard no opposition and it is  
5 a compatible use within the neighborhood. It will not  
6 have an adverse influence on future development with  
7 the conditions approval of a Final Development Plan to  
8 allow required parking on adjoining lot.

9 MR. DYSINGER: Second.

10 CHAIRMAN: A motion has been made and a  
11 second. Is there any other comments or questions from  
12 the board?

13 (NO RESPONSE)

14 CHAIRMAN: Staff have any other comments?

15 MR. NOFFSINGER: No, sir.

16 CHAIRMAN: The applicant have anything else  
17 you would like to add?

18 APPLICANT REP: No.

19 CHAIRMAN: Hearing none all in favor of  
20 support of the item raise your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries.

23 Next item.

24 ITEM 3

25 1611 rear Frederica Street, zoned R-4DT  
Consider a request for a Conditional Use Permit in  
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1 order to construct and operate a parking lot.

Reference: Zoning Ordinance, Article 8,

2 Section 8.2F11

Applicant: Marcus W. Bosley

3

#### 4 ZONING HISTORY

5 The subject property is currently zoned R-4DT  
6 Inner City Residential. OMPC records indicate there  
7 have been no zoning map amendments for the subject  
8 property.

9 The applicant is wishing to use this 0.060  
10 acre (2.602 square foot) lot for overflow parking for  
11 the commercial office building currently under  
12 construction at 1611 Frederica Street. 1611 Frederica  
13 Street meets their requirements for parking on site;  
14 this lot would be used for possible overflow. The  
15 applicant is proposing to pave the lot, provide eight  
16 parking spaces, provide a varying landscaping buffer  
17 between 14.5 and 5 feet and provide 6 foot high  
18 continuous element with a tree every 40 feet along the  
19 south and east property boundaries.

#### 20 LAND USES IN SURROUNDING AREA

21 The properties to the north, south and east  
22 are zoned R-4DT Inner City Residential. The property  
23 to the east is zoned P-1 Professional Service. The  
24 subject property is bordered to the north and west by  
25 existing alleyways.

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1 ZONING ORDINANCE REQUIREMENTS

2 1. Parking - no minimum required. Eight  
3 spaces proposed as shown on the site plan submitted.

4 2. Landscaping - Vehicular Use Area screening  
5 between the subject property and the residentially  
6 zoned property to the south and east consisting of a 3  
7 foot high continuous element and a tree every 40 feet.  
8 A 6 foot high continuous element and a tree every 40  
9 feet is proposed as shown on the site plan submitted.

10 MR. HOWARD: We would like to enter the Staff  
11 Report into the record as Exhibit B.

12 CHAIRMAN: Thank you.

13 Has there been any comments in the office?

14 MR. NOFFSINGER: We've had at least one phone  
15 call in the office asking questions.

16 CHAIRMAN: Anyone wishing to speak in  
17 opposition of this item?

18 Hold on. I just wanted to be sure if there  
19 was opposition. Let me get the applicant first,  
20 please.

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

23 MR. BOSLEY: Mark Bosley.

24 (MARK BOSLEY SWORN BY ATTORNEY.)

25 CHAIRMAN: Any board member have any comments

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1 or questions of the applicant?

2 (NO RESPONSE)

3 CHAIRMAN: Do you have anything you want to  
4 add at this time?

5 MR. BOSLEY: Just something to say. That when  
6 we developed that property we have this rather small  
7 piece of property that we had a very rundown old  
8 garage on it that we tore down. We just want to clean  
9 it up. It's just right now we're trying to keep it  
10 mowed. It's not a very esthetically pleasing piece of  
11 property and we would like to use it for overflow  
12 parking and landscaping.

13 CHAIRMAN: Board have any questions of the  
14 applicant at this time?

15 (NO RESPONSE)

16 CHAIRMAN: Staff have any other comments?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: Opposition, if you have any  
19 comments come forward, please, sir.

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

22 MR. PELPHREY: Thomas Pelphrey.

23 (THOMAS PELPHREY SWORN BY ATTORNEY.)

24 MR. PELPHREY: Just for clarity, because I  
25 don't understand all of these things. Conditional Use

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1 Permit, what are the conditions on that? Is there a  
2 time limit on that? How many months? How many years?  
3 Can someone help me with that?

4 CHAIRMAN: Can Staff answer that, please.

5 MR. NOFFSINGER: Well, there's no time limit  
6 on the Conditional Use Permit unless this board  
7 chooses to set a time limit. A Conditional Use Permit  
8 is a use that may or may not be able to be integrated  
9 into a particular neighborhood. Because of that there  
10 is a requirement that there be a public hearing to  
11 hear what folks in the neighborhood have to say. This  
12 board after hearing that testimony and weighing the  
13 applicant's proposal can then either approve, they can  
14 approve with conditions or they can modify the  
15 proposal or they deny the proposal.

16 MR. PELPHREY: Thank you. Because I was  
17 confused about what "conditional" meant. Sometimes  
18 conditional has a time period, a time frame in it, and  
19 I wasn't sure about that. Whatever is decided here  
20 tonight is going to be perpetual. Not conditional in  
21 terms of time and could be permanent; is that correct?

22 MR. NOFFSINGER: That is correct.

23 MR. PELPHREY: Part of what I want to say is  
24 I'm not sure why the overflow is needed. The site  
25 plan that was developed for the property that's in

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1 question at 611 obviously had enough parking called  
2 for in it or the site plan would not have been  
3 approved; is that correct?

4 MR. NOFFSINGER: The site plan at the time did  
5 meet the minimum parking requirements of the zoning  
6 ordinance, but again those requirements are minimum  
7 parking requirements. The applicant may need more,  
8 may feel they need less, but the applicant is required  
9 to at least meet the minimum parking requirements of  
10 the ordinance.

11 MR. PELPHREY: So at 611 that minimum level  
12 was met at that time, right?

13 MR. NOFFSINGER: Yes, sir.

14 MR. PELPHREY: There was no effort at that  
15 time to zone this particular property anything other  
16 than residential?

17 MR. NOFFSINGER: That's correct. It was not  
18 part of the rezoning of the property.

19 MR. PELPHREY: So it's still residential.

20 The tract that's involved here, according to  
21 the site plan my understanding -- by the way, I live  
22 to the south of this property. I'm live south of  
23 that. Directly it effects me a great deal because now  
24 I'm going to have a parking lot at the back of my  
25 house.

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1           The property there is tract B-2 and it's  
2 really tied to the B-1 tract across the alley, as I  
3 understand it.

4           I guess my question is: If there is no, if  
5 the minimum requirements are met for parking on the  
6 site where the construction is going on now and this  
7 property is tied to the B-1, why we even need to be  
8 talking about this being termed as overflow parking  
9 for 1611. I just make the point here that it's  
10 actually tied to a different piece of property. I  
11 don't know if that has any bearing, but I wanted to  
12 bring that up because that's my understanding. Is  
13 that your understanding?

14           MR. NOFFSINGER: What I do know is that this  
15 is a separate piece of property. It may be under  
16 common ownership with tract B-1, but it is a separate  
17 piece of property. We are not considering tract B-1  
18 or the development of that.

19           MR. PELPHREY: I understand.

20           MR. NOFFSINGER: We are considering whether or  
21 not this is an appropriate location for a parking lot.

22           Now, the applicant has stated here tonight  
23 that his reason is he wants this parking lot for his  
24 overflow parking. That I would say is, you know,  
25 certainly the reasoning is up to him and may or may

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1 not be justified. I don't know that, but this board  
2 is charged with determining whether or not this is an  
3 appropriate location for a parking lot and how it can  
4 be integrated into this neighborhood.

5 MR. PELPHREY: All right. Then dealing with  
6 the issue that you brought up. I would say that it's  
7 not an appropriate place to have a parking lot when  
8 it's surrounded by four other pieces of property that  
9 are all residential and have been residential for  
10 years and years. We bought into the community with  
11 this being residential. There's no other property  
12 either to the north, to the east or to the south that  
13 is anything but residential. If you go down this  
14 alley starting at Frederica Street, follow this alley  
15 all the way down to 25th Street, I can find no other  
16 parking on the east side of this alley that is used  
17 for business parking. So for this one to be the only  
18 one I would think we're setting precedent that I don't  
19 understand and I don't think would be appropriate for  
20 use.

21 The last thing I would like to make is I'm  
22 just a homeowner. This is going to be backed up right  
23 up to my back door. I don't know if you would like to  
24 look out your back door and see a parking lot all the  
25 time, but that's about what is to happen to me. I

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1 don't have great investments financially and I'm not  
2 here to poor mouth except to say my home is my biggest  
3 investment. If in any way this parking lot is going  
4 to reduce the value of my home, then I come out  
5 hurting. Frankly, in a declining economy I can't  
6 afford that.

7 I ask you to consider not allowing this  
8 conditional use as it will turn into permanent  
9 parking. In my opinion, it's actually a de facto  
10 zoning change and I would prefer it to be handled that  
11 way, have it more public. You can see from my  
12 standpoint where I see it as a permanent change in the  
13 zone and I oppose it and ask you to.

14 Do you have any questions of me?

15 MR. DYSINGER: Mr. Chairman, I have a couple  
16 of questions.

17 Sir, could you tell me where exactly your  
18 property is in relation?

19 MR. PELPHREY: Do you have the site plan?

20 MR. DYSINGER: I do.

21 MR. PELPHREY: If you're looking at the site  
22 plan, so you can read it left to right, I am to the  
23 right of the proposed -- I'm sorry. I'm to the left  
24 of the proposed parking lot. On the map I'm to the  
25 south.

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1 MR. DYSINGER: Gary Postlewaite?

2 MR. PELPHREY: No. Thomas Pelphrey.

3 MR. DYSINGER: Okay.

4 Sir, can you describe for me right now what  
5 the lot looks like?

6 MR. PELPHREY: I want to commend Mr. Bosley.  
7 He took down an ugly garage and took some trees off  
8 that needed to be taken down. I deeply appreciate  
9 that. He has kept it cleaned and mowed. I got out  
10 there and weed eated it once myself earlier in the  
11 spring. Since that time he has had someone in there  
12 who weed eated it and recently had in there mowed. So  
13 it is cut back. I appreciate that a great deal. I  
14 wouldn't call it ugly. I would call it unimproved.  
15 Don't know that to beautify it requires -- I do not  
16 believe to beautify that piece of property requires  
17 putting eight parking places on it. Grass would be  
18 sufficient.

19 MR. DYSINGER: Thank you.

20 MR. PELPHREY: Other questions from someone  
21 else?

22 CHAIRMAN: Any other board members have any  
23 comments?

24 MR. DYSINGER: Not at this time. I would like  
25 to hear the applicant's response however.

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1 CHAIRMAN: Staff have any other comments at  
2 this time?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Does anyone else speak in  
5 opposition?

6 Come forward, ma'am, please.

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

9 MS. BRADLEY: Nancy Bradley.

10 (NANCY BRADLEY SWORN BY ATTORNEY.)

11 MS. BRADLEY: I live, if you have that map, at  
12 206 Phillips Court.

13 I was here a month ago and at that time Mr.  
14 Bosley was wanting to have the alley closed coming off  
15 of Frederica that goes straight up to Mary Kendall.  
16 I'm the one that is near the alley that goes Phillips  
17 Court down to 17th Street.

18 In the shaded area where it's showing that a  
19 parking lot would be installed and built, I have a  
20 fence that comes along that. Last month when we were  
21 discussing this 18-wheelers and large trucks come down  
22 from Mary Kendall and to make -- they can go straight  
23 out Mr. Bosley's road now, but to make a left-hand or  
24 to make a turn and go down 17th Street, you cannot  
25 make that. You truly with that parking lot there

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1 honest, you cannot make it if you have a trailer on  
2 the back of your car, if you are on your truck. If  
3 you have a large truck, whether it's a moving van, you  
4 cannot make that turn. Honest you can't.

5 Having a parking lot there with cars parked  
6 right up almost to that alley, it's not going to be  
7 any better. That does bother me.

8 Again, Phillips Court is an older historical  
9 area. 17th Street, we have lived there for years.  
10 Yes, it is probably the most, it is a value to me  
11 financially. It's a value to me because of the house,  
12 because of the oldness, and I truly think a grassed  
13 area would be great. I think even the neighbors would  
14 even mow that. It could be like a little park area,  
15 but to have fencing, to have a parking lot, I cannot,  
16 I just cannot see it and I don't think that trucks can  
17 get around it.

