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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

APRIL 3, 2014

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, April 3, 2014, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Ward Pedley, Chairman
Judy Dixon, Vice Chairman
Terra Knight, Attorney
Brian Howard
Lewis Jean
Sean Dysinger
Fred Reeves

* * * * *

CHAIRMAN: Call the Owensboro Metropolitan Board of Adjustment meeting to order. We will begin our meeting with a prayer and pledge of allegiance to the flag. Mr. Howard will lead us. Will you stand, please.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: I would like to welcome everyone. Anyone that wishes to speak on any item may do so. We welcome your questions and comments. We ask that you come to one of the podiums and state your name and be sworn in.

We have a new board member tonight, Mr. Lewis Jean. Would like to welcome him.

1 Reference: Zoning Ordinance, Article 8,
2 Section 8.2L7/48
3 Applicant: John & Carla Gerow; Seth Stewart

4 MS. KNIGHT: State your name, please.

5 MS. EVANS: Melissa Evans.

6 (MELISSA EVANS SWORN BY ATTORNEY.)

7 MS. EVANS: A Conditional Use Permit to
8 construct and operate an individual storage facility
9 on the subject property was approved in September of
10 2012 by the OMBA, but the facility was never
11 constructed and therefore the conditional use permit
12 has expired.

13 A Variance was approved for the subject
14 property in September of 2012 to increase the maximum
15 building height of an individual storage unit in a B-4
16 zone in the County from 15 feet tall to 22 feet tall
17 for the existing buildings on the property with the
18 following conditions; an 8 foot solid fence or wall be
19 added to all sides of the property extending to the
20 right-of-way line at New Hartford Road unless the
21 adjoining property owner to the north determines a
22 shorter distance would be required and except for the
23 road frontage; and the adjoining property owner to the
24 north be notified prior to the submittal of the
25 development plan and receipt of the notification be
given to the Planning office.

1 The current applicant is proposing to
2 construct and operate an individual storage facility
3 on the subject property identical to the application
4 that was approved in 2012. The applicant is proposing
5 to use some of the existing building on the property,
6 converting them to storage units and office space, and
7 construct six new buildings while demolishing the
8 garage type buildings to the rear of the property.

9 Individual storage is Conditionally Permitted
10 in a B-4 zone in the County with following conditions,
11 unless a Variance is granted:

12 A. Structure to be used as individual storage
13 units shall not be located closer than 25 feet to any
14 residential zone.

15 B. An 8 foot high solid wall or fence shall
16 be installed and maintained on all sides that adjoin
17 any other property, except for those properties of
18 zoned B-1, B-2, B-3, B-4, B-5, I-1 or I-2. Tree
19 plantings may also be required as per Article 17 of
20 this Zoning Ordinance.

21 C. Building height shall not exceed 15 feet,
22 measured from the finish grade at the loading doors,
23 to the top of the roof ridge or edge; a Variance has
24 been granted for this requirement for the subject
25 property.

1 D. Outdoor storage shall be prohibited on the
2 same property as the individual storage structures.
3 This shall include vehicles, boats and personal items.

4 E. All uses other than individual storage
5 shall be prohibited within structures while those
6 structures are being used for individual storage,
7 except for one office or caretaker's residence, which,
8 if present, shall be directly related to the
9 management of the individual storage units.

10 F. The Owner of the individual storage
11 structures shall be responsible for policing and
12 material and/or items being stored. The Owner shall
13 notify the Zoning Administrator upon discovering any
14 storage not meeting the requirements set forth herein,
15 providing the name, address and phone number of the
16 renter whose storage is in question.

17 LAND USES IN SURROUNDING AREA

18 The properties to the north are zoned B-4
19 General Business and A-U Urban Agriculture and both
20 are vacant. The property to the west is zoned B-4
21 General Business. The properties to the south and
22 east are zoned R-1A Single Family Residential and A-U
23 Urban Agriculture and are Single Family residences.

24 ZONING ORDINANCE REQUIREMENTS

25 1. Parking - no parking required.

1 2. Landscaping - a 8 foot solid wall or fence
2 with 1 tree every 40 feet along any property line
3 adjoining residential property with a 10 foot
4 landscaping easement and a 3 foot continuous element
5 between the vehicular use area and the road
6 right-of-way.

7 There are a couple of special conditions that
8 we would like the Board to consider.

9 SPECIAL CONDITIONS

10 1. Structures to be used as individual
11 storage units shall not be located closer than 25 feet
12 to any residential zone.

13 2. Outdoor storage shall be prohibited on the
14 same property as the individual storage structures.
15 This shall include vehicles, boats, personal items.

16 3. All uses other than individual storage
17 shall be prohibited within structures while those
18 structures are being used for individual storage,
19 except for one office or caretaker's residence, which,
20 if present, shall be directly related to the
21 management of the individual storage units.

