The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, June 4, 2015, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Ward Pedley, Chairman
Judy Dixon, Vice Chairman
Ruth Ann Mason, Secretary
Brian Howard, Director
Terra Knight, Attorney
Jerry Yeiser
Susan Free
Fred Reeves

CHAIRMAN: Call to order the Owensboro Metropolitan Board of Adjustment June 4, 2015 meeting. We begin our meetings with a prayer and pledge of allegiance to the flag. Mr. Reeves will lead us. Will you stand, please.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

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

With that the first item on the agenda is to consider the minutes of the May 7, 2015 meeting.
Board members, you have a copy of the minutes in your packet. Are there any additions or corrections on the minutes?

(NO RESPONSE)

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

MS. DIXON: Move to approve.

CHAIRMAN: We have a motion for approval.

MS. FREE: Second.

CHAIRMAN: We have a second. All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

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CONDITIONAL USE PERMIT

ITEM 2

1631 Breckenridge Street, zoned B-5
Consider a request for a Conditional Use Permit in order to operate a homeless shelter.
Reference: Zoning Ordinance, Article 8, Section 8.2A7/6a
Applicant: Cross Roads, Inc.; Thomas H. & Mary Lou Blackford

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

MR. HILL: Mike Hill.

(MIKE HILL SWORN BY ATTORNEY.)

MR. HILL: Good evening, Commissioners.
This is a request for a conditional use permit for an emergency overnight homeless shelter.

The applicant has been operating a soup kitchen at this property since it was rezoned last September to B-5 business industrial zone for a food pantry and community center. The application proposes to expand the services that they offer to the community by opening an emergency overnight shelter for women and children to be in use between 7 p.m. and 8 a.m.

The applicant has provided all the necessary information required in the zoning ordinance for this particular conditional use; demonstrating that they meet the criteria for a conditionally permitted group housing of which this use falls into that category.

The information that they have submitted demonstrate they're compliant with the criteria. Most of that is included in the packets that you all have before you, if you're interested in looking through that.

As far as the surrounding area, this part of Breckenridge Street is a variety of land uses, commercial, industrial and professional offices all within the vicinity around the site.

On the Staff Report we listed the specific
zoning ordinance requirements that pertain to this conditional use permit. I'm not going to go through every one of those, but they're there for your reference. They have submitted information that demonstrate that they have met all the criteria listed there.

Just in brief it's things like supposed to be located within half a mile of a public transit; not located in a historic district; the facility has to have an on-site administrator that administers the rules of the house so-to-speak. They have submitted the information regarding that. They have to have a fire exit plan. They have to demonstrate that hallways and stairs and other means of egress shall be kept clear of obstructions. So that information is in your packet.

The board, of course, as it mentions in the code and in this conditional use permit may impose additional conditions on request if they choose to do so.

The one suggested condition that we have listed is at the bottom of the Staff Report. They obtain the necessary building, electrical and mechanical permits, inspection and certificates of occupancy and compliance from the Owensboro
Metropolitan Planning Commission.

Staff request that the Staff Report be entered into the record as Exhibit A.

CHAIRMAN: Anyone here representing the applicant?

MR. TAYLOR: Good afternoon. Septimus Taylor. I'm the attorney for Cross Roads and the applicant. Ms. Ison and Mr. Blackburn are here if you have any questions.

MR. YEISER: Mr. Chairman, I will need to excuse myself since it's a personal friends asking for this conditional use permit.

CHAIRMAN: So noted.

Do you have any comments that you want to share with us, and we'll see if you have any questions from the board members?

MR. TAYLOR: The one condition that the Staff has presented, they are ready and able to meet that condition. Other than that, everything is submitted in the application, but we can answer any questions that you may have.

CHAIRMAN: Board members, do you have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Is anyone here that would like to
speak in opposition of this application?

(NO RESPONSE)

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

MR. REEVES: I'll move for approval of the application based on the fact that this area of the community already has a great deal of mixed use in there, and the proposed use by the applicant would not have any negative impact on any of those current uses; also proposed use would not have any significant impact on the increase traffic or noise in the area.

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

MS. DIXON: Second.

CHAIRMAN: Second by Mrs. Dixon. Any comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT - WITH THE DISQUALIFICATION OF JERRY YEISER - RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

ITEM 3

1412 Tamarack Road, zoned R-1B
Consider a request for a Conditional Use Permit in order to operate a by appointment only personal training facility in a detached structure
MR. HILL: This is a request for a conditional use permit for a personal training facility. The zoning ordinance is listed as an indoor recreational activity. There's several activities, and fitness centers is one of those listed uses.

There's a little bit of history on this property. I want to go through a little bit of that for you as we move forward tonight.