18 CHAIRMAN: Any board members have any  
19 questions?

20 MR. DYSINGER: I guess I don't understand.  
21 Trucks can get around it?

22 MS. BRADLEY: They cannot. I do not think if  
23 you came down Mary Kendall and you came down off of  
24 Daviess Street, turn in that alley that runs by Mary  
25 Kendall, behind Mary Kendall, you come down straight

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1 and you want to go either to Phillips Court but to  
2 17th Street, I don't think they can make that. Now,  
3 you're going to say that they could go straight  
4 through because we did keep that alley open instead of  
5 having that closed. For people that own their houses  
6 that their backyards back up to that, I don't  
7 understand why a parking lot has to be in a  
8 residential section for eight parking places that he  
9 thinks is going to be an overflow. There should be  
10 ample parking in the development that Mr. Bosley is  
11 building. I may not be answering your question.  
12 That's the best that I can do.

13 MS. RAINES: So you're concerned that in the  
14 future they won't be able to turn?

15 MS. BRADLEY: Yes.

16 MS. RAINES: How are they doing it now?

17 MS. BRADLEY: It's open.

18 MS. RAINES: So they're driving over the  
19 property?

20 MS. BRADLEY: Not very much.

21 MR. NOFFSINGER: If I might interject.

22 In looking at this site plan, it appears that  
23 a portion of the approved alley is located on the  
24 subject property at the corner of it. So some of that  
25 asphalt extends onto this property where in the future

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1 you have a vehicle parked right there.

2 MS. BRADLEY: That's I'm saying.

3 MR. NOFFSINGER: It would not make it a little  
4 tighter. I'm not saying you couldn't do it. I'm just  
5 saying I think that's what she's speaking to.

6 MS. BRADLEY: It would be very difficult.

7 CHAIRMAN: Any other questions?

8 MR. DYSINGER: Not at this time, Mr. Chairman.

9 CHAIRMAN: Anyone else have any comments?

10 Come forward please, sir, and state your name.

11 MR. SILVERT: State your name, please.

12 MS. POSTLEWAITE: My name is Gary Postlewaite.  
13 (GARY POSTLEWAITE SWORN BY ATTORNEY.)

14 MR. POSTLEWAITE: My property is adjacent to.

15 I think it's 52 feet across there that effects me.

16 Now I've got a parking lot right at my back door just  
17 the way Tom does on his.

18 One of the things that I would like to mention  
19 that Tom made some reference. If you go down  
20 Frederica Street, on the east side and on the west  
21 side, there's been quite a few of those homes that  
22 have been repurposed into either a B-1 or P-1. Every  
23 one of those without the exception has their parking  
24 upon their pieces of property. None of those pieces,  
25 none of those businesses, none of the P-1's, no B-1's

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1 have gone across the alleys adjacent to a residence to  
2 establish parking. So this will be first time in that  
3 whole area from say from Parrish Avenue all the way to  
4 down 25th Street on both sides of Frederica. I bring  
5 your attention to that.

6 The three spaces that would been on the alley  
7 that's facing to the north, that alley is only 15 foot  
8 the wide. There's no way in the world that you can  
9 pull a car in there. When you get ready to back out,  
10 you're going to back out into a blind alley. There's  
11 no way you can see what's coming down that alley.  
12 There's a lot of traffic in that alley off of Mary  
13 Kendall home especially. I bring your attention to  
14 that. It absolutely doesn't work. There's no way you  
15 can make that work. I just want to say from my view  
16 point, you know, when we bought into the area, and if  
17 you look at Ms. Bradley's home which backs right up to  
18 it, that house is on the national historical record.  
19 Put in a parking lot across the alley just doesn't  
20 make any sense.

21 I mean I would ask you folks to look at that  
22 and think about it. If your house was sitting where  
23 mine is, would you want a parking lot right next to  
24 it? Thank you.

25 CHAIRMAN: Thank you.  
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1 Any other comments on opposition?

2 (NO RESPONSE)

3 CHAIRMAN: Mr. Bosley, would you come and try  
4 to answer our questions please, sir, to the neighbors.

5 MR. BOSLEY: Let me begin by saying that if  
6 you looked out Mr. Pelphrey's back door, the first  
7 thing you're going to see is a carport. A couple of  
8 cars. It's not like you're looking out and you can  
9 even -- I don't even know if you can even see the  
10 ground down there. Possibly you could maybe see the  
11 ground. I don't think it really hurts the view.

12 As far as Mr. Postlewaite, he's got a big  
13 double car garage and a removable carport where he  
14 works on cars. He's got a big fence up there that all  
15 backs up to that property. I'm pretty confident  
16 there's no vantage point from inside his house he can  
17 see that.

18 So I don't believe that the criticism is  
19 valid. We're going to improve the looks of the  
20 property. We're going to put the landscaping in. It  
21 is for overflow.

22 As far as people being able to turn, it was  
23 brought up that we are trying to close the  
24 thru-traffic from the alley. I might add that the  
25 only reason we were ever trying to close the

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1 thru-traffic for the alley is because we were asked by  
2 the city to close the alley. We said, if you want to  
3 close it, close it. They said, no, we want you to  
4 close it. We want you to get the attorney and we want  
5 you to do everything. We did all of that and they  
6 made the recommendation to approve it. Then at the  
7 end it got voted down three to two. We didn't really  
8 care if the alley was closed or not. It didn't matter  
9 to us, other than we were asked to do it as part of  
10 our development plan.

11 You know, I've had these same three neighbors  
12 since we originally went through the planning and  
13 zoning process. Mr. Postlewaite said he was okay with  
14 building an office there as long as it was two-story  
15 and Victorian style. I told him that wasn't really  
16 the plan we had. I think later he became okay with it  
17 as it went along. When the alley closing first came  
18 up, Mr. Postlewaite called me at my office. He said,  
19 I have a problem with you closing the alley. I said,  
20 okay, what's your problem? He said, I can't get my  
21 car hauler back there to move my cars in and out. I  
22 said, I don't think it would be that much of a  
23 problem. He said, if you would sell me that property  
24 that adjoins my property, if you would sell that to  
25 me, that he originally wanted to buy, he said, I

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1 wouldn't have a problem with it.

2 I think sometimes after being here for the  
3 original planning and zoning, the work that we went  
4 through and then the alley closing that we were asked  
5 to do, that the city later decided they didn't want us  
6 to do, to now, I think if you look out there all we're  
7 going to do is put in some greenery in a space that  
8 quite frankly if we can't use it for overflow parking,  
9 I don't know what we would use it for. It's not a big  
10 enough to construct anything on. I think it will look  
11 a lot better once the landscaping gets in.

12 Again, the property that it directly abuts up  
13 to, you know, neither property owner can see it very  
14 well. I think once it's done it will look pretty  
15 good. We don't tend to use it a lot, but we will use  
16 it. We intend to use it or we wouldn't go to the time  
17 and money and expense to pay.

18 Does anybody have any questions of me?

19 MR. DYSINGER: Mr. Chairman, I would like to  
20 ask the applicant that in testimony your neighbors  
21 suggested that it might be an unsafe situation due to  
22 the width of the alley. I think especially regarding  
23 the parking spots that you have planned that would be  
24 on the east side of the lot, would you like to comment  
25 on that?

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1 MR. BOSLEY: It would be unsafe?

2 MR. DYSINGER: I think in terms of people  
3 pulling in and then trying to back out into I guess  
4 what would then be blind from their vantage point.

5 MR. BOSLEY: You know, I think, this  
6 preliminary plan as Brian has put it together show a  
7 maximum use of, you know, eight parking spots is the  
8 most we can do. We intend to have a drive to pull in  
9 probably from the alley. It would be to the north.  
10 It would probably come in and exit that way is the way  
11 I envision that we would probably use it.

12 As far as people turning in across the corner,  
13 if that's an issue, we can address that probably with  
14 some type of greenery or something and maybe do  
15 something else with that corner piece if we needed to.

16 MR. DYSINGER: I guess I'm not so much worried  
17 about what I assume to be trucks that are apparently  
18 using your property to make a turn. You're certainly  
19 not obligated to provide your property to allow trucks  
20 to do that.

21 MR. BOSLEY: That's good.

22 MR. DYSINGER: I guess that answers my  
23 question. I mean I don't necessarily see a safety  
24 issue here, but I did want to give the applicant an  
25 opportunity to respond to it.

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

3 (NO RESPONSE)

4 CHAIRMAN: Staff have any other comments?

5 MR. NOFFSINGER: No, sir.

6 MR. POSTLEWAITE: Thank you.

7 CHAIRMAN: Appreciate it.

8 Do we have any comments? Come forward.

9 MR. SILVERT: If you could just state your  
10 name again.

11 MR. PELPHREY: Thomas Pelphrey.

12 I just wanted to tell the board that I can see  
13 the property from my backyard. From my backyard I can  
14 see the grass. I wanted him to know that I can do  
15 that.

16 Secondly, his last comments indicated that  
17 what we see on this site development here may not be  
18 what's going to be built; is that correct? He said  
19 Bryant developed this. I don't know what Bryant is.  
20 Are we getting ready to pass something that we don't  
21 know what it's going to look like when we get done.  
22 That's my question to the commission here or is this  
23 it? His testimony just indicated that it might look  
24 different.

25 MR. NOFFSINGER: The applicant's engineer is  
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1 here tonight, Bryant Engineering, that can certainly  
2 address anything on the site plan. However, the site  
3 plan we're considering tonight and what we expect to  
4 be built is what we're looking at here tonight. If  
5 that site plan changes, they will have to come back  
6 before this board with a new hearing on the  
7 Conditional Use Permit.

8 MR. PELPHREY: Thank you very much.

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

11 MR. BAKER: Jason Baker.

12 (JASON BAKER SWORN BY ATTORNEY.)

13 MR. BAKER: The site plan I prepared will be  
14 what the applicant plans to build.

15 CHAIRMAN: Any questions?

16 MS. RAINES: Can you clarify the entrance and  
17 the exit?

18 MR. BAKER: Well, the parking spaces back out  
19 into the alley. That's very common around the inner  
20 city, to have park directly off the alley. These will  
21 function much like all of those do.

22 CHAIRMAN: Any other comments?

23 MR. PEDLEY: I have a question.

24 On your site plan, Jason, why did you not --  
25 you've got 18-foot parking places on 15-foot alley.

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1 Of course, impossible to turn in there or pull back  
2 out. Why did you not chase those parking places on up  
3 into the lot so you would have adequate space to pull  
4 in.

5 MR. BAKER: I can answer that. It's actually  
6 a -- we're required to do an average 10-foot green  
7 area or landscape buffer adjacent to the residential  
8 areas in order to do that as part of the ordinance.  
9 The calculations of that work out to be the numbers  
10 that you have there. So the intent here is to  
11 maximize the use of a property that is otherwise  
12 somewhat useless to the client. This is to provide  
13 the best use of his property.

14 MR. PEDLEY: But you don't have one parking  
15 place, number three, that effects the landscape area  
16 and the green space.

17 MR. BAKER: Yes. The requirement is to have  
18 an average of 10-foot along each of those boundaries.  
19 Again, this is a calculation to get the maximum number  
20 there.

21 MR. PEDLEY: The next two parking places you  
22 could chase on up into the lot.

23 MR. BAKER: Yes, sir, that is correct. It  
24 does show that as paved.

25 MR. PEDLEY: It does. Why would you do that?

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1 You're talking about 18-feet in a 15-foot alley. It's  
2 very -- most of the time when we get parking lots  
3 we've got 24-feet between parking placing to pull in,  
4 to back out. You're talking about 15-feet here.

5 MR. BAKER: Many cases, you know, alley  
6 parking is often times very tight. Again, that's the  
7 assumption we made here. Those parking spaces, if the  
8 board felt like that was necessary, I'm sure the  
9 client would.

10 MR. PEDLEY: It is tight. That was one of the  
11 concerns of the adjoining property owners. How can  
12 you get in and out of there. The lady spoke on that.

13 MR. BAKER: Again, the plan was developed  
14 based on providing maximum utilization of a piece of  
15 property that's otherwise fairly useless to the  
16 client.