22 4. The Owner of the individual storage
23 structures shall be responsible for policing the
24 material and/or items being stored. The Owner shall
25 notify the Zoning Administrator upon discovering any

1 storage not meeting the requirements set forth herein,
2 providing the name, address and phone number of the
3 renter whose storage is in question.

4 5. Submission and approval of a Final
5 Development Plan.

6 6. An 8 foot solid fence or wall be added to
7 all sides of the property extending to the
8 right-of-way line at New Hartford Road unless the
9 adjoining property owner to the north determines a
10 shorter distance would be required and except for road
11 frontage.

12 We would like to enter Staff Report into the
13 record as Exhibit A.

14 MS. DIXON: Do we have anyone here wishing to
15 speak in opposition to this item?

16 MS. KNIGHT: State your name for the record,
17 please.

18 MR. RODNEY: Dean Rodney.

19 (DEAN RODNEY SWORN BY ATTORNEY.)

20 MS. DIXON: You are opposed to this item or
21 you have concerns about it?

22 MR. RODNEY: I am opposed to this, yes.

23 MS. DIXON: Could you give us a little more
24 information on your opposition?

25 MR. RODNEY: Sure.

1 The proposal that has come before the board
2 tonight calls for the addition of six buildings as was
3 just read to be constructed on this site that would
4 house approximately 250 storage units.

5 As was common, there are five residential
6 homes that adjoin this property on the east and on the
7 south side, as well as the property on the northwest
8 side which is owned by the YMCA where they hope to put
9 in a kids park. Of course, then also property on the
10 north by Matt Hayden.

11 The buildings would be constructed about 25
12 feet from our property lines; however, the traffic
13 flow as proposed would be within that 25 feet. So in
14 effect that would mean that the renters of these
15 storage units would have traffic rights and
16 opportunities to be right on our backyards. I think
17 therefore there are multiple reasons not to approve
18 this Conditional Use Permit.

19 Construction, as we all know, alters the
20 drainage of any site. Our concern is that the
21 drainage gutters and pipes will not direct the flow of
22 water away from our property lines and into the
23 storage sewage areas where it belongs. There's also
24 concern on our part that the drainage will do erosion
25 and undermine the residential lots.

1 With any storage units potentially renters
2 would have the right to access their units 24 hours a
3 day, 7 days a week, 365 days a year. This obviously
4 presents a privacy issue for families of the adjoining
5 adjacent properties. Given there's going to be some
6 noise levels, that will increase on our behalf as
7 homeowners during the daytime and obviously
8 potentially in the evenings, and perhaps on weekends
9 as well.

10 It's a known fact that it's impossible to
11 police or patrol what's stored in storage units.
12 Hopefully all of it would be legitimate and legal;
13 however, on a national basis, illegal activity has
14 been stored in these units and therefore that has not
15 been the case. Drugs, for example, meth labs,
16 firearms, explosives and all other types of hazardous
17 materials have been found nationwide in storage units.
18 This is the type that we possibly could have next to
19 our homes, our families and kid parks are located.

20 The quality of life has always been a notable
21 importance to Owensboro/Daviess Countians. The type
22 of conditional use requested tonight for this project
23 would, I believe, negatively impact the quality of
24 life for the people living in their homes and for the
25 kids in the kids park.

1 There are certainly a number of commercial
2 proper uses that would be compatible with adjacent
3 residential lots; however, I would submit that 250
4 approximately storage units with the potential of 24/7
5 access with a traffic flow that is right in our
6 backyards within that 25 foot span, as well as the
7 possibility of hazardous materials being stored within
8 some of these units, would not be one of those
9 compatible uses.

10 Therefore, for these and other reasons I would
11 ask this board to consider denying this Conditional
12 Use Permit.

13 MS. DIXON: Thank you, Mr. Rodney.

14 Is there anyone else in the audience that
15 would like to speak in opposition?

16 MS. KNIGHT: Would you state your name,
17 please?

18 MR. HAYDEN: Mathew Hayden.

19 (MATHEW HAYDEN SWORN BY ATTORNEY.)

20 MR. HAYDEN: I just want to clarify to make
21 sure that what was read prior. That the two
22 conditions that were approved last time about the
23 screening, the wall and/or solid fence and then
24 notification, that those two are conditions. I know
25 you were running through that. I just wanted to make

1 sure that is the case.

2 MS. EVANS: Yes. Those were conditions that
3 were on the Variance that was approved. The Variance
4 runs with the land and is still valid and those
5 conditions still do apply to that variance.

