OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

SEPTEMBER 6, 2012

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, September 6, 2012, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  C.A. Pantle, Chairman
Ward Pedley, Vice Chairman
Ruth Ann Mason, Secretary
Gary Noffsinger, Director
Madison Silvert, Attorney
Fred Reeves
Marty Warren
Sean Dysinger
Shannon Raines

* * * * * * * * * * * * * * * * * *

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

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  Again, I want to thank you all for coming and welcome you. If you have any item that you wish to speak on, please come to one of the podiums and state your name so we'll have a record.

With that the first item is consider the minutes of the last meeting which was August 2nd.

Ohio Valley Reporting
(270) 683-7383
They're on record in the office. We have no problems with them I don't think.

MR. NOFFSINGER: That's correct.

CHAIRMAN: Entertain a motion to dispose of the item, please.

MR. PEDLEY: Motion for approval.

MS. MASON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

MR. PEDLEY: Mr. Chairman, I need to disqualify myself on this next item.

CHAIRMAN: So noted.

MR. NOFFSINGER: Mr. Pedley, you'll also be disqualifying yourself also on Item 2A; is that correct, which is a related item?

MR. PEDLEY: Yes.

CHAIRMAN: So noted.

---------------------------------------------------------------

CONDITIONAL USE PERMIT

ITEM 2

3425 New Hartford Road, zoned B-4

Consider a request for a Conditional Use Permit in order to construct and operate an individual storage facility in a B-4 zone in Daviess County

Ohio Valley Reporting

(270) 683-7383
Reference: Zoning Ordinance, Article 8, Section 8.2L7/48

Applicant: Seth Stewart; Gilliland Group Partnership

MR. NOFFSINGER: Mr. Chairman, this application was postponed from the last meeting due to the disqualification by Mr. Pedley. At that time of his disqualification we no longer had a quorum.

We do have three members present here tonight on the board that were not present at the August meeting. These three members, Mr. Dysinger, Ms. Raines and Ms. Mason, have each been mailed a copy of the transcript. I do believe that each one has read the transcript in its entirety.

(ALL NOD IN THE AFFIRMATIVE.)

MR. NOFFSINGER: They're indicating that they have read the transcript and that they are prepared to listen to the remainder of the testimony and take action as necessary.

With that Ms. Evans is here to describe just briefly what took place at the last meeting.

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

MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

MS. EVANS: At our last meeting, as Mr. Noffsinger stated, we heard this item read into the Ohio Valley Reporting

(270) 683-7383
agenda. The Staff Report was read. Mr. Stewart then
got up and gave a brief description of what the
activity was going to be.

Then there were several neighbors that
expressed concerns for this use on the property. They
expressed concerns over security, increased traffic,
hazardous materials being stored and how those would
be policed, access to the property being 24 hours a
day, 7 days a week, their privacy, their property
values, the lighting for the property, noise and
possible rodents that can come from this use.

After some discussion on the item by the
concerned adjoining property owners and Mr. Stewart
and a few questions from the board members, Mr. Pedley
then did disqualify himself where we did not have a
quorum.

At that time we couldn't vote on the item and
we postponed this item and the next item, the related
item for the Variance that would be heard tonight.

CHAIRMAN: Thank you.

We have sent a copy of the minutes to each one
of the members. We have a copy to look at. If you
all have any new items or new information, come
forward at this time. We want to hear from that. We
do not need to listen to the minutes and everything we
Ohio Valley Reporting
(270) 683-7383
had last time and the information. We've got that on record.

The first thing, the applicant, do you have anything else you would like to add at this time, please, new information?

MR. STEWART: Yes, sir.

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

MR. STEWART: Seth Stewart.

MR. SILVERT: Seth, you're previously sworn from the previous meeting.

MR. STEWART: Just wanted to address some of the concerns that were brought up at the last meeting. Taking some notes here.

There was a question on how many units will be on the property. Approximately there will be 250 units. This includes larger units that are 20 by 60 feet up to smaller climate control units that are 5 by 5.

Question on what are the operational hours. An employee will be on site from 8 to 5:30. This could change depending on business hours when they're busy, 9 to 5:30 week days, and 9 to 1 on Saturdays. The facility will have a 24 access to customers that are renting. Customers will be required to enter a
pin number to enter the facility and again enter the same pin number to exit. This lets the computer know who was on the property and how long they were there.

A question of how to police hazardous materials. To my knowledge there is no way to completely police what someone stores from what I've read and researched. Renting a storage unit is pretty much like renting an apartment. There is no way to police what goes in and out without a search warrant or the renter falls behind on their rent. There will be a surveillance cameras posted throughout the property to monitor any suspicious activity after enduring business hours.

A question on how the property is lit and how will be effect the shining towards the surrounding houses. The property will have lights on the side of the buildings approximately every 20 to 40 feet. The new buildings are a total height of 8'6" with lights being on the side and not facing the houses, shining into the houses. These lights will not be a nuisance to the surrounding property.

Fencing concerns. The property in question is in a very low area, also has to do with the lighting, compared to the neighboring houses. In most cases the lower level of the home is being higher than the roof.
of an existing building that is already on the property which is approximately 20 feet tall. I could build a 20 foot tall fence and still not eliminate the few from the neighboring community. I have pictures to show that. In most cases there's already an 8 foot privacy fence in place where there is a very thick tree line. By me replacing the already existing 6 foot fence that has another one foot of barbwire on the top with an 8 foot chain-link fence does not do anything to view of the neighboring community.

I've also included pictures of several facilities currently operating in residential areas in Owensboro that do not have anything more than what's already on the property in question. One being no fence at all, and these are in residential areas. I have pictures of those buildings.

Security concerns. There will be an entry gate where a customer has to enter their own personal pen in which the gate to open. This tells the computer who has just entered the property documents the time. When a person exits, they will go through a different gate for exit only and have to enter their personal pin number again. This lets the computer know when the person left and documents the time as well. If any customer is on the property for an

Ohio Valley Reporting
(270) 683-7383
abnormal amount of time or more frequently than normal, this will cause the system to send out a notification to me or the site computer via e-mail. Also the property will be monitored by a motion video camera. Once a car or person triggers the motion sensor, the camera will record until there is no more motion detected. This will be saved in the computer data base in the office. If anything suspicious were to happen after or during hours, we will be able to go back and watch for ourself.

Noise concerns. There should be no large trucks on the property that have reverse alarms or any other noise. I have large units that will be marketed to large boat owners, RV owners and local businesses. None of these removal or replacements of RV or boat should take place after hours and very seldom at any time.

I have been in contact with an owner of an five acre facility in Bowling Green. Mine is less than three acres. He tells me that he averages about 10 to 15 cars after hours per week.

Surrounding property value concerns. These three acres have been growing up for the past three to four years. The building are run down and falling apart. It used to be a light industrial place when
Atmos ran the property well after Copper Creek was developed and the home surrounding were built. They used it for welding, heavy trucks and equipment and large storage. It is hard to believe by doing this project, getting everything in shape and working to make the property appealing to the public will hurt the value to anyone's home.

Pest control concerns. I plan to have a monthly contract with a local service to spray for pests that might be a concern.

There was concern on my map that I drew, the privacy fence in question was not to scale. I was not -- the homeowner's privacy fence, I was not able to get a definite measurement on that fence, but everything else on that is to scale from Atmos's map that they provided.

I would also like to make a point. Other things that could develop this property is to remind that this is not a bad project. Without going in front of the board or hearing anybody's concerns this property could be developed into a night club, a 16,000 square foot night club, a restaurant, a pawn shop, home appliance, computer repair, a beauty salon or banks with drive-thru facilities. That could go forward without going in front of the board. I
believe I'm correct. That's all I have.

CHAIRMAN: Any board members have a question of the applicant at this time?

MR. DYSINGER: Mr. Chairman, I think the applicant said he had photos to put into evidence.

MR. STEWART: Yes.

MR. DYSINGER: Could we see those, please?

(MR. STEWART PRESENT PHOTOGRAPHS.)

CHAIRMAN: Thank you. You want those entered into the record?

MR. STEWART: Sure.

CHAIRMAN: Any other questions of the applicant at this time?

(NO RESPONSE)

CHAIRMAN: Does anyone else have any comments on the applicant's side at this time?

CHAIRMAN: State your name, please.

MR. MASON: Jim Mason.

(JIM MASON SWORN BY ATTORNEY.)

MR. MASON: I'm a real estate broker with L. Steve Castlen Realtors. I represent the Gilliland Group Partnership which is based in Amarillo, Texas. I don't have a statement, but I'm here to answer any questions that you may have on their behalf or respond to any other comments that may come up this evening.

