The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, November 5, 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
                Robynn Clark

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CHAIRMAN: Come to order the Owensboro Metropolitan Board of Adjustment November 5, 2015 meeting to order. We will begin our meeting with a prayer and pledge of allegiance to the flag.
Mr. Reeves will lead us. Would you stand, please.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

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

Board Members, we ask that you do the same.
The first item on the agenda will be to consider the minutes of the October 1, 2015 meeting. Board Members, you have a copy of the minutes in your packet. Are there any additions or corrections?

(NO RESPONSE)

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

MS. DIXON: Move to approve.

MS. MASON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: The minutes are approved.

Next item, please.

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CONDITIONAL USE PERMIT

ITEM 2

1280 Gobler Ford Road, zoned A-R
Consider a request for a Conditional Use Permit in order to operate an outdoor recreational facility for birthday parties with hand led pony rides and private riding lessons.
Reference: Zoning Ordinance, Article 8, Section 8.2K7/42
Applicant: Christina Perlowski; Kevin Perlowski

MS. KNIGHT: State your name for the record,

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please.

MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is currently zoned A-R Rural Agriculture.

There was a Conditional Use Permit approved in July of 2012 by the Board to operate with the hand-lead pony rides and private riding lessons. It was stated at the previous meeting that any increase in the size or scope of the operation would need to come back before the Board for additional approval.

Recently, the Zoning Administrator received a complaint about a large building being constructed on the subject property. Upon investigation of the complaint, the Zoning Administrator contacted the applicant who confirmed the construction of a 65 foot by 120 foot building. The applicant was advised to stop construction and follow the proper procedures for the construction of the building. They're now requesting to continue the current operation of the hand-led pony rides for birthday parties with the private riding lessons, and to contract this new building over the riding arena to provide protection from the elements.
LAND USES IN SURROUNDING AREA

The properties to the north are zoned R-1A Single-Family Residential and A-R Rural Agriculture. The properties to the south, east and west are zoned A-R Rural Agriculture.

ZONING ORDINANCE REQUIREMENTS

1. Parking - 1 space for each employee on the maximum shift, plus 1 space for every 3 participants, plus 1 space for every 3 spectator seats. All parking areas shall be paved or gravel.

2. Landscaping - Vehicular Use Area screening consisting of a 3 foot high continuous element with 1 tree every 40 feet of the vehicular area between the right-of-way and the vehicular use area.

SPECIAL CONDITIONS

1. Obtain all necessary building, electrical, and HVAC permits, inspections and certificates of occupancy and compliance as required by the OMPC.

MS. EVANS: We would like to enter the Staff Report into the record as Exhibit A.

CHAIRMAN: Is anyone here representing the applicant?

MS. PERLOWSKI: Yes.

CHAIRMAN: Do you have something you would like to share with us? Step the podium, please.
MS. KNIGHT: If you could please state your name for the record.

MS. PERLOWSKI: Christina Perlowski.

(CHRISTINA PERLOWSKI SWORN BY ATTORNEY.)

MS. PERLOWSKI: I would like you to consider my application. I'm sorry, I'm more of a cowgirl than a business woman. That's why I didn't really know that I needed this permit the second time for the canopy. So I do apologize for that. I am working with the OMPC to do this properly.

CHAIRMAN: Any board members have any questions of Ms. Perlowski?

MR. REEVES: You did confirm that you were unaware of the need for permitting to build the building?

MS. PERLOWSKI: Yes, sir.

MR. REEVES: Who is building that building for you?

MS. PERLOWSKI: My husband.

MR. REEVES: You didn't hire a contractor who would know that you would need a permit?

MS. PERLOWSKI: No, sir. It's a kit building. It's fairly simple to construct. Yes, I did not know.

MR. REEVES: Will there be electricity in the building?
MS. PERLOWSKI: Eventually, yes.
MR. REEVES: That's all I have.
MS. PERLOWSKI: And I'm going to make sure
that they have all the permits for that or get the
permits for that and everything.
CHAIRMAN: Any other board members have any
questions?
(NO RESPONSE)
CHAIRMAN: Thank you for right now. Let's see
if we have any opposition.
MS. PERLOWSKI: Thank you.
CHAIRMAN: Anyone here would like to speak in
opposition or have any questions on this application?
MS. SMEATHERS: Yes.
CHAIRMAN: Yes, ma'am, would you step to the
podium, please.
MS. KNIGHT: Please state your name for the
record.
MS. SMEATHERS: Leslie Smeathers.
(LESLIE SMEATHERS SWORN BY ATTORNEY.)
MS. SMEATHERS: My name is Leslie Smeathers.
I live at 1274 Gobler Ford Road. We share the
property line with Chrissy and Kevin Perlowski, doing
business as Party Pony, LLC.
I have several concerns, if you guys will give
me just a moment to give some history and concerns as to why we have a problem with this ongoing business and any expansion of this business.