6 MR. HAYDEN: I just want to make sure of that.
7 I think more of a clarification point.

8 I guess with this being a large, I guess,
9 development on a tract, a four or five acre tract
10 here, I guess three and a half acres, what assurances
11 are there going to be to make sure the utilities are
12 upgraded that serve this site? For example, the water
13 that comes to this area right now is I think a two
14 inch water line. There's not a fire hydrant. If this
15 is going to be developed into more building square
16 footage, etcetera, how will the assurances be that it
17 will have the proper things that are required? If
18 something were to happen to deal with a situation like
19 a fire or explosion because of something that was
20 stored in it. I guess my concern is that if you're
21 going to come in and start rehabbing buildings and
22 then just increasing the capacity, at what point will
23 the checks and measures be there to make sure that the
24 area gets developed and brought up to standards;
25 whether it's from water, from the electric, sewer,

1 drainage, etcetera. I don't know what that process
2 is. Is that going to be addressed when the
3 development plan comes back and that's when they'll
4 come and make sure that that's taken care of.

5 Then my last point is the joint access that we
6 have with the property that adjoins the entrance of
7 this. How will that work? What width will that be?
8 Who will make the improvements to that entrance?
9 Since that will technically to be ours as well, I just
10 want to make sure that these specifics aren't left out
11 and things just start developing and then the end
12 product and realize that things were overlooked.

13 MR. HOWARD: Do you want me to answer?

14 MS. DIXON: Yes, please, Mr. Howard.

15 MR. HOWARD: Sure. Be glad to.

16 Mr. Hayden, in regards to your questions,
17 let's answer the first. The conditions on the
18 variance still hold truly certainly.

19 As far as the utility goes, there will be
20 requirement for a final development plan. There will
21 be multiple principle structures on the property that
22 will require a final development plan, at which time
23 all the utilities will have to review and sign off.
24 This property is located in Daviess County,
25 unincorporated area. So the county engineer would

1 have to review and sign off on drainage prior to any
2 type of approval. So at that time the utility should
3 review and should not sign off unless there are
4 adequate services to the site. If not, they will work
5 with the developer to make sure they are there.

6 Then the third, as far as the joint access
7 goes. One of the conditions was that you as the
8 adjoining property owner be notified. My hope would
9 be that the applicant will be working with you as far
10 as how that access point would look and who would be
11 responsible for putting it in. It would be a joint
12 access between two private property owners. It's not
13 necessarily a public improvement as a street would be
14 within a new development. It would be some
15 negotiation between you all as adjoining property
16 owners. We would hope that all of that would be
17 addressed that way and you would know about it before
18 it was signed off on a final development plan.

19 MR. HAYDEN: Well, I guess I appreciate the
20 fact that the development plan hopefully catching the
21 utilities and the upgrades that need to be made. That
22 seems like a check and measure when it happens.

23 I guess the concern with the joint access
24 being that this is on a state highway that is not
25 going to allow additional access points would probably

1 be a fair statement to make. Is that there is no
2 assurance that the improvement, the width, I can't
3 keep him or whoever the new applicant is from breaking
4 ground and doing what they want and then I'm left with
5 a nonfunctioning access point because, back to your
6 point, it is private, but you're the one that is
7 giving jurisdiction for this to move forward and I
8 can't back go back to the state and say, hey, how
9 about another curb cut five foot down.

10 MR. HOWARD: Sure.

11 MR. HAYDEN: I understand the negotiation
12 process with a property owner, but this is set in
13 motion and there's not a check and balance to maybe an
14 additional signature can be required of the
15 development plan process making sure that that's
16 worked out. I'm not here to be unreasonable about it,
17 but I don't want a piece of property that basically
18 becomes landlocked or not able to function because a
19 development plan has been signed off and they're
20 moving forward. My ability to negotiate will become
21 irrelevant.

22 MR. HOWARD: Sure. That's a valid point. I
23 may defer to legal counsel here.

24 If there is a property that has a shared
25 access point, it would be of my opinion or at least I

1 think would be reasonable to have that person that
2 also shares that access point be required to the sign
3 the development plan because that access point not
4 only impacts this site, but then the adjoining
5 property as well.

6 Is that a valid point?

7 MS. KNIGHT: I'm not sure as I look at this.
8 It's a joint, but am I understanding this correctly,
9 that everything on this permit site plan, everything
10 on the final plan is encompassing actually joint
11 entrance. Is that the way I'm understanding it?

12 MR. HOWARD: There are basically two lots that
13 have frontage on New Hartford Road that share a single
14 access point. So it would serve not only this site
15 that is under consideration tonight, but Mr. Hayden's
16 property as well. I think his point is valid. That
17 he wouldn't want an access point to go in that would
18 render his site to be useless. I would think from a
19 perspective of it impacts his property, I think we
20 could look at having him sign the plan.

21 MS. KNIGHT: I think if it's on the final
22 development plan itself as being something that's
23 impacted that, I don't disagree.

24 I wonder, is the applicant here? I wonder if
25 we could hear from him.

1 MS. DIXON: Yes, we will hear from him.

2 MR. HAYDEN: That is my concerns. Once it
3 moves forward, I just want to make sure the check and
4 balances, if it happens.