Ohio Valley Reporting
(270) 683-7383
CHAIRMAN: Any board members have any questions of this gentleman?
(NO RESPONSE)
CHAIRMAN: Staff have any comments?
MR. NOFFSINGER: No, sir.
CHAIRMAN: Hearing none the opposition, do you have anything else new that you would like to bring at this time, please?
MR. SILVERT: Could you state your name, please?
MR. RODNEY: Dean Rodney.
MR. SILVERT: Mr. Rodney, you were previously sworn at the last meeting.
MR. RODNEY: That is correct. Thank you.
My wife and I live on Briar Cliff Trace, as I mentioned last month. We've been there for over 18 years.
We have 178 feet of our backyard adjoins the former Atmos Energy property that's in question tonight.
At last month's meeting we had receivable objections that were raised, concerns from our neighborhood regarding the conditional use permit that's being proposed to this board. I'm thankful that you started this evening by looking at some of Ohio Valley Reporting
(270) 683-7383
that information. The letter that was submitted by
Bob Hill you should have received, a neighbor in
Copper Creek subdivision who was unable to be here.
His property joined the Atmos Energy property. He let
out some reasons as to why you should deny this
conditional use permit.

In addition, Doug Black who is the president
of our homeowners association in the Copper Creek
neighborhood unfortunately for him and for us is
working tonight and unable to attend the meeting;
however, he sent a message to me that he wanted this
shared with this particular board.

That the Copper Creek Subdivision is united in
opposing the storage units being constructed on a
former Atmos Energy property as it affects
specifically those homeowners who adjoin this
property. It also affects all of us in this
neighborhood negatively. Single-family residential
homes border all of the south side and all of the east
side of this property in question. Also, the YMCA
borders part of the north side with several acres that
they have there that they're hoping to develop a kids
park. Security has been mentioned as an issue because
there's going to be a real problem for kids and for
our residential neighborhoods that are located next to
Ohio Valley Reporting
(270) 683-7383
storage units.

I think Mr. Stewart has already said that there will be 24 hour access 365 days a year. That's got to be a security nightmare for us as neighbors. The unnecessary noise has been mentioned. Obviously, there will be an infringement on our privacy.

Looking at the plan that he's presented here to the board there's over 44,000 square feet of storage units that he's looking to adapt and construct that's going to be right up against the Copper Creek neighborhood. Obviously, he's already mentioned tonight that that will include several hundred storage units that will be in our backyard.

Neighbors that will turn over frequently. Neighbors who could store the hazardous materials. We've mentioned this as a reason last month for our real concern in the neighborhood of what could be stored in these storage units. But since last month I had the opportunity to research some of the items that have been stored in storage units nationwide that could be very problematic, especially when we're dealing with kids and especially in a residential neighborhood that's already established.

They include but they're not limited to the following:

Ohio Valley Reporting
(270) 683-7383
In Michigan a live hand grenade was found in an individual's storage unit.

In Florida, a family member decided to bury another family member in an individual storage unit.

In San Diego, California a man murdered a woman, rented a storage unit and stuffed her in there.

Stolen items, drugs, meth labs, firearms, explosives, hazardous materials of all kinds have been discovered numerous times in storage unit across the country.

In Clay County, Minnesota 32 python snakes were put in a storage unit and discovered there, and so on. There's a long list.

Any one of these problems can prove to be disastrous for kids and from an established neighborhood that's located next to storage units. It only takes one.

It has been said that there are three things that determine real estate values. Location, location and location.

Several hundred storage units, as have been mentioned, are going to be in our backyard if you approve this. If there's that potential for hazardous material of any kind to be stored there, then that can only reduce our property values. I'm probusiness. I

Ohio Valley Reporting
(270) 683-7383
worked over 33 years in business. I also volunteer as
many of you have in a lot of organizations like the
Chamber of Commerce, who is very probusiness, and I
support that. However, I would never nor would you
support that if there's any indication that it would
be at the detriment of kids or an established
residential neighborhood. There is a time and a place
for everything. In my opinion, tonight is the time
for the board to deny this conditional use permit for
this project because this property is not the place
for storage units. We in our neighborhood have tried
to itemize a lot of things for you to consider that we
have concerns over, as well as the noise we talked
about, the hazardous materials that have been
addressed, security would certainly be breached,
privacy would be compromised, property values have to
be declining if you're next to potentially storage
units that could have hazardous materials in them.
All of this would reduce the quality of life for us in
Owensboro, in this community, that are next to the
storage units.

So I would hope that this Board of Adjustment
would seriously consider our concerns and vote to deny
the conditional permit use for this particular
project. Thank you for listening.

Ohio Valley Reporting
(270) 683-7383
CHAIRMAN: Any board member have any questions of this gentlemen at this time?

MR. DYSINGER: I do, Mr. Chairman. Did opposition research crime rates in areas maybe even in Owensboro around storage units and see if any of these concerns? Is there any quantifiable data to support that supposition?

MR. RODNEY: Have I done that?

MR. DYSINGER: Anyone in the opposition.

MR. RODNEY: I have not. All I have looked at is the research that I have found of what could be and has been stored in these storage units in terms of being detrimental to someone next to it like a kids park, or like a residential established neighborhood, but certainly it's there. I don't know what the statistics are.

MR. DYSINGER: Thank you, Mr. Chairman.

CHAIRMAN: Any other board member have any questions at this time?

(NO RESPONSE)

CHAIRMAN: Staff have anything you would like to add on his comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Does anyone have any other comments?
MR. SILVERT: Could you state your name, please.

MR. BALL: Manuel Ball.

(MANUEL BALL SWORN BY ATTORNEY.)

MR. BALL: Just for the record. I believe I actually read into the record the last time, but hazardous materials would not be allowed in an individual storage per our zoning ordinance.

CHAIRMAN: Does anyone else have any other comments at this time, new information?

MR. PACE: I wasn't here the last time, but I don't think I'll be addressing anything that was.

MR. SILVERT: Could you state your name for the record.

MR. PACE: Pat Pace, 1531 Cooper Creek Drive.

MR. SILVERT: You're sworn as an attorney, Mr. Pace.

MR. PACE: It's true that these storage units are not supposed to contain hazardous material, but the applicant has told us there's no way that he can actually police that. In fact, they're only there during business hours and not at all on Sunday and half a day on Saturday.

The concern is not only hazardous materials, but flammable material or anything that could be a
health hazard. Your zoning ordinance defines those as prohibited, but we have no way to assure that they would not be located on these facilities.

The zoning ordinance also prescribes that you should determine that the conditions would not have an adverse influence on the surrounding neighborhood. I think from what you've heard it clearly can and very well might.

The highest court in Kentucky has also addressed this with respect to conditional use permits. In making a determination, you should consider the affect of the proposed use on the public health, safety and welfare of adjoining zones. That would certainly include this residential neighborhood. I think you've heard the reasons. I'm trying to give you some reference to the ordinance and the law.

We would ask that you deny this permit particularly when some the protections that are built into the conditional use permit and the ordinance they're already seeking to change such as the height of the fence. The fence is not just for screening. It's also for security, and lowering it could affect security. Thank you.

CHAIRMAN: Any board member have any questions for this gentleman at this time?
MR. DYSINGER: I do, Mr. Chairman.

Counselor, if the applicant were proposing to build say apartment buildings for low income tenants, many of the same objections that opposition has put forward would still be true. Why is storage units any more of a threat or detriment than apartment buildings, duplexes? In fact, any neighbors at all could have hand grenades and dead bodies.

MR. PACE: That maybe true, but it's certainly more unsupervised and less security.

MR. DYSINGER: Currently it's basically an abandon building, a vacant lot, correct?

MR. PACE: That's my understanding. I don't know that for a fact.

MR. DYSINGER: No further questions.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Thank you.

Anyone else wishing to speak?

Come forward and state your name, please, sir.

MR. HAYDEN: My name is Matt Hayden.

(MATT HAYDEN SWORN BY ATTORNEY.)

Ohio Valley Reporting

(270) 683-7383
MR. HAYDEN: I have a series of questions. I don't know if they should actually -- I'm usually represented when I'm here so if I speaking prior to the next request, assuming this one passes, I'll be happy to stand back up and ask them then if I'm going out of sync here.

One question I have is all the questions that he answered from the prior meeting which I wasn't able to attend, will those be read into the variance if it is accepted as part of the motion so that if it does not meet those answers, how will that be monitored and will his variance be taken away if he doesn't meet all the questions that he has supplied answers for?

CHAIRMAN: Staff answer that, please, sir.