17 MR. NOFFSINGER: Mr. Chairman, if I might.  
18 Mr. Pedley, if I might interrupt.

19 The Staff is telling me that the landscape  
20 buffer between residential and residential where you  
21 have the parking lot is not 10-feet. It's 3-feet.  
22 That's what I thought it was. I thought what you were  
23 trying to do is maximize the green space.

24 Now, you laid this plan out. I don't think  
25 I'm wrong. I believe it's a 3-foot wide buffer

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1 instead of a 10-foot.

2 MR. BAKER: It doesn't change the number of  
3 parking spaces we can get. That's the assumption we  
4 made.

5 MR. PEDLEY: But it does reduce the minimum of  
6 your green space where in reality you could chase that  
7 number three on up in there deep, which it needs to be  
8 done.

9 Also, a 6-foot fence on two sides.

10 My question is: Would the applicant be  
11 willing to increase those trees since pine trees give  
12 more buffer, more compatible with the neighbors.  
13 You've got a 6-foot fence.

14 MR. NOFFSINGER: Mr. Pedley, they're showing a  
15 6-foot high continuous element. They're not saying  
16 it's going to be a fence. It could be a shrub row.  
17 They're just saying it's going to be a 6-foot high  
18 continuous element.

19 MR. PEDLEY: It says it's a 6-foot solid  
20 element.

21 MR. DYSINGER: My site plan says deciduous  
22 trees. I mean it says actual "tree."

23 MR. NOFFSINGER: Excuse me. The site plan I  
24 have shows 6-foot high continuous element. Then the  
25 trees that are shown, there are trees shown.

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1 MR. DYSINGER: I've got. Every 40 feet.

2 MR. NOFFSINGER: I'm just speaking of the  
3 element, the actual buffer element says continuous  
4 element. Does not say fence or solid. It just says  
5 continuous element.

6 MR. PEDLEY: I understand that. Normally if  
7 it is solid, it's normally a fence.

8 MR. NOFFSINGER: That's correct, yes.

9 MR. PEDLEY: I'm just asking for some more  
10 buffer and more green space such as 6 or 8-foot pine  
11 tree every 10-along the fence on the property owner  
12 side.

13 MR. BOSLEY: I'm sorry, you're asking, am I  
14 willing to add additional trees? Is that what your  
15 question is?

16 MR. PEDLEY: The question is we've got a  
17 6-foot solid element. Normally that is a fence. I'm  
18 looking for green space, green. My normal buffer in  
19 all of the developments I do I put a 6-foot fence and  
20 then I put 8-foot pine tree every 10-feet. You really  
21 have a good buffer. It enhances the neighborhood. It  
22 makes the neighbors, put the pine trees on the outside  
23 of the fence on the neighbor's side. It will give  
24 them perfect screening. It will enhance the  
25 neighborhood. It's not big bucks to you. I'm asking

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1 you that question. Are you willing to do that? Also,  
2 that Number 3 parking place, are you willing to chase  
3 it on up in there?

4 MR. BAKER: Let me explain to him the parking  
5 space.

6 MR. NOFFSINGER: While, they're explaining  
7 that, Mr. Chairman. I would suggest that you take a  
8 look at parking space Number 3 in terms of sight  
9 distance and trying to back out on to that alley  
10 because you're going to have a fence possibly all the  
11 way to the property line. That's where your sight  
12 visibility is going to be a problem. It might be that  
13 you should eliminate space three all together due to  
14 the proximity of that fence.

15 MR. PEDLEY: To remedy that you can cut that  
16 solid element back a little bit, but an 18-foot space  
17 with a vehicle in it I would say a lot of times would  
18 be, back of it would be in the alley. 18-feet is not  
19 very much to park a lot of vehicles.

20 MR. NOFFSINGER: You're going to have a tough  
21 time seeing. The applicant is required to have a  
22 6-foot element all the way to the property line. So  
23 it would take a variance to reduce that fence height.

24 MR. PEDLEY: As far as sight, you could  
25 shorten the fence at that point a few feet so you

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1 wouldn't be blocking.

2 MR. NOFFSINGER: You could, but the ordinance  
3 says it goes to the property line.

4 MS. MASON: Mr. Chairman, I'm a little  
5 confused because it says a 6-foot high continuous  
6 element. Does that mean it is a fence?

7 MR. NOFFSINGER: No, ma'am.

8 MR. BOSLEY: We are planning on putting a  
9 fence and landscaping. I don't know if that helps or  
10 hurts.

11 MR. PEDLEY: I didn't understand what you  
12 said.

13 MR. BOSLEY: Our intent is to have a fenced  
14 area on the outside and also to have landscaping along  
15 with that.

16 MR. PEDLEY: What I'm seeing you have a 6-foot  
17 high fence, and it doesn't say 6-foot. It says,  
18 6-foot solid element. That could be trees or  
19 anything. As long as it is solid.

20 MR. PEDLEY: Mr. Chairman, I think the  
21 applicant was just attempting to clarify what his  
22 plans were because some of the board had some  
23 questions about that. I don't think, correct me if  
24 I'm wrong.

25 MR. BOSLEY: That's correct. I'm just trying

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1 to answer the question.

2 MR. NOFFSINGER: Mr. Chairman, again, it's a  
3 6-foot high continuous element. The plan does not  
4 indicate a solid element. The applicant also has  
5 included the 6-foot high element as an accommodation  
6 because the ordinance only requires a three-foot high  
7 element. So I want to make sure, if you're heading  
8 toward approval that you attach a condition that  
9 states specifically what you want to see in terms of  
10 screening. That be if it's a 6-foot high solid fence  
11 with pine trees however so often. You need to  
12 specifically state that because I think we're mixing a  
13 lot of things here and I want to make sure everyone  
14 understands the minimum ordinance requirements, 3-foot  
15 wide buffer with 3-foot high element and one tree per  
16 40-feet. That's the minimum. That's what they have  
17 to meet.

18 Back to what I was getting at on that fence  
19 height. A 3-foot high fence right at the property  
20 line would probably be better suited and then going up  
21 to a 6-foot high fence that would go on with the  
22 fence. We just need to make sure that we can see  
23 coming out of there and that goes from a 3-foot up to  
24 a 6-foot, if that's what you approve.

25 MR. PEDLEY: My concern, Mr. Pelphrey and Mr.  
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1 Postlewaite is not wanting to look at that parking  
2 lot. They don't want to see that parking lot. About  
3 the only way you can do that is with a fence and some  
4 good pine trees. If you want to do it, you want to do  
5 it right. If you want to put the minimum on it, do  
6 that. Mr. Pelphrey and Mr. Postlewaite does not want  
7 to look out there and see a parking lot.

8 CHAIRMAN: You make a motion?

9 MR. DYSINGER: Mr. Chairman, at the risk of  
10 confusing this matter further, what we seem to be  
11 heading towards or asking the applicant to do is to  
12 come up with some contraption that will not allow  
13 people to see past it from one side and then asking  
14 him to put in some sort of situation so that people  
15 can see through it from the other side so that they  
16 can back out of the alley. I'm afraid that we're  
17 getting maybe a hair far field in terms of what this  
18 application is trying to accomplish. Perhaps I'm  
19 wrong. There's no way -- first let me say that the  
20 type of space as described on an alley is not unusual  
21 in downtown Owensboro. I live on Bolivar Street and  
22 we have quite a lot of it and we somehow manage to  
23 make due for 100 years now or so.

24 I'm afraid that we're putting the applicant in  
25 a difficult position. I'm not trying to be

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1 troublesome, Ward, but I just want to make sure that  
2 we maintain some clarify because this gentleman has  
3 complied with a great deal of expense to meet what  
4 we're may be about to do.

5 MR. PEDLEY: Let me say this: I've been a  
6 developer for 50 years. I always put pine trees and I  
7 always put a fence. In the last 12 years I've set  
8 over 1,000 pine trees. Most of them 20, 30 feet high,  
9 and I'm getting ready to set another 250 pine trees.  
10 I don't have to set any of those pine trees. I can do  
11 what this thing saying here. Put something up, a tree  
12 every 40 feet. I just believe for environmental and I  
13 believe for the neighbors, you know. This is a  
14 business. What I do is a business and I spend money.  
15 I spend major money I don't have to spend. It's the  
16 same thing we had last month. I tried to give those  
17 people a fence and a pine tree and I got shot out.  
18 Now they have nothing. They have absolutely nothing.  
19 That's where I am. That's what I'm doing. Let's go  
20 at it.

21 MR. DYSINGER: I don't disagree with those  
22 goals. I'm certainly well aware of everything you've  
23 done over your career and salute you for it. We just  
24 seem to be talking about screening on the one hand and  
25 then visibility on the other and I want to make sure

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1 that the applicant is not caught in-between these two  
2 allotable goals.

3 CHAIRMAN: Mr. Bosley, would you agree to put  
4 greenery all in front and then a fence on it too?

5 MR. BOSLEY: Yes, absolutely.

6 CHAIRMAN: We put that condition in the  
7 application and you will be satisfied with it?

8 MR. BOSLEY: Yes, sir, I will.

9 CHAIRMAN: Good deal.

10 Any other questions of the applicant?

11 (NO RESPONSE)

12 CHAIRMAN: Opposition have any other  
13 questions?

14 It's not stating everything over again?

15 MR. POSTLEWAITE: No.

16 CHAIRMAN: Come forward and state your name.

17 MR. POSTLEWAITE: My name is Gary Postlewaite.

18 I would just ask you to, I'm an architect. I've been  
19 doing this stuff for 37 years too.

20 The three spaces that are backing out into a  
21 15-foot alley, there's no way on God's green earth  
22 that you can do that and back out there safely. It's  
23 going to be a dangerous situation for somebody. It's  
24 not dangerous for me. I'm not going to park there.  
25 I've got a personal opinion. I don't want a parking

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1 lot there, but that's my personal viewpoint. I don't  
2 see how a commission can vote to do something like  
3 that that's very very dangerous. I'll quit at that.

4 CHAIRMAN: Board member have any other  
5 comments or questions now?

6 (NO RESPONSE)

7 CHAIRMAN: I think we've passed it pretty  
8 good. I'll entertain a motion to dispose of the item.

9 MR. PEDLEY: Mr. Chairman, I'm going to make a  
10 motion to approve it based on it is a compatible use  
11 in the neighborhood and it won't have an adverse  
12 influence on the future development.

13 I put the condition on it that that fence be a  
14 6-foot high fence on both sides and then a 6-foot pine  
15 tree every 10-feet along that fence on the property  
16 owner's side of Pelphrey and Postlewaite. If  
17 necessary, to cut the fence back at the alley for the  
18 sight vision at that point. Mr. Noffsinger says it  
19 has to go to the property line, but it could be lower  
20 at that point a few feet.

21 MR. NOFFSINGER: Three feet.

22 MR. PEDLEY: That's necessary to lower it down  
23 to 3-feet high, 10-feet off the alley, then we'll put  
24 that condition in there to. That's my motion and  
25 that's my condition.

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1 MR. DYSINGER: Second.

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

5 (NO RESPONSE)

6 CHAIRMAN: Staff have any other comments?

7 MR. NOFFSINGER: No, sir.

8 CHAIRMAN: The applicant, you understand what  
9 the conditions are that were stated, you and Mr.  
10 Baker?

11 MR. BOSLEY: Yes, sir, I understand and we  
12 agree with them.

13 CHAIRMAN: And you agree and understand?

14 MR. BOSLEY: Yes, sir. I agree and  
15 understand.

16 CHAIRMAN: Thank you.

17 All in favor raise your right hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries.

20 Next item, please.

21 ITEM 4

22 926 Maple Street, zoned I-1 (Postponed from the August  
4, 2011 meeting)

23 Consider a request to revoke a Conditional Use Permit  
in order to operate an outdoor storage facility

24 approved at the April 7, 2011 OMBA meeting.

Reference: Zoning Ordinance, Article 8, Section 8.2L8

25 Applicant: River City Industrial Services, Inc.

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1 MR. NOFFSINGER: Mr. Chairman, at the last  
2 meeting there was considerable testimony given. The  
3 applicant presented a letter stating that they would  
4 have all of the items corrected. The applicant is  
5 represented by counsel here tonight. I think you  
6 should hear from the applicant's counsel.

7 MR. SILVERT: State your name, please.

8 MR. WILSON: Bill Wilson.

9 MR. SILVERT: You're sworn.

10 MR. WILSON: We had three conditions we were  
11 to meet and that one was amended an final, I think  
12 it's called amended final development plan. That has  
13 been submitted by Don Bryant.