First of all, the neighbors in the immediate vicinity of the property, with the exception of Mrs. Perlowski's mother who lives on the other side of her, were never notified of the development of the business until we happen to see flyers out in the community. We protested the original conditional use permit. While we support the entrepreneurship of the Perlowskis and their right to use their property as they see fit, we also demand our rights as property owners and tax payers. We are being asked to respect their rights while ours be are being trampled.

When we began building our house, the Perlowski property was vacant. We literally built our house, doing most of the work ourselves and it took over two years. We were very familiar with the area because my husband grew up on the farm less than a mile away and was part owner of a livestock venture at a farm adjacent to our current property. We knew many of the neighbors. We especially came to know Mary and George Baldwin, 1301 Gobler Ford Road, that moved in approximately a year after our house was completed.

When the Perlowskis moved in, there was no

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mention of a business. In fact, it was nearly two
years before that developed. We had numerous problems
prior to the business onset and have continued to have
issues. We have also learned that the Baldwins and
the Greenwells, neighbors directly across from us,
also had issues.

These are the issues that we have had and this
is why we are finding it difficult to sit back and
allow development of that property:

If you guys would like copies of this and
supporting documents, I have copies.

1. We have had numerous problems with the
Perlowski's livestock escaping the property's
inadequate fencing to wonder on our property and other
adjacent properties. I have found horse manure and
hoof prints in my landscaping, including the mulch of
my foundation plantings. We have no evidence to prove
that it was Mrs. Perlowski or any of her associates,
but soon after we noticed the first trespassing of the
animals on her property, we found the existing fence
cut along our shared property line to the rear of her
property.

We also had problems with their dogs. Most of
our new neighbors have dogs, but theirs are the only
ones that have been a problem. I'm a huge dog lover
and have two large dogs of my own, but I take objection to having her small dog chase my car down the driveway and nearly be hit. I've asked Chrissy to please contain the dog because I would be devastated if I injured Cleo. Her response was something to the effect, "If she was too stupid to get out of the way, go ahead and hit her."

This same dog and others on that property have chased, nipped and charged myself and my dogs when we were outside. It had gotten so bad that we avoid the dogs. Cleo has run up on our porch and our garage area trying to bite. She did in fact bite my dog and draw blood.

Ironically, Mrs. Perlowski posted on social media about a cat that was bothering her animals and wanted someone to capture it for her to be taken to the pound because it was on her property.

If we are having problems now, how is it going to be with this business expanding?

2. We, and surrounding neighbors, have had a significant problem with Mrs. Perlowski trespassing on our land despite being told to desist. She has brought students and other riders onto our property even though we have made it clear that we do not want the liability.
She has also interfered with my husband and sons hunting on our property. My husband was fearful for her safety during a recent deer season and had to speak to her about it. While my son was in a deer stand on our property near the property line, Mrs. Perlowski rode her horse through the woods wearing brown duck coveralls. She was not wearing orange or taking any other safety precaution. This occurred just before sunset on the opening weekend of deer season. Anyone in this area knows that's a prime time for deer and you don't go in the woods unprotected without an orange vest.

After my husband warned her that her activity was unsafe for her and her animals, and he did this out of concern, she repeated the action the very next day, but this time was singing loudly as she rode.

If she has the right to use her property as she sees fit, why do we not have the same right?

Although it is not a trespassing issue, we have safety issue of her riding her horses in the roadway. Sometimes it's her and two other riding abreast. The roads in our neighborhood are narrow, hilly and curvy. It is scary to come around a curve and be faced with horses and riders.

3. When cleaning out the barn, the Perlowskis
pile manure just a few feet from our property line and
also proximately 10 to 20 foot from our driveway. Any
time it rains the water drains and pools on our
property and driveway.

4. One of the biggest complaints we have is
that Mrs. Perlowski has defamed and slandered us on
social media because we have challenged her and gone
through the proper channels to do so. I have examples
of those posts. There is also proof of our claims of
trespassing because of a photo that she had posted on
Facebook. On Facebook Mrs. Perlowski even condoned
one of her friends vandalizing our property. In fact,
the post said, we shall go over to his yard and paint
erk in Round-Up on his yard, which she liked, and I
see it as a method of condoning it.

On social media, Mrs. Perlowski slammed my
husband for reporting her to the EPA for burning a
mattress. My husband is obligated by his profession
and current position to do that. He had no other
choice. We have witnessed them burn other materials
such building materials, old tires and other things
that is against the law to burn.