MR. NOFFSINGER: If the conditional use permit is approved, it would be more meaningful if the board would set specific conditions and name those conditions that they expect the applicant to meet. That way it helps us enforcement and it makes it clear to everyone as to what has been approved.

However, when the applicant steps up here and puts forth an application, they're under oath. If they make a commitment under oath, then I believe that that commitment should be honored and we would be in the position to enforce what they've said.

Ohio Valley Reporting
(270) 683-7383
Now, that has been challenged and we have been directed that testimony that's given by either the applicant or the opposition has to be trusted. I think we can hold his feet to the fire in terms of what he is committed to. However, it may take court action beyond this board court action which takes time in which then is out of our control to enforce.

MR. HAYDEN: I guess normally I do developments around town, but most of my developments are in the city. I think this property is in the county; is that correct?

MR. NOFFSINGER: All property in Daviess County, whether it be in the City of Owensboro or Daviess County, is in the county. This property has not been annexed into the City of Owensboro.

MR. HAYDEN: I'm sorry, so it's not in the city was the direct question?

MR. NOFFSINGER: It has not been annexed into the City of Owensboro.

MR. HAYDEN: With that being said, will it be annexed into the city? The reason I ask that is because obviously with it being in the county I assume there's different regulations or mandates as to how property has to be kept up because if that property was in the city I'm the under assumption it would not
look like it does today. I guess back to jurisdiction
of how do you monitor these things? I mean the
property is in disarray. I guess my question is:
Being a neighbor, how did it get to this? I know if I
don't mow my grass on any of the properties we own, I
get a letter. If I don't fix it in ten days, I get a
fine.

MR. NOFFSINGER: The City of Owensboro
enforces their own property maintenance code. That's
not enforced by this board or the Planning Commission.
Daviess County, they have a property maintenance code
that they enforce that we do not have any control
over.

Any questions regarding the maintenance of
that property should be directed at this time to the
Daviess County Fiscal Court. In terms of whether he
intends to annex or not, I have not heard him say
whether he plans to do that or not.

MR. HAYDEN: Because it might be nice if he
does because then maybe he would have to keep the
grass up in the future.

The people in the neighborhood, as well as I,
I would like to know is there a contact for the county
because I'd love to try to get somebody to cleanup the
property that adjoins mine because obviously it's in
total disarray. Has been for some time.

MR. NOFFSINGER: Mike Hamilton with the Daviess County Property Maintenance office, solid waste. His name is Mike Hamilton.

MR. HAYDEN: Thank you.

Also, it's come up being that hazardous materials, possible fire. Bottom line is the density. Will it be increased on the property? I also have concerns that because this isn't in the city I think is the reason that I'm under the impression there will be not be a development plan later that goes back to the OMPC Board for approval of the actual improvements that will be made on this property; is that correct?

MR. NOFFSINGER: There will be a requirement of a development plan regardless of whether it's in the City of Owensboro or outside the City of Owensboro. Because you have multiple principle structures on the property. That will be a requirement to go before the Planning Office regardless. It will not go before the Planning Commission. It will be signed in-house by the director to assist those developers in this community that are trying to start a business.

MR. HAYDEN: I guess the concern is, is that being that it won't be back into the public again,
I've got concerns with the utilities that come to that property, whether it's fire, sewer, etcetera. I think the utilities are inadequately sized for that area, especially since the density and the use is going to be taxing, what is there and probably won't even allow it to operate properly. How will we have a checks and balance that they'll be upgraded so that it can, one, protect the neighborhood if something bad was to happen, etcetera? The reason I'm asking this is because of the development plan not coming back. So we won't have a chance to go and make sure that all of this is being taken care of and notified of the meetings etcetera. I mean most of these people have jobs, etcetera. They won't even realize the process is happening I guess is what I'm making notice. Also, I want be aware of that as being a property owner that adjoins this.

MR. NOFFSINGER: The development plan is reviewed by all utility companies, as well as the Planning Staff and the Engineering Department. You certainly can contact those various agencies if you have concerns about adequacy of utilities in the area, but it's been my experience they do a fantastic job in terms of reviewing plans and making sure that the utilities and infrastructure is adequate prior to
approving that development.

MR. HAYDEN: Not saying that they're not.

Being that it's not going to come back to that process.

I don't want to miss it as being a property owner that
wasn't able to see if those things were being met.

Like, for example, having enough pressure to have a
fire hydrant installed so that if there is a fire that
they'll be able to take care of the issues at hand. I
just want to make sure that the bases are covered,
being a property owner that owns the property
next-door, on the opposite side of the neighborhood.

Thank you.

CHAIRMAN: Any questions of this gentleman
from the board?

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Anyone else have any new items?

MR. SILVERT: Would you state your name,

please.

MS. PATEL: Darshana Patel.

(DARSHANA PATEL SWORN BY ATTORNEY.)

MS. PATEL: The gentleman, Seth Stewart,
mentioned about multiple activities or multiple
entrance by one person entering the property, the
Ohio Valley Reporting
(270) 683-7383
storage units, he will be alarmed via e-mail. He said
the computer system would be notified of the entrance
or whatever, whoever enters. Who is going to monitor
that 24/7? If he said the computer would e-mail him,
I mean I don't understand that process.

CHAIRMAN: Would the applicant answer this
question for us, please.

MR. STEWART: The computer system will be on
24 hours a day. When somebody keys in to that gate,
they have their own personal four digit code that they
use. When that code gets enter, the computer
recognizes it and marks the time. When he leaves,
same thing happens, the customer leaves. If it's an
abnormal amount of time, I can set is up to anything,
I believe, it kicks me an e-mail. The computer system
will automatically send me an e-mail with, I believe,
I don't want this to be on record, but I believe with
the customer's ID number and everything right then.
It will be in the computer system once I can get to
it. The e-mail will come straight to my phone and I
will have it in ten minutes.

CHAIRMAN: In other words, you'll be on 24
hours a day, to be notified?

MR. STEWART: Yes.

CHAIRMAN: Thank you.

Ohio Valley Reporting
(270) 683-7383
Any questions?
(NO RESPONSE)
CHAIRMAN: Any other questions? I think we've pretty well touched all the items, unless you have something new.
(NO RESPONSE)
CHAIRMAN: With that the board have any other questions right now?
(NO RESPONSE)
CHAIRMAN: We've got two items. The first one is a conditional use permit. I'll entertain a motion for that item at this time, please.
MR. REEVES: Mr. Chairman, I'll be glad to make a motion.
While I'm not one that's ever going to particularly swayed, they're not in my backyard, I think there are issues they have merit to them. Storage facilities certainly could be a necessary evil. People have to have places to store. However, I'm usually moved by is it going to be a disturbance to the neighbors and more importantly what are the safety issues.
I move that this conditional use permit be denied based upon the testimony of the owner. He has no ability to control safety on the site. Individuals
certainly could climb the fence. There would be any number of ways. Somebody could go in legitimately and still set up some sort of dangerous issue in the storage facility. Secondly, there will certainly be noise 24 hours a day. Someone could come in at 3:00 in the morning to load up one of these large rooms and decide they want to play a jam box to keep themselves entertain while they work. I certainly think that both light and noise would impact the neighborhood and their tranquility. So with those two facts I would recommend that the motion be denied.

CHAIRMAN: We have a motion. Is there a second?

MS. MASON: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else at this time?

MR. NOFFSINGER: No, sir.

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

(BOARD MEMBERS RUTH ANN MASON AND FRED REEVES RESPOND AYE.)

Ohio Valley Reporting

(270) 683-7383
CHAIRMAN: All opposed.

(BOARD MEMBERS SHANNON RAINES, MARTY WARREN
AND SEAN DYSINGER RESPONDED NAY.)

CHAIRMAN: Two to three. The motion fails.
With that we'll have to have another motion.

MR. NOFFSINGER: You need another motion or --
you really need another motioned.

CHAIRMAN: To pass it?

MR. SILVERT: Either way. You need a motion
to dispose of the item one way or the other.

CHAIRMAN: Thank you.

Entertain a motion one way or the other again.

MR. DYSINGER: Mr. Chairman, given the
findings that there is no compelling evidence that the
proposed use presents a danger to the neighborhood, I
move that we grant the conditional use permit with the
following special conditions:

Structure to be used as individual storage
units shall not be located closer than 25 feet to any
residential zone. An 8 foot high solid wall or fence
shall be installed and maintain on all sides that
adjoin any other property, except those properties
zoned B-1, B-2, B-3, B-4, B-5, I-1 or I-2. Tree
plantings may also be required as per Article 17 of
the Zoning Ordinance. Building height shall not
exceed 15 feet measured from the first grade of the loading doors to the top of the roof ridge or edge. Outdoor storage shall be prohibited on the same property as the individual storage structures. This shall include vehicles, boats, personal items etcetera. All other uses, all uses other than the individual storage shall be prohibited with end structures while those structures are being used for individual storage, except for one office or caretaker's residence which at present shall be directly related to the management of the individual storage units.