14 We were to comply with a 10-foot buffer area  
15 where we were cited to be in violation. That has now  
16 been determined to been an erroneous citation. We  
17 were in compliance with it all the time. It was  
18 measured from inside of the fences when the property  
19 line went out another two feet or so.

20 So basically we've been here two or three  
21 times now based on what was initially an erroneous  
22 citation. I think that's accepted by everybody now  
23 that it is in compliance.

24 The last thing was a gate. Fifty some odd  
25 foot gate. There was a gate, but it was just an iron

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1 thing. I was hoping we could get a Variance for that.  
2 Found out we could not. So I had delivered to the  
3 office yesterday the receipt from Lowe's. We already  
4 paid \$3,400 for the gate that is being constructed as  
5 we speak. In addition to that \$3,400 we paid \$800  
6 apiece for two posts that it will go on. So we've got  
7 \$5,000 expended right now in materials for that gate.

8 So I don't know what else we can do to satisfy  
9 the terms that were put before us. The primary one  
10 being the buffer area which was not right.

11 So we are in compliance as far as I'm  
12 concerned and I think this commission should be  
13 concerned 100 percent plus. Would ask that that be  
14 withdrawn.

15 MR. PEDLEY: When you were here last month you  
16 were talking about an 18 inch variance. Has that been  
17 corrected? Supposed to be ten foot.

18 MR. WILSON: We needed a variance because we  
19 thought we had a problem. Our engineer got out there  
20 and checked it out. We were cited for something that  
21 was not a problem. That's in the record also.

22 MR. PEDLEY: It was not a problem. You do not  
23 need a variance?

24 MR. WILSON: No. We don't even need the  
25 variance.

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1 MR. PEDLEY: Is that correct, Mr. Noffsinger?

2 MR. NOFFSINGER: That is correct.

3 CHAIRMAN: Staff have any other comments?

4 (NO RESPONSE)

5 CHAIRMAN: Board members have any?

6 MR. PEDLEY: I do. I would like to bring Mr.

7 Mischel to the podium, please.

8 MR. SILVERT: Would you state your name,

9 please?

10 MR. MISCHEL: Jim Mischel.

11 (JIM MISCHEL SWORN BY ATTORNEY.)

12 MR. PEDLEY: Mr. Mischel, has that been  
13 inspected on a regular basis? Since we were here last  
14 month, has that been inspected for any kind of  
15 pollution or anything running out on the sidewalks or  
16 food or anything or smell or anything? Has there been  
17 any inspection since we were here?

18 MR. MISCHEL: I've been out there myself. I  
19 can't speak for Air Quality. At the last meeting  
20 there was a question about mosquitos and a problem  
21 with those. I was asked to check in. I called the  
22 health department and talked to David Miller. He made  
23 two inspections. He said he couldn't find any  
24 problems. He would keep an eye out on it. He said he  
25 would call me if they found a problem, but I never got

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1 a call from him.

2 The other, there was a question about the  
3 fencing. I think a neighbor said that they thought  
4 the fence had to be a solid fence with slats in it.  
5 That was the motion. It just said to comply with the  
6 screening requirements of the zoning ordinance. So  
7 what they have is okay. The screening is okay except  
8 for the fence, the gate that they've got on back order  
9 I guess is what they've done at Lowe's.

10 MR. PEDLEY: Has there been any calls or any  
11 correspondence in the planning office or complaints in  
12 the past month?

13 MR. NOFFSINGER: I'm not aware of any.

14 MR. MISCHEL: I haven't had any myself.

15 MR. PEDLEY: Mr. Wilson, I've been out there  
16 three times since we were here before. About four  
17 days after we were here before I went out and  
18 inspected that property. On the Maple Street side  
19 next to the warehouse, next to the gate, was a big red  
20 dumpster there. One of those big red dumpsters. I  
21 walked around the entire lot. I looked at everything  
22 I was trying to look for. There was water, oily  
23 leaking stuff leeching out of the back of that  
24 dumpster. Out of the tailgate of it. It was running  
25 through the weeds. It was running across the parking

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1 lot. It was oily. It was a mess and it was a smelly  
2 mess. That cannot be permitted. That's one of the  
3 things that was in the condition.

4 MR. WILSON: We're addressing matters of that  
5 nature, Mr. Pedley.

6 MR. PEDLEY: It must absolutely be corrected.  
7 We're talking about an environmental thing. We're  
8 talking about a health issue of perishable goods  
9 leaching out onto the asphalt. Water coming out.  
10 Water puddles. Kids get out there playing in it.  
11 We're talking about bacteria. It's a very very  
12 dangerous thing. It's a health issue and it  
13 absolutely must be stopped.

14 MR. WILSON: We're being addressed. We're  
15 addressing it.

16 MR. PEDLEY: I can assure you I'm going to be  
17 out there at least every week or two. I'm going to be  
18 looking at it.

19 MR. WILSON: There are a lot of folks who are  
20 doing that. We know that.

21 MR. PEDLEY: I know what I'm looking at. If I  
22 see that again, I'm going to be favor of revoking  
23 this. That's all I've got to say.

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

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1 MR. DYSINGER: I'm interested in Mr. Pedley's  
2 statement and counsel's statement back to you.

3 Can you talk about what you're doing to  
4 address that?

5 MR. WILSON: We just got some information from  
6 Frankfort in the last couple of days, from  
7 Madisonville in the last couple of days. I haven't  
8 addressed it yet. It doesn't have anything to do with  
9 the issues that we have with this commission.

10 Yes, we have those issues. Mr. Pedley is  
11 right and we are going to have to address them.  
12 They're very serious issues. We know that. It really  
13 doesn't have to do with this Conditional Use Permit.  
14 It's matters that we've got to address and we're in  
15 the process of doing it. We're just getting started.

16 We've got two. One from the Division of Waste  
17 Management. One from the smell. The other division.  
18 Everything is with the Division of Environmental  
19 Protection.

20 One came back yesterday saying they've been  
21 out there last week. They had neighbor complaints.  
22 They were out there last week and tested everything  
23 and it was fine.

24 The other one said, was from the same division  
25 but a different department in that division. Had to

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1 do with the leakage and that's what we're addressing  
2 now, what you're talking about.

3 MR. PEDLEY: It must be stopped.

4 MR. WILSON: We know it. We know what the  
5 serious consequences are if it isn't. Real serious.  
6 So we're addressing that.

7 MR. DYSINGER: I don't know that I agree that  
8 it's not connected to this issue. A Conditional Use  
9 Permit, part of the reason, part of the conditions  
10 that lead us to grant them in the first place is the  
11 uses can be integrated into the neighborhood. What  
12 Ward describes and what you seem to admit is going on  
13 I don't know that it does.

14 MR. WILSON: No, sir, I'm not admitting it's  
15 going on. I'm admitting we've received a letter as a  
16 result of a neighbor's complaint and a visit from  
17 that. It may well be going on. I haven't been able  
18 to address it yet. I'm admitting it is in process. I  
19 don't know what stage it's at. It's very early.  
20 We're just getting started. I just got the letter  
21 yesterday.

22 MR. NOFFSINGER: Mr. Chairman, one of the  
23 conditions to the Conditional Use Permit was that any  
24 notices of violation regarding the seepage or odors  
25 and whatnot, that it be corrected immediately. So

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1 although that was not one of the conditions that the  
2 Staff had raised in terms for revocation of the  
3 Conditional Use Permit. That is certainly one of the  
4 items you may look at to revoke the Conditional Use  
5 Permit. That's something that we just learned here  
6 tonight. I feel like Mr. Wilson is working on it and  
7 will, but just know we had three conditions before but  
8 that's not to say that this is not an issue pertinent  
9 to the Conditional Use Permit. It certainly is.

10 MR. DYSINGER: Mr. Chairman, counsel has  
11 referenced notification that he received from  
12 Frankfort or Madisonville. Could he go into that  
13 more. Explain what sort of notification, what  
14 agencies we're talking about?

15 MR. WILSON: I'd be glad to.

16 It's from the Energy and Environmental  
17 Cabinet, Department for Environmental Protection,  
18 Division of Waste Management. They sent us a notice  
19 of violation along the lines that Mr. Pedley was  
20 talking about. That exact type thing.

21 Yesterday I received another one. This is not  
22 a notice for violation. This is from the Energy and  
23 Environmental Cabinet, Department for Environmental  
24 Protection. This is the Division of Air Quality.  
25 It's dated August 29th. I just got it yesterday. It

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1 says they went out as a result of a neighbor's  
2 complaint. They received numerous complaints over the  
3 years. Went out on a certain date last week.  
4 Measured it. There are no air quality violations at  
5 this time.

6 MR. DYSINGER: So that one is not a violation?

7 MR. WILSON: It is not a violation. It's a  
8 report of a clean report as a result of a visit last  
9 week because of complaints by the neighbors on the  
10 odor issue.

11 MR. DYSINGER: I understand that.

12 MR. WILSON: So I've got two different ones.  
13 They're out of the same department, but different  
14 divisions. One is air quality one is waste  
15 management.

16 MR. DYSINGER: But the first one you described  
17 is in fact a violation?

18 MR. WILSON: It's a charged, it's an alleged  
19 violation, yes. We have October 3 to respond to that.  
20 We just got it.

21 "By October 3 this material must be stored in  
22 a manner or location that prevents leachage, flies and  
23 potential odor and general nuisance problems." That's  
24 what we're addressing.

25 MR. DYSINGER: So by "addressing" do you mean

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1 that you're fixing the problem or that you intend to  
2 dispute the violation?

3 MR. WILSON: We intend to fix the problem.

4 MR. DYSINGER: So you don't dispute the  
5 violation? I'm not trying to put you on the spot and  
6 I understand you just got it.

7 MR. WILSON: We're going to you try to comply  
8 so it doesn't become a violation. It has a fine of  
9 \$25,000 a day attached to it.

10 MR. DYSINGER: Understanding you just received  
11 it, can you tell me how much time that agency gives  
12 you --

13 MR. WILSON: October 3rd.

14 MR. DYSINGER: -- to correct the problem?

15 Well, I certainly do not want to be the  
16 problem child of the evening, but it seems to me that  
17 the existence of this violation is a new issue, a  
18 separate issue.

19 It appears, Mr. Chairman, that the conditions  
20 that were originally called into question are at least  
21 being addressed. Understanding the gate is on back  
22 order. Staff seems to be okay with that.

23 However, it was condition of the original  
24 permit, and in fact one of the more important ones if  
25 I remember correctly, because it was the biggest

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1 complaint that the neighbors had. It was the biggest  
2 concern that they had.

3 I would be interested in what the other board  
4 members, what their thoughts are regarding this new  
5 evidence.

6 Our counsel or Staff, if you need to jump in.  
7 I don't want to be the one that gets us too many far  
8 field on this particular issues, but it is --

9 MR. NOFFSINGER: Again, the condition was that  
10 any violations of pollution or hazardous nature are to  
11 be corrected immediately. If they're not, it's ground  
12 for revocation. That was the condition you put on it.

13 Mr. Wilson is here tonight. He admits, hey,  
14 we've got a notice of a potential or alleged  
15 violation.

16 MR. WILSON: We think it's already been  
17 addressed.

18 MR. NOFFSINGER: They're going to try to  
19 address it. They're going to address it. It may or  
20 may not be addressed right now. That's something this  
21 board has to determine. All we can give you are the  
22 facts and what the conditions were. Then where you go  
23 at that point is up to you as a board.

24 CHAIRMAN: Any other board member have any  
25 comments?

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1 MS. MASON: I personally wonder if it would be  
2 possible for this board to maybe possibly give him  
3 until the October 3rd deadline or whatever to comply  
4 and then we meet or that we look at it again. It may  
5 be our November meeting.

6 CHAIRMAN: If you can make a motion.

7 MS. MASON: I'm just I'm up for discussion on  
8 it.

9 FATHER HOSTETTER: I have a question I'm not  
10 sure if anybody here can answer it.

11 If there is a judgment that the air quality is  
12 sound, does that have anything to say about the smell  
13 that might be there? Can something smell really bad  
14 and still have good air quality?

15 MR. NOFFSINGER: Yes.

16 FATHER HOSTETTER: That first statement  
17 doesn't say anything about odor. I remember you  
18 saying something in the second one where there was a  
19 violation found about potential odor. The question of  
20 odor is relevant. Okay.