I would appreciate it if we could keep
comments of liar and such be kept at a minimum from
others because they will get their chance to speak.
In fact, in that packet there are posts from Mrs. Perlowski’s Facebook account showing them burning a couch behind their house, which is also an EPA violation.

5. In October, Party Ponies was issued a stop work order by Planning and Zoning because they did not have permits nor had they submitted the requisite paperwork to Planning and Zoning. They continued to work for two days after that until their stop order, their violation of the stop order was protested by a neighbor.

If this is how this business is going to comply with the law, how do you expect them to abide by rules and regulations set forth by this board?

If Party Ponies, LLC is to be allowed to expand their business, these are the things that we, my husband and I and some other neighbors, would respectfully request that they be required to do:

1) Install and sustain maintenance of an 8 foot privacy fence along road frontage and the property line shared with our property. If an 8 foot fence is not allowed by Planning and Zoning, then a minimal 6 foot is requested. This would help with the problem of her wandering livestock and trespassing.

2) We request that she be required to comply
with all federal, state and local laws, regulations
including and especially the ADA. Mrs. Periowski
touts her work with disabled children so she should
comply with the ADA.

3) We request permanent bathroom facilities on
this premises. If this is a permanent business, then
the temporary "port-a-potties" should go. By the way,
how is that ADA compliance?

4) We also ask prohibition against external
lights on the riding area, present or future. This
would be very invasive for our surrounding neighbors.

One other request that I did not put in here,
but there's never been a mention of height of the
structure. We were curious to know what that is
because we were never informed that it was being
built, let alone what it's going to look like when
it's done. Thank you.

CHAIRMAN: Board Members, do you have any
questions of Mrs. Smeathers? Anyone?

(NO RESPONSE)

CHAIRMAN: Take a seat and we'll see if we've
got anyone else that would like to speak.

MRS. SMEATHERS: Thank you for your attention.

CHAIRMAN: Anyone else would like to speak in
opposition?

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Would you step to the podium, please.

MS. KNIGHT: State your name for the record.

MS. STADTLANDER: My name is Nancy Stadtlander.

(NANCY STADTLANDER SWORN BY ATTORNEY.)

MS. STADTLANDER: That was such a list I don't even know where to start.

One of the things I would like to point out that came out when they contested my daughter first starting the business, is that they've always said that they moved in at the same time. That is absolutely not true. My daughter and her husband were living there a good two years before they even started building. It took them two years to build. They didn't move in at the same time.

My daughter does have a dog that wandered some and, yes, it has chased them up the driveway and I can understand where that would be infuriating. She has tried to do something about that.

The livestock wandering has been so minimal.

The hunting incident I would like to point out, I was the one singing in the woods. Yes, we should not have been there, but it is our property and between my property and my daughter's property, which is about ten acres of woods in the back, I figure we
ought to be able to go ride our horses on our own property. So, yes, I was singing. I'm not stupid. I realize somebody could be there without permission. We went back as far as we could and we stopped our horses and sat for a minute. Somebody shot a gun off within 20, 25 feet of where we were. We had no idea anyone was in that woods. In fact, they weren't in the woods. When we started back, we found out that Chrissy's neighbors had built a permanent blind about 10 feet from my daughter's property. They did not ask for permission. They did not tell us they were going to do that. Their lucky my horse did not bolt.

The riding across their property, would you really want to ride across their property? They get upset if a horse accidently gets in there. Are we going to be dumb enough to ride across their property? I don't think so. Thank you.

CHAIRMAN: Ma'am.

MS. KNIGHT: Please state your name for the record.

MRS. BALDWIN: Mary Baldwin.

(MARY BALDWIN SWORN BY ATTORNEY.)

MRS. BALDWIN: Mary Baldwin. I live at 1301 Gobler Ford Road, directly across from the Perlowskis. When we moved there, the Perlowskis did live

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across the street and they had horses, but there was no business. This home is our retirement investment. It's beautiful to see the horses graze, but the business came. One day we seen a sign go up directly across from our house. That's when we learned there was going to be a business.

The light from the barn that they have now shines directly into our front door. So our concern is that what size is this building going to be and how much lighting will there be?

During the summer, I know is a horse riding business, but there has been a lot of two-cycle motorcycles there on the weekends racing up and down. Sounds like little bumble bees. We decided with having a business across the street and with all this noise, we put up a line at our expense at the end of our property hoping they will grow up and be some privacy there.

Our request would be for this that there is, on their side of the road, on their business, that they put up a line of trees to cut down on the light shining and the noise from the business. With this going on they did work several days past the stop work order. That's all I have.

CHAIRMAN: Thank you.
Board Members, do you have any questions of this lady while she's up? Anyone?

MR. REEVES: I have a question for her, please.