The owner of the individual storage structures shall be responsible for policing the material and/or items being stored. The owner shall notified zoning administrator, calling discovering any storage not meeting the requirement set forth herein, providing the name, address and phone number of the renter storage is in question, and also submission and approval of final a development plan.

CHAIRMAN: Is there a second to this motion?
MR. WARREN: I'll second it.
CHAIRMAN: A motion has been made and a second. Any other comments or questions from the board at this time?

Ohio Valley Reporting
(270) 683-7383
MR. DYSINGER: Mr. Chairman, I would just say that I'm not insensitive to the issues that the opponents brought up, having just had a storage facility built within just 100 feet of my home. However, the right of a property owner to develop their property often should take some precedence.

CHAIRMAN: Any other comments from the board or questions?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add at this time?

MR. NOFFSINGER: Just one second.

No.

CHAIRMAN: You've heard the motion and the second. All in favor raise your right hand.

(BOARD MEMBERS MARTY WARREN, SEAN DYSINGER AND SHANNON RAINES RESPONDED AYE.)

CHAIRMAN: All opposed.

(BOARD MEMBERS RUTH ANN MASON AND FRED REEVES RESPONDED NAY.)

CHAIRMAN: Motion passes.

You understand the conditions on the conditional use permit?

MR. STEWART: Yes.

MR. NOFFSINGER: Mr. Chairman, before we move
forward, the related item is a variance. The variance that the applicant is proposing is in direct conflict with the conditions you just placed. I would like to ask the applicant if you would like to withdraw your variance request or if you would like to proceed.

MR. STEWART: I would like to proceed.

RELATED ITEM

ITEM 2A

3425 New Hartford Road, zoned B-4
Consider a request for a Variance in order to reduce the height of the solid wall or fence along the south and east property boundaries from 8 feet tall to 6 feet tall and to increase the maximum building height of an individual storage unit in a B-4 zone in the County from 15 feet tall to 22 feet tall.
Reference: Zoning Ordinance, Article 8, Section 8.2L7/48(b) and 8.2L7/48(c)
Applicant: Seth Stewart, Gilliland Group Partnership

MS. EVANS: The applicant is requesting a Variance regarding Items B and C that were just conditions placed on the Conditional Use Permit.
Currently there is a 6 foot tall chain-link fence around the perimeter of the subject property. The applicant is proposing to install slats into the existing fence along the south and east property boundaries where the subject property adjoins residential property making the fence solid. The portion of the south and east property boundaries are screened with an intense line of existing trees.
portion of the southern property boundary is screened with an 8 foot tall privacy fence; which is located on the adjoining properties, not the subject property. There is an elevation change from the subject property to the adjoining properties where the subject property sits lower than the adjoining properties to the south and east.

The applicant is also proposing to utilize the existing buildings located down the center of the subject property, converting them to storage areas and an office. The existing buildings are taller than the required 15 foot height limitation for individual storage units in a B-4 for zone in the County; the existing buildings range in height but are not taller than 22 feet. These buildings have been located on the property for a number of years, as they were constructed to serve Atmos Energy when their business was located on the property. The existing building have not generated complaints regarding their heights with the previous use, which was Atmos service, maintenance, welding shop and storage of service trucks. The previous use appears to have been a more intense use than the proposed individual storage which is prohibited from having outdoor storage. The elevation change from the adjoining properties to the Ohio Valley Reporting
(270) 683-7383
subject property provides some buffer to the taller buildings. The applicant states; any new storage unit buildings to be constructed on the property will not exceed 15 feet in height; the requested height variance is limited to the existing buildings located on the property. Because there will be more than one principal building on the subject property, the applicant will be required to submit a Final Development Plan for the project to be reviewed by all the appropriate agencies.

Granting the variance to reduce the height of the solid wall or fence along the south and east property boundaries from 8 feet to 6 feet will not adversely affect the public health, safety or welfare because the adequately screening will be provided; it will not alter the essential character of the general vicinity because this use will be less intense than the previous use, utilizing existing screening; it will not cause a hazard or a nuisance to the public because it will be adequately screened with existing elements in place; and it will not allow an unreasonable circumvention of the requirements of the zoning regulations because the use will be less intense than the previous use and the screening will meet the intent of the zoning ordinance.

Ohio Valley Reporting
(270) 683-7383
Granting this Variance to increase the maximum building height of an individual storage unit will not adversely affect the public health, safety or welfare because it has not thus far and this use will not increase the building height any further; it will not alter the essential character of the general vicinity because this use will be less intense than the previous use, utilizing the existing buildings; it will not cause a hazard or a nuisance to the public because no new buildings will be constructed over the 15 foot height maximum and the existing building has not caused any issues in the past; it will not allow an unreasonable circumvention of the requirements of the zoning regulations because this use will be less intense than the previous use and because of the elevation change and an increased building height will meet the intent of the zoning ordinance.

Staff recommends approval with the following Conditions:

1. If the existing fence or tree line is affected in any way, reducing the screening from the adjoining properties, the applicant shall install the required 8 foot tall solid fence along the south and east property lines;

2. Any new buildings constructed on the site
shall not exceed 15 feet in height;

3. Submission and approval of a Final Development Plan.

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

CHAIRMAN: Thank you.

The Applicant, you understood you just got approval on your Conditional Use Permit?

MR. STEWART: Yes, sir.

CHAIRMAN: Just wanted to be sure. Do you have any comments at this time?

MR. STEWART: I can't think of anything from what Ms. Evans said other than the already existing 8 foot fence that runs into the very thick tree lines was to be changed, I would then add the extra two feet to the fence that exist and continue the screening on up. The 6 foot fence that is there in place will be screened. It also has one foot of barbwire, three runs on top of it.

CHAIRMAN: Board members have any other questions at this time?

(No response)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Opponent have anything else you
would like to add at this time come forward.

MR. PACE: Pat Pace.

The Zoning Ordinance provides that this be 8 feet tall. There was a mention in the Staff Report that the 6 foot fence would provide adequate screening. That doesn't address the security issue that we've addressed with this board. We would ask that you follow suit on what you did in the previous proceeding and require that this be 8 feet tall.

Thank you.

CHAIRMAN: Any board members have any questions of this applicant or this gentleman at this time?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

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

Come forward and state your name, sorry.

MR. HAYDEN: Matt Hayden.

MR. SILVERT: You're sworn.

MR. HAYDEN: Thank you.

We weren't privy to the pictures that were produced. Were those new construction or renovation of existing infrastructures for the record?

Ohio Valley Reporting
(270) 683-7383
MR. NOFFSINGER: Some of those would have construction since the adoption of the ordinance. Others would have been there. It's really mixed, Mr. Hayden. One I believe was at the intersection of Fifth and Castlen Street. Individual storage unit constructed probably in the late '80s, early '90s by Tom Hayden. That was in a residential area. It was included. I recognized that one. Some others looked like they had been there a while. Perhaps predated the ordinance.

MR. HAYDEN: I was just curious if it was going to be new construction, for my clarification, or whether it was novation or possible renovation of rundown facilities that currently exist.

MR. NOFFSINGER: I'm sorry, I'm not following your question.

MR. HAYDEN: I'm trying, as being a neighbor, there was a picture that was painted as to what's going to happen to this facility. We all just said that it was rundown. So is the improvements going to be mandated that there may, which is -- my real question is: Is he going to be able to occupy this as a storage facility before the improvements are made and the development plan comes to you all?

MR. NOFFSINGER: No. He cannot occupy the
Ohio Valley Reporting
(270) 683-7383
property until such time, for storage, as a final
development plan is approved.

MR. HAYDEN: So it will have to be brought up
to some standard prior to using it for storage to the
public?

MR. NOFFSINGER: That is correct.

MR. HAYDEN: That was my main question. I
just wanted to make sure that this couldn't all of a
sudden close on the property and start using it for
storage in its current state.

MR. NOFFSINGER: That's correct.

MR. HAYDEN: I guess the other question I have
since it's now proceeding as being that I do own the
adjacent property how will the shared access point
work and will it be required to have any public
improvements, etcetera, that the state or OMPC might
require?

MR. NOFFSINGER: I'm not prepared to answer
that question. Perhaps Ms. Evans has reviewed and
talked with the applicant and can address that. I
have not been involved in the discussions.