At the beginning of January of this year, the applicant approached the Planning Commission office about this particular land use that they wanted to do at the residence. Planning Staff advised them that rezoning was more than likely not going to be successful endeavor given the residential nature of the neighborhood, and advised them that there is a conditional use permit option that they could pursue if they chose to.

We explained the process, how it works, requirements that are involved including landscaping, parking, things of that nature that would be required of them associated with this conditional use permit request.

At that time a business license was issued for
this address for the activities that they have
proposed with the caveat that they cannot occur on
this site until a conditional use permit is applied
for and successfully obtained. Any business
activities would have to occur off-site until such
time.

A few weeks later, the end of January of this
year, our office received a complaint that there was
business activity going on at the site. A Notice of
Violation was sent to the property owner.

Then exactly one month later on February 26th
our office received a response from the applicant's
attorney. They notified us that they intend to
complete the application, submittal process for the
conditional use permit. Asked if we would delay
further enforcement until they turn in their
application. Our office was agreeable to that.

Skip forward another six weeks or so. We
started receiving additional complaints from neighbors
in the area that business activity was going on at the
property at that time. So we were made aware by the
neighbors that this was ongoing. We sent out a
subsequent Notice of Violation, and I believe another
notice was also hand-delivered to the applicant by the
zoning enforcement team.
Then on May 13th a conditional use permit application paperwork, completed paperwork was turned into our office for tonight's agenda.

Regarding parking on the site, residential portion of the site is required to have two parking spaces per the zoning ordinance. The commercial portion based on their activity and their number of staff and appointments is also required to have two spaces as well. They would be required to provide screening for any vehicular use area that they propose to implement on the sites where the parking areas would be adjacent to residential properties, as well as public street right-of-way on Tamarack.

The applicant has provided a site exhibit in the packet that shows how and where they propose to comply with the parking and landscape requirements.

As far as surrounding land uses in the area, it's residential all around it.

The suggestive condition at this point that we recommend is to obtain necessary building, electrical and mechanical permit, inspections and certificates of occupancy and compliance from the OMPC.

Staff request that the Staff Report be entered into the record as Exhibit B.

CHAIRMAN: Anyone here representing the
applicant?

MR. PFEIFER: Mark Pfeifer.

MS. KNIGHT: Mr. Pfeifer, you're sworn as an attorney.

MR. PFEIFER: I'm here for Brittany Gooley and Rocky Maddox, they are here as well and will answer any questions that anyone would have.

One thing I would say is the area immediately surrounding their property is residential. If you look on the screen, there are three buildings, further east is all Blessing International, which is an adoption agency, and right across the street, one building closer to Frederica, is a chiropractic center.

They are ready to comply with both the parking requirements and the screening that is required by the commission.

CHAIRMAN: Board members, do you have any questions of the application?

MR. REEVES: I have a question for Staff. Does the City issue business license for a business even though a conditional use permit has not been approved?

MR. HOWARD: Jim, correct me if I'm wrong.

The business license was issued stating that,
basically allowing them to use their business name or whatever, but would not allow it to take place at the residence until a conditional use permit was approved.

MR. REEVES: Okay. I'm going to have several questions, but go ahead.

CHAIRMAN: Anyone else have a question?

MS. DIXON: I have question.

Why did you continue using it before you got the permit?

MR. PFEIFER: I'll let Mr. Maddox speak to that. I don't know that he did continue using it. There may be disagreement on that.

MS. KNIGHT: Mr. Maddox, would you state your full name for the record, please?

MR. MADDOX: Rocky Maddox.

(ROCKY MADDOX WORN BY ATTORNEY.)

MR. MADDOX: When we first moved into the property, I just applied for a license in order to continue to do my personal training business in the City of Owensboro. I've been a personal trainer, you know, traveling around for two years. We first bought the property like eight months ago. We didn't intend of it flourishing or me becoming as popular as I became in the city. It just kind of, you know, it kind of potentially started picking up. Some of the
clients that I picked up I really need to have them come by, you know. I maybe operate with around ten clients and I need maybe half of them to come by the house because I have to show them proper exercise technique. I have to maybe go over their assessments, set goals for them because they're at either gyms or traveling or whatnot. I have a lot of prominent clients that I go to their homes.

I didn't start a business because my gym is not finished yet. If you see it, you would probably laugh. It's not really finished yet so I didn't -- other than have people come over, whether friends that are nurses or my friends, whether jogging around the street or something, I didn't operate a business where I was taking monetary funds in order to allow people to work out. My facility is not really big enough to actually have that volume and have people work out in.

CHAIRMAN: Any other questions from board members?