As I hear your testimony, it seems that I'm hearing that you have great concerns about their existing business, which is already conditionally permitted; is that correct?

MS. STADTLANDER: I'm sorry, I do wear a hearing aid. I didn't catch all of that. Your concern?

MR. REEVES: Melissa, do you want to repeat that?

MS. EVANS: He said that he was concerned that you have concerns about the existing building now as it is regardless of the expansion. The existing business that's already permitted.

MS. STADTLANDER: I said with the existing building they have a light. Now, it isn't on all the time, but it will burn. They have an existing light on the building that shines to our front door, which reflects the light.

Our concern is with the new building will there be -- we're concerned about the new building. How much lighting? Will it be burning day and night?
MR. REEVES: That answers my question.

MRS. STADTLANDER: It's not the existing building that we're concerned with. It's the new.

MR. REEVES: Okay.

I have a question, if I could, for Mrs. Perlowski. If she could come back up.

CHAIRMAN: Let's go ahead, if we could, Mr. Reeves, and get the opposition and then we'll bring Mrs. Perlowski back up.

MR. REEVES: Well, this relates to what I just asked.

CHAIRMAN: Okay.

MR. REEVES: Is it your intention to have lighting in your new building?

MRS. PERLOWSKI: Yes. I think this will actually be a lot better for them because it's going to be on the inside where it's not shining out. It's just florescent lights hanging inside the building. So it might be a little bit better for what she's talking about.

MR. REEVES: Is the pavilion that you're proposing to build in the same location as where you do the rides now?

MRS. PERLOWSKI: Yes, sir. There's really no difference to the permit that you guys have already
given me besides the fact that I'm putting a canopy
over the riding area. I have a lot of kids and some
with disabilities that sometimes we have to wait a
week, two weeks, three weeks before they can get back
out to ride. I just thought that I would get this
 canopy for the kids so that we could have them out
more regularly, more consistently. That way, you
know, we can not have to worry about the rain. That's
really the only difference here.

A lot of what I heard from my neighbors here,
we is like an ongoing feud that's really not going to
change whether I have a business or not, I guess. I
would like it to.

As far as the dog, that really doesn't have
anything to do with my business. As far as the
motorcycles, I mean my brother and his friends ride
motorcycles out at my place on the weekends. That
also doesn't have anything to do with my business.

I'm trying to think about the things that do. As far
as the livestock getting out, that's very, very rare.

MR. REEVES: I'm not concerned about that,
Mrs. Perlowski. I just want to know about the lights.
The other question I have for you is your
hours of operation.

MRS. PERLOWSKI: I don't think I have started
any earlier than 8 a.m. It's for kids so I mean 9 p.m. max.

MR. REEVES: Thank you.

MRS. PERLOWSKI: You're welcome.

CHAIRMAN: Anyone else would like to speak in opposition or have any questions or concerns?

MS. KNIGHT: Please state your name for the record.

MR. SMEATHERS: Dwane SMEATHERS.

(DWAYNE SMEATHERS SWORN BY ATTORNEY.)

MR. SMEATHERS: My name is Dwane SMEATHERS. I live at 1274 Gobler Ford Road, directly northeast I guess you would say or northwest of the Perlowski's property.

My main concerns, my wife has already given a lot of concerns. One of my main concerns is our privacy. We have, as she stated, they have their manure pile within ten feet of our property line and it's on a steep incline. So all the mud from their barn, it comes into our yard. Which that and noise I believe at the minimum they should be required to build a fence or put up some type of barrier to respect our privacy.

CHAIRMAN: Board Members, do you have any questions of Mr. SMEATHERS?
CHAIRMAN: Thank you, sir.

Anyone else have any questions, concerns?

MS. KNIGHT: Please state your name for the record.

MS. HOWARD: Virginia Howard.

(VIRGINIA HOWARD SWORN BY ATTORNEY.)

MS. HOWARD: My address is 1381 Gobler Ford Road. We're across the street and down two houses from Chrissy.

Our boys have done riding lessons with Chrissy for the past, we're going on two and a half years now. The rain and the ability to not be in the arena for the boys is kind of a big deal. Having the canopy over the arena would provide them to be able to do their lessons every week. Two of our boys, our older two boys do ride with Chrissy.

As far as the livestock, as neighbors we have not had any issues with them having the animals out. Also, just the ability to have that canopy there so the boys could ride every week would make a big difference having a regular consistency for them riding. They've not only done arena riding with her, they've done trails on our property. We have our own trails and they've rode on our trails. They've also
done horse shows and different shows with Chrissy.
Having that consistency and that covering canopy so
they can ride so it's not too muddy would be a big
difference for us.

