The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, June 9, 2016, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Fred Kewes, Chairman
Larry Moore
Irvin Rogers
Beverly McEnroe
Manual Ball
Terra Knight, Attorney
Brian Howard
Larry Boswell
John Kazlauskas
Steve Frey
Angela Hardaway
Lewis Jean

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

MR. CHAIRMAN: I'll call the June 2016 meeting of the Owensboro Metropolitan Planning Commission to order. We start every meeting with a prayer and pledge to the flag. That will be done by Mr. Lewis Jean tonight. Will you all stand.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

MR. CHAIRMAN: Thank you very much.

All of you should have received a copy of the minutes in your packet. Are there any questions or corrections to anything in the minutes?

If not, the Chair will entertain a motion. Mr.
Kazlauskas?

MR. KAZLAUSKAS: So move that the minutes be approved.

MR. CHAIRMAN: Motion by Mr. Kazlauskas. Do we have a second?

MS. MCENROE: Second.

MR. CHAIRMAN: Second by Ms. McEnroe. All those in favor, raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MR. CHAIRMAN: Before we get started this evening with the regular business, I know a lot of you have never been to an OMPC meeting. We appreciate your coming. We're here every month. You might come down again, but most folks don't return.

If you wish to speak, anybody is welcome to and invited and encouraged to speak on any issue that's on the agenda that you'd like to. If you wish to speak, you need to come to the podium where the mics are, be sworn in, and then you can express your opinions on any of the items that are here. So we invite you to do that.

Also, we just remind the commissioners, if you do speak, try to speak into the mic so the stenographer can get your words correct. We all have a tendency to back away from the mic. Makes it hard for them to hear.

Mr. Howard?
MR. HOWARD: All right. We're under zoning changes. I will note that all of the zoning changes heard tonight will become final 21 days after the meeting unless an appeal is filed. If an appeal is filed, we will forward a copy of the meeting information and the minutes and all that stuff to the appropriate legislative body for them to take final action.

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

ZONING CHANGES

ITEM 3

1601 & 1611 Frederica Street, 1.151 acres
Consider zoning change:
From P-1 Professional/Service to B-4 General Business
Applicant: Tristate Pizza, LLC; Ashley Worth Rentals, LLC

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

MR. HILTON: Mike Hilton.

(MIKE HILTON SWORN BY ATTORNEY.)

MR. HILTON: Staff is recommending denial of this change. For that reason, I will read the report into the record.

PROPOSED ZONE & LAND USE PLAN

The applicant is seeking a B-4 General Business zone. The subject property is located in a Central Residential Plan Area where General Business uses are appropriate in limited locations.
SPECIFIC LAND USE CRITERIA

(a) Building and lot patterns; outdoor storage yards -- Building and lot patterns should conform to the criteria for "Nonresidential Development" (D7) and outdoor storage yards with "Buffers for Outdoor Storage Yards" (D1).

(b) Logical zoning expansions of proportional scope -- Existing General Business zones may be expanded onto contiguous land that generally abuts the same streets. The expansion of a General Business zone should not significantly increase the extent of the zone in the vicinity of the expansion and should not overburden the capacity of roadways and other necessary services that are available in the affected area.

(c) Expansions across intervening streets -- In Central Residential, Future Urban, and Professional/Service plan areas, the expansion of an existing General Business zone across an intervening street should be at least one and one-half acres in size, but should not occur if this would significantly increase the extent of the zone in the vicinity.

(d) New locations in Central Residential plan areas -- In Central Residential plan areas, new locations of General Business should be at least one and one-half acres in size, "arterial-street-oriented" (D2), and sited
at corners of intersecting streets if located in close
proximity to existing dwellings.

**Planning Staff Review**

**GENERAL LAND USE CRITERIA**

**Environment:**

It appears that the subject property is not
located in a wetlands area per the US Department of
Agriculture Soil Conservation Service dated March 6, 1990.
The subject property is not located in a special
flood hazard area per FIRM Map 21059CO138 D.

It appears that the subject property is not
within the Owensboro Wellhead Protection area per the OMU
map dated 2015.

The developer is responsible for obtaining
permits from the Division of Water, the Army Corps of
Engineers, FEMA, the EPA, the OMPC
building/electrical/HVAC division or other state and
federal agencies as may be applicable.

**Urban Services:**

All urban services, including sanitary sewer,
are available to the subject properties.

**Development Patterns:**

The subject properties are two parcels that
total 1.151 acres in size and are located along a segment
of Frederica Street that consists mostly of
professional/service and residential land uses. The properties to the north and west are office uses, zoned P-1 Professional/Service. The properties to the east and south are single-family residential, zoned R-4DT Inner-City Residential. The closest B-4 zoned property along Frederica Street to the north is approximately 760 feet away, just north of 14th Street. The closest B-4 zoned property along Frederica Street to the south is approximately 250 feet away, between 17th and 18th Streets.

The subject properties were rezoned in 2010 from R-4DT to P-1. A final development plan for both parcels was also approved in 2010, depicting two office buildings and their required parking areas. The office building located at 1601 Frederica Street was subsequently constructed, while the proposed office building planned for 1611 Frederica Street was never constructed.

A consolidation plat approved in 2010 restricts the access to 1611 Frederica Street to the existing alley between 1601 and 1611 Frederica Street. No additional access to Frederica Street will be allowed however this property is developed in the future.

Frederica Street in this location is classified as a principal arterial roadway with a 500-foot driveway spacing standard, a 75-foot building setback, and a
60-foot roadway buffer; although a variance was granted in 2010 to reduce the roadway buffer to 40 feet.