21 MR. SILVERT: I might suggest that the board  
22 not get into, not try to get into a definition of what  
23 is immediacy and how immediately something was dealt  
24 with. Remember that that's relative when you start  
25 getting into questions of reasonableness and how

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1 reasonable it was were they in trying to address the  
2 immediacy of the problem. In my experience dealing  
3 with the Environmental Protection Cabinet it can take  
4 some time sometimes. They may be immediate in the way  
5 they're dealing with it, but the resolution may take  
6 some time. This board may also want to consider  
7 allowing counsel to keep the Staff updated. Then if  
8 it were aware of a problem bring it back at a later  
9 time, but maybe not require constant coming back and  
10 reporting to this board. That would certainly be to  
11 your discretion to do so.

12 MR. DYSINGER: Mr. Chairman, counsel brings up  
13 a good point. I wonder however the violation actual  
14 -- the second thing I understand is you just being  
15 notified that a complaint was made. I'm not too  
16 concerned about that. Complaints can be made, as I'm  
17 sure they often are about me.

18 The first thing does appear to be an actual  
19 citing of some kind and it has an actual deadline.  
20 One that another government agency within this state  
21 has set a deadline for. Understanding counsel's  
22 caution about trying to define immediacy, that seems a  
23 reasonable deadline to me if another government agency  
24 within the state has said that, if I understand the  
25 violation as you've described it. Is it conceivable

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1 to -- I don't want to postpone again. Is it possible  
2 to find for the defendant - that's not the right term  
3 - with the condition that he produce on or before  
4 October 3rd the certificate or the conclusion of that  
5 other matter?

6 MR. SILVERT: Not to interject too much. The  
7 only reason I caution against that is because those  
8 deadline seems to be fluid. So if you require counsel  
9 to have something by October 3rd, it may be nothing  
10 more than here are the things we've done to address  
11 this, but the Cabinet realizes this is going to be  
12 take more time and we may not have a resolution until  
13 January or February. That's just kind of the nature  
14 of dealing with the regulatory agency.

15 MR. DYSINGER: I do understand that. However,  
16 this was a concern of the neighbors. It was a concern  
17 of all of us too. Because of that one of the  
18 conditions we set that there's violations or a  
19 problem, an environmental problem, that Ward has seen  
20 with his own two eyes. We not only have that  
21 apparently. We have an actual violation from another  
22 government agency that I believe we have to find some  
23 way to pay consideration to. I'm concerned that, you  
24 know, we've arrived at a place where many of us were  
25 afraid we would when this was first passed. That

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1 there is a violation of some kind. I for one, and I  
2 don't necessarily have this answer, but I for one am  
3 not -- I don't want to just disregard that and move  
4 on. I don't think that we can.

5 MR. PEDLEY: What I observed was a neighbor's  
6 complaint is what I observed. What I observed was  
7 environmental. It's a health issue. If that stuff is  
8 out in that parking lot going down. You get a water  
9 puddle. Kids play in it. You're going to come up  
10 with some bad disease and we've got a health issue.  
11 That's an issue you don't need, you do not ignore an  
12 issue like that. You take salmonella, something like  
13 that. One of those kids, you're going to pay big  
14 time. It wasn't what the neighbors said. It's what I  
15 saw. It's come out of the back of that red dumpster.  
16 It's coming through grass. It's flowing across the  
17 sidewalk. It was greasy. It was terrible and it was  
18 smelly.

19 MR. WILSON: And it may be exactly what they  
20 saw. I haven't had a chance to do anything except  
21 read this letter.

22 MR. PEDLEY: And I'm going to be looking  
23 again. I assure you.

24 CHAIRMAN: I think we've hashed it pretty  
25 well. I'll entertain a motion for someone to dispose

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1 of it for the time being or postpone it or whatever we  
2 need to do.

3 MR. PEDLEY: I'm basically in favor of what  
4 Ruth Ann said. I think maybe we should continue this  
5 conditional use permit for another 30 days until you  
6 correct everything that's a problem. If I'm wrong in  
7 doing that, counselor, is this proper form to take?

8 MR. SILVERT: It's within your discretion. I  
9 think that what Ruth Ann said earlier and what  
10 everyone else had said is maybe give them at least  
11 time, the same amount of time that the Environmental  
12 Protection Cabinet had given them to respond. So that  
13 would be --

14 MR. WILSON: She had indicated the first of  
15 November. That would give us time to get the response  
16 and get the ruling on that. We're going to take care  
17 of it.

18 MS. MASON: I would actually prefer to do it  
19 in October, but I understand, I don't know when the  
20 3rd falls as far as when we have our meeting.

21 CHAIRMAN: Next meeting will be October 6th.

22 MS. MASON: But then I understand what  
23 counselor is saying. The fact that it takes a while  
24 for these agencies, and I've dealt with these agencies  
25 before. That it takes a while for them to, but still

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1 it's not fair to the homeowners in that area. So I  
2 still think that we need to look at it and then we can  
3 decide then.

4 MR. DYSINGER: I would certainly -- Ward, did  
5 you actually make a motion?

6 MR. PEDLEY: No, I didn't actually make a  
7 motion. I was just speaking in favor of what Ruth Ann  
8 spoke of.

9 MR. DYSINGER: In that case, Mr. Chairman,  
10 given the findings of the new evidence that was  
11 introduced here tonight regarding an actual violation,  
12 I move that we once again postpone this matter until  
13 the October meeting at which time I would like the  
14 applicant to make a report as to the exact nature --  
15 with the understand you're just now receiving all the  
16 information. The exact nature of that violation and  
17 the disposition of that violation at that time, which  
18 I believe is the 6th of October. If it's held over,  
19 so on and so forth, that's understandable. We'll deal  
20 with that at that time. We have an actual deadline  
21 from another agency. I think we can reasonably expect  
22 to have more information by that time. I move that we  
23 postpone for that reason.

24 MS. MASON: Is it possible to make an  
25 amendment to that in that Staff would on a regular

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1 basis between now and our October meeting check the  
2 property and see if they're seeing what Mr. Pedley had  
3 seen?

4 CHAIRMAN: Would you state in your motion to  
5 have the Staff check it regularly, please?

6 MR. DYSINGER: As far as the things that Ward  
7 is reporting I do not want to put the Staff in a  
8 position to make decisions of health and things that  
9 are better suited to other agencies. What I will say  
10 and what I will amend it to is to ask the Staff to  
11 make some regular visits to check on the status of the  
12 conditions that we've already discussed. The gate and  
13 so forth. The things that would naturally be within  
14 the course of their duties.

15 Mr. Noffsinger, is that not putting you guys  
16 in too much of a --

17 MR. NOFFSINGER: I think Mr. Mischel goes out  
18 there on a regular basis anyway. He's not making a  
19 determination. He's only presenting facts as to what  
20 he sees.

21 MS. MASON: And I didn't mean to make it a  
22 determination. I just mean to check.

23 MR. DYSINGER: Is that amendment --

24 MS. MASON: Yes, that's fine.

25 MR. DYSINGER: Does everybody understand the

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1 motion at this time?

2 CHAIRMAN: Do we have a second?

3 MS. MASON: I'll second.

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

6 (NO RESPONSE)

7 CHAIRMAN: Staff?

8 (NO RESPONSE)

9 CHAIRMAN: Mr. Wilson, you understand where  
10 we're at?

11 MR. WILSON: I understand it and the motion is  
12 acceptable with one thing I'd like the record to show.  
13 I think it said that we had been found, we had  
14 committed a violation. I do not concede that we  
15 committed any violation. We've been charged with and  
16 we intend to address it to make sure it doesn't come  
17 to a fine.

18 CHAIRMAN: So noted.

19 With that all in favor raise your right hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries.

22 ITEM 5

23 609 Wing Avenue, zoned R-4DT

Consider a request for a Conditional Use Permit in  
24 order to construct a 36 foot by 20 foot open air  
pavilion and a 20 foot by 10 foot open air pavilion on  
25 the site with an existing rehabilitation facility.

Reference: Zoning Ordinance, Article 8, Section 8.2C1

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1 Applicant: Boulware Mission, Inc.

2 ZONING HISTORY

3 The subject property is currently zoned R-4DT  
4 Inner City Residential. OMPC records indicate there  
5 have been no zoning map amendments for the subject  
6 property.

7 There have been five previous Conditional Use  
8 Permits approved for this property, the latest  
9 approved in November 2008 for the operation of a  
10 homeless shelter with an occupancy of 90 residents,  
11 providing educational, spiritual, financial, and  
12 substance abuse recovery services to the residents and  
13 to non-residents. The latest CUP approved an access  
14 point on Benita Avenue for emergency vehicles only.

15 With this CUP, the applicant is proposing to  
16 build two open air pavilions, one In the women's wing  
17 area and one in I the men's wing area. All other  
18 items with regards to number of residents, access  
19 points, parking and; landscaping are to remain the  
20 same.

21 LAND USES IN SURROUNDING AREA

22 All surrounding properties are zoned R-4DT  
23 Inner City Residential.

24 ZONING ORDINANCE REQUIREMENTS

- 25 1. Parking - as approved with the last CUP  
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1 and shown on the site plan submitted.

2 2. Landscaping - as approved with the CUP and  
3 shown on the site plan submitted.

4 MR. HOWARD: We would like to enter the staff  
5 report into the record as Exhibit C.

6 CHAIRMAN: Staff, have we had any commence in  
7 the office, sir?

8 MR. NOFFSINGER: No, sir, we have not.

9 CHAIRMAN: Anyone wishing to speak in  
10 opposition?

11 (NO RESPONSE)

12 CHAIRMAN: Applicant have anything would you  
13 like to add at this time?

14 MR. SILVERT: State your name, please.

15 MS. CECIL: Wanda Cecil.

16 (WANDA CECIL SWORN BY ATTORNEY.)

17 MS. CECIL: Thank you for your consideration  
18 of this. We are doing this to help improve their  
19 lifestyle there. With an open area pavilion, if the  
20 whether is bad, they will be able to meet under a  
21 covered shelter. We can have picnics and gatherings  
22 there for them. Again, we thank you for your  
23 consideration.

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

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1 (NO RESPONSE)

2 CHAIRMAN: Staff have any other comments?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Hearing none entertain a motion to  
5 dispose of the item, please.

6 MR. DYSINGER: Mr. Chairman, given the  
7 findings that the use is compatible with current usage  
8 and the surroundings I move we grant the conditional  
9 use permit.

10 MS. MASON: Second.

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

13 (NO RESPONSE)

14 CHAIRMAN: Staff have any other comments?

15 MR. NOFFSINGER: No, sir.

16 CHAIRMAN: Applicant have anything else to  
17 add?

18 MS. CECIL: We just like to thank you.

19 CHAIRMAN: All in favor raise your right hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries.

22 Next item.

23 ITEM 6

24 12419 US Highway 60 East, zoned A-R

25 Consider a request for a Conditional Use Permit in  
order to operate a family cemetery.

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1 Reference: Zoning Ordinance, Article 8, Section 8.2J1  
Applicant: Bertha M. Fullenwider and Martha J.

2 Stewart; Allan Stewart

3 ZONING HISTORY

4 The subject property is currently zoned A-R  
5 Rural Agriculture. OMPC records indicate there have  
6 been no zoning map amendments for the subject  
7 property.

8 This application is to operate a family  
9 cemetery only. With the lot being undersized, the  
10 minimum lot size required in an A-Z zone is 1 acre,  
11 and having no road frontage, no building permits could  
12 be issued for the subject property. The plat creating  
13 the lot will have to show an access easement for the  
14 property since it has no road frontage, the easement  
15 will need to be monumented and the plat will have to  
16 receive approval from the full Planning Commission.

17 LAND USES IN SURROUNDING AREA

18 All the surrounding properties are zoned A-R  
19 Rural Agriculture.

20 ZONING ORDINANCE REQUIREMENTS

- 21 1. Parking - no minimum required.  
22 2. Landscaping - none required.

23 SPECIAL CONDITIONS

- 24 1. Approval of a minor subdivision plat.  
25 2. No building permits shall be issued for

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1 the subject property.

2 MR. HOWARD: We would like to enter the Staff  
3 Report into the record as Exhibit D.

4 CHAIRMAN: Been any comments in the office?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: Is the applicant here and have any  
7 comments?