5 MS. DIXON: Anyone else wishing to speak in
6 opposition?

7 (NO RESPONSE)

8 CHAIRMAN: Is there someone here representing
9 the applicant?

10 MS. KNIGHT: Would you state your name for the
11 record, please?

12 MS. GEROW: Carla Gerow.

13 MR. GEROW: John Gerow.

14 (CARLA AND JOHN GEROW SWORN BY ATTORNEY.)

15 MS. KNIGHT: Whichever would like to speak
16 first.

17 MR. GEROW: We basically want to develop
18 several storage units. We want to pick up where Seth
19 stopped, and we would like to use the same plan that
20 was approved in October of 2012.

21 As far as the problems with the access, I'll
22 be glad to work with Mr. Hayden in any way I can.

23 MS. KNIGHT: Would you be agreeable to having
24 him sign off on the final development plan, if that
25 was required?

1 MS. GEROW: As far as the driveway and
2 entrance? Absolutely.

3 MS. KNIGHT: Yes, ma'am.

4 MR. GEROW: Within reason.

5 MS. KNIGHT: That would be the only interest
6 that he would have would be the joint entrance. He
7 would have no say so in the electrical issues and that
8 type of thing. It would only be --

9 MS. GEROW: If it's the access, yes.

10 MR. GEROW: Yes, I would be willing to do
11 that.

12 MS. DIXON: Do you have any other comments to
13 address to Mr. Rodney's concerns?

14 MR. GEROW: The only thing I can come up with,
15 as far as the building and the people driving right
16 next to residences, there will be a fence, an 8 foot
17 fence between the driveway and the property line. So
18 there won't be any vehicles right up next to the
19 fence.

20 MS. GEROW: Also the elevation is quite
21 significant. In other words, if the buildings were
22 here, it's going to be quite substantially far away
23 where the actual property home is. I don't know how
24 many feet. Hundred?

25 MR. STEWART: It's probably --

1 MS. DIXON: Excuse me, if you're going to
2 speak you'll have to be sworn.

3 MS. KNIGHT: Would you state your name,
4 please?

5 MR. STEWART: Seth Stewart.

6 (SETH STEWART SWORN BY ATTORNEY.)

7 MR. STEWART: The property in question, the
8 residential property, the bottom level of a house is
9 sit above the buildings in question. You're talking
10 25 feet elevation change.

11 Drainage I know was an issue. Right now the
12 complete three and a half acres is paved. Adding
13 buildings with roof tops does not change the runoff at
14 all. The elevation stays the same. Right now the
15 runoff goes into a creek that runs underneath 231
16 between Dairy Queen and Subway. I believe the YMCA
17 owns that property.

18 With traffic in the backyard, I mean this
19 isn't a significant traffic flow. These are storage
20 units. Not a 24-hour McDonald's that could be on this
21 property.

22 Also, there's a lot of different things that
23 would create a lot more traffic that would not have to
24 have a conditional use permit.

25 Hazardous materials in Owensboro. I have not

1 known of any or ever heard of any, as far as in
2 storage units. I know it was a question a year and a
3 half ago when we had this meeting. Once a person
4 rents it, it's their property. That would be a
5 question for another owner if they ever had trouble
6 with hazardous materials or meth labs or anything like
7 that.

8 I have been in contact with a large facility
9 in Bowling Green. I know he has not had any troubles.

10 I believe that addresses most of what
11 Mr. Rodney had to say, and I believe they addressed
12 Mr. Hayden.

13 MS. DIXON: Mr. Rodney, do you have any other
14 questions of the applicant?

15 MS. KNIGHT: Ma'am, please state your name.

16 MS. RODNEY: Sandra Rodney.

17 (SANDRA RODNEY SWORN BY ATTORNEY.)

18 MS. RODNEY: I have some comments and then I
19 also have a question.

20 In terms of a 25 foot elevation, I believe
21 that's incorrect. Have you done an elevation --

22 CHAIRMAN: Ms. Rodney, if you'll direct your
23 question to us, and we'll get the answer.

24 MS. RODNEY: I would like to know has there
25 been an elevation by a county engineer or a reputable

1 professional who has established that fact?

2 There are two properties, two residential
3 homes that are on the same level that are New Hartford
4 Road backyard and the south backyard of two homes that
5 actually are in the same elevation. There are three
6 properties that are somewhat elevated, but I question
7 25 feet.

8 Also, I would like to know if the gas pipes
9 have been secured on this property? At one time there
10 were above ground gas pipes on this property that did
11 not need to be exposed to this traffic.

12 Also, I think if you have, I believe I heard
13 250 units. Once the person has rented that unit, what
14 are the security measures that the owner of the
15 property has in place? How about lighting, what's
16 that plan? Are we planning 24-hour access? Is that
17 in the proposal, that these 250 renters would be
18 allowed to enter the property 24/7, 365 days a year?
19 I heard in the proposal a comment about 25 foot
20 requirement, that the actual building be 25 feet from
21 the property line. Then I heard another comment on a
22 10 foot easement. I wonder if that could be explained
23 to me, the 10 foot easement, what that arrangement
24 was.