If this property is successfully rezoned, all site improvements, including drives and parking areas shall be paved and appropriate vehicular use area screening shall be installed. Since the proposed zoning for the subject property is B-4, buffer screening along the south property line where abutting residential zoning will be required, consisting of a ten-foot-wide landscaping easement and a six-foot-tall solid element with one tree every 40 feet. Due to the proximity to existing residences, all site lighting shall be directed away from the residential uses.

If this property is successfully rezoned, the applicant must obtain approval of an amended final development plan to demonstrate compliance with zoning ordinance requirements including, but not limited to, parking, landscaping, building setbacks, access management, and signage prior to occupancy of the property.

**SPECIFIC LAND USE CRITERIA**

The applicant's proposal is not in compliance with the Comprehensive Plan. The proposed general business use conforms to the criteria for non-residential development. However, the proposal is not a logical
expansion of existing B-4 zoning in the area. The
proposal is not an expansion of existing B-4 zoning across
an intervening street. There is no commercial zoning
within this block, and the nearest commercial zoning to
the north and south is located several hundred feet away
and across streets. The proposal does not meet the
1.5-acre minimum requirement for a new location of general
business zoning in a Central Residential plan area,
although it is arterial-street-oriented. At 1.151 acres,
the proposal would be a significant increase in B-4 zoning
in the immediate vicinity and may overburden the capacity
of roadways and other necessary urban services that are
available in the affected area. B-4 uses typically
generate more traffic than P-1 type uses. Although
located at the corner of intersecting streets, the
existing use is appropriate in the P-1 zone. The proposed
commercial use is mid-block and adjoins residential
property.

PLANNING STAFF RECOMMENDATIONS

The planning staff recommends denial subject to
the findings of fact that follow:

Findings of Fact:

1. Staff recommends denial because the proposal
is not in compliance with the community's adopted
Comprehensive Plan;
2. The subject property is located in a Central Residential Plan Area where general business uses are appropriate in limited locations;

3. The proposed general business use conforms to the criteria for non-residential development;

4. The proposal is not a logical expansion of existing B-4 zoning in the area;

5. This proposal is not an expansion of existing B-4 zoning across an intervening street;

6. There is no commercial zoning within this block, and the nearest commercial zoning to the north and south is located several hundred feet away and across streets;

7. The proposal does not meet the 1.5-acre minimum requirement for a new location of general business zoning in a Central Residential plan area, although it is arterial-street-oriented;

8. At 1.151 acres, the proposal would be a significant increase in B-4 zoning in the immediate vicinity and may overburden the capacity of roadways and other necessary urban services that are available in the affected area;

9. B-4 uses typically generate more traffic than P-1 type uses;

10. Although located at the corner of
intersecting streets, the existing use is appropriate in
the P-1 zone; and

11. The proposed commercial use is mid-block
and adjoins residential property.

Staff requests that the staff report be entered
into the record as Exhibit A.

MR. CHAIRMAN: Anyone here representing the
applicant?

MS. KNIGHT: State your name.

MR. MEYER: J.D. Meyer, representing the
applicant.

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

MR. MEYER: Ladies and Gentlemen of the
Commission, I appreciate the opportunity to be here
tonight. We're asking the commission to approve the
zoning change from P-1 Professional to B-4 General
Business for the property located at 1601 and 1611
Frederica Street.

I'd like to introduce my clients, the applicants
in this matter, Sean Byrne and Jennifer Byrne, who are
with Tristate Pizza. Excuse me. Tristate Pizza, LLC.
And Cindy Bosley back here who is an owner of Ashley Worth
Rentals, LLC, who is the current owner of the property.

I think it's important for the Commission to
first know and understand what the intended use and the purpose for the rezoning is. I've provided information in the way of a packet that was sitting at all of your all's place when you sat down. And at this time, I'd like to kind of go through that packet.

It's my clients' intention to build a new building. This is a -- like I said, this is a vacant lot at the current time. They plan to construct a Donato's Pizza location, which will be a single, stand-alone building. Estimated costs at completion of construction as well as furnishing and fixing the restaurant are estimated between $1,000,000 and $1,200,000.

Additionally, Tristate Pizza plans to employ approximately 40 people, you know, at this restaurant. Not at any one given time, but that would be their current payroll.

As you can see as you flip through these pictures, the first picture is a picture of a Donato's Pizza that's actually located in Nashville, Tennessee. And all of these pictures are taken from that location. This is the type of structure that they would build. Obviously, it wouldn't conform exactly to this piece of property, as it would have to conform in shape and size to meet the other building requirements.

The second page represents an outside picture,
and then third page is just sample interior. On the third and fourth pages, where you have just a standard casual pizza restaurant that we believe will compliment this neighborhood and this area.

And then the last picture is of an outdoor area for outdoor seating. Obviously, the weather here is great during the summertime and we believe that we would do all we can to utilize and maximize the space for patrons of the restaurant to enjoy outdoor seating.

Next you have a picture of the notification area. I know that was provided and sent -- provided earlier as part of the staff report. But we respectfully disagree with the staff. We do believe that the proposed rezoning does meet the requirements of the Comprehensive Plan.

If I can -- this is old school, before computers and all of those high-tech devices and things of that nature. But this is a depiction, you know, of the property. And I think it's important that the Commission have a general overview and lay of the land.

The next page on your packet is actually a fold-out of this exact drawing, and you can see that -- you can see that the subject property is located here at the corner of Phillips Court, almost where it intersects with Griffith Avenue. There's an existing building here.
that houses Marcus Bosley & Associates as well as Ashley
Worth. And the vacant lot is here at this location. And
we have properties down here. This map and chart,
properties outlined in blue are professional use;
properties outlined in yellow are residential; and
properties outlined in red are currently B-4 zoning.