CHAIRMAN: Board Members, comments or
questions for this lady?
(NO RESPONSE)

CHAIRMAN: Thank you.

Anyone else like to speak pro/con, in support
of or opposed?

MRS. PERLOWSKI: I guess I would just like to
hit a couple of the things they've said, if you all
don't have any questions for me.
(NO RESPONSE)

MRS. PERLOWSKI: As far as most of what
they're saying, with or without my business there a
lot of that is just I'm on a farm. That's just,
that's the way it would be whether I had my business
there or not. That's the way it has been before I
wanted this canopy. All I'm asking for a canopy over
the area.

I was made aware of the stop work thing. I
was told -- I was called and stated that I was
building a building. I said, yes. He said I needed
permits. I don't understand how this works, guys. I
didn't know that that meant to stop. As soon as he
was called back and told me that I needed to stop
working, I stopped working. I didn't realize they
called me stating that, meant that I was to stop
working. We were just doing it ourselves. We weren't
doing a whole lot during those two days. I'm really
sorry about that. I plead ignorance.

As far as the ADA standards, I am working with
Jim Mischel on making sure that I'm meeting the ADA
standards.

As far as the fence goes, I wish I could
afford one because they obviously really don't like
us. Whether I have my business there or not, I mean
people are going to be riding horses on my property
and through my woods. I have never rode a horse on
his property except before they moved there. I was
told absolutely, we don't do that, and I have never
been back since. I do have permission however to ride
on the Fullenweider's property. My business insurance
covers me on-site or off-site so we do go down the
road some and go on his property because he has a
beautiful farm that the kids enjoy riding on. We try
to stay off the road. It's actually state law in
Kentucky that I'm allowed to ride my horses on the
road and the vehicles have to yield to me.
I don't know what else to say. Thank you very much for your consideration tonight.

CHAIRMAN: Anyone else? Any further comments or questions?

MR. REEVES: Question for Mr. Mischel, please.

MS. KNIGHT: Please state your name for the record, Jim.

MR. MISCHEL: Jim Mischel.

(JIM MISCHEL SWORN BY ATTORNEY.)

MR. REEVES: Mr. Mischel, if this conditional use permit were approved and if they built the structure but initially did not put lighting in the structure, would they have to come back to the OMPC to get the permit to put the electricity in there to do the lighting?

MR. MISCHEL: Yes, they would have to have an electrical permit. The building her husband, I think she stated her husband was going to do the building, which under state law that would be okay. They have to get the permits and plan approved and everything else.

On the electrical, they would not be under to do it under the electrical law. They would have to have a contractor, a licensed contractor. They could only do it at their house.
MR. REEVES: And they're aware of this?

MR. MISCHEL: We talked initially about the building permits and the plan review and what they have to do, but I think they're waiting to get through this process first. I think they've talked to an engineer and done some of their preliminary work.

MR. REEVES: Thank you, Mr. Mischel.

MS. MASON: I have a question too for you, Jim.

As far as the bathroom facilities are concerned, if we were to approve this, do they have to put bathroom facilities in or is a port-a-potty permissible?

MR. MISCHEL: That's something we will have to check into. I think under the previous one they had, conditional use permit, I think we got something from the health department that's in the file that stated -- I'm not sure. Manuel Ball was at the last meeting when we had it. I haven't read that. I did see where the health department had given us a report I think initiating that it did not have to have.

MS. MASON: Even working with handicap they still don't have to have the bathroom?

MR. MISCHEL: That's something we're going to have to look into. Since then we've changed the new
ANSI ADA. Those laws have changed. That's been quite a while. You know, it's 2015 now. That's something, like any other code, we just have to see if it's been updated or whatever.

MS. MASON: Okay.

MS. EVANS: I'd like to add that I don't know that that was necessarily looked at beyond saying that the health department was okay with there being a port-a-potty. Because previously on their conditional use permit it wasn't to build any new structures out there. They were just using the property for the horse riding lessons. They weren't actually constructing anything. So now this time they are actually building something. There may be different requirements for restrooms.

MS. MASON: Okay.

MR. MISCHEL: I did mention when she came in when she showed the building and the parking that she will have to have ADA parking, which is on that drawing. We'll have to go over the specks of it with her and everything. When we start doing plan review, that really kicks in ADA, restrooms, whatever. It just kicks it all in. That's part of the planning review process.

MS. MASON: Okay.
CHAIRMAN: Any further questions from the board members?

(NO RESPONSE)

CHAIRMAN: Mr. Howard, do you have any comments?

MR. HOWARD: No, sir.

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

MR. REEVES: Mr. Chairman, I'll make a motion. I'm going to move for approval of this conditional use permit based on the facts that the health and safety nor the character of the neighborhood will not be any more impacted with this addition than the current business that is there. I will add these conditions to the conditional use permit.