25 MS. DIXON: Ms. Evans, you want to explain the

1 easement?

2 MS. EVANS: The 10 foot easement is a
3 landscaping easement from the property line where
4 there couldn't be buildings built. It would have to
5 be a grass area.

6 MS. RODNEY: Are you talking about a 10 foot
7 easement, and from the 10 foot boundary an additional
8 25 foot to the next building or is the 10 foot
9 inclusive in that 25?

10 MS. EVANS: The 10 foot is included in that.
11 The buildings have to be 25 feet from the property
12 line, but there is a 10 foot landscaping easement that
13 runs inside that 25 feet.

14 MS. RODNEY: So my understanding then the
15 traffic flow would also be within that 25 feet for
16 access to the openings for these units.

17 My final comment is: I don't think any of us
18 are anti-business. I don't think any of us want to be
19 negative citizens, but certainly one of the attributes
20 of Owensboro and Daviess County is quality of life.
21 Any judgments that we make that enhance quality of
22 life and maintain quality of life and the well-being
23 of our families and our children, that enhances
24 business.

25 So thank you for your service and please keep

1 this in mind.

2 MS. DIXON: Thank you.

3 Let's see if we can get some answers to these.

4 Repeat your name for the record.

5 MR. STEWART: Seth Stewart.

6 Question of the height. I know the building
7 in question on this property is 22 feet. The fence
8 that separates the residential property sit taller
9 than that building. The lower level of the homes in
10 question are higher than that fence.

11 MS. DIXON: She asked if there has been an
12 elevation study.

13 MR. STEWART: I have had a phase 1 done. I do
14 not believe that includes the elevation. I don't
15 think that would be hard to find though.

16 Exposed gas pipes. Atmos, this used to be the
17 old Atmos property. That was their doing. Once I
18 took over in October '12, they came and unhooked
19 anything that was in question, including and removing
20 a meter that was not needed.

21 Lighting we went over in October of 2012 at
22 this meeting. It was not to be directed at the
23 residential areas, but there would be adequate
24 lighting for security. 24-hour access is part of this
25 project. It's a better sell. People get off work

1 don't want to be in hurry to get something in their
2 storage unit. There is cameras. There are also
3 computer programs that when a person comes into the
4 24-hour access they have a four digits pin as you need
5 to them. When they punch that in, it tells the
6 computer that John Doe has entered the property. When
7 he leaves, he punches in the same four digits. The
8 computer logs how long he was there. You have
9 security cameras watching everything else. So
10 significant amount of time would suggest maybe
11 inappropriate activities. You can go back and look on
12 the film and know exactly who was there.

13 This property has been vacant for five years,
14 six years, I believe, without any development. It's
15 on 231. It's a little bit of an eyesore. We're
16 trying to develop this into a nice, you know, uniform
17 painted, new blacktop, new fence and landscaping.
18 It's the first thing you see when you get off the
19 bypass headed north. It's a good piece of property
20 for this business. I believe it will succeed and be a
21 whole lot better than what it is right now.

22 MS. DIXON: Ms. Rodney, did those answer your
23 questions?

24 MS. RODNEY: Mostly.

25 MS. DIXON: Any board member have questions of

1 the applicant or the opposition?

2 MR. DYSINGER: I have question of Staff.

3 Are there any conditions, not conditions. Is
4 there anything in this application which materially
5 changes from when it was approved in the first case?
6 Are there new conditions that the Staff is putting in?
7 Is there any of the other information that changes
8 this application materially from the original?

9 MR. HOWARD: Ms. Evans is prepared to answer
10 that.

11 MS. EVANS: The only new conditions are the
12 conditions from the variance that run with the land.
13 Those are the only new conditions that were added to
14 this Staff Report.

15 MR. DYSINGER: Thank you.

16 MS. DIXON: Mr. Reeves.

17 MR. REEVES: My question too is probably for
18 Mr. Howard, and he may not be able to answer this.

19 Do you know if we have any other conditionally
20 permitted storage units that are adjacent to
21 residences in the county?

22 MR. HOWARD: I'm trying to go back through my
23 memory. We've had several done here in the last few
24 years. The majority I would say have been in
25 commercial and industrial type zones.

1 Are you aware in your research for the
2 application, Ms. Evans or Mr. Ball?

3 MR. BALL: I agree with you, Brian.

4 MR. HOWARD: I can't think of any within the
5 last six, eight years that have been.

6 MR. DYSINGER: What's over by Bolivar? You
7 remember the adjacency there? I mean there's a couple
8 of houses. My house around the corner, but it turns
9 out it's zoned industrial.

10 MR. HOWARD: That's in an area that's zoned
11 industrial.

12 MR. DYSINGER: But there's quite a bit of
13 residences around there so I don't know what the
14 zoning is.

15 MR. HOWARD: If I remember correctly, I don't
16 think they were residentially zoned properties.

17 MR. DYSINGER: Regardless of the zoning, you
18 would be hard pressed to find a less residential
19 looking. I mean the area is very residential and the
20 storage units there are dead, right in the middle of
21 them.