So I think it's important for everybody to make
sure they have an understanding of the general outlay of
the property and how it comports, because it's important
to look at the planning staff. I think they're in
agreement with us. When you look at the requirements for
rezoning from a Professional into a B-4 General Business
classification into what's characterized as a Central
Residential zone, the property has to conform to
non-residential development.

And as I indicated before, this property is
intended to be a casual pizza place, a casual pizza
restaurant where families in the neighborhood can walk
down and, you know, grab a slice of pizza; can enjoy the
night with their family; obviously walk home. Of course
there will be traffic from other sources, but this is a
natural compliment to a residential neighborhood.

In fact, if you'll note on the map, to the south
of the property, you have almost a mirror image of what
the proposal would look like if the Commission granted and
approved the zoning request. Because you have on 17th Street, on the corner of 17th Street and Frederica Street, on the south side, that's a professional zone. I believe that's an optometry building. You have Dairy Queen, which is a restaurant. You have a vacant lot, and then you have Myriad CPA Group there on the corner. That used to be the old -- I think at one time was York Neel & Company. And then you have 18th Street.

Across the street is Owensboro High School. Again, the proposed use of the property is complementary to the high school and those students who may be able to leave campus and obtain lunch and then get back for their classes, as well as any teachers or other staff members who may want to do the same.

There are also other professional buildings, you know, within the area that would support that, that same type of use where they could walk and enjoy lunch or dinner after work.

So we agree with the staff and I believe it would support a rezoning of the property since the proposed use as a restaurant conforms to the criteria in satisfying and merging with the residential development.

I think the other important factor that needs to be looked at and considered in connection with the rezoning is the qualification and requirement where you
have a new business zone that's going into a central residential development. And there's three criteria there that have to be met and found.

The first criteria is that the property must be located on an arterial street. As the planning staff reported, Frederica Street is certainly an arterial street. That is, you know, one of the main arteries, as you all all know, for traffic patterns. It's a four-lane road; and there's a turning lane running down the middle of all of Frederica Street, especially in and near this property.

The second requirement that they have looked at in that classification is that the property proposed to be rezoned should be on a corner lot, essentially. Here certainly the property is located at a corner lot, there at the corner of Phillips Court and Frederica Street.

I think it's important for the Commission to take note of the fact that there is a traffic light. While it's not directly at Phillips Court, there is a traffic light there at Griffith Avenue. I know a concern that the planning staff had in objecting to the zoning request was the impact that the restaurant may have upon traffic patterns. We believe the fact that there is a light there will help slow the traffic down and alleviate any concerns of people in the neighborhood, as well as
allowing for pedestrians to cross the street to access the property.

We do recognize and acknowledge that the lot itself is a 1.15-acre tract of land. The criteria for locating a new business zone in a central residential development states that we should have a 1.5-acre tract of land. It's our submission that this tract of land substantially complies with that requirement. And the reason that it substantially complies with that requirement is it meets the spirit of the planning and zoning ordinances. We have an adequate-sized piece of property to support the building and the structure. Certainly will meet all of the parking requirements that exist with respect to the Planning Commission.

I would note that there is a small -- it's easier for me to show. There's a tract of land that's actually also owned by Ashley Worth, which is located right here, that is to the east of the little jut-out there on the property. That's a six-hundredth of an acre. If you add that to the 1.15, we've almost got 1.21 acres of land. That lot, there is some conditional use requirements and land development restrictions that's actually tied to the property and is to be utilized as parking. So I think it's important for the Commission to take note of the fact that with that requirement and tying
of the properties together that little .06 acres of land should be considered when you're looking at what the total land acreage size is. Not technically part of the rezoning; we do acknowledge that. But, again, if it's tied to the property, it's required to be utilized as parking. It helps further meet the substantial - - substantially meet the code and substantially comply with the provisions there.

As we've said and we've pointed out, we do believe that this is a logical expansion and a logical use, especially when you consider the property to the south. I call it the Dairy Queen block. It's almost a mirror image, as I indicated before, of what we are intending to do - or are asking the Commission to do - with this piece of property.

There is another issue that we would point out, too. Not really an issue, but something to consider is that Abbington's Bridal House, their business actually is one that is more akin to be located in a B-4 Business zone. It's technically zoned P-1 Professional. We believe that that use may actually predate the code; that's why they didn't have to rezone their property. But there is a closer, more business general, a more general business use than what the staff proposed further down and further north on Frederica Street.
We don't believe that traffic patterns will be an issue. Most of the access is going to be confined to this corner. The running between where it says "the two subject properties" is actually an alley. There's already an access point there. We believe most of the traffic will just simply come in there and exit that same space or exit down behind. There's another alley running behind on the eastern side of the property. All the traffic will exit that way, exit onto Phillips Court, and then go down Frederica Street. Frederica Street is already a busy street and location. We don't believe that the casual pizza restaurant is going to overburden the existing infrastructure and add to the traffic. We don't believe that that's an issue that would prevent and bar rezoning of the property.

Lastly, I think it's important for the Commission to consider the nature and the change that Owensboro has undergone. I know Commissioner Reeves was part of that in a prior life when he served on the downtown boards. We're trying to make Owensboro a more urban area, an urban area with mixed residential commercial development. And as we said before, we believe that this project and this proposal to rezone the property fits within that spirit of a mixed residential urban area with commercial uses where people can get out and walk; be
active; take their kids; get pizza; and then, you know, leave to go back home.