8 (NO RESPONSE)

9 CHAIRMAN: Anyone wishing to speak in  
10 opposition on this item?

11 (NO RESPONSE)

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

14 MS. MASON: Mr. Chairman, I move for approval  
15 with the findings of fact that it's compatible with  
16 the area since it's a rural area and according to the  
17 zoning ordinance the cemetery is conditionally  
18 permitted and it's agricultural zoned. It will not  
19 endanger the public health and safety. And with the  
20 special conditions that there be an approval of a  
21 minor subdivision plat and no building permit shall be  
22 issued for the subject property.

23 MR. DYSINGER: 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. NOFFSINGER: No, sir.  
5 CHAIRMAN: Hearing none all in favor raise  
6 your right hand.  
7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)  
8 CHAIRMAN: Motion carries.  
9 Next item, please.

10 -----

11 VARIANCE

12 ITEM 7

13 919 Griffith Avenue, zoned R-1A

14 Consider a request for a Variance in order to reduce  
15 the required project boundary for a Planned  
16 Residential Development from 20 feet to 5 feet along  
17 the northeast property line.

18 Reference: Zoning Ordinance, Article 10,  
19 Section 10.432

20 Applicant: Marvin Powers Nunley and Deborah May  
21 Nunley, Co-Trustees of the Marvin P. and Deborah M.  
22 Nunley Trust, U.T.D. January 25, 2001.

23 SPECIAL CIRCUMSTANCES

24 Are there special circumstances that do not  
25 generally apply to land in the general vicinity, or in  
the same zone?

The applicant is proposing to construct A 24  
foot by 24 foot attached garage in a Planned  
Residential Development that was created in 1987.

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1 Because this property is part of a Planned Residential  
2 Development, the lots within this subdivision enjoy  
3 the benefit and flexibility of being smaller than lot  
4 sizes typically permitted in an R-1A zone.  
5 Additionally, the flexibility of a Planned Residential  
6 Development allowed a private drive to access all the  
7 lots which is not allowed in a regular subdivision.  
8 However, there was or is a requirement of a 20'  
9 setback from the project boundary lines that is not  
10 required in a standard subdivision plat in order to  
11 buffer a higher density development from other  
12 adjoining properties.

13 The applicant is requesting to reduce this  
14 project boundary from the required 20 feet to 5 feet  
15 along the northeast property line for the construction  
16 of their attached garage. In a standard subdivision,  
17 the typical side yard setback is 10 feet from the  
18 property line. This request of a 15 foot Variance  
19 would reduce the side yard setback/project boundary  
20 to only 5 feet, which is less than the distance  
21 allowed in a standard development in an R-1A zone.

22 Granting this Variance will alter the  
23 essential character of the general vicinity because it  
24 abuts a residential neighborhood that was developed as  
25 a standard subdivision meeting lot size requirements.

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1 Keeping this 20' project boundary setback will allow  
2 adequate space between the existing standard  
3 neighborhood and this Planned Residential  
4 Development with a private alley, smaller lot sizes  
5 and greater density. Granting this Variance will be  
6 an unreasonable circumvention of the requirements of  
7 the zoning ordinance because by doing a Planned  
8 Residential Development the applicant has already  
9 received the benefits of smaller lot sizes and the use  
10 of a private alley and this development should adhere  
11 to the requirements of Article 10 in order to continue  
12 to enjoy its benefits.

13 **HARDSHIP**

14 Would strict application of the regulations  
15 deprive the applicant of the reasonable use of the  
16 land or create an unnecessary hardship on the  
17 applicant?

18 This lot has already been granted the benefits  
19 of being developed as a Planned Residential  
20 Development maximizing the use of the lot area.

21 **APPLICANT'S ACTIONS**

22 Are the circumstances from which relief is  
23 sought a result of the applicant's actions taken after  
24 adoption of the zoning regulations?

25 The answer is, "No."

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1 FINDINGS:

2 1. It will not adversely affect the public  
3 health, safety or welfare.

4 2. It will alter the essential character of  
5 the general vicinity because it abuts a residential  
6 neighborhood that was developed as a standard  
7 subdivision meeting lot size requirements and keeping  
8 this 20 foot project boundary setback will allow  
9 adequate space between the existing standard  
10 neighborhood and the Planned Residential Development  
11 with a private alley, smaller lot sizes and higher  
12 density.

13 3. It will not cause a hazard or a nuisance  
14 to the public.

15 4. It will allow an unreasonable  
16 circumvention of the requirements of the zoning  
17 regulations because by doing a Planned Residential  
18 Development the applicant has already received the  
19 benefits of smaller lot size and the use of a private  
20 alley and this development should adhere to the  
21 requirements of Article 10 in order to continue to  
22 enjoy its benefits.

23 MR. HOWARD: We would like to enter the Staff  
24 Report into the record as Exhibit E.

25 CHAIRMAN: Any comments filed in the office?  
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1 MR. NOFFSINGER: No, sir.

2 CHAIRMAN: Is there anyone wishing to speak in  
3 opposition of this item?

4 Let me have the applicant first, please.

5 The applicant have any comments?

6 MR. SILVERT: State your name, please.

7 MR. KAMUF: Charlie Kamuf.

8 I represent Debbie Nunley concerning this  
9 Variance request.

10 Ms. Nunley moved in the Griffith Estates in  
11 2002. Some of you know that's been here a long time  
12 it's a cul-de-sac off of Griffith Avenue at 919. Of  
13 course, it's a planned unit development. It consist  
14 of four lots.

15 As you can see from this description, what it  
16 is, is along this north side here they propose a 24 by  
17 24 foot garage. The Variance would be in the project  
18 boundary area, but it would not be in the public  
19 utility easement.

20 The aerial photograph that we have here shows  
21 the property. This will be an important matter that I  
22 will show you. We have a handout that shows that.  
23 That's very difficult for you to read. Let me pass  
24 this out, if I can. Here's a copy of the aerial  
25 photograph.

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1           That will be an important photograph that I  
2 will talk about.

3           As you can see, what it is is that these are  
4 four houses that we have in that particular area.  
5 This one here was originally owned by Penny Smith.  
6 This one here is owned by Dr. Fuqua. This is the  
7 present area that we talk about.

8           This is the proposal that we have. At the  
9 present time her two-car garage she has no direct  
10 entrance from this cul-de-sac. Each of these house  
11 that we have, the one in the front, this one, and this  
12 one, they all have direct access to their garages from  
13 the cul-de-sac. That's what those three arrows that  
14 we have. That's the importance of those.

15           We'll show some pictures here. There's an  
16 eight foot fence that is presently around the property  
17 to the -- this photograph that I show you here, and  
18 I'll pass it around. There will not be any more  
19 impervious surface that we request. That concrete  
20 driveway that you see will be the floor of the  
21 existing 24 by 24 addition. So there will not be any  
22 less green space.

23           In line with what was talked about at the  
24 previous hearing, this shows you the exact buffer  
25 in-between the two areas. The property to the north

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1 is owned by T.A. Smith. That shows that property.

2 Then this is another photograph which shows, I  
3 believe Debbie says, I just asked her, an eight foot  
4 fence that separates the property with screening and  
5 screening and screening. So let me pass those around,  
6 if I can.

7 The first one that I pass around is the one  
8 that shows the impervious surface. There will not be  
9 any more additional concrete in this little unit.

10 Here are the other two.

11 MS. RAINES: Let me interrupt real quick. I  
12 have a question.

13 Is there a garage already right here?

14 MR. KAMUF: Right. There is a two-car garage.  
15 Every house in that unit has a two-car garage. At the  
16 present time Debbie has a two-car garage, but as you  
17 see the entrance is not from, she has no direct  
18 entrance from the cul-de-sac. Instead the garage is  
19 on the side.

20 MS. RAINES: She would come in through?

21 MR. KAMUF: Right here. She comes in right  
22 through here and the garage does not face the  
23 cul-de-sac at the present time. All the rest of them  
24 do at the present time. Her proposal would show and  
25 would be on that concrete area that we have there.

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1 MS. RAINES: She has access from the  
2 cul-de-sac?

3 MR. KAMUF: That's correct.

4 MS. RAINES: Okay.

5 MR. KAMUF: Before I could file this Variance  
6 request, our office had to certify that we did have  
7 all of the consent of all the four people in the plan  
8 unit development. That is Betty Barnard. She owns  
9 the property in the front. Dr. And Mrs. Fuqua own the  
10 property next-door. Ms. Greenville owns the property  
11 in the middle.

12 Now, what basis do I have in asking for this  
13 variance?

14 First of all, if you look to the rear here,  
15 let me show you this exhibit.

16 On 12/11/2003, Debbie has already had a  
17 request for a Variance. A Variance has been approved  
18 in this unit. Here right along the north boundary  
19 line in 2003 she had a Variance request. That was  
20 right after she moved there and the Variance was  
21 approved by this board. So we have strong precedence  
22 for that.

23 In addition, and this is a critical point. In  
24 searching the records of the -- we did a Google Earth  
25 search and that's how we prepared this map.

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1 In finding that I noticed that there was an  
2 addition. This is in 2002 Penny Smith built an  
3 addition on to the property that we show. I think  
4 it's 931. That's that little yellow sheet that I show  
5 you there. That was an enclosed structure that was  
6 built in 2003. We found that information and there  
7 was an addition made on to that house in 2002.

8 Here are the pictures as to what it looks like  
9 today. The reason that we know that I searched the  
10 records at the PVA office. The PVA office shows there  
11 was an addition on to that house in 2002. Here is  
12 what the addition looks like. This is an enclosed  
13 structure. Here are three pictures that shows it one  
14 from one side, another one from the other side. So we  
15 think that's important. We think we have precedence.

16 One, we've already had a Variance in the  
17 neighborhood.

18 Two, there was an addition made in 2002.

19 Prior to the time that we got the variance for  
20 the structure to the rear that I showed you on this  
21 particular plat. Here is what that structure looks  
22 like. Those are three. All of those shows the  
23 structure that was built by Ms. Penny Smith in 2002.

24 MR. DYSINGER: Counsel, the Variance you refer  
25 to is the original Variance to allow for the density?

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1 MR. KAMUF: 2003. This one here is a  
2 structure -- let me tell you how we found that. We  
3 found that by googling this property and we were going  
4 to prepare this aerial. The engineer and myself  
5 looked at it and said, well, there's already a  
6 structure on one of them. Then I ran over to the PVA  
7 office and there wasn't an improvement made. I think  
8 the year was 2002. Where this structure that I show  
9 you was made. So this is nothing new in that area to  
10 have some type of structure that is within the  
11 boundary. It's 8 foot off of the setback of the  
12 property to the rear of 931 of that cul-de-sac.

13 Now, let me say this: The intent of the  
14 regulations are met by the buffer and screening inside  
15 this development.

16 Debbie Nunley has hired an architect. The  
17 main purpose of the architect is to be sure that we  
18 don't change the character of that neighborhood.

19 Was explained by Bryant. There's a 10 foot  
20 setback in an R-1A community or a zoning. There will  
21 is a 20 foot setback in the Griffith Estates  
22 development.

23 However, the development that we have, Ward,  
24 is unique. The screening buffers that you see, the  
25 fencing all of this is made to meet the requirements

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1 of the zoning ordinance.

2 Here is the second thing. The intensity of  
3 the existing vegetation, you can see that. Fencing  
4 assures the neighbors that they will be protected and  
5 that the development will maintain the cluster of the  
6 community and the characteristics.

7 The proposed garage will not alter the cluster  
8 character of the general vicinity. In as much as the  
9 side yard lot shares what? Trees, fence and hedge  
10 buffering with it adjoining to the east and that the  
11 essential character of this neighborhood will be  
12 maintained. We preserve the character of the  
13 neighbored. We hired an architect. The architecture  
14 in this, the changing of that garage will be the same  
15 that's in the neighborhood and nothing will change.

16 In other words, this should not have any  
17 affect on any of the neighbors.

18 Here are two other photographs that show the  
19 area. This shows in-between the neighborhood. Mr.  
20 Smith owns the property on the north and on the east.  
21 That's what it looks like from Griffith Avenue.