22 MS. KNIGHT: Would you state your name,
23 please?

24 MR. BALL: Manuel Ball.

25 (MANUEL BALL SWORN BY ATTORNEY.)

1 MR. BALL: I would agree, Brian. I believe
2 almost all the other ones are industrial zones;
3 however, almost all of the other ones that we've done
4 in the past have had residential adjacent to them. I
5 think you have Sumo Storage, as well as the one there
6 on Old Henderson Road.

7 MR. HOWARD: There was residential across the
8 street. We had one out in the county that did a
9 conditional use permit, but that was surrounded by
10 agriculturally zone property primarily.

11 MR. REEVES: I had one other question for
12 Mr. Hayden.

13 Mr. Hayden, were you satisfied with the
14 resolution to the access point? If this is approved
15 do you feel like that the access point issue has been
16 resolved to your satisfaction?

17 MR. HAYDEN: As long as there's a signature to
18 where we will be aware and involved in the process
19 because otherwise we have no negotiations. They can
20 proceed as they see fit.

21 MS. KNIGHT: May I just clarify something on
22 your signature on the final development plan. They
23 have agreed to it. That's the main reason it would be
24 on there. I understand their concern about it not
25 being unreasonably withheld. Do you understand?

1 You're not probably going to be able dictate that they
2 improve if there's asphalt? Do you understand what
3 I'm saying?

4 MR. HAYDEN: I understand that.

5 MS. KNIGHT: You can't withhold your signature
6 on the final development plan just because you want
7 something better.

8 MR. REEVES: Is the bottom line that you just
9 want to make sure that you have access?

10 MR. HAYDEN: I want to make sure that I don't
11 end up being landlocked.

12 MR. REEVES: That your access be assured.

13 MR. HAYDEN: For instance, if the gate, the
14 security to access this -- I mean there is really no
15 real plans approved. There's no civil engineer work.
16 It's very preliminary. So for all I know the gate
17 could be right when you pull into the access point.
18 Therefore the access point really is unable for us to
19 operate that adjacent property. The voice of
20 unreason, I mean it takes two willing parties. I need
21 to be able to access my property and to have chance to
22 be able to function.

23 MS. KNIGHT: Correct.

24 MR. HAYDEN: I don't know enough right now to
25 know the pros and cons of what's trying to be

1 permitted is the best way to say it because there's
2 not enough information here tonight to know what's
3 going on.

4 MS. KNIGHT: My concern is just like
5 Mr. Reeves said. That your approval would be that,
6 yes, you are insured that you have access and
7 continued access and that would be it. It's not the
8 Board of Adjustment's job to get in a private dispute
9 between private landowners, as far as joint use of
10 their property is concerned. Do you understand what
11 I'm saying the differences there?

12 MR. HAYDEN: Actually to a degree, but you're
13 making the change tonight so in essence --

14 MS. KNIGHT: Again, as far as the material
15 used for the joint access and how that's maintained
16 and those type of things, those issues for the private
17 landowners. That's my concern. I just want to make
18 sure that you understand why your signature would be
19 on there and what you would be signing off on.

20 MR. HAYDEN: I'm appreciative that it's going
21 to be required, but I'm very concerned how it
22 proceeds. Because there's no information here
23 tonight. No different than the elevation question.
24 He said he had a phase 1. That's a soil
25 investigation. There's not even topo. There's

1 nothing meaningful to answer any of these questions.

2 MS. KNIGHT: Again, your concern is that you
3 main joint access.

4 MR. HAYDEN: Yes. Joint access to where my
5 property continues to function.

6 MR. REEVES: This concerns me for both
7 parties. I'm concerned for this party, as well as
8 this party.

9 Once we make a decision on this, if we approve
10 it, then they're approved to go forward with their
11 project, unless Mr. Hayden wants something that
12 doesn't agree with him. Then who resolves that
13 dispute? That's my question. Is that then one that
14 this property has to sue Mr. Hayden or Mr. Hayden has
15 to sue this party to resolve it?

16 MS. KNIGHT: That's what I'm trying to get it
17 clear because I don't want there to be -- if they're
18 wanting to put concrete on the joint easement and he
19 wants asphalt, that's not necessarily going to be a
20 requirement on the final plan, as far as what material
21 is used for this joint access or who maintains it,
22 that type of thing.

23 MR. HAYDEN: I would agree with you. But to
24 that point actually Mr. Reeves has a very good point.
25 What will become unreasonable is usually money.

1 Because of the lack of information, you know, it's
2 hard to -- there is no reasoning at this point.
3 Probably the logical thing to do would have more
4 information before this moves forward so that there
5 are less unknowns.