MS. EVANS: It's my existing that it's an
existing shared access point and it can continue to be
a shared access point. We have not contacted the
state to know if there are any requirements that they
CHAIRMAN: Do you have anything else, sir?

MR. HAYDEN: How will I know how that gets addressed? I mean will I get notification as to how it will proceed?

MR. NOFFSINGER: If you have a right to that access.

MR. HAYDEN: I own the property that is the shared access.

MR. NOFFSINGER: Then the applicant should be working with you and you communicating with the applicant before any improvements are made to that property. We will be taking a look at it from the standpoint of what the state requires and any improvements made. If he's going to effect the shared access point, that development plan may require your signature in terms of improvements only to that access point. I can't tell you that for certain because that becomes a legal question, if it's a shared access point. It will have to be improved to a certain standard that meets the requirements of the zoning ordinance. That means it can't be gravel. It can't be dirt. It's going to have to be approved with the hard surface such as concrete, blacktop. We don't have that information at this point.

Ohio Valley Reporting
(270) 683-7383
MR. HAYDEN: So I will be notified and asked to sign on the development plan? I mean I just want to make sure that I come home one day and it's all happened.

MR. NOFFSINGER: We will not notify you. When the development plan is submitted to us, the development plan is to be signed by the property owner. If it affects your access and you have the right of access to that property, then it becomes a legal question as to whether or not you'll have to sign off on that plan. There's no notification of adjoining landowners on any final development plan.

MR. HAYDEN: Who do I ask the legal question of: Will I be notified?

MR. NOFFSINGER: You will not be notified.

MR. HAYDEN: That brings up my concerns. How does that work and then how will I know that the public improvements are going to be made; the water will be upgraded, the retention system be met? There's a list of things that improvements to that site were substandard. One of the reasons Atmos left that site was because they could not continue to do that operation if they ever rebuilt, etcetera, on that site. The process, I just don't want to be left behind and all of a sudden now my neighbor has
devalued my property. I don't have adequate access to
my property and the utilities going to the site are
never brought up to standards so that, you know, the
area can actually even perform. I don't the process
as to -- because it's not coming back to the Board of
a development plan, I don't know other than calling
everybody and checking in. How do you even monitor
the process?

MR. NOFFSINGER: Well, as you're aware as a
developer in this community, development plans used to
come before the Planning Commission for approval;
however, to make this community more business friendly
we removed, this community removed the requirement of
the development plans going before the Planning
Commission in a public hearing. Really it wasn't a
public hearing on a development plan anyway because as
long as the development plans meets the minimum
requirements of the zoning ordinance, it's to be
approved.

The process that you go through as a developer
on a routine basis is the same process that you should
follow here. You should be in communication with this
gentleman. He should be in communication with you
because you have sounds like a shared interest, and
that's the access into the property. You can also
communicate with the planning office. You can communicate with the utility companies and the county
engineer as well as the State of Kentucky as to how
the process is going. I'm sure that you can be
involved in that process in some way. The public is
not involved in the final development plan process.
The public was taken out of that process to make us
more business friendly. So that's where we are today.

MR. HAYDEN: I know when I develop projects
I'm asked and the only way I get to proceed is when I
go get development adjacent signatures and I'm also
held accountable on doing millions of dollars of
public improvements. I just hope that the same level
of standard is held to accountability of this project.
That's the main focus here. If that happens, my
shared access will work nicely and the utilities will
all be there. The protocol, I'm just wanting to make
sure that it's there and there's no assurance unless
me monitoring it, which by the way I plenty to do just
like everybody else in this room. So I don't like the
process because I know in the past I didn't get the
luxury of just running things through.

MR. NOFFSINGER: Well, your notification
process of adjoining property owners comes from a
re zoning. You've not been required to notify
Ohio Valley Reporting
(270) 683-7383
adjoining landowners on a final development plan. This gentleman is not going through the rezoning process. The property is zoned B-4 General Business. So he's not going through a rezoning process. That has a requirement that all adjoining landowners be notified, and that's a state requirement. There is no notification requirement for a final development plan.

MR. HAYDEN: Actually if you wanted one, it could just be read into the motion and approved as an additional condition on the plan. So it can be solved if the Board elects to take that process. It happens all the time. So it should all -- the burden should not be put back on citizens in the community to monitor every move that this board makes.

CHAIRMAN: Sir, I think being this is a joined entrance there, you're going to have to sign off so you've the right.

MR. HAYDEN: Can you put that in the record as a condition and I'll feel good about it?

MR. SILVERT: Here is the problem right now, Mr. Hayden. The conditions on the previous item have been made. It's been voted on and that wasn't one of the conditions. Had you brought this up 15 minutes ago, it would have been a different issue. I know that almost sounds smug to say it that way. I hate to
say it that way, that motion has come and gone now.

That much being said, if the variance is anything but defeated, that might be something that could be added as a condition to the Variance potentially or some type of notification. If you want to continue to have communication with myself or the office, I'm sure that we'd be more than happy to let you know where we are in the process and do that.

MR. HAYDEN: Based upon Gary's comments, the notification was not going to come to me.

I appreciate your clarification that it could, Mr. Pantle.

You can see where my concern is. Is the burden is being put back on me.

My next question now is: If the appeal is filed to reject that, would it come back to where that recommendation could it be added so that all of our concerns actually have a chance to be met, as meaning the utilities, the improvements made to the facilities, etcetera? I'm not trying to block this. I just want a level of standard to make sure it happens next to this property and make it as good as it can be for all that are involved. Right now the burden is 100 percent continuously put on the homeowners or the adjacent property, which I don't
feel is fair. I don't know how to mediate through the
process here. Good news is there's plenty of
attorneys in the neighborhood so we'll see how we work
through it.

CHAIRMAN: Any other comments?
Please, ma'am.

MR. SILVERT: State your name.
THE WITNESS: Could you state your name, please.

MS. RODNEY: Sandra Rodney.

(SANDRA RODNEY SWORN BY ATTORNEY.)

MS. RODNEY: I have just a couple of comments
in regard to the variance.

I heard in the Staff Report less than intense,
less intense, less intense. Having been a resident in
the area and having been a neighborhood of Atmos, I
would say that their functioning was certainly less
intense than what the proposal that has been accepted
will be. Certainly Atmos and their workers were there
from maybe 9 in the morning, coming and going, and a
very limited basis a handful of workers. They may
would arrive, pick up a truck, and leave. Return it
4:30 or 5 they were gone. They were not there 24/7.
So certainly I would say that that is the less intense
of the two uses of the property.

Ohio Valley Reporting
(270) 683-7383
Also, my understanding is that in a B-4 zone that it's incumbent upon the owner of the property to put the taller fence, a solid fence, and also landscaping; is that correct; when you read the B-4 ordinance online? Is that correct?

CHAIRMAN: Staff.

MR. NOFFSINGER: The requirement would be for the solid wall or fence --

MS. RODNEY: Eight foot. And also landscaping. The tree lines --

MS. EVANS: It's a tree every 40 feet, but you can count trees that are existing if they're on his property and they can be clustered as well.

MS. RODNEY: Those trees are not on his property.

CHAIRMAN: Then he can't touch them if they're not on his property.

MS. RODNEY: Okay. Is it incumbent upon him as a property owner to establish landscaping?

MR. NOFFSINGER: Yes, ma'am, it is. He will be required on his property to place trees one per every 40 feet that he has. He can group those. He may choose to group them out near New Hartford Road or he may choose to group them to the rear. That's just so we can get the number.
MS. RODNEY: The discussion that I heard to this point is indicating that there is existing landscaping. There are existing trees. There is an existing fence. Those are property owners in the Copper Creek subdivision who have the landscaping items, who have -- one property owner has a solid fence. The rest is 6 foot chain-link that you've made reference to. That is not is solid.

Also, in the Staff Report I heard words about elevation. I believe Mr. Hayden's property and the Weise property is identical elevation of this property. It is not raised in any fashion from where these units will be going in. I think that point needs to be made. Do you not have a letter from the Y?

MR. NOFFSINGER: We do not.

MS. EVANS: No.

MS. RODNEY: Staff does not. In our discussion with the Y, it was our understanding that they had sent the Staff a letter saying that in particular they were concerned because the proposed use of their property would be to have day camps for children and whatever and a six foot fence would not for safety reasons for these children be adequate. I think all of these points, when you consider a
variance and you consider the neighborhood surrounding
with children in these neighborhoods, you consider the
exact same elevation of those two property owners and
even the Creek Haven area that is on the same
elevation, that needs to be kept in mind before you
make this choice.