MR. REEVES: I have a couple of questions. Is there a reason that you didn't apply for the appropriate permits when you made improvements to the building?

MR. MADDOX: Sir, the only improvement that I made is for the drywall. I contracted a company. I
really didn't know anything about business or how this goes. I just made a call to a company and they came and put drywall up. That's the only things I've made. I haven't done any other changes, electrical or anything. I just a made call and asked to put drywall up. I didn't remodel it or anything.

MR. REEVES: Mr. Warren, would that be accurate? Was there any improvements made that should have been inspected other than drywall?

CHAIRMAN: Mr. Warren, will you step to the microphone, please.

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

MR. WARREN: Matthew Warren.

(MATTHEW WARREN SWORN BY ATTORNEY.)

MR. WARREN: I have not actually been in the garage at this time. The enforcement of the building code issues, I was going to wait until this was taken care of to see if it was approved or disapproved before we looked at what we are going to do. All I can do is take him at his word that that's all he did. I have not done an inspection at this time.

MR. REEVES: Thank you.

CHAIRMAN: Any other questions of the applicant?
CHAIRMAN: I'm going to ask for any opposition. Just have a seat.

Anyone here would like to speak in opposition of this application?

MS. KNIGHT: Mr. Land, you're sworn as an attorney.

MR. LAND: Good evening, Mr. Chairman, Board Members, Counsel, Mr. Howard. My name is Sean Land. I'm here tonight on behalf of several neighboring property owners. Here tonight are Don and Sylvia Barlow, Cindy Bartley and Brenda Whitmer. They may wish to speak.

With counsel's permission I would like to pass out a couple of copies of items.

My clients strongly object to the conditional use permit sought by the applicant at this evening's meeting.

The applicant's property, as well as my clients' property, is located in a residential zone. It's R-1B, previously discussed in Staff Report and by the applicant.

The applicant seeking a conditional use permit in order to operate an appointment only personal training facility in "a detached structure." This
detached structure actually is an existing garage in
the rear of the applicant's yard. In fact, I believe,
that garage was constructed many years ago. Long
before the applicant purchased the property. It was
there at the time they purchased.

In the packet that I have passed out, in fact,
it's probably the same photo that's on your screen, it
clearly shows the detached structure.

Now, my clients that are here tonight, the
Barlows, Mrs. and Mrs. Barlow, I guess live next-door
to the subject property to the east. Mrs. Whitmer
lives next-door to the west. Mr. and Mrs. Bartley is
across the street.

Looking at that aerial photo you can see that
this detached structure of the garage where the
activity would occur, if the conditional use permit is
granted, is actually closer to Mr. and Mrs. Barlow's
dwelling than the applicant's dwelling.

Now, I've also including, and I'm sure you
have a copy, of a site plan drawing that was submitted
with the application. To assist I have a blown up
copy of that.

This site plan drawing clearly shows a portion
of the applicant's detached structure, the garage,
where the with business would be conducted, actually
encroaches on a public utility easement. We have a five foot public utility easement at the rear of the property line. I believe the south -- well, the rear corner closest to Mr. and Mrs. Barlow's house actually as shown on the site plan submitted with the application, just over three feet from the rear property line.

My clients object to the conditional use permit essentially on two basis. First, they actually when I'm finish may wish to speak to this issue. We believe that it's contrary to the general nature and character of the surrounding area and the neighborhood. As noted in the Staff Report, all properties in the immediate vicinity are zoned residential or are used as such.

Mr. Pfeifer is correct, several properties down on the corner of I guess Tamarack and South Griffith there is adoption agency. Then as you going towards Frederica there is chiropractor, then of former Texas Gas building, well, JA building then Texas Gas.

We believe there is simply as to this area there is simply no precedence for this sort of use or business.

The second basis for my clients' objection is
we believe that the proposed use or activity would violate at least three portions of the zoning ordinance. I have included copies of excerpts of those in the package that I've passed out.

First in Article 3 of the zoning ordinance in Section 3-6(a)(1) it provides "residential zone - accessory buildings shall not be used for or involved with the conduct of any business, trade or industry."

Of course, as you all are well are, Article 14 of the Zoning Ordinance, the definition section deals with definitions for words such as may or shall. In all circumstances, according to Article 14, the word "shall" is mandatory. Not merely directive.

There can be no question that the applicant is seeking to use this detached structure or garage for a business purpose. Thus it's expressly prohibited under that section, again, Section 3-6(a)(1) of the Zoning Ordinance.

Second, staying in Article 3 but now looking at Article 3-6(e). It provides, "accessory buildings, structures and features shall not encroach upon or be located within public right-of-way, public utility easements, or adjoining lots."