Can I put conditions, counsel?

MS. KNIGHT: You can, yes.

MR. REEVES: That the business not operate before 8 a.m. in the morning nor after 9 p.m. in the evening Monday through Saturday. That on Sunday it not operate before noon nor after 9 p.m.

That should they make a decision to put lighting in the pavilion that they would come to the OMPC Staff and secure the appropriate permits and that they would work with the OMPC Staff to ensure that the
lighting would have the least possible impact on the neighbors. Thirdly, they abide by all requirements by the health department regarding restrooms or any other sanitary facilities on the property.

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

MS. DIXON: Second.

CHAIRMAN: We have a second by Ms. Dixon. Any comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: If not, all in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

Next item, please.

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VARIANCE

ITEM 3

1013 Hermitage Drive, zoned R-1A
Consider a request for a Variance in order to reduce the side yard building setback line from 10 feet from the property line to 6 feet from the property line.

Reference: Zoning Ordinance, Article 8, Section 8.5.5(d)

Applicant: Jay & Susie Fillman

MR. REEVES: Mr. Chairman, I need to disqualify myself from this item as I live in that
neighborhood.

CHAIRMAN: Okay. So noted.

MS. EVANS: The subject property is located in the Massie Clarke Subdivision just off of Frederica Street. All the lots on this block of Hermitage Drive are approximately 100 feet wide and between 150 and 180 feet deep. The subject property is 100 feet by 165 feet.

The applicant is requesting a 4 foot side yard building setback reduction in order to construct a 20 foot by 32 foot attached garage. With the garage being attached to the house as part of the principal structure; the required side yard setback for principal structure is in an R-1A zone and is 10 feet from the property line.

The applicant cites a garage on the adjoining property at 1023 Hermitage Drive as encroaching into the side yard setback and only six feet from the property line as they are requesting. The garage on the adjacent property however is a detached structure connected to the principal structure by a breezeway. As long as the breezeway remains open, the detached structure is not considered attached by the Kentucky Residential Building Code, and therefore may be located 3 feet from the side property line as required.
by the Zoning Ordinance.

There is a letter signed by the adjacent property owner at 1023 Hermitage Drive stating that the breezeway connecting the house and the detached garage will not be enclosed.

That is in the building file for the property at 1023 Hermitage Drive when they constructed that breezeway.

There have been no variances granted in the area and only two structures on this block of Hermitage Drive appear to encroach into the side yard building setback. Those appear to be original encroachment or original part of the principal structure that was built before the Zoning Ordinance went into effect. So those are nonconforming, legally nonconforming encroachments. There haven't been any additions to any property that would trigger variance or any nonconforming illegal encroachments into any side yard building setbacks that appear to be in that area.

Granting the Variance to reduce the side yard building setback will alter the essential character of the general vicinity and be an unreasonable circumvention of the requirements of the zoning ordinance because the majority of the structures in
the area meet the required setback and no other variance requests have been granted in the area.

Would a hardship with strict application of the regulations deprive the applicant of the reasonable use of their land or create an unnecessary hardship on the applicant?

Staff says, no. If the application is denied, the applicant could construct a smaller addition or construct a detached structure in a different part of their property.

APPLICANT'S ACTIONS? Are the circumstances from which relief is sought a result of the applicant's actions taken after adoption of the zoning regulation? No, they are not.

Findings for this Variance: It will not adversely affect the public health, safety or welfare; it will alter the essential character of the general vicinity because the majority of the structures in the area conform to the required setbacks with only two structures that appear to encroach into the side yard building setback; it will not cause a hazard or a nuisance to the public; it will, however, allow an unreasonable circumvention of the requirements of the zoning regulations because a majority of the structures meet the required side yard building
setback and there have been no other variances granted in the area.

Staff would recommend denial of this application.

We would request that the Staff Report be put into the record as Exhibit B.

CHAIRMAN: Anyone here representing the applicant?

MS. KNIGHT: State your name, please.

MR. FILLMAN: My name is Jay Fillman.

(JAY FILLMAN SWORN BY ATTORNEY.)

MR. FILLMAN: We just recently moved to this location. We would like to construct a two-car garage on the side of the house where the driveway is.

As was stated, we do have a neighbor that has a garage that's about 5 1/2 feet from our property fence. There apparently is a couple of other structures that encroach on or are in the encroachment area. Our request is for the two-car garage. Not knowing all the legal rederrick, or whatever the correct word would be, at the end of the day our neighbor's garage is still 6 feet, 5 1/2 feet from our property. We would like to be given similar consideration to, you know, make an addition to our house and increase the property value.
CHAIRMAN: Board members, do you have any questions of the Mr. Fillman?