So we believe that these facts all support the rezoning of the property and we respectfully request the Commission to do so.

The last page, we provided sample findings for you all, based upon the testimony that's been presented through me and as well as testimony presented by the planning staff, that you all can utilize and base to find that rezoning the property from P-1 Professional to B-4 Business is appropriate, as the building and lot patterns along Frederica Street corridor conform to the criteria for non-residential development and that the proposed zoning substantially complies with the criteria for a new business location within a central residential plan because it is located on an arterial street, which is Frederica Street; and that the proposed rezoning is located on a corner, and that it's on a corner, Frederica Street and Phillips Court; and that the acreage size substantially complies with the requirement in the regulations for at least an acre and a half, especially when you consider that lot that's dedicated as a parking facility; and lastly, that it meets the overall zoning in the area where you have other similar properties along Frederica Street that are a mixed professional B-4 zone.
with residential neighborhoods behind them.

The conditions imposed in the planning staff report, we're acceptable to meeting them; and then we would submit our final development plan for review and approval by the OMPC staff as well as the city engineers and that we'd meet the appropriate buffer zones as required by the zoning ordinances.

So with that, I would request on behalf of my clients, Ashley Worth Rentals as well as Tristate Pizza, that you all approve the zoning request.

MR. CHAIRMAN: Thank you, Mr. Meyer. Would you stay up there for questions.

I think what we're going to do, folks -- and I know some of you want to speak on the other side of the issue. What we're going to do is let the commissioners ask any questions they have of Mr. Meyer and then we will open up for anyone who wants to support the application or anyone who wants to oppose the application to make their comments, and we'll make sure to ask questions of you. If you raise issues that need to be addressed by the applicant, we will. All the questions will be addressed to me. That way we don't go back and forth. This is kind of like -- it's almost like being in court, but not quite like being in court. And we'll make sure that the applicant then addresses your questions.
So, Commissioners, any of you have questions of the applicant?

Mr. Kazlauskas?

MR. KAZLAUSKAS: Thank you, Mr. Chairman. I've got some questions of the applicant and the applicant's attorney and then maybe some questions to the staff. So I'm going to ask all my questions at one time. And then, Mr. Meyer, maybe you can answer or get some answers for us.

On the proposed building, the size of the building and the occupancy, how many seats would be in that building? Because - this is where the staff comes in - the size of that building and the seats in it would have an impact on the required parking; is that correct?

MR. HOWARD: That's right.

MR. KAZLAUSKAS: So I think it's important that we know the size of the building, how many seats are going to be in that building, and what the required parking is going to be.

And also, for the staff, down the road if this facility was not to stay as a pizza restaurant, what other types of business under B-4 would be able to move into that? I think we all need to know what could happen down the future - five, ten years down the road - if this restaurant proved not to be successful. We all want all
our businesses to be successful.

And then when we come to the traffic, we all know how heavily-traveled Frederica Street is. And from the schematics that I see here, there are no entrances and exits to Frederica Street. I think I see two on Phillips Court there, if that's correct. Would those entrances and exits be able to handle the amount of people that would be driving in there and parking cars? So maybe if we could get some answers to those questions, I would appreciate it.

MR. MEYER: Okay. Thank you, Commissioner. The size of the building we propose to construct is about 2,800 square feet. That's the total size of the building. I'm not sure what the parking requirements -- based upon the square footage, that would require 14 parking spaces on that lot or in that area that can be used either -- specifically on that lot or within the adjoining, you can have a mutual parking agreement with the other property.

And I think one of the things, Commissioner Kazlauskas, you pointed out, or asked about, was traffic patterns. And I think there's two things to point out with respect to and in response to that question. The first is, is that -- an important thing to note is the style of the building that's already there. That building is currently -- it houses the Bosley's
insurance/investment kind of agency. That is permitted in a B-4 zone. That building went in at a cost of in excess of a million dollars, I know, as well. And that use will probably always remain a professional use just because of the style of that building. Now, I'm not saying you can't go in and renovate things; but logically, I don't believe they intend to locate anywhere else in town. It's a very beautiful piece of property. So the traffic patterns there, we believe, are going to be limited because that building on the northern lot will probably more likely remain professional.

Now, with respect to the traffic patterns and placing a lot of access on the alleys moving to Phillips Court — it's probably easier for me to show you all on this schematic. But there is an alley -- there's an entrance right here on the property. So there is an access point here for access entry into the parcel, as well as there's an alley that runs here as well, and then there's an alley that runs behind it. And this alley runs all the way back to -- I believe this is part of the Mary Kendall campus. So it accesses all the way back. So it's our opinion that most of the traffic pattern is either going to either access here and then exit here or will access Phillips Court and up that property line.

MR. KAZLAUSKAS: Phillips Court and that alley
dead-ends to the east; is that correct?

MR. MEYERS: This alley? I don't know the answer to that question.

MR. KAZLAUSKAS: Phillips Court?

MR. CHAIRMAN: Phillips Court dead-ends at the Mary Kendall Home.

MR. MEYER: Phillips Court dead ends, but I think the alley runs all the way out.

MR. CHAIRMAN: The alley runs all the way through, runs right adjacent to the Mary Kendall Home property. Comes out on -

MR. MEYER: Allen Street.

MR. CHAIRMAN: - Allen Street.

Mr. Kazlauskas, does that answer your questions? I think we had some response from Mr. Howard.

MR. KAZLAUSKAS: I was just wondering if that alley would be proposed to handle the traffic. It's an alley, right?