Again, we have the words "shall not" which are imperative or mandatory. The fact that the corner of

Ohio Valley Reporting
(270) 683-7383
this garage encroaches upon the public utility
easement, can't be questioned here. It was on the
site drawing submitted with the applicant's
application. Therefore the Zoning Ordinance would I
think prohibit granting the permit on that basis.

Finally, turning to Article 8 of the Zoning
Ordinance, specifically Section 8.2b11/13, which
relates to "Indoor Recreational Areas." It provides
in Part 13 where it can be done with the conditional
use permit, but Part 13 there that is included with
the package clearly provides "Commercial indoor
recreational activities are prohibited in all
Residential Zones."

The personal training facility applicant
wishes to operate clearly will constitute a commercial
use. It's a business. In fact, I have included
copies with the package, my clients became of aware of
this by January 15, 2015 article in the Messenger.
The head photo actually shows the applicant with a
client. The article discusses rates, fees, things
like that. That makes it very clear it is commercial,
and it clearly is in a residential area.

Article 8 in the applicable section provides
again, "Commercial indoor recreational activities are
prohibited in all Residential Zones."
I submit that the conditional use permit must be denied based upon the effect and, again, my clients may wish to speak on the effect that it will have on the vicinity where they live, but most importantly it must be denied due to the expressed provision of the cited sections of the zoning ordinance.

Again, we're talking about Section 3-6(a)(1), 3-6(e), and finally 8.2b11/13.

Again, I appreciate your time, your consideration.

CHAIRMAN: Let's see if any board members have any questions.

Board Members, do you have questions on this? Anyone?

(NO RESPONSE)

CHAIRMAN: If not, if you want to have a seat and we'll see if anyone else would like to speak.

Anyone else like to speak on this?

MS. KNIGHT: Sir, can you state your name?

MR. BARLOW: My name is Don Barlow.

(DON BARLOW SWORN BY ATTORNEY.)

MR. BARLOW: My name is Don Barlow. I live at 1406 Tamarack Road. My wife and I have lived there for 50 years. I would not have bought this house back that many years ago if there had been a business
already. My property is next to Mr. Maddox. Our property is separated by a gravel driveway that extends from the street back to Mr. Maddox's detached garage, where his business is located. The building is approximately three feet from my backyard. This may devaluate my property or at least make it difficult to sell it as its true worth. Businesses should not be allowed in residential zoned areas. To compound the problem, parking and backing out of the gravel driveway makes it more dangerous for his clients as well as the surrounding neighbors that you will hear from or already have.

Traffic on Tamarack Road already makes it difficult for local residents to safely get out of their driveway. This adds to the problem.

Kind of in summary. It takes away the residential feeling, opens the gate for other commercial businesses to move in. Evaluation probably won't change, but I never will be able to sell my property for what it's worth with a business there. It creates more traffic problems by blocking view of people trying to get out.

That's pretty much all I have to say. Does anyone have questions for me?

CHAIRMAN: Any board members have any
questions?

(NO RESPONSE)

CHAIRMAN: Thank you, sir.

Anyone else who would like to speak in opposition or have any comments or questions on the application? Anyone?

MR. REEVES: I have another question for Mr. Maddox, please.

CHAIRMAN: Let me make sure we don't have anyone else in opposition, and then I'll call back Mr. Pfeifer or Mr. Maddox.

Would you like to respond to the concerns and questions that you've heard?

MR. PFEIFER: No.

MR. REEVES: Mr. Maddox, is this picture in the Messenger-Inquirer an accurate representation that you are in fact working with a client in your gym at this property?

MR. MADDOX: When the Messenger-Inquirer came to ask to do a story because they heard about my popularity around town, they came and they did a story. I was telling that, you know, I have a building in the back that hopefully I can maybe one day turn into a gym. The gentleman that was there asked if he could take a picture. You know, I had a
cousin of mine that stated in the article that we've been working out for two years, and remind you that we've only been in the house for three months up until January. I've been working out with her. It's a friend of my family.

They asked if they could take a picture, you know, for publicity. I was young. I didn't know that it would get blown out of proportion to where they would make it like I was really having a gym. I just wanted to have a couple of my clients come by just as normal traffic, no traffic in the road, but just to come by and just to get assessed and just to get taught the proper formation of exercise. I never intended it on being what the newspaper made it out to be, like a commercial gym. I can't compete with any commercial gym. It's just a residence where I need a couple of people to come over and show them certain things. That's all. I don't want to interrupt anything. I don't want to interrupt the residential area. I like my property value how it is. I don't want to interrupt any of my neighbors or anything.