(NO RESPONSE)

CHAIRMAN: Thank you. Let's see if we have any opposition of this, sir.

MR. FILLMAN: I would like to ask that if this is denied that I get an opportunity to ask another question after that or do I need to ask that at this time?

CHAIRMAN: If we have questions, I'll bring you back.

MS. EVANS: You can go ahead and ask the question.

MR. FILLMAN: I guess my question would be if this request is denied, what's our appeal process? What's our next step in the situation? I guess that would be something to wait and see what happens.

MS. KNIGHT: Just in general once this board denies something you've got 30 days to appeal it to the Daviess Circuit Court.

MR. FILLMAN: Thank you.

CHAIRMAN: Is there anyone here that would to speak in opposition on this item?

MR. OETINGER: My name is David Oetinger.

(DAVID OETINGER SWORN BY ATTORNEY.)
MR. OETINGER: We moved to our home 28 years ago, which was next to Bruce Embry's home, which Jay and his wife purchased recently.

We were told, I have a garage, attached garage to my house. In order to get to the garage we've got a driveway that goes all around to the back of the house to get to the garage. We were told that because this was in the Massie Clarke Subdivision, that there is a covenant that prohibits front street facing garages. Consequently people on Hermitage either have carports or garages that are approached by driveway around the back. So I don't know about the Massie Clarke Subdivision issue. It's something I think Jay should be concerned about.

I'm not against the variance at all. I have another concern though. It's a one word. Percolation. I monitored my sump-pump. We have a full basement. I monitored my sump pump this spring. It was coming on over 30 minutes. Each time it came on, it pumped about 10 gallons of water, waste water. That goes out to the back collection system. Over the course of three months, that would be about 43,000 gallons of waste water. So percolation is an issue, I think, in many areas of town. With more and more coverage the land with buildings it becomes more and
more of a problem getting rid of waste water.

So if a garage is built, which I'm okay with, it needs to have adequate drainage out to the street, I guess, and not into my yard. That's my concern.

Thank you.

CHAIRMAN: Board members, do you have any questions?

(NO RESPONSE)

CHAIRMAN: Thank you, sir.

Mr. Howard, would you address the issue on deed restrictions?

MR. HOWARD: Sure. I would preface what I'm going to say by saying in generally, we don't enforce private restrictions on property. Those are recorded covenants that are typically enforced by Homeowner Associations or through legal channels.

However that being said, we do require for a conditional use permit, a variance, for rezoning, any of those types of applications, that a letter be submitted from an attorney researching the deed restrictions. We have a letter in the file dated October 21st that was prepared by Bill Wilson, who is a local attorney. He says after doing research for a period of 30 years, find no deed of restrictions, no deed of dedication or other covenants of record that
would prohibit the proposed use of the subject
property or invalidate consideration of the requested
variance by the Owensboro Metropolitan Board of
Adjustment.

The attorney has certified to us and you all
as a board that there are no private restrictions in
place. So that's the information we have to go on.

CHAIRMAN: Thank you, Mr. Howard.

Mr. Fillman, do you have further comments or
questions?

MR. FILLMAN: No, sir.

CHAIRMAN: Board Members, do you have any
comments or questions of Mr. Fillman?

(NO RESPONSE)

CHAIRMAN: If not chair is ready for a motion.

MS. DIXON: Mr. Chairman, I move for denial of
the variance based upon the findings that it would
alter the essential character of the general vicinity
because the majority of the structures in the area
conform to the required setbacks with only two
structures that appear to encroach on the side yard
building setback. Then it will allow an unreasonable
circumvention of the requirements of the zoning
regulations because a majority of the structures meet
the required side yard building setback and there have
been no other variances granted in the area.

CHAIRMAN: We have a motion for denial by
Mrs. Dixon. Do I hear a second?

MR. YEISER: Second.

CHAIRMAN: Any comments or questions on the
motion?

(NO RESPONSE)

CHAIRMAN: If not, all in favor of the motion
raise your right hand.

(ALL BOARD MEMBERS PRESENT - WITH THE
DISQUALIFICATION OF FRED REEVES - RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

Next item, please.

ITEM 4

4701 US Highway 60 West, zoned I-1
Consider a request for a Variance to allow a 120 foot
wide industrial driveway which exceeds the allowable
maximum driveway width of 50 feet.
Reference: Zoning Ordinance, Article 13,
Section 13.231
Applicant: Sterett Crane & Rigging; Lamasco Transfer,
LLC

MR. YEISER: Mr. Chairman, I need to be
excused from this one. It's family.

CHAIRMAN: So noted. Mr. Yeiser disqualifies
himself.

MS. KNIGHT: State your name for the record.