MR. CHAIRMAN: I was out -- I don't know how many of you have been, but I was out there today. That alley is extremely narrow. It's extremely narrow, but it would be able to handle certainly traffic going down through there.

MR. MEYER: You have a shared access point, Commissioner, here. Right here. It's onto Frederica. So
there's really -- logically, if you're a patron of the
restaurant, you're not going to exit down the alley that's
going to run back. You're going to use the shared access
point here on Frederica or here on Phillips Court, which
will run behind the professional building here. And this
alley running behind, combined with the parking lot, is a
very wide alleyway, very wide alleyway; as well as the
access point.

MR. KAZLAUSKAS: Do you know the dimensions on
it?

MR. CHAIRMAN: It's at least a couple of lanes
wide. Maybe a little more than that

MR. MEYER: You could easily fit two cars in
there at the same time.

MR. KAZLAUSKAS: Just one more question. We
know it's going -- the applicant said it's going to be
2,800 square feet, but we don't have a proposed occupancy
for how many seats are going to be in there. How many
people are going to be in that building at one time?

MR. MEYER: Maximum occupancy would be between
35 and 40.

MR. KAZLAUSKAS: We're not talking about a whole
lot of people, I guess.

MR. CHAIRMAN: Yes, Mr. Howard?

MR. HOWARD: If I could, they were correct as
far as parking itself. The parking is one space per 200 square feet. So occupancy comes in when our building department is looking at the plan review and the fire department and that type of thing. The parking itself would be dictated solely by the square footage of the building.

And then I'll address the other question you asked of me a few minutes ago as far as what other businesses could go in a B-4 zone. Basically, a B-4 zone is General Business. And because it's general, it will allow basically any type of commercial use to go in there, whether it's an office, like the property to the north, or restaurant or, you know, something like that, anything in between barber shops and -- it will allow almost any type of commercial/retail/restaurant type use.

MR. CHAIRMAN: I have a question on this, too. So I'm assuming that if we rezone this, the existing building would also fall under B-4. I know what their plans are for the building; but say plans down the road are not that. You could conceive to have a restaurant go in there, check-cashing center, barber shop?

MR. HOWARD: Right. Any of those use would be permitted in a B-4 zone.

MR. CHAIRMAN: Any other commissioners have any questions? Mr. Boswell?
MR. BOSWELL: A number of them ties into what Commissioner Kazlauskas mentioned. The access off of Phillips Court, looks like two accesses, entrances or accesses there, or exits. Do you anticipate people coming in off of Phillips Court, coming across that lot, over to that facility, rather than using that alley?

MR. MEYER: When you say "that alley," what's -

MR. CHAIRMAN: I think he's talking about through the existing property here at the end.

MR. BOSWELL: That goes into the Bosley property. It has two entrances off of Phillips Court.

MR. MEYER: I'll let David Weaver with Bryant Engineering answer that question.

MS. KNIGHT: State your name for the record.

MR. WEAVER: David Weaver.

(MR. WEAVER SWORN BY ATTORNEY.)

MR. WEAVER: I would anticipate that most of the traffic coming into the business would come off a shared access point on Frederica. And then leaving, could easily go out the alley at Phillips Court, and then it puts you at a light.

MR. CHAIRMAN: Anything else, Mr. Boswell?

MR. BOSWELL: Yes, I do.

One of the questions I have is around the
statement that you had in your overview on your findings, applicant's findings, for the zone change. You made mention to classification in order to comply with Article 8 of the zoning ordinance. One of the things that I was struggling with in looking at this is whether that fits under the assembly section, which would be permitted, but it's associated with item 15, which addresses a drive-through and requirements if you have a drive-through. Is this restaurant going to have a drive-through?

MR. MEYER: There would be a pickup window but not a drive-through, so you would -- similar to what is on Fetta, where you can walk up, get your pizza, and then leave. But there would not be a particular -- there would not be a drive-up or drive-through as it would be at Dairy Queen.

MR. BOSWELL: My concern -- there was a statement that said that you had to be at least a hundred feet from a residential zone if it were to have a drive-through.

MR. MEYER: Right.

MR. BOSWELL: The other thing that -- I want to get your take on this, your all's take on this. The other argument, this last finding makes a statement about the corridor from 25th to Parrish Avenue containing a mixture
of zoned properties of all types, B-4s, P-1s. You know, my concern here is there's not been any real changes in that area since our Comprehensive Plan was adopted, or revised, in 2013. Putting this type of facility in there is certainly going to create more traffic issues. The concern I have is around how this is going to impact the residents within this area. Have you all had any conversation with residents?

MR. MEYER: Yes, sir. We did go door-to-door and talk with the residents about what we intended to do, what we intended to build, what the design of the restaurant would be, what it would look like, our concept. And so many of them are obviously here in the audience tonight. But we did reach out to them prior to this meeting in an attempt to discuss with them, you know, what we intended to do and what our proposal was.

MR. BOSWELL: And what was your sense of those findings or discussions?

MR. MEYER: The majority would have concerns about the project. I think it's more from a safety standpoint, of children in the neighborhood was a larger - - a larger concern.

But the access and the way, in our opinion - - in our opinion, the way that the property would flow from the traffic pattern is it would all be directed away from
the residential area, with a shared access point coming in off Frederica Street, which is, of course, in the middle of the property, not adjoining any of the residential property. And then the remaining access being -- the other main access out of the property would be, you know, behind the building on the northern lot, out to Phillips Court. So we believe most of the traffic is directed away from the residences.

You know, you're going to have the same concerns there as you do having a professional office building. If I were to locate my law firm there, I mean, I would still bring clients in and out, you know, throughout the day, especially in the summertime. But that's just -- that's part of the nature of the property and where it's located.