The structure is going to be there. I'm still going to work out there. That structure is not going to change, you know. The traffic is going to be there. Tamarack is a high traffic area. Apollo is
down the street. There's people run up and down the
street all day long. I do that also. I don't want
any problems. I want to get along with my neighbors.
I really do. I wish we could have had a conversation
about it. I don't want to interrupt anything that
they've got going on.

In response to what you said, Mr. Reeves, I
never intended on it being what it was. The newspaper
came and they were really wanting a story. I mean
that's what they got. I really am sorry that it came
across to my neighbors as such a shock.

MR. REEVES: Did you represent Ms. Torres as a
client or did the Messenger-Inquirer independently
represent Ms. Torres as a client?

MR. MADDOX: Well, they represented to her
basically -- she was there. They basically asked if
she would come in and portray --

MR. REEVES: My question is --

MR. MADDOX: No.

MR. REEVES: -- who represented her as a
client?

MR. MADDOX: I am her personal trainer.

MR. REEVES: So she is a client?

MR. MADDOX: She is a client of mine.

MR. REEVES: That answers my question. Thank
CHAIRMAN: Mr. Pfeifer, would you like to address his concerns?

MR. PFEIFER: Well, with regard to the encroachment issue, Mr. Maddox didn't do anything to enlarge that structure. So that garage has been there long before he ever bought that property last year. He didn't do anything to expand the scope of that building. He never added onto it. As far as that goes, he hasn't done anything to change that in one respect at all.

The main question you have is would this have an adverse influence on any future development of the subject property or the surrounding neighborhood.

Tamarack Road has been used heavily for a long time. I've grown up in this town and it's changed since I was a kid living in Thoroughbred Acres in 1980. That neighborhood has changed quite a bit. There has been increased business along that neighborhood. I don't think the scope of what Mr. Maddox is envisioning is going to change the essential nature of that neighborhood at all.

We would ask that the conditional use permit be granted, his application be grant. He'll comply with whatever reasonable restrictions you need to put
on it. Thank you.

CHAIRMAN: Board members, you have any questions?

MS. MASON: Yes, I have another question for Mr. Maddox.

I'm kind of glancing down through this newspaper article. I see where you say the gym will offer a clothing line that you're featuring shirts. So you're planning to sell clothing which would be people coming and going for that also?

MR. MADDOX: No. All my clothing purchases are online. People order them and they're shipped to their address.

MS. MASON: Okay.

CHAIRMAN: Any other questions from a board member?

MR. YEISER: I really want to talk to Jim. That's who I want to question.

CHAIRMAN: I'm going to come back to Staff.

MR. YEISER: Thank you.

MS. DIXON: I have a question for Mr. Maddox. You stated that you wish you could have had a conversation with your neighbors. When you first bought the property and decided this was the use you wanted, did you make an effort to talk to your
neighbors?

MR. MADDOX: They were really friendly. You when the newspaper article came out everyone stopped speaking to me. I don't see my neighbors. No one really comes out or anything. They stopped speaking to me I didn't want to really intrude. I really, really wanted to go and speak with them. I spoke to my attorney and when I went up to Planning and Zoning they said that was a good idea. But I was just getting a cold shoulder. I'm really young. I want to do the right thing, but our age differences are kind of large. I wish I could have, but I just didn't have the opportunity.

MS. DIXON: When you first moved into the property, before the newspaper article came out, did you make an effort to explain to them, I'm considering this?

MR. MADDOX: Well, when I moved into the property, I never thought that this, I never intended on having it. It was just like once the newspaper came and I said, this is a facility that, I mean this is what I have that I workout in and maybe I could have it into a gym maybe. The story kind of got big and people were asking me about it. I said, you know, I'm going to apply for it and I'm going to see if I
can get the permit for it. Sounds like maybe a good idea to have a couple of people over, you know. So here I am now.

CHAIRMAN: Thank you sir. I'm going to see if the opposing side, Mr. Land, would like respond to this.

MR. LAND: Just briefly.

Earlier I brought up what I believe are three violations of the zoning ordinance. Mr. Pfeifer certainly addressed the issue about the encroachment on the public utility easement. He's correct, Mr. Maddox, neither of the applicants, current owners of the property constructed that garage. The garage was constructed after the neighborhood was developed. It was after the plat. I believe I have the original Town and Country, Unit 1, subdivision plat in the packet I passed out, which shows five foot utility easements. That structure did not exist. These folks can probably tell you about, you know, the exact year that it went up, but it was well after the easement was granted.

Question whether, you know, the permitting, other than a conditional use permit, but as to the building, Mr. Warren and his office may be conducting, whether it can ever lead to a certificate of occupancy
based on that encroachment.

Of course, we can't forget the other two.