22 The third picture that we show, if you can see  
23 this. Right here is Mr. Smith's, I'll put a big X  
24 right there. That's a party house for the swimming  
25 pool. Here is where Mr. Smith lives on this one here

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1 that we show here. In other words, it will change  
2 nothing in-between there whether it be vegetation, the  
3 growth, the trees, the fence. The 8 foot fence will  
4 remain. Nothing will change.

5 So Debbie as she sits here, you can see that.  
6 This is what it looks like. That's the garage or the  
7 party house to the rear. This one over here that you  
8 see shows the house to the rear. Whatever development  
9 that we have you can see comes across here and the  
10 house that she has, the main part of the house is up  
11 to the front part.

12 Let me pass those around.

13 We don't want to alter the neighborhood. If  
14 it gets down to it, probably we could put a one car  
15 garage there. It would be tough, but that wouldn't be  
16 in accord with the character of the neighborhood. All  
17 of the other houses, the other four have two-car  
18 garages. We want to maintain that.

19 Let me conclude by saying that there is no  
20 concrete, there will be no more concrete than what we  
21 have. Debbie is asking for no more than what has  
22 occurred in the neighborhood previously. Precedence  
23 has been established by, one, the variance in 2003, by  
24 the encroachment of 2002. The garage we think will  
25 blend in with the rest of the garages in the

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1 neighborhood.

2 Now, Debbie is here to tell you, to give you  
3 the information that she has as far as how this will  
4 blend in to the character of the neighborhood.

5 CHAIRMAN: State your name.

6 MRS. NUNLEY: My name is Deborah Nunley.  
7 (DEBORAH NUNLEY SWORN BY ATTORNEY.)

8 MRS. NUNLEY: Having been involved with real  
9 estate for over 30 years I understand the importance  
10 of continuity, of privacy. That is certainly  
11 something that I want to stay within that realm.

12 In fact, upon moving into this home my  
13 neighbor to the east had constructed a large fence. I  
14 think an 8 or 10 foot fence. I had talked to him  
15 about erecting some shrubs there. Tall. Now, I don't  
16 use pines, but I use upright hollies because it's a  
17 small space. Those hollies are now 20 foot tall and  
18 shield and buffer the back of my house from the  
19 additional home that they have outside their pool.

20 It's my thought as I add this additional space  
21 to continue those hollies. Right now they're the same  
22 height of the fence. I would like to plant those and  
23 again have a hedge type situation where it's 20 foot  
24 high. That's appropriate. I agree with you, Mr.  
25 Pedley. That kind of situation green space it key and

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1 it offers a lot of privacy. So that's where I'm  
2 headed with this.

3 Right now I have a side load garage. That  
4 will be converted into more living space. It would  
5 certainly add to the value of those homes in that  
6 area.

7 The garage would be then moved out onto that  
8 impervious surface. Again, not compromising any more  
9 green space. And I would have an entrance from the  
10 front as do my other neighbors.

11 In talking with each of these people who are  
12 part of that association, they're very much in favor  
13 of it. They signed immediately. I feel comfortable  
14 with what I'm doing.

15 Having been in real estate and have a  
16 reputation in that, I don't want to compromise that  
17 certainly with my neighbors who plan on being there  
18 for a long time.

19 CHAIRMAN: Any board member have any questions  
20 of the applicant at this time?

21 MR. DYSINGER: Applicant or counsel either  
22 one.

23 Mr. Chairman, when counsel refers to the  
24 Variance of 2003, can somebody tell me what that was  
25 for?

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1 MRS. NUNLEY: On my particular home?

2 MR. DYSINGER: Yes, ma'am, if you can answer  
3 that.

4 MRS. NUNLEY: I had remodeled the interior.  
5 Marvin Purcell was the remodeler and he's going to be  
6 doing the work on this project, if we get to that  
7 point.

8 He suggested -- there's was a small room in  
9 the back, that that area be bayed out. So it was just  
10 basically like a bay type structure. Just to make it  
11 more of a room instead of a small rectangular area.

12 The woman before me was an elderly woman and  
13 she used the small space as a card room. It had a  
14 fireplace in it. It just needed to be expanded  
15 slightly. So he put that in the back. It's like a  
16 bay window area.

17 MR. DYSINGER: On the very back of the house?

18 MRS. NUNLEY: It's on the very back, right?

19 MR. DYSINGER: And that was a Variance into  
20 the setback?

21 MR. NOFFSINGER: Yes. Questioning is very  
22 good. We probably need to get Mr. Riney up here to  
23 address this or perhaps Mr. Kamuf.

24 Mrs. Nunley, I think what you're explaining is  
25 an addition to your home.

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1 MRS. NUNLEY: Right.

2 MR. NOFFSINGER: Mr. Kamuf has stated to this  
3 board that a Variance was approved in 2003. Now, I'm  
4 unaware of a Variance being approved in 2003. The  
5 Staff is unaware of that. Mr. Silvert went to the  
6 agendas for the Board of Adjustment in 2003 and we  
7 find no variances. So I'm most interested in  
8 understanding what this Variance was Mr. Kamuf is  
9 speaking to and who approved this Variance. Because  
10 you've just described an addition to your home that  
11 what we show would be in compliance with the setbacks.  
12 Now, I hope we're not confusing an amended development  
13 plan with a Variance because that's not a Variance.

14 MR. KAMUF: I represented her before this  
15 board.

16 I didn't bring my file on that previous  
17 Variance, but I came over here. Wait a minute. Jim  
18 did it. Hold on a second.

19 What this is, he showed this on this old  
20 development plan. I was over here at this board and I  
21 got a Variance from this board to put that structure  
22 to the rear of that property on that date, 2002. It  
23 says approved 12/11/2003.

24 MR. NOFFSINGER: What was approved in 2003?  
25 Mr. Mischel has a drawing that shows what was

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1 just described as meeting all setbacks in this  
2 development.

3 MR. MISCHEL: I have the folder from the  
4 meeting of 12/11/2003. At that meeting it was not for  
5 a Variance. It was to amend the final development  
6 plan. She did a 49 square foot addition.

7 MR. KAMUF: Yes, 49 foot addition.

8 MR. MISCHEL: It meets the 20 foot buffer  
9 requirement, but because there is a development plan  
10 on those four houses, they had to amend it and that's  
11 what they did. So variance wasn't requested.

12 MR. NOFFSINGER: So please let the record show  
13 this board did not consider a Variance at this  
14 location or any other Variance at this development.  
15 What was considered on that date was an amendment to a  
16 development plan which was in line with the adopted  
17 regulations and went before the Planning Commission.

18 MR. KAMUF: Mr. Riney says that that's  
19 correct. I stand to be corrected, and I apologize.

20 In any event, whether that was approved or  
21 not, the photos that I show you there was, that was  
22 inside the project boundary line and it's an 8-foot  
23 encroachment into that boundary line that we see on  
24 the west side of that property, and that's what those  
25 three photographs show. Mr. Riney can tell you. He

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1 measured that. The reason, again, that I found it is  
2 that we were looking at this map on Google Earth and  
3 we found it. Then I checked with the PVA office and  
4 they found on that particular day that there was a  
5 remodeling done on that particular encroachment.

6 MR. DYSINGER: I have a question about that  
7 too, Mr. Chairman.

8 Was a Variance sought and granted?

9 MR. KAMUF: I don't have any idea. I can  
10 assure you that the PVA records, I've got them, shows  
11 that there was remodeling done on that particular day.  
12 This development, that was not on this property in  
13 1986 when this property was developed.

14 MR. DYSINGER: I understand. We've seen no  
15 evidence that that structure, that addition is in  
16 compliance. The fact that someone else got away with  
17 something, and I don't know what the statute of  
18 limitations is on these things, but you may not have  
19 gotten away with it, would necessarily mean that a  
20 neighbor could do the same.

21 MR. KAMUF: What we're showing is that the  
22 neighborhood, everybody within that planned unit  
23 development has been, they are in agreement with this  
24 and there have been other encroachments in the area as  
25 I showed you with those photographs.

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1 MR. DYSINGER: Right. I have a couple of more  
2 questions about those as well, Mr. Chairman.

3 MR. MISCHEL: I might be able to clear that  
4 up.

5 MR. NOFFSINGER: Let him go on because I have  
6 questions as well, Jim.

7 MR. DYSINGER: The pool house or the party  
8 house that you refer, Mr. Smith's, do you when that  
9 structure was constructed?

10 MR. KAMUF: I have no idea.

11 MR. DYSINGER: So it could conceivably predate  
12 the zoning ordinance?

13 MR. KAMUF: I don't know about that.

14 MR. NOFFSINGER: Mr. Chairman, if I may.

15 That structure meets the requirements of the  
16 zoning ordinance, I believe, because it's a detached  
17 structure on a regular subdivision lot that meets the  
18 minimum side yard setback. That's not an  
19 encroachment.

20 MR. KAMUF: I didn't infer to say that. I'm  
21 trying to show you where that's located as far as the  
22 location of our Variance request of 24 by 24 garage.  
23 It's in the back of property and the house is in the  
24 front. So it shouldn't have any affect on the living  
25 of the house.

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1 MR. DYSINGER: Right. I understand why you're  
2 citing it. If it sounded as though I was drawing an  
3 inference from what you said, forgive me.

4 The things that I look at when granting a  
5 variance, there's a couple of things. There's  
6 precedence. There's nature of the neighborhood,  
7 character of the neighborhood, so on and so forth. If  
8 something is doing what your client would like to do  
9 but it's in compliance, it does not necessarily mean  
10 that the zoning plan should be deviated from. I'm  
11 just trying to establish why that structure is there.  
12 For the same reason why I was trying to establish the  
13 addition. Don't read too much into these questions at  
14 this point. That's why I asked that.

15 Just one more. This one is probably for  
16 Staff, whichever member of Staff wants to tackle it.

17 I know some of the reasons for setbacks. If  
18 possible, could you just talk about why there are  
19 setbacks. Because I think there's a couple of reasons  
20 why you have setbacks that may be germane here and  
21 others that are not. I want to make sure I'm on the  
22 same page.

23 MR. NOFFSINGER: Right. Generally speaking  
24 it's to preserve the health, safety and welfare of  
25 those that live in and around the area. For example,

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1 in this particular development you had a lot that had  
2 limited frontage on Griffith Avenue that you've really  
3 built one house on. However, in our zoning ordinance,  
4 we have the flexibility. If you have at least an acre  
5 of ground, you can do a planned residential  
6 development. You can even do private alleys or  
7 private streets. You take advantage, you can create  
8 as many lots. As you have in this example. For every  
9 10,000 square feet, you can build one house. What  
10 they did, they were able to build four homes on this  
11 property. In the planned residential development  
12 internally, you have reduced setbacks. You can even  
13 build a common wall. You can have zero setback on one  
14 line and then you would have to have maybe a 5 or a 10  
15 foot setback on the other to make up for it. Around  
16 the project boundary, there's a 20 foot setback  
17 because this is a higher density development than the  
18 surrounding neighborhood and generally planned  
19 residential developments are than higher density.  
20 It's also for air, circulation of air for light as  
21 well as safety in terms of fires. If you get too much  
22 on a lot, if you get buildings and fences and trees  
23 too close together, it can create problems for  
24 emergency personnel. So those are some of the reasons  
25 why you have setbacks. Again, there are minimum

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1 setbacks. They're not maximums.

2 MR. DYSINGER: Thank you.

3 Mr. Chairman, that's all I have.

4 MR. KAMUF: Our answer to that is that if you

5 look at those photographs, this garage facing the

6 cul-de-sac like all the other garages in that area

7 will not change the character of that neighborhood.

8 The boundary line and the fencing and the shrubs and

9 the greenery and the eight foot fence, nothing

10 changes. The point I was making about the precedence,

11 people nowadays want less yard space. There's no

12 objection of any of the people in the development.

13 CHAIRMAN: Any other board member have any

14 questions of the applicant right now?

15 (NO RESPONSE)

16 CHAIRMAN: Staff.

17 MR. NOFFSINGER: I do. I have a question of

18 Mr. Riney, please.

19 MR. SILVERT: Would you state your name,

20 please?

21 MR. RINEY: Jim Riney.

22 (JIM RINEY SWORN BY ATTORNEY.)

23 MR. NOFFSINGER: Mr. Riney, did you go out and

24 visit the site at 931 where this structure is in the

25 picture?

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1 MR. RINEY: A couple of times, yes.

2 MR. NOFFSINGER: Would you describe this  
3 structure, as you saw it, in terms of materials used,  
4 the roof type, as well as any foundations you might  
5 have observed.