6 MS. KNIGHT: Again, my -- the reason that
7 you've been asked to sign off on the final development
8 plan to ensure that you do have access to your
9 property. That's not landlocked and it's not shut
10 off. That's, I believe, what the applicant has agreed
11 to and to that extent only. Yes, then it would become
12 a private dispute and civil dispute between the two
13 parties.

14 MR. REEVES: I understand that.

15 MR. HAYDEN: My reason for delay would be if
16 more things were set in stone, then the reason for
17 signature prior could maybe accomplished. Does that
18 mean sense? I don't necessarily want to be looked at
19 as the holdup, but I don't want to be in a legal
20 dispute 30 days from now or whatever because somebody
21 thinks we're not being reasonable. I don't see -- I
22 mean I want it to move forward in some fashion, if
23 everybody sees fit. Also, I don't want to be stuck
24 with something that's not functioning for our
25 property.

1 MR. REEVES: Let me make one more comment
2 before he speaks on that.

3 I'm reluctant to say postpone it. Okay? I'm
4 equally reluctant to move forward before we have
5 something that we know perhaps cannot be resolved. At
6 the same time if we were to postpone it I'm not
7 willing to hear any additional testimony. We've heard
8 all the testimony that I care to hear on this as far
9 as making decisions on conditional use permit. I'm
10 not necessarily opposed to seeing if a month from now
11 Mr. Hayden and the applicant can work out this
12 particular piece. I don't want us to take action that
13 simply leads to a legal suit somewhere, which
14 inevitably, like it or not, we get drawn into because
15 we made a decision.

16 MR. DYSINGER: Madam Chairman, I'm hesitant.
17 We have a conditional use permit application in front
18 of us that's supported with evidence and testimony and
19 covers everything necessary for a conditional use
20 permit. Further, maybe reenforcing that, this is just
21 a redux of a conditional use permit that this body has
22 already approved without any material changes to it.
23 I am leery of going far field with regards to the
24 access issue, as sensitive to it as I am. It's not a
25 good position that Mr. Hayden is in. I'm very

1 sensitive to it. There's two issues here. This
2 permit on it's face has already been approved by this
3 body without any significant changes in the situation
4 before us. Secondly, and I can't support Mr. Reeves
5 enough. To get this body anywhere close to deciding,
6 you know, we can't go down that road in my opinion.

7 So to include a signature of an adjacent
8 property owner and the qualifications I think gets
9 this conditional use permit too far field from what
10 it's designed to do with the complicating fact that
11 we've already approved this one.

12 MR. HAYDEN: In past development that I've had
13 to have signatures to protect the landowners to have
14 work out access.

15 MR. REEVES: I'm not that uncomfortable with
16 that particular point. I would like, my preference
17 would be that that process has been resolved before it
18 comes before this board for a final approval. The
19 last conditional use permit was not unanimously
20 approved.

21 MR. HOWARD: If I could ask a question of the
22 applicant.

23 The site plan shows entry gate I guess 150
24 feet back from the property line. Will that be the
25 point of ingress and egress to the site?

1 MR. STEWART: Yes.

2 MR. HOWARD: So there will be a straight shot
3 from the access point on New Hartford Road back that
4 distance until you reach the first entry gate?

5 MR. STEWART: Exactly as it sits right now.

6 MR. HOWARD: Would you be willing to commit to
7 say a 40 foot wide access point, which is the maximum
8 width in a commercial zone, and that that 40 foot
9 paved access point would go straight back, be
10 completely open to the property to the north, the
11 entire distance back to where that entry gate is?

12 MR. STEWART: That's how it sits right now.
13 We don't have any plans to change it except the gate,
14 it's going to be different gate. It's going to be the
15 same spots it is right now. We're not going to touch
16 Mr. Hayden's property. There would be no way to get
17 it landlocked. It's going to be the same entrance as
18 it is now. Might have a fresh coat of paint on it.

19 MR. HOWARD: I guess another question I would
20 have. It seems like in some of what I was reading.
21 Is there an entrance point and an exit point or will
22 it all go through that entry gate?

23 MR. STEWART: It will all go through that
24 gate.

25 MR. HOWARD: So you're willing to put in a 40

1 foot wide paved strip, whether that's concrete or
2 asphalt, all the way back to that gate with no
3 blockage to the north?

4 MR. STEWART: Yes.

5 MR. HOWARD: I guess, Mr. Hayden, if that were
6 the case, if it went all the way back to where that
7 existing gate is, 40 foot wide paved drive with no
8 blockage on your side of the driveway, if that was
9 presented on a plan, would you be willing to sign off
10 on it?

11 MR. HAYDEN: Yes.

12 MR. REEVES: I think it needs to be put in as
13 a condition of the motion.

14 MR. HOWARD: Sure. I agree.

15 MS. KNIGHT: I agree.

16 MS. DIXON: Any other comments on either side?

17 (NO RESPONSE)

18 MS. DIXON: Chair is ready for a motion.

19 MR. DYSINGER: Madam Chair, I move that we
20 find that none of the findings from the previous
21 approval changed in any material way, and given the
22 special conditions suggested in the Staff review, and
23 in addition to those conditions that a 40 foot wide
24 paved, either concrete or pavement, access is
25 provided, move for approval of the conditional use

1 permit.