MR. NOFFSINGER: Mr. Chairman, for the record
the only thing we have in the file from the YMCA is a
fax transmittal statement of waiver of notice. There
was a discrepancy on the notification to the Y back
prior to the first meeting. They sent us a waiver
stating the unsigned waives statutory requirements of
14 days notice and acknowledges receipt, a copy of
which is attached hereto. They had received notice.
We have not received anything else from the Y.

MS. EVANS: One thing that I wanted to clear
up a little bit. The reason that the condition of the
8 foot solid fence is along Copper Creek and the back
part there is because it adjoins residential property.
That is not a requirement along between Mr. Hayden's
property and the YMCA property. That is only a
requirement for residentially zoned properties. So
that's why we said the elevation difference. That
elevation difference doesn't -- that's not referring
to those properties because that 8 foot requirement
MS. RODNEY: Please take into consideration that our discussion with members who are on the board of the Y indicated that a 6 foot fence would not be adequate because of their concerns for the welfare of children who might be in that park as it is developed. They would prefer the 8 foot fence, solid fence to stay as is current in the B-4 zone. Thank you.

CHAIRMAN: Staff.

MS. EVANS: It's not a requirement on that side with the YMCA's property, that there be any fence 6 foot or 8 foot.

MS. RODNEY: According to the --

MS. EVANS: According to the conditions, a storage unit in the county in a B-4 zone it is an 8 foot solid fence for property that adjoins residentially zone property. So that's why it's along the Copper Creek side and doesn't affect the YMCA's property or Mr. Hayden's property.

MS. RODNEY: But please acknowledge that that is a concern.

CHAIRMAN: Thank you.

Any other?

MR. PACE: Yes. I would just like to address what was raised about the fence.
Under the Conditional Use Permit ordinance, it says an 8 foot high solid wall or fence shall be installed and maintained on all sides that adjoin other properties except B-1, B-2, B-3, B-4, B-5, I-1 or I-2. That was a condition on the approval of the Conditional Use Permit. Again, we ask you to make that a condition of this Variance if it's granted for denial.

MR. NOFFSINGER: I believe what we're saying is the properties that adjoin on the opposite side of Copper Creek meet that exception. So there's not a fence requirement along the north property line or the west property line. Only the south and east property lines where it adjoins agricultural, and I think Copper Creek may be A-U Urban Agriculture as well.

MR. PACE: But as I understand the motion that was made on the Conditional Use Permit, it was 8 foot tall around the property.

MS. RAINES: Excuse me, but I thought the motion listed the 8 foot solid except for -- it actually included the exception.

MR. SILVERT: I think the point that Mr. Pace is trying to make that it was 8 feet. It's not the exceptions that he's pointing out. It's that the --

MS. RAINES: So we're not requiring the 8
feet all the way?

MR. NOFFSINGER: Right. The ordinance requires 8 feet. The applicant is asking for a variance to go down to 6 feet. That's what he's pointing out. Staff is recommending, as we typically do, unless there's opposition. Since there's opposition, the Board has in the past taken that into consideration and generally have not granted the variance on the landscaping or the buffering.

This variance happens to include two items. The fence height and then the building height. The building height part of this variance is only for the existing buildings. Any new buildings could not exceed the 15 foot maximum height.

MS. MASON: Let me make sure I understand something, Mr. Chairman. We cannot, as a Board we cannot make the applicant put a fence up on the area of Mr. Hayden's property and the area of the Y property; is that correct?

MR. NOFFSINGER: You could have on the Conditional Use Permit, but you did not. You can't do that on a variance because -- you can negotiate I guess with him as a part of granting other variances to the property, but you can't go in and just place a condition. The ordinance doesn't require the fence.
CHAIRMAN: I think we've pretty well discussed this. I'll entertain a motion.

MR. WARREN: I have another question on the building height variance.

I'm really a little bit confused why he even needs it. Is it because the buildings aren't currently being used, that if we don't grant this Variance he'll have to tear those building over 15 feet tall down?

MR. NOFFSINGER: Yes.

MR. WARREN: Thank you.

MR. NOFFSINGER: Yes, that's correct.

CHAIRMAN: Entertain a motion to dispose of the item.

MR. REEVES: Kind of piggyback off Marty's questions.

The way I read it says the maximum building height of an individual unit. Is he using existing buildings as units?

MR. NOFFSINGER: Yes.

MR. REEVES: Okay.

CHAIRMAN: Any other questions?

(NO RESPONSE)

CHAIRMAN: Entertain a motion to dispose of the item.

Ohio Valley Reporting
(270) 683-7383
MR. WARREN: I'm ready to make a motion. Make sure I get it right here.

On granting the Variance for the height of the solid wall or fence along the south and east property boundaries from 8 to 6 feet I'm making a motion that we deny that variance. I feel that it will adversely affect the public health, safety and welfare. I do feel like that this use can possibly be more intense than the past use. That an 8 foot fence would be more in line with the screening. I just feel like that it will alter the essential character of the general vicinity because a 6 foot fence would open it up for people to be able to view into these backyards. Even though they're at a higher elevation it's still a little more secured I feel like.

The granting of the variance on the maximum building height of an individual storage unit from 15 to 22 feet, I want to allow that variance on the current buildings only for the same reasons. The buildings are already there. They've been used for years. It's not going to alter the general character of the area, but no new buildings can be taller than 15 foot.

With a condition that a submission of an approval of a final development plan and once again Ohio Valley Reporting
(270) 683-7383
that any new buildings constructed on this site shall
not exceed 15 feet in height.

MS. RAINES: I'll second.

CHAIRMAN: Before I take the second, I think
for clarification we need to make two different
motions.

MR. WARREN: Two different motions. That's
what I was afraid of.

Let's go with the first motion with the fence.

That was for denial for the reasons that I stated.

CHAIRMAN: And you were stating because
lowering it from 8 foot to 6 foot being denied on
that?

MR. WARREN: Yes.

MS. RAINES: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Now I'll entertain a motion for the building

Ohio Valley Reporting

(270) 683-7383
MR. WARREN: On the second, the variance on increase the maximum building height of an individual storage unit from 15 feet to 22 feet, I make a motion to approve that variance for the existing buildings only. The buildings that are already there, that are already 22 feet high, that it will not adversely affect the public health, safety and welfare. The buildings were already there and have been for several years. It will not alter the character of the general vicinity. Once again, the buildings have been there for several years. This is only for buildings that are there.

The conditions would be the submission and approval of a final development plan. Once again, only new buildings not to exceed 15 feet in height. I think that's it.

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

MR. DYSINGER: Can I ask for a friendly amendment before the second or wait for the second?

MR. SILVERT: You can ask for a friendly amendment if the author of the motion accepts it.

MR. DYSINGER: Do I need to wait for a second?

MR. SILVERT: No.
MR. DYSINGER: I would wonder if the maker of the motion would consider a friendly amendment to make one of the conditions applying 8 foot screening fence around the entire property line so that it can integrate more easily into the neighborhood.

MR. NOFFSINGER: Do you want that around all property lines or do you want to exempt the street frontage or do you want it all around? You would end up with an 8 foot wood fence, solid fence around the frontage as well. I just want to make sure that that's what you mean.

MR. DYSINGER: With the condition that the applicant apply the 8 foot screened fencing requirement around the entire property with the exception of the street frontage.

MR. WARREN: I accept that addendum to my motion.

CHAIRMAN: Your motion is stating 8 foot solid everywhere except on the front part, and that still will be 8 foot tall there.

MR. WARREN: Yes.

CHAIRMAN: Is there a second to this motion?

MR. DYSINGER: Second.

CHAIRMAN: A motion has been made and a second. Any other questions or comments from the Ohio Valley Reporting

(270) 683-7383
MR. SILVERT: Mr. Chairman, I would like to make sure that the applicant understands the conditions as they've been stated.

CHAIRMAN: Do you understand the motion that's just been made?

MR. STEWART: Yes, I understand the motion.

The question why the fence on the YMCA's property and Mr. Hayden's property needs to be 8 feet and screened? We're talking about quite a -- you're fencing three acres. That's quite a bit.

MR. DYSINGER: Mr. Chairman, conditional permits, generally speaking, the burden is on opposition to say why the use should not be allowed. A Variance is different. A Variance is asking to depart from the zoning ordinance entirely; and therefore the burden is more so on the applicant and more weight should be given to the opposition. The argument about integration into the neighborhood, an opposition to a Variance that was made earlier, the point regarding that, is very valid. There doesn't necessarily have to be evidence why neighbors don't want something to be a certain way. They can just be against it. That's different with a Variance than it is for a Conditional Use Permit. That's why that
requirement, the amendment that I offered and it was accept is above and beyond what might be required by the ordinance because it's an attempt to make the use that you have been conditionally permitted integrate more easily into the neighborhood and be more sensitive to the concerns of the neighbors.