And David would like to --

MR. WEAVER: Just a couple of points I wanted to add to what J.D. said.

I think the change that's happened since the adoption of the Comprehensive Plan is the community strives to become a living/walking community. Having a pizza facility in close proximity to office spaces and to residences gives the ability to walk to those.

And another point. Oh, my other point, traffic. One thing to note is, as far as the traffic patterns go, when you have a pizza facility, it's not going to affect
the peak-hour traffic because you don't have people going
to get pizza at eight a.m. in the morning when people are
commuting to work. And people leave work and go get
something to eat, but it's the same traffic that's already
there. So to me, if you had a professional use, you
almost add traffic, because it's peak hours of what's
happening in that vicinity increase, if you follow my
logic.

MR. BOSWELL: Another question I had was, in
looking at the packet of information you supplied, there
was a picture of what appeared to be like a loft area
where it would be outdoors.

MR. MEYER: Yes, sir.

MR. BOSWELL: I think it's the last picture in
the packet. Do you have a sense of how that would be
located? Would that be facing Frederica Street?

MR. MEYER: At this point, we don't know. And
it's not really a loft area. If you go back and look at
the second picture, you can see that there must be an
elevation change on this property because there's no
seating at street level.

MR. BOSWELL: Right.

MR. MEYER: So, as I said, this would be
pictures that were taken just to give the Commission a
feel for what the restaurant may look like. Most of this
will be at street level. Certainly, I think the focus
would be more -- but that outdoor seating area would more
likely than not face Frederica Street as much as possible.
But it will probably, more likely than not, be more at
street level with Frederica Street.

MR. BOSWELL: Thank you.

MR. CHAIRMAN: Is this what they call the Gulch
in Nashville? Is that were this Donato's is?

MR. MEYER: Right downtown, yes, sir.

MR. CHAIRMAN: Just a couple of questions on
kind of what your intent are. If this were to be rezoned,
of course, you're sitting right next to residences. I
notice in here that they have music. I assume they're
going to be open till midnight or so?

You may want to address that. If you'll come
and be sworn.

MS. KNIGHT: State your name for the record.

MR. BYRNE: Sean Byrne.

(MR. BYRNE SWORN BY ATTORNEY.)

MR. CHAIRMAN: So what would you anticipate your
closing hour would be?

MR. BYRNE: Probably around midnight. I don't
know that we'll have any kind of music there at all. The
reason they have it there in particular is because it's
Nashville. So they try to get entrenched in every
community they've got. And one of the things they have in Nashville is they like music, so they have people up there that come in and play music for them. It's not by any means going to be a nightclub-type atmosphere. If somebody's out there playing, it would be like music that you see down at Fetta. They may play music for a while, pizza, whatnot.

MR. CHAIRMAN: But you do plan on having outdoor dining in the front?

MR. BYRNE: We would like to have that, but a lot of that depends on how the site would be laid out and how many parking spaces we have and, you know, what the setbacks are to is.

MR. CHAIRMAN: Okay. And this may be a question for Brian. I'm not sure. We just had a rezoning back -- we did not rezone it. The fiscal court rezoned a piece of property over our objection. And when the site plan came in, the developer did what was completely legal but destroyed the property next to it. That property there sits on an angle. Would you be planning to build your property to fit into the angle, or would you be planning to cut and level it off there?

He knows what I'm talking about. It's on 54. That was falling off a cliff back there.

MR. WEAVER: With the lot, I would almost
anticipate there would be a need for a retaining wall over on that side. Of course, you have to have a ten-foot landscape buffer, but that's a detail that has to be worked out. We've actually kind of talked along the context of, you know, the six-foot continuous element that's required, we would want to make sure that we situated that such where it's near the top. It would probably be closer to the property line as opposed to being, you know, in the ten foot; so you've got more of a barrier there. Does that answer your question?

MR. CHAIRMAN: Yes, it does. You know what my concern is.

MR. WEAVER: I know what you're talking about. The slope of the grade across there? It's a detail we haven't looked at yet.

MR. CHAIRMAN: I know that's not as harsh as what was on 54.

MR. WEAVER: Yeah. Yeah.

MR. CHAIRMAN: Any other commissioners have any questions? Mr. Ball?

MR. BALL: I have a question for staff. There was an example of Abbington's Bridal House being a mercantile use, which would obviously fit in a B-4 and not a P-1. Can you explain to us a little bit about what happens with that, how that's grand-fathered in, and what
other uses could be there in the future? Could it ever change to a restaurant due to that? How does that work? Can you explain that to me?

MR. HOWARD: Sure. As far as grand-fathered in, if it was in existence prior to the adoption of the zoning ordinance, it can remain what it is until there's a change. It could change from a bridal shop to a similar type of use without going through a rezoning process. However, if they had a desire to convert it to a restaurant, it would have to go through a rezoning process because you would be increasing the intensity of the use on that property.

MR. BALL: So it really never changes. It never changes the type of use that it has as opposed to in the event that this other property is rezoned -- and right now we're looking at a pizza restaurant and an investment business. Those could potentially change to anything that would fit inside B-4, correct?

MR. HOWARD: That is correct.

MR. BALL: Thank you.

MR. CHAIRMAN: Any other commissioners have any questions?

MR. MEYER: I would like to point one thing out. I would like to point out the fact that my clients are both -- and especially Tristate Pizza. They're both
engrained in this community. They were born and raised here. They have other businesses located here. They own the Shammy's Car Wash up the street. And they have intent on continuing in various business ventures, you know, throughout the city. So they have a vested interest. This is their community. They want to remain here. Certainly anything can happen in a business, but they're committed to doing everything they can to make sure that, you know, they're good neighbors to the residential neighborhood behind them.