Again, I believe obvious prohibition in the zoning ordinance dealing with business use is never permitted. As stated in Article 3 there, "accessory buildings shall not be used for or involved with the conduct of any business, trade or industry."

Again, we're at Article 8. This has been brought and a portion of the zoning ordinance cited actually provides that "commercial indoor recreational activities are prohibited in all residential zones."

Now, I believe Mr. Warren earlier said, you know, we really have to take the applicant's word on the nature of those using the facility over the last several months. I'm sure any of these folks would be happy to advise, ask to frequency of visitors, and items like that, you know, if there's any specific questions. I don't know that that actually establishes any violation. It could be just lots of people going by.

The Staff Report does indicate that the connection with the planning office began with at least an inquiry about the zoning change to the area, and then resulted in the current conditional use permit. I think that does make clear that the intent,
while it may be different after today, but up until this point was clearly to engage in a business out of that detached garage. Otherwise, I don't see the need to go to those extremes.

CHAIRMAN: Board members have any additional questions?

(NO RESPONSE)

CHAIRMAN: Anyone else? This is the final round, final call. I think everyone has had adequate time to respond to both sides.

I'm going to ask board members, do you have questions of Staff.

MR. YEISER: I would like to ask Jim a question.

On this zoning, according to what he just read, Jim, these articles are pretty strong that we're not supposed to do that. Is there something in the condition that will allow us to be able to give them a conditional permit?

MS. KNIGHT: State your full name for the record.

MR. MISCHEL: Jim Mischel.

(JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I'll try to clarify some of the comments I've heard.
As far as the comments about Article 3, one of the comments on the definition I think is the article, when you get into assembly and recreational activities, a fitness center does belong in that activity and is conditionally permitted R-1B zone. I believe that takes care of part of Article 3. That gives you a reason why you can justify it.

I think if there's a gray area in there, you would have to go to what's been pointed out to Number 13 where it says "Commercial indoor recreational activities are prohibited in all Residential Zones." That's kind of where you have to look at all the evidence and see if you think it fits into that neighborhood, integrates into the neighborhood.

I believe by it being conditionally permitted in that zone that's why they come to this board.

As far as the other comment about Article 3, the easements, this board really doesn't have the authority to relieve that. I mean that structure is in an utility easement. The only people that can relieve that would be the utility company. They would have to go to the utilities and ask for an easement release. That wouldn't be done by this board.

MR. YEISER: The encroachment I'm not concerned about. That's been there so long enough
it's going to be grandfathered anyway. Town and
Country has been in existence a lot of years. So I
can't see that anything can be done with that. I was
just concerned about this commercial and/or
recreational activities. He is doing this for pay. I
mean it is a business. My concern is are we allowed
to give him encroachment on something like this with
these rules.

MR. MISCHEL: I think you're allowed to
consider it by the sheer fact that it conditionally
permitted in an R-1B zone, but you have to weigh the
evidence to determine to what degree is that
commercial activity, I believe.

MR. YEISER: That's all I have. Thank you.
CHAIRMAN: Any other board members have
questions of Mr. Mischel?
(NO RESPONSE)
CHAIRMAN: Any other questions of Staff or
anyone?
(NO RESPONSE)
CHAIRMAN: Mr. Howard, do you have any
comments?
MR. HOWARD: No.
CHAIRMAN: Mr. Pfeifer, do you have any final
comments?
MR. PFEIFER: No. I think the fact that the conditionally permitted use will allow you all to grant it.

CHAIRMAN: Final call.

(NO RESPONSE)

CHAIRMAN: Board members, do you have any additional comments or questions?

(NO RESPONSE)

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

MR. REEVES: Mr. Chairman, I move this application be denied. First fact being that this is clearly a residential area for over 50 years and the applicant's property is located in the midst of this residential area.

Secondly, Article 3, Section 3-6(a)(1) gives an intent that "In residential and manufactured housing park zones, accessory buildings shall not be used for or involved with the conduct of any business, trade or industry." Further Section 8.2b11/13 "Commercial indoor recreational activities are prohibited in all Residential Zones."

CHAIRMAN: We have a motion for denial by Mr. Reeves.

MR. YEISER: I'll second the motion.
CHAIRMAN: We have a second by Mr. Yeiser. Any comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

MR. REEVES: I have a question before the party leaves. This is for legal counsel. Should the individual applicant here decide down the road that they just choose to have folks comes in and take compensation, people are attending, are there any criminal or civil consequences for somebody conducting this without the permit?

MS. KNIGHT: For purposes of this board it would be another notice of violation or citation.

MR. REEVES: If that notice of violation is sent, then what are the consequences if that violation is upheld?

MS. KNIGHT: I don't know that it would be a civil, like monetarily. Like the neighbors, I think they have right to bring their own civil action if they wanted to force that as well.