6 MR. RINEY: It appeared to be -- I didn't  
7 crawl into it. It appeared to be a peer foundation  
8 post or whatever. It was totally enclosed. I did  
9 observe that it roofed. It was enclosed and covered  
10 with a roof. It was glassed like an atrium. I did  
11 observe it. It conditioning units so that it could be  
12 heated in the winter and cooled in the summer. I  
13 observed through the glass a ceiling fan in there. I  
14 observed furniture where people live and do whatever  
15 they do inside a room like that.

16 MR. NOFFSINGER: Did you do any research in  
17 terms to check to see if any building permits were  
18 issued for this structure?

19 MR. RINEY: No. That was beyond the scope of  
20 what we found. What Mr. Kamuf described to you is  
21 where there was a renovation, an addition added in  
22 2002.

23 MR. NOFFSINGER: Then the floor of the  
24 structure?

25 MR. RINEY: I did not go in the house and

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1 examine the interior. I don't know what the floor  
2 was. There were wooden steps leading up to an  
3 exterior door on the north end.

4 MR. NOFFSINGER: The reason I ask these  
5 questions, it appears to me when I was looking at the  
6 pictures it was a deck, a wooden deck that someone  
7 went in and looked like some of the roof was open. It  
8 looked like it had a wooden deck with a floor. Then  
9 they went in and enclosed it.

10 Now, a wooden deck would not require a  
11 building permit. It would not be considered a  
12 structure. However, if this structure has a roof,  
13 totally enclosed roof on it, it may very well be.  
14 It's certainly an issue that Staff is going to have to  
15 address with those landowners because certainly it was  
16 constructed after the adoption of the zoning  
17 ordinance. Those neighbors will certainly, will have  
18 to address that issue.

19 Our records don't show anything in terms of  
20 any Variances approved. This site plan does not show  
21 that addition.

22 CHAIRMAN: Staff, what you all are talking it  
23 sounds like probably of a green house construction for  
24 flowers and stuff. Is that what you get?

25 MR. NOFFSINGER: That's correct. We're just

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1 going to have to look at it and see. It looks to me  
2 like with the peer construction, it looks to me like  
3 it was constructed as a deck. That someone went in  
4 and actually maybe over improved. It does not appear  
5 to be what we consider a room addition, if you will,  
6 that you would typically see.

7 CHAIRMAN: Any other comments for Jim?

8 MR. RINEY: If you would ask me, I would  
9 classify as an enclosed living space because of what I  
10 observed out there with the roof, with the  
11 environmental control. It has heat and air.

12 MR. NOFFSINGER: It does have that?

13 MR. RINEY: Yes, sir. There may be one shown  
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1 in the picture. It's a living area.

2 CHAIRMAN: Any other board members have  
3 questions for Jim?

4 (NO RESPONSE)

5 MR. RINEY: I will add. I don't think Mr.  
6 Kamuf understood. When I made the measurements, I  
7 think he understood that it encroached eight feet into  
8 setback. My measurement that we have eight feet plus  
9 or minus because we measured to the perimeter fence  
10 that's out there on the west side of the property.

11 It's eight feet to the structure. So there's eight  
12 foot open space. So roughly 12 feet that would  
13 encroach out into that area just to clear the record.

14 MR. NOFFSINGER: Which there's a public  
15 utility easement there as well, according to the plan.  
16 So they're probably inside that easement.

17 CHAIRMAN: Staff have any other comments?

18 (NO RESPONSE)

19 CHAIRMAN: The other side wishing to speak  
20 now, please.

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

23 MRS. SMITH: Cathy Smith.

24 (CATHY SMITH SWORN BY ATTORNEY.)

25 MRS. SMITH: We have lived at 905 for 30

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1 years. When we bought the home, it was a 100 year old  
2 home, our main focus was to continue the character of  
3 the 100 year old home. We have tried to do that for  
4 30 years.

5 It is a spacious neighborhood. It's a  
6 traditional area. You know, it's a historical  
7 neighborhood.

8 We definitely feel that the Variance from 20  
9 to 5 right by our property does change the general  
10 character of the neighborhood. On one side we have  
11 another home that's been there probably 70 years and  
12 there's at least 35 feet between the property line and  
13 the home. Of course, the space is an issue.

14 Mr. Kamuf said the concrete, there would be no  
15 change. It is on concrete as far as a driveway. It  
16 would be built on that, but it will also be a height  
17 issue. It's not just going to be a flat area.  
18 There's also horizontal area.

19 I'm concerned issue of turning into the  
20 driveway. Right now there is a double car garage as  
21 you see the wonderful pictures. There has been access  
22 there since '02 to gain access to her garage. That's  
23 an interesting point. I don't think that is a reason  
24 to construct another garage. Therefore, I do not see  
25 any special circumstance that would initiate the need

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1 for another or warrant for another garage.

2 I'm also concerned about the public utilities.

3 On the little picture that I was sent, and I need a  
4 magnifying glass to see it, but it does look like the  
5 public utility, I don't understand how a OMU truck  
6 could get back there if this Variance does change  
7 unless it comes over on our property, which we would  
8 have to take down the fence. It would encroach in a  
9 different area.

10 Also, I have a question about the applicant.

11 It's filed by the trust. To my knowledge the Town  
12 Home Association is the owner of said property. That  
13 concept as you own your home you don't own the land  
14 around it. So therefore even with the approval of the  
15 homeowners in that area of the town homes, I would  
16 think that would come from them and not from a said  
17 trust. That that request would come from them.

18 The last point is I just don't feel that the  
19 general character of the neighborhood, I do feel that  
20 it will be changed permanently. I just would ask that  
21 you not alter that. Thank you.

22 CHAIRMAN: Any board members have any  
23 questions of Mrs. Smith?

24 (NO RESPONSE)

25 CHAIRMAN: Anyone else have any comments?

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1 (NO RESPONSE)

2 CHAIRMAN: Staff have any other comments?

3 MR. NOFFSINGER: No.

4 MR. KAMUF: Mr. Chairman, I have one when you  
5 get through.

6 CHAIRMAN: Come forward and state your name  
7 against, please.

8 MRS. NUNLEY: My name is Deborah Nunley.

9 As far as the height issue, and compromising  
10 the style of the neighborhood, I really do not believe  
11 that an additional 400 square feet of living space is  
12 going to compromise what that community is right now.  
13 I mean they have a Victorian home, but next to them is  
14 this development. An additional 400 square feet is  
15 not going to make a major change in that development,  
16 in that neighborhood.

17 Additionally, on the height, the reason I  
18 planted my hollies, which are now 20 feet high, was  
19 because I'm looking out over their garage/pool house,  
20 whatever. I understand that's an important thing to  
21 do. I believe that if they would allow these trees to  
22 be planted, as I have before on the back part of the  
23 property, that it would probably shade that or  
24 conceal, screen the roof.

25 Right now, they're overlooking the roof of.

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1           There's an auxiliary building in the back,  
2       which sits right behind my property. Those are just  
3       two points I would like to make. Thank you.  
4           CHAIRMAN: Board have any other comments?  
5           (NO RESPONSE)  
6           CHAIRMAN: Staff have any other comments?  
7           MR. NOFFSINGER: No, sir.  
8           CHAIRMAN: You all have any other questions or  
9       comments?  
10          Come forward and state your name.  
11          MR. SILVERT: State your name, please.  
12          MR. SMITH: T.A. Smith.  
13          (T.A. SMITH SWORN BY ATTORNEY.)  
14          MR. SMITH: In terms of the nature, when we  
15       first moved there it was an open lot next to us. Of  
16       course, we hoped a single home would be built there  
17       that would be parallel to our property.  
18          As it turned out, four homes were built on the  
19       property. The one Mrs. Nunley lives in ended up  
20       appearing to encroach upon the property, right over  
21       the backyard of the property.  
22          I just want to say to make this addition you  
23       bring that encroachment closer to our property where  
24       you'll have more of an appearance of encroachment, if  
25       you try to mark it the property.

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1 I don't know. You talk about the meaning of  
2 the setback lines. An encroachment on other property  
3 is a reason, I feel like that's a reason to deny the  
4 Variance.

5 CHAIRMAN: Any questions of Mr. Smith?

6 MRS. NUNLEY: I have spent many years and have  
7 been friends with the Smiths and have not had quiet  
8 enjoyment many evenings because of partying in the  
9 pool house. It wasn't our neighbors who caused that.  
10 It was the people in the Victorian house. That's all  
11 I have.

12 CHAIRMAN: Does anybody have any new  
13 information?

14 MR. SMITH: I have no registered complaints as  
15 far as the parties in the pool house. I've never  
16 received a call.

17 MRS. NUNLEY: No, you haven't.

18 CHAIRMAN: Staff have any other comments?

19 MR. NOFFSINGER: No, sir.

20 MS. RAINES: I do have a question.

21 If the addition to the garage was made and  
22 there would just be a five foot distance between, I  
23 guess, the fence or the property line and the garage,  
24 would it be an issue for utilities, you know, an OMU  
25 truck, for example, that couldn't get through there?

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1 MR. NOFFSINGER: That's certainly what  
2 setbacks are for. I cannot say that if you granted  
3 this Variance that it would be a problem. That has  
4 not been explored, but it does encroach upon that  
5 property line where it would be very difficult to get  
6 a large vehicle back there. Now, they may have  
7 another way to get there. I don't know. That  
8 certainly could be an issue.

9 CHAIRMAN: Any other questions from the board?

10 MR. KAMUF: Mr. Riney will answer on that.

11 CHAIRMAN: Jim.

12 MR. RINEY: Jim Riney.

13 I'm just going to add the primary utility  
14 easement is parallel to Griffith Avenue. That the  
15 rear of these lots where Mr. Smith and the lots that  
16 continue on to the west, that's where the primary  
17 utility easement is. There's a small easement that  
18 Mrs. Smith was trying to read on that reduced copy  
19 plat that was hard to see. That only comes up a short  
20 distance to a phone pedestal in order to spur off.  
21 Evidently serves both the Smith property and the other  
22 development. There is no utility easement from  
23 Griffith Avenue going north toward the subject  
24 addition. All easements are in the rear, which is  
25 typical for that type of development.

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1 CHAIRMAN: Any other questions from the board  
2 members?

3 (NO RESPONSE)

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

6 MR. DYSINGER: Mr. Chairman, given the  
7 findings that granting the Variance will alter the  
8 essential character of the general vicinity, and  
9 certainly will allow an unreasonable circumvention of  
10 the requirements of the zoning regulations, I move  
11 that we deny the Variance request.

12 CHAIRMAN: I hear a motion. Is there a  
13 second?

14 MS. RAINES: Second.

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

17 (NO RESPONSE)

18 CHAIRMAN: Staff have any anything else to  
19 add?

20 MR. NOFFSINGER: No, sir.

21 CHAIRMAN: You heard the motion. All in favor  
22 raise your right hand.

23 (BOARD MEMBERS SEAN DYSINGER, RUTH ANN MASON  
24 AND SHANNON RAINES RESPONDED AYE.)

25 CHAIRMAN: Opposed like sign.

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1 (BOARD MEMBERS WARD PEDLEY AND FATHER  
2 HOSTETTER NAY.)  
3 CHAIRMAN: Two to three. Motion denied.  
4 One more item.  
5 MR. DYSINGER: Move to adjourn.  
6 MS. MASON: Second.  
7 CHAIRMAN: All in favor raise your right hand.  
8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)  
9 CHAIRMAN: We were adjourned.

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1 STATE OF KENTUCKY )  
 )SS: REPORTER'S CERTIFICATE

2 COUNTY OF DAVIESS )

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and  
4 for the State of Kentucky at Large, do hereby certify  
5 that the foregoing Owensboro Metropolitan Board of  
6 Adjustment meeting was held at the time and place as  
7 stated in the caption to the foregoing proceedings;  
8 that each person commenting on issues under discussion  
9 were duly sworn before testifying; that the Board  
10 members present were as stated in the caption; that  
11 said proceedings were taken by me in stenotype and  
12 electronically recorded and was thereafter, by me,  
13 accurately and correctly transcribed into the  
14 foregoing 95 typewritten pages; and that no signature  
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the  
17 30th day of September, 2011.

18  
19

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

22  
23 COMMISSION EXPIRES: DECEMBER 16, 2014  
24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25

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