CHAIRMAN: You understand the motion at this time?

MR. ELLIOTT: Yes, I understand.

CHAIRMAN: Is there any other comments or question from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MS. RAINES: May I, Mr. Chairman.

I know we have the residential property on one side and we have Mr. Hayden on one and the YMCA.

Mr. Hayden, can I direct a question to him?

CHAIRMAN: You can.

MS. RAINES: Do you want a fence? Is that something that you want? I feel like I haven't really heard, you know, Mr. Hayden or the YMCA stated they would like to have the fence, barbwire or whatever.

MR. HAYDEN: I haven't had any of my recommendations warranted or granted so I don't know why we'd care at this point. I'm just being perfectly
honest. I guess the thing I hope we're stressing is not only the development plan before he occupies any of the property for storage use, is that part of this round of motions that's being said?

CHAIRMAN: That's correct.

MR. HAYDEN: Because it was not said prior to being occupied. It was prior to a development plan.

MR. WARREN: That goes without saying. That's just part of it.

MR. HAYDEN: I mean I thought we were going to make public improvements and now we're worried about what a fence cost, an extra 50 feet. I mean I don't think we're going to have any improvements made to be honest with you.

CHAIRMAN: You're going to have a solid fence all the way around it.

MR. HAYDEN: I don't even know what my access is going to look like. Why do I care about a fence at this point? I mean my property is being devalued 20 minutes ago. At this point I mean fence it all the way around. Foreclose on it.

CHAIRMAN: Any other comments?

MR. DYSINGER: I'm just wondering if Board Member Raines had her question answered.

CHAIRMAN: Are you satisfied?

Ohio Valley Reporting

(270) 683-7383
Ms. Raines: I'm satisfied.

Mr. Noffsinger: Let me also throw this out in terms of the shared access point and the fence along Mr. Hayden's property. It can conflict with that shared access point. So you can't run it all the way down the boundary. You couldn't get into the property. There has to be a cutoff there of that fence so far. We don't know how he's going to access his property in the future and what rights -- I don't know what rights either side has to that shared access point aside from what they used to adjoin in the past, what they have always adjoined. I don't know.

Mr. Dysinger: Mr. Noffsinger, for this variance to be approved it could not cut Mr. Hayden off on the property. We don't have the power to do that. So imposing the Variance up to where Mr. Hayden's rights exist seems to me would be a matter of course.

Mr. Hayden: Where do my rights exist to?

Mr. Dysinger: The same way it's always been. I mean the shared access to these properties has been in existence. Is that not correct?

Mr. Hayden: You don't know.

Mr. Dysinger: It's been entered into evidence by testimony. I have to assume that it's true.
MR. HAYDEN: You haven't listened to the
testimony thus far.

CHAIRMAN: I think --

MR. HAYDEN: You don't have enough facts to
know how to address these things.

CHAIRMAN: We can't argue that. That's
between attorneys to take care of. Your attorney and
the gentleman that he has will have to work that out.

MR. HAYDEN: And here we go.

CHAIRMAN: That's the only legal way we can do
that property because we can't practice attorney like
we'd like to at times on some of the items.

MR. HAYDEN: It seems to me you don't have
enough information to proceed.

MS. MASON: Mr. Chairman, we've still got some
discussion.

MS. RODNEY: Obviously I'm not an attorney.
Common sense would tell me that an 8 foot solid fence
would be advisable if you are trying to maintain the
value of your property.

CHAIRMAN: That is the motion that you have in
front of you now.

MS. RODNEY: Exactly. Exactly. I think we
were saying what are the wishes. We have not heard
from the Y. We didn't know what Mr. Hayden was
saying. I'm saying common sense would say to me, not
an attorney. I do not own property. In those two
locations, I do own adjacent property that is somewhat
elevated that would cause us to be looking down upon
these facilities. I appreciate your hearing what
we're saying. Just speaking from the common sense
perspective, not only as a property owner but as a
citizen of this community, an 8 foot solid fence
should be incumbent upon the property owner around the
perimeter. Perhaps not facing the roadway, but on the
south, on the east, and on the north for common sense
safety and visual screening that should be incumbent
as well as landscaping. Thank you.

MR. NOFFSINGER: Mr. Chairman, in order for
the applicant to proceed, they first have to have a
conditional use permit. Then they have to address the
Variance issue. Then they can proceed with their
final development plan in putting that together.
Until you know that your use is approved, you're not
going to the expense of engineering to know to put
that together. So that's where we are right now.

What I don't want to happen is for you to
place a condition of fencing along that entire side or
property line that he shares with Mr. Hayden and that
condition not be able to be met because of access
limitations. Maybe we have to keep it 25 feet or 50 feet from the edge of the right-of-way on New Hartford Road to prevent access. At this point in time, I don't know what is necessary there. Certainly you can require the condition that the fence be installed, but we just need to come up with a way that we don't put either side in a compromised position in terms of not being able to construct the fence as far as we need to or we can construct the fence.

MR. DYSINGER: Mr. Chairman, I'm of the opinion that this board lacks the power to compel an applicant to put something in someone else's right-of-way. I'm also of the opinion that we don't have the ability to determine what this access is. But the two things should be able to co-exist. The only alternative is a postponement and more testimony, which I'm not opposed to, if that's what it takes to see that within the confines of the ordinance the best thing is done. We don't have the power to compel the applicant to build a wall across somebody else's right-of-way. I believe that that fact would keep what you described as happening, Mr. Noffsinger, but I would always defer to your experience.

MR. NOFFSINGER: I think we word the condition in that way to protect the rights of both parties.

Ohio Valley Reporting
(270) 683-7383
We've been in this situation before where someone was required to construct a fence all the way down the property line, but then it interfered with the site triangle. I just don't want to get into that position where we can't move forward and we have to come back before the board to amend conditions.

If you could amend your condition to state that the fence be constructed along that north property line to the extent that it does not interfere with the adjoining property owners rights of access.

MR. DYSINGER: Do I have to prove that or does he?

CHAIRMAN: Let me make this simpler. Let me make one statement. Would the applicant that made the motion withdraw your motion and the second withdraw your motion, and I'll recognize that and then we can get a new motion and start over.

Mr. Warren, will you withdraw your motion?

MR. NOFFSINGER: You might also include a condition that the adjoining landowner be notified by the applicant prior to submission of the final development plan to the planning office. Given the fact that there are issues, pressing issues regarding access to that property. Not the entire neighborhood. I'm sure word could get out that one is being
proposed, but given the fact that we have an issue regarding access and very legitimate that that landowner be notified by the applicant prior to submittal to our office and that that evidence of that notification be submitted with the final development plan.

CHAIRMAN: Mr. Attorney, am I correct?

MR. SILVERT: It would only require a withdraw by the author of the motion. There aren't two here. There's only one. So it would just be Mr. Warren that would have to withdraw his motion if he so chose. That's his personal privilege.

CHAIRMAN: Second doesn't have to withdraw too?

MR. SILVERT: It was taken as a friendly amendment. If it was taken as an actual amendment it require both do a set, but it was taken as a friendly amendment.

CHAIRMAN: But he seconded the motion.

MR. SILVERT: From that perspective you just have to agree.

CHAIRMAN: Mr. Warren.

MR. WARREN: Sure. I'll be glad to withdraw my motion.

CHAIRMAN: Entertain another one.

Ohio Valley Reporting
(270) 683-7383
MR. WARREN: In regards to the Variance to increase the maximum building height of an individual storage unit from 15 to 22 feet, approve that Variance for the existing buildings only. So that no other buildings could be constricted for more than 15 feet because I do feel like they will not adversely affect the public health, safety or welfare because the buildings have been there for several years. That it will not alter the essential character of the general vicinity. These buildings have been there. The use is essentially the same for the buildings. I would like to also add a condition that an 8 foot fence, solid wall fence be added to all sides of the property except for road frontage and allow for the adjoining property owners to the immediate north of Mr. Hayden, that those two be able to work that out, and that Mr. Hayden be notified prior to the submittal of the development plan, and that receipt be given to the Planning Office as a part of that financial development plan. Receipt of notification to Mr. Hayden.

MR. DYSINGER: Second.

CHAIRMAN: We have a motion and we've got a second. Does everybody understand that motion?

MR. STEWART: May I make a comment, sir?
CHAIRMAN: Just a minute, sir.

All board members understand how the motion was made?