MR. REEVES: I'm wondering what value does this denial have in terms of consequences if anybody
chooses not to abide by findings of this board.

MR. MISCHEL: I guess the only recourse we would have if it came to that fact is we would issue a letter of violation, and eventually if it wasn't complied with it would end up in Daviess District Court.

MR. REEVES: Would we take that action?

MR. MISCHEL: Yes, we would take that action. We would send it over to Daviess District Court.

MR. REEVES: Would we send it to Mr. Porter or would we send it directly?

MR. MISCHEL: If it would go to circuit court it wouldn't be Mr. Porter.

MS. KNIGHT: Board of adjustment would file suit of violation.

MR. REEVES: I wanted to make sure I understand. Thank you.

CHAIRMAN: Thanks to everyone.

Next item, please.

ITEM 4

4901 West 5th Street Road, zoned A-U
Consider a request for a Conditional Use Permit in order to operate a lawn care business.
Reference: Zoning Ordinance, Article 8, Section 8.2H8/33a
Applicant: Delbert Falloway

MR. HILL: Good evening again.
Commissioners, this is a conditional use permit request to operate a landscaping service. Section 8.2H8/33a in the zoning ordinance allows for a conditional use permit to be requested for landscaping service. The applicant has provided an exhibit of the site in the packet. Some of the items regarding landscaping and access that will be mentioned here in a minute are demonstrated on the exhibit that you have.

In 1988 this property was consolidated with a property directly to the east on Dove Court, 754 Dove Court to be exact. There were a series of consolidation plats over subsequent years to bring the parcel that you seen on the screen highlighted in blue to its current shape and size. The Dove court portion residential lot carries residential zoning application larger portion in the rear is zoned A-U Urban Agricultural.

There is detached structure on the large portion. The applicant has recently as a couple of months ago try to obtain building permit for additional structure on that large rear portion of the property. At that time it was discover the applicant intended to use the area for landscaping service. He
was then advised conditional use permit would be required in order to proceed with that main use activity of the property. Since the two properties are consolidated and have split zone residential on small piece and urban agricultural on the large piece, if this is successful he is able to continue with his business at the site, it will be required for two segment of the property to be divided by minor subdivision plat.

With regard to access, in 2006 there was a subdivision plat that was presented to Staff and approved. It had a note about the western access that had to be removed. You can see it on the screen there at the bottom left corner of the property. It is required and it's been proposed to be a condition of this application that that access be removed. There is another reference in our current suggested conditions that the one remaining access, which is to the east on this site on Fifth Street Road, that it be paved to a minimum of 50 feet into the property from the edge of the pavement. Again, that shows on the exhibit that you have in your Staff Report. It's the color aerial photo that the applicant has provided. Also suggested condition is to install a required vehicular use area screening as required by
the zoning ordinance. That is also shown on that exhibit I referred to. We failed to include in the Staff Report the condition regarding minor subdivision plat, but we do want to add what would be a fifth condition that reads, "A minor subdivision plat will be required to divide the residence at 754 Dove Court and the subject property at 4901 West Fifth Street Road."

The last condition we propose is to obtain necessary building, electrical and mechanical permits, inspections and certificates of occupancy and compliance from the OMPC.

Staff request that the Staff Report be entered into the record as exhibit C.

CHAIRMAN: Anyone here representing the applicant?

MR. FALLOWAY: Yes.

MR YEISER: I need to be excuse myself. They are friends of mine.

CHAIRMAN: So noted.

MR. FALLOWAY: I'm Delbert Falloway. I'm the owner of the property.

(DELBERT FALLOWAY SWORN BY ATTORNEY.)

MR. FALLOWAY: I did talk to the county engineer about the culvert on West Fifth Street Road.
I asked him, because there is guardrails that goes down that road. I asked him if I left the culvert and I took the access out because I do have to landscape, continue the landscape down through the property, if I could turn it in and grass it in. He said that would be fine because the guardrail abutments, which are on the end, they're already up to the safety code. That he would not have to replace the guardrail. That was the only question that I had about that.

CHAIRMAN: Any board members have any questions of Mr. Falloway?

(NO RESPONSE)

CHAIRMAN: Mr. Falloway, I'm going to see if we have any opposition and bring you back. Anyone here that would like to speak in opposition on this item?

(NO RESPONSE)

CHAIRMAN: Would Staff like to address Mr. Falloway's concerns?

MR. HOWARD: I will glad to.

That's fine. As long as it's grassed in and it's not used as access and the gravel is gone. I don't have an issue with that either, as long as the county think it's okay.