2 MR. HOWARD: Could I --

3 MR. DYSINGER: Friendly amend away.

4 MR. HOWARD: From the Staff, would you clarify
5 that 40 feet access to say that there would be no
6 potential for blockage to the north for Mr. Hayden's
7 property.

8 MR. DYSINGER: So amended.

9 MS. DIXON: I need a second.

10 MR. REEVES: I'll second it.

11 MS. DIXON: All in favor of the motion raise
12 your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 MS. DIXON: We are approved.

15 With that I will turn the gavel back over to
16 Mr. Pedley.

17 CHAIRMAN: Thank you, Ms. Dixon.

18 Next item I believe will be Item Number 3.

19 ITEM 3

20 3201 East 8th Street, zoned R-1A
21 Consider a request for a Conditional Use Permit in
22 order to operate a parrish house/administrative office
23 for an adjoining church.

24 Reference: Zoning Ordinance, Article 8, Section 8.2B4
25 Applicant: Pleasant Valley Community Church;
Betty Alvey

ZONING HISTORY

The subject property is currently zoned R-1A

1 Single Family Residential. OMPC records indicate
2 there have been no Zoning Map Amendments for the
3 subject property.

4 Pleasant Valley Community Church, located
5 across Pleasant Valley Road from the subject property,
6 is requesting to use the residential structure on the
7 subject property for its pastoral offices. According
8 to the applicant, on a typical week, the property will
9 be inhabited by the pastors, student ministers and a
10 communications coordinator. The offices will
11 primarily be used for study, small meetings and
12 administrative tasks. The parish house/administrative
13 office will be located across the street from the
14 church and will be required to provide parking and
15 landscaping as indicated by the Zoning Ordinance.

16 LAND USES IN SURROUNDING AREA

17 The properties to the north, south and east
18 are zoned R-1A Single-Family Residential and are
19 either vacant or residential structures. The property
20 to the west is zoned B-4 General Business and is the
21 Pleasant Valley Community Church.

22 ZONING ORDINANCE REQUIREMENTS

23 1. Parking - Churches, Sunday Schools, Parish
24 houses - One for every 5 seats with a minimum of 5
25 parking spaces provided as shown on the site plan.

1 2. Landscaping - 1 tree per 40 foot of the
2 vehicular use area boundary.

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

5 CHAIRMAN: Anyone here representing the
6 applicant?

7 APPLICANT REP: Yes.

8 CHAIRMAN: Any board member have any comments
9 or questions of the applicant?

10 (NO RESPONSE)

11 CHAIRMAN: Does the applicant have anything
12 you would like to state?

13 APPLICANT REP: No.

14 CHAIRMAN: If not the chair is ready for a
15 motion.

16 MR. REEVES: I make a motion for approval in
17 that it does not change the character of the
18 neighborhood and offers no safety or health issues.

19 CHAIRMAN: We have a motion for approval by
20 Mr. Reeves.

21 MS. DIXON: Second.

22 CHAIRMAN: Second by Ms. Dixon. Comments or
23 questions on the motion?

24 (NO RESPONSE)

25 CHAIRMAN: All in favor of the motion raise

1 your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries unanimous.

4 Next item, please.

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6 VARIANCE

7 ITEM 4

8 315 Worthington Road, zoned I-1 Postponed from the
9 March 6, 2014 meeting
10 Consider a request for a Variance in order to waive a
11 portion of the required 6' solid element around the
12 perimeter of an outdoor storage yard as shown on the
13 site plan submitted with the variance application.

14 MR. HOWARD: Mr. Chairman, this item was read
15 into the record at the meeting last month. The
16 applicant and Staff recommended postponement until
17 such time that the Daviess County Fiscal Court took
18 final action on the rezoning change. They have not
19 taken action on the zoning change at this point so we
20 would recommend that it be postponed again.

21 CHAIRMAN: We need a motion for postponement.

22 MS. DIXON: Move to postpone.

23 MR. DYSINGER: Second.

24 CHAIRMAN: We have a motion and a second.

25 Comments or questions?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise

1 your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries unanimous.

4 We need a motion to adjourn.

5 MR. REEVES: So moved.

6 CHAIRMAN: We have a motion to adjourn.

7 MR. DYSINGER: Second.

8 CHAIRMAN: All in favor of the motion raise

9 your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries.

12 We are 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 39 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 28th day of April, 2014.

18

19

LYNNETTE KOLLER FUCHS
NOTARY ID 433397
OHIO VALLEY REPORTING SERVICES
2200 E. PARRISH AVE., SUITE 106-E
OWENSBORO, KENTUCKY 42303

22

23 COMMISSION EXPIRES: DECEMBER 16, 2014

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25

Ohio Valley Reporting
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