(ALL BOARD MEMBERS NODS YES.)

CHAIRMAN: Do you have a comment on the motion, sir?

MR. MASON: Yes, sir. Jim Mason. I just want to address the situation on the shared access point. I'm probably the most familiar person in the room with the property having been on the property on a weekly, sometimes daily basis for the past three years.

Shared access point between the Gilliland Group Partnership property and Mr. Hayden's property is equally divided between the two parties. Neither one can block the other one, even if they took the fence all the way out to the highway, which they can't do. Mr. Hayden cannot be blocked from utilizing his property next-door to it.

The other comment I wanted to make was the adjoining property owners should be careful what they wish for because if you put a solid wall completely around that property it's going to be less appealing esthetically than it would if it was a chain-linked fence there. It's going to look more like a junk yard than a storage facility. I don't know of any other
storage facilities in the county that have a solid wall all the way around them.

CHAIRMAN: You've heard his comments. Is there any other comments or questions from the board?

MR. REEVES: Just clarify one thing for sure because I noticed Mr. Mason continued.

Does the applicant currently own the property or is this contingent upon approval of this?

MR. MASON: He does not own the property. The Gilliland Group Partnership out of Amarillo, Texas owns the property. We have a contract to sell the property to the applicant pending approval of the Conditional Use Permit and the Variance.

MR. REEVES: Okay.

CHAIRMAN: Any other questions from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: Only just a clarification on the fence along Mr. Hayden's boundary that he shares on the north. I believe I understood that the fence would extend to the right-of-way line at New Hartford Road unless Mr. Hayden determines that a shorter distance would be required.

MR. HAYDEN: This is on the prior issue actually. I just want clarification because I don't
How long is the variance granted if the property never closes? Is it conditional, unconditional, forever?

MR. NOFFSINGER: The Variance runs with the land. So it would run from here on out.

MR. HAYDEN: So even if this person doesn't buy it, it is now granted on whoever buys it maybe in the future?

MR. NOFFSINGER: Yes, to the degree -- that's a very good question. I'm trying to think this out. The only variance they are granting would be to the building height for individual storage units. If you wanted to construct a business office here, you could go much higher. So this variance would only apply to someone if they were going to create individual storage units and keep the existing structures, but any new structures could not be -- it only applies to the existing structure. So it runs with the land, but it only applies to the existing structures. I don't know of any other use, I could be wrong, but I don't know of any other use at this time that would require a height variance because those buildings are 22 feet.

MR. HAYDEN: I was just curious if the property didn't close, if the prior issue that was
addressed would actually --

MR. SILVERT: The Conditional Use Permit does.

MR. HAYDEN: So this doesn't become an issue because the first thing doesn't close, it's not grandfathered to the next person that comes and possibly wants to buy it. They have to come and apply also?

MR. SILVERT: The Variance runs with the land, but the Conditional Use is sunset.

MR. NOFFSINGER: Within a year. Another group could come in and do individual storage units, meet the same conditions within a year. A Conditional Use Permit has to be exercised within one year. I'm sorry to confuse. We've got a motion on the floor, but on the Variance -- well, I'm sorry, I tried to answer that one.

CHAIRMAN: Before we go forward on this motion, I want to ask the attorney, our attorney one question.

Am I correct, if somebody else buys this property they can come back and apply for a Variance and Conditional Use down the road; is that correct, or does this stop down the road?

MR. NOFFSINGER: Someone else could come in and ask for a completely new Conditional Use Permit or
a completely new variance. I remembered what I wanted
to state.

That if the applicant decides to tear down
those existing structures, then the condition for the
fence along these property lines goes away because
they would not exercise the Variance. The only way
the fence, the conditions has to be met that you
place on it is if they exercise the variance.

There's a denial on reducing the fence height
from 8 foot down to 6. That's recommended for denial.

MS. RODNEY: But should the existing building
come down --

MR. NOFFSINGER: If this Variance is granted
to allow the existing buildings to maintain their
height, then the applicant will have to construct the
fence along Mr. Hayden's property and the Y's
property. If he tears those buildings down or reduces
the height of them to meet the 15 foot requirement,
then he would not have to put a fence along that
boundary because he would not exercise the Variance.

MS. RODNEY: Along the north?

MR. NOFFSINGER: Be along the north boundary.

MS. RODNEY: But still on the east and on the
south the 8 foot would remain?

MR. NOFFSINGER: Yes.
MS. RODNEY: Thank you.

CHAIRMAN: Ma'am, you have something?

MS. PATEL: I just want the board to consider that when you make this decision, Mr. Berry and other properties, but Mr. Hill and my property is at a higher elevation. So any activity which goes in this proposed property we see everything. If you go upstairs, that's where my children's bedroom is and the master bedroom. You can see everything even with an 8 foot fence. So when he puts those lights, it will be shining on my house.

CHAIRMAN: Thank you.

Any other comments from the Board or Staff?

(NO RESPONSE)

CHAIRMAN: You've heard the motion. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

VARIANCES

ITEM 3

1201 Pleasant Valley Road, zoned P-1

Consider a request for a Variance in order to increase the allowable 150 square feet per sign to 256 square feet each for two (2) entrance monument signs and increase the allowable square feet from 150 to 210 square feet, 377 square feet and 210.14 square feet.

Ohio Valley Reporting

(270) 683-7383
for three (3) building identification signs.
Reference: Zoning Ordinance, Article 9,
Section 9-5(b)(1)
Applicant: Adelphia Graphic Systems; Owensboro
Medical Health System

MS. EVANS: The subject property was rezoned
in 2009 to P-1 and at that time a Conditional Use
Permit was approved for the construction and operation
of a hospital in November of 2009. A revised
Conditional Use Permit including a building envelope
was approved in May of 2010 and several development
plans have been approved for the subject property as
well.

Unlike a typical P-1 zoned property, the
subject property is over 150 acres with a campus like
setting for the main hospital building and support
office buildings. Pleasant Valley Road and Daniels
Lane, both roads used to access the subject property,
are minor arterial and major collectors roads,
respectively, with heavy traffic likely once roadway
improvements are complete around the subject property.

With the classification of Pleasant Valley
Road and Daniels Lane and the increased traffic
anticipated, larger entrance signs would be
appropriate to identify the entrances to the hospital
campus making it easier for vehicle traffic to
identify the entrances to the property.

Ohio Valley Reporting
(270) 683-7383
At 150 plus acres, the subject property is much larger than the typical P-1 zoned property. The large size of the property coupled with the campus like setting with many buildings make it appropriate for larger signage on the facade of the buildings.

Granting this Variance will not adversely affect the public health, safety or welfare because the larger signs will make it easier to identify the property. It will not allow an unreasonable circumvention of the requirements of the zoning regulations because of the large size and campus like setting of the property uncharacteristic of properties similarly zoned.

Staff would recommend approval with the following Conditions:

1. Obtain necessary building, electrical and mechanical permits, inspections and certificates of occupancy and compliance.

2. No signs shall be located in an easement without approval from the appropriate agencies.

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

CHAIRMAN: Thank you.

Does the applicant have comments at this time?

MS. BRENNAN: Not really. I believe you've
summed it up.

MR. SILVERT: Would you state your name and let me get sworn in, please?

MS. BRENNAN: Marilyn Brennan.

(MARILYN BRENNAN SWORN BY ATTORNEY.)

MS. BRENNAN: Basically I'm here to answer any questions regarding the signs, the size, the use.

Very straightforward. One of the size differences in the monument, which is the largest, it's because of encompassing the glass. It's illuminated. It's behind the illuminated box and that's what really increased the size of the square footage that we're requesting.

CHAIRMAN: Any board members have questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Do you have some pictures or something you want to show?

MS. BRENNAN: I wasn't sure if there would be anyone from the community to have the same drawings that you have in front of you set up. Those are only based on where the proposed easement agreements that have to be made for the utilities issued. That's the proposed locations.

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

(NO RESPONSE)

CHAIRMAN: Mr. Chairman, given the finding that granting the Variance will not adversely affect the public health, safety or welfare because of the larger signs will make it easier to identify the property and due to the general uniqueness of the property and the size of the property, I move that we grant the Variance.

CHAIRMAN: Is there a second?

MS. MASON: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Entertain one more motion, please.

MR. WARREN: Motion to adjourn.

MR. DYSINGER: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

Ohio Valley Reporting

(270) 683-7383
CHAIRMAN: We are adjourned.

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

I, LYNNETTE KOLLER FUCHS, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Board of Adjustment meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 78 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 25th day of September, 2012.

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

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

Ohio Valley Reporting
(270) 683-7383