CHAIRMAN: With no further comments or
questions, board members do you have any comments or questions?
(NO RESPONSE)
CHAIRMAN: If not the chair is ready for a motion.
MS. MASON: Mr. Chairman, I move for approval based on the fact that the two adjoining properties are consolidated and one of the properties is agricultural which fits within the lawn care business, and with the approval of the suggested conditions that were mentioned earlier, 1 through 5.
CHAIRMAN: We have a motion for approval by Mrs. Mason. Do we have a second?
MS. DIXON: Send.
CHAIRMAN: We have a second by Mrs. Dixon.
Any comments or questions on the motion?
(NO RESPONSE)
CHAIRMAN: All in favor of the motion raise your right hand.
(ALL BOARD MEMBERS PRESENT - WITH THE DISQUALIFICATION OF JERRY YEISER - RESPONDED AYE.)
CHAIRMAN: Motion carries unanimous.
Next item, please.
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VARIANCES

Ohio Valley Reporting
(270) 683-7383
ITEM 5

308 Hubert Court, zoned R-1A
Consider a request for a Variance in order to reduce
the interior side yard building setback on each side
from 10 feet from property line to 9 feet from the
property line.
Reference:  Zoning Ordinance, Article 8,
Section 8.5.5(d)
Applicant:  Chester R & M. Elaine Pack

MR. HILL:  Commissioners, this is a variance
request by the applicant to construct a new
single-family residence 9 feet from the property line
rather than the required 10 feet. It's a one foot
variance on each side of the subject property.

Applicant has provided an exhibit of
information that you have in your packet that shows
the area and a sketch of the footprint of the building
and relation to the required setbacks.

The subject property is located a
single-family residential zone and typically requires
a 75 feet of road frontage on lots in that zone. The
majority of the lots on Hubert Court are 60 feet. So
15 feet less wide than the typical lot in the zoning
district. After you remove the required 10 foot side
setback from 60 foot typical lot on Hubert Court, you
are left with a 40 foot wide. The applicant's house
plan, which copies are included in your packet as
well, is proposed to 42 feet wide. So two feet wider
than the space that is given according to the zoning ordinance.

The applicant as well as Staff did some research on Hubert Court and the existing structures in the area. We found at least six or eight along Hubert Court that appears that the primary structures encroach into the side yard setbacks. So there appears to be an established pattern of this type of development. This does not appear to be out of character with the existing situation on the Hubert Court neighborhood.

Staff finds that the granting of this variance will not adversely affect the public health, safety or welfare because the requested variance is only for 1 foot on each side leaving 9 feet from the structure to the property line on each side.

Granting of the variance will not alter the essential character of the general vicinity because 8 other primary structures appear to encroach into the side yard building setback on Hubert Court.

Granting the variance will not cause a hazard or nuisance to the public because a 1 foot variance on each side leaves sufficient room for access between structure and property line for emergency services.

Granting the variance will not allow an
unreasonable circumvention of the requirements of the
zoning regulations because a majority of the other
primary structures on the street appear to encroach
into the side yard building setback and at only 1
foot, the variance does not significantly impact the
area.

Staff recommends approval of the variance and
Staff also request that the Staff Report be entered
into the record as Exhibit D.

CHAIRMAN: Anyone representing applicant.

APPLICANT REP: Yes.

CHAIRMAN: Do you have anything you would like
to share with us?

APPLICANT REP: No. I think you’ve pretty
much covered everything. Any questions anybody like
to ask?

CHAIRMAN: Board members, do you have any
questions or comments?

(NO RESPONSE)

CHAIRMAN: Let’s see if we have opposition.
Anyone here like to speak in opposition, have
any concerns or comments on the application?

(NO RESPONSE)

CHAIRMAN: Board members, do you have any
comments?
CHAIRMAN: If there are none the chair is ready for a motion.

MR. YEISER: I'll make a motion to accept the Variance on the findings with all that they've asked him to do.

CHAIRMAN: We have a motion for approval.

MR. REEVES: I'll second it.

CHAIRMAN: We have a motion for approval by Mr. Yeiser and a second by Mr. Reeves. Comments or questions on the motion?

(NO RESPONSE).

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

We need one final motion.

MS. MASON: Move to adjourn.

MR. REEVES: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.
STATE OF KENTUCKY )
)SS: REPORTER’S CERTIFICATE
COUNTY OF DAVIESS )
I, LYNETTE 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 43 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the
30th day of June, 2015.

LYNETTE KOLLER FUCHS
NOTARY ID 524564
OHIO VALLEY REPORTING SERVICES
2200 E. PARRISH AVE., SUITE 106-E
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES: DECEMBER 16, 2018
COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

Ohio Valley Reporting  
(270) 683-7383