MR. CHAIRMAN: Mr. Howard, this may be a question to you, and the engineer may want to --

The existing traffic going into the business there -- that is an investment and insurance agency, so they may have a car going in every 30 minutes, every hour or so. My concern is just how close that alleyway entrance between the two lots is from Frederica if you had people getting off work and going in there to pick up a pizza on the way home. I'm not particularly concerned about the business with the insurance agency there, but I am concerned about -- would the State Transportation Cabinet weigh in on this at all, or does that resolve the issue?

MR. HOWARD: There's an existing access point there; and, you know, it is what it is. We would look to
the State and ask them if anything would need to be done from their perspective if this was developed as a restaurant. You can look at the Institute of Transportation Engineer Traffic Generation Manual; and it'll give you a formula to calculate how many parking spaces would be required for a professional office, a bank, a restaurant, anything. And you're right in general - and that was pointed out in our staff report - an office use like that is going to have a lower traffic count and lower traffic generation than a restaurant would.

MR. CHAIRMAN: I'm really concerned about the left turns of the people going south there during peak business hours at the restaurant. I just didn't know if the Transportation Cabinet would weigh in on that or not.

MR. MEYER: It's probably no different than what is already going on in Dairy Queen just a block down. But as David indicated, it is on your way home, it is at different hours, and we would -- we don't believe it'll have that great of an impact.

MR. CHAIRMAN: It is a little bit different than Dairy Queen because of the way Griffith comes in there. Dairy Queen is about halfway down the block. This one, you enter just a few hundred feet down the block. I suspect that that's --

Mr. HOWARD: Well, and to piggy-back on that,
the concern I would have there is -- in it being
different from Dairy Queen, as Mr. Meyer pointed out
earlier, there is is central turn lane that goes the
length of Frederica Street. However, at the point where
this alley, the east/west alley between the two properties
goes into Frederica Street, that's actually at the
tail-end of a designated left turn lane at the signal for
traffic entering Griffith Avenue. So I would have a
concern about where southbound left-turn traffic trying to
enter this site would sort. You're going to have a
conflict there with that being a designated left turn
lane.

MR. CHAIRMAN: We always abide by what the --
MR. MEYER: Sure. We do have to meet all of
their requirements.

MR. CHAIRMAN: Any other commissioners have any
questions of the applicants before we hear from anyone
else in the audience? Yes, Ms. Hardaway?

MS. HARDAWAY: I have one. You said that with
the size of the building, you would need about 14 parking
spaces?

MR. MEYER: Yes, ma'am.

MS. HARDAWAY: And so I assume that some of your
employees would be using some of those parking spaces.
Correct?
MR. MEYER: They would.

MS. HARDAWAY: I was just wondering, what are you going to do with overflow in case, you know, you have a lot of cars come in? Where is you parking going to take place, the overflow parking?

MR. MEYER: I think the beauty of the way these properties can work together is that some of our peak hours are the -- you can have overflow parking over to the property on the north because our peak hours are not going to -- generally, the property to the north would have available spaces. There's also available spaces in that .06 acres that I advised you all earlier is not part of the zoning but is solely restricted to --

MR. CHAIRMAN: Mr. Meyer, do you want to point that out to Ms. Hardaway so she'll know for sure where it is?

MR. MEYER: This spot right here is dedicated parking for both parcels under some conditional -- some prior conditional use permits. And so you have that. And then, of course, you have overflow parking. We'll have to reach an agreement, obviously, as part of our transaction to utilize the property of Ashley Worth. But that can also be utilized as overflow parking because their employees will typically be gone during those peak hours and after work.
MS. HARDAWAY: So are you open for lunch?

MR. MEYER: It is, yes.

MS. HARDAWAY: So possibly you could have the business that's already there, their employees are there, and then plus the restaurant's business for overflow employee -- I mean -- I understand what I'm trying to say.

MR. MEYER: I understand. The lunch crowd is what I did not address.

MS. HARDAWAY: Yes. Yes.

MR. MEYER: And that's what you're raising?

MS. HARDAWAY: Yes.

MR. MEYER: We believe that we've met the requirements of the, you know, planning. And of course we won't have 40 people there at the same time. There's no parking on Frederica Street. We would just have to find another location for that.

MR. WEAVER: Fourteen parking spots is what's required. That doesn't mean that that's what we're going to have. Obviously we'll have whatever parking we can fit on the lot in addition to Mr. Bosley's property. There's a considerable amount of parking. They're way under-utilizing that during office hours anyway. So, you know, I think there's plenty of room.

MR. CHAIRMAN: Mr. Kazlauskas?
MR. KAZLAUSKAS: You just brought up an important point. Walk me through this now. Don't walk away.

MR. WEAVER: I'm sorry.

MR. KAZLAUSKAS: Walk me through this, because I want to be sure that I'm understanding. Let me get my other drawing here. All right. Here's my map.

The property at 1601 Frederica, the property at 1611 Frederica, and the property at Phillips Court, 210 Phillips Court, are all owned by different people; is that correct?

UNIDENTIFIED SPEAKER: That is correct. That is correct.

MR. WEAVER: I'm sorry. Which properties are you talking about?

MR. MEYERS: 210 Phillips Court. I'm not sure. This property is owned by Ashley Worth. I'm not sure of the 210.

UNIDENTIFIED SPEAKER: That is my house.

CHAIRMAN: Ma'am, I know you want to, but you haven't been sworn. Plus, she needs to get your comment. We'll get to you.