MR. HILL: Mike Hill.
MR. HILL: This is a Variance request to allow greater than the maximum allowable driveway width. The subject property is 6 1/2 acre industrial zoned parcel at the corner of Booth Field Road and U.S. Highway 60 West. It's centered there on the screen for you. The applicant is Sterett Crane & Rigging. They own the adjacent property just to the north of it, as you can see on the screen. They would like to use this parcel for storage of large construction vehicles, equipment, crane equipment that they use with their construction business.

The applicant states that due to the very unique and extraordinary size of the hauling equipment that they'll be transporting to and from the site, that that justifies extra driveway width to accommodate the required turning movement to and from the site.

The Zoning Ordinance allowances and industrial zone driveway to be a maximum of 50 feet in width. They are proposing to have a 120 foot wide driveway. You can see on the exhibit in your packet that 80 feet of that 120 feet is supposed to be paved. The other 20 feet on the either side of the pavement is
proposed to be gravel, a sealed gravel mixture shoulder area.

It's on State Highway U.S. 60 West. The Staff has contacted KYTC Staff. They have indicated that they are okay with the proposed width of 120 feet, as well as the use of the gravel mixture shoulders.

It is worth noting that the applicant is also going to be requesting at next week's Planning Commission meeting a special exception that allows the location of this proposed driveway to be in a different location than what was originally platted some years back. Again, tonight you're only dealing with the width of the proposed driveway.

I also included in your packet a schematic showing kind of a detail of what these transport carriers may look like dimensionally. They're very large. They could be up to 16 feet in width. They could be over 150 feet in length when you include the truck, the dimension of the truck, length, as well as the trailer.

Applicant representatives are here tonight. They may be able to speak more to the specifics of why those are needed and what they're going to be used for and those kind of things.

Staff feels that the granting of this variance
will not adversely affect the public health, safety or welfare because it is not unusual for large industrial and agricultural equipment to be seen on the roadway in this area. Granting this variance will not alter the essential character of the general vicinity because the area already has been established as industrial and agricultural. Granting the variance will not cause a hazard or a nuisance to the public because the construction of the driveway must meet or exceed the standards required by the Kentucky Transportation Cabinet. Granting this variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the subject property is relatively large in size and includes significant amount of road frontage which will help minimize the impact of the extra wide driveway.

Staff recommends approval of the request along with four conditions as follows:

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

2. Approval of a minor subdivision plat amending the location of the driveway entrance onto U.S. Highway 60 West by the Owensboro Metropolitan
Planning Commission.

3. A Site Plan Review by OMPC Staff will be required which will include approval of the driveway design by Kentucky Transportation Cabinet.

4. Any future change in use on the property which discontinues the current proposed storage of large cranes and the use of mammoth transport units will require the drive to be reduced to a maximum 50 foot curb cut.

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

CHAIRMAN: Anyone here representing the applicant?

MR. RINEY: Yes.

CHAIRMAN: Do you have anything you want to share with us?

MR. RINEY: I'll answer any questions or I have show and tell if you want pictures.

CHAIRMAN: Any board members have any comments or questions of the application?

(NO RESPONSE)

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

MS. MASON: Mr. Chairman, I move for approval based on that findings that it will not adversely
affect the public health, safety or welfare because it's not unusual for large industrial and agricultural equipment to be on the roadways in the area. It will not alter the essential character of the general vicinity because the area already is industrial and agricultural. It will not cause a hazard or a nuisance to the public because construction of the driveway has to meet the standards required by the KTC. It will not allow an unreasonable circumvention of the requirements of the zoning regulation because the subject property is large in size and includes quite a bit of road frontage which will help minimize the impact of the driveway being made larger.

The conditions that they obtain all necessary building, electrical and HVAC permits, inspections and certificates of occupancy and compliance. That they have approval of a minor subdivision plat amending the location of the driveway entrance onto U.S. Highway 60 West by the Owensboro Metropolitan Planning Commission. A Site Plan Review by OMPC Staff will be required which will include approval of the driveway design by Kentucky Transportation Cabinet. Any future change in the use on the property which discontinues the current proposed storage of large cranes and the use of mammoth transport units will require the drive
to be reduced to a maximum 50 foot curb cut.

CHAIRMAN: We have a motion for approval by Mrs. Mason.

MS. CLARK: Second.

CHAIRMAN: Second by Ms. Clark. Comments or questions on the motion?

(NO RESPONSE)

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

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

CHAIRMAN: Motion carries unanimous.

Any new business?

(NO RESPONSE)

CHAIRMAN: If not we need a motion to adjourn.

MS. DIXON: Move to adjourn.

MS. MASON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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STATE OF KENTUCKY )
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 1st day of December, 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

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