MR. KAZLAUSKAS: Who owns the property at 1601?

MR. BOSLEY: Mark Bosley.

MR. CHAIRMAN: Mark, can you step back and be
sworn. You can be sworn right there. You've got the mic.

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

   MR. BOSLEY: Marcus Bosley.

   (MR. BOSLEY SWORN BY ATTORNEY.)

   MR. KAZLAUSKAS: Who owns the property at 1611?

   MR. BOSLEY: It's owned by Ashley Worth Rentals, but my wife and I own -- Mark Bosley and Tina Bosley own 50/50 Ashley Worth Rentals.

   MR. KAZLAUSKAS: Okay. Now, who owns the property at 210 Phillips Court?

   MR. MEYER: That property is owned by Howard Adams, per the notification.

   MR. KAZLAUSKAS: And that's where the agreement is for overflow parking?

   MR. MEYER: No.

   MR. KAZLAUSKAS: That's what you kept pointing at. That's what I couldn't understand.

   MR. MEYER: This is Mr. Bosley's building right here. And there's parking -- well, he may --

   MR. KAZLAUSKAS: And what was that other address?


   MR. MEYER: 210 Phillips Court is here. That's an existing house. And the alley is directly to the west.
MR. KAZLAUSKAS: Is there overflow parking there at 210?

MR. MEYER: No, sir. Just on the Bosley tract.

MR. KAZLAUSKAS: Okay. So what about 203?

MR. BOSLEY: Where's 203?

MR. MEYER: If I may.

MR. KAZLAUSKAS: Please.

MR. MEYER: If you could turn to the page in your book before that map. You see the notification area on the top. You'll see 1601, 1611.

MR. KAZLAUSKAS: Right.

MR. MEYER: And then there's a small, almost square lot that is immediately behind the 1611 property.

MR. KAZLAUSKAS: Okay.

MR. MEYER: That says West 17th Street, Marcus Bosley.

MR. KAZLAUSKAS: We're talking about overflow parking now, right?

MR. MEYER: That's right. That is also owned by Mr. and Mrs. Bosley.

MR. KAZLAUSKAS: Okay. So we don't have to worry about any type of agreements between the property owners?

MR. MEYER: Right. Right. That's correct.

MR. KAZLAUSKAS: As long as we're not talking
about three different property owners, I don't think we'll have a problem there. And then how many -- on this overflow parking, how many vehicles can we get in there?

MR. MEYER: You're talking about in the lot, the West 17th Street lot?

MR. KAZLAUSKAS: Yeah.

MR. MEYER: It's about seven spaces.

MR. KAZLAUSKAS: Okay. Thank you.

MR. CHAIRMAN: Thank you all for clarifying that.

Are there any more questions of the applicants? If not, we invite anybody else who wants to speak on this issue to come to the podium and be sworn, and we'll be happy to hear from you.

MS. KNIGHT: State your name for the record.

MR. MCQUARRIE: Colby McQuarrie.

(MR. MCQUARRIE SWORN BY ATTORNEY.)

MR. MCQUARRIE: Well, there are a couple of points that we'd like to make if we may. We won't get into all the details about property size and all that. But as far as soliciting any of the neighbors concerning this project, we saw the signs. We apparently had somebody come through the neighborhood. I'm not sure how many times. Maybe once. I was never contacted, and I think there was probably two or three neighbors that
weren't.

Just a little history and background. This is probably one of the few intact neighborhoods, on Phillips Court, of Victorian homes, single-family residences. Folks that have been there for -- well, I know myself, we've been there for 29 years. I bought the home, restored it, renovated it, raised our children there. So we've lived in the community. And most of our neighbors are the same neighbors that were there before. Sure, there's been a house change here and there. But for the most part, it's solid.

And of course we are also a very good neighbor of the Mary Kendall Home, which, you know, is just a wonderful program with the church and the employees. And we've never had an issue with any of the young people that are there. We've never had an issue with any of the property use or anything.

As time went on, when we were living on Phillips Court, there were a number of homes that changed ownership. And I'm sure you all probably remember quite a bit of that, when the homes were in a dilapidated state. Some weren't; some were. But for the most part, they had been used for rentals over the years. The facades and the front yards looked great. But honestly, the bones of the buildings weren't there.
There was a project once before that was mentioned, changing all of that area. And I believe at one point they had an option on pretty much every parcel from Phillips Court to 17th. Part of the concern was that there again, that was -- probably look through your records and see. Some years ago, there was proposed a B-4 business change.

I believe the Department of Transportation looked at the project and realized that there was an issue because of the Frederica Street and Griffith Avenue light. There has never been a light on Phillips Court. There's a stop sign. But we've dealt with that for years. Honestly, as long as we've lived there, it's a right-hand turn. It's never a left-hand turn. Because, one, the traffic light is very short and it's dangerous to cross traffic there, even with the light. So that project was stalled because they were going to require an increase in access to Phillips Court in order to change that project. I believe Mr. Pembrook was working on that at that point, and Mr. Cambron. So that project stalled.

When Mark bought the property and he presented his program to the Phillips Court folks and the adjoining community, we thought that this was a good use. We understood that Frederica was going to be a professional district, and there are buildings across the street all
around us that are used for office space. Not that we
were concerned about the traffic. That was not an issue
because we knew that it was professional. We knew there
would be one or two cars every 30 minutes or so and
probably five or six employees. And that's pretty much
remained the same since he built the building there.

The alleys themselves, both accessed from
Daviess Street and also 17th, are at best one-lane alleys.
By living there and using those alleys to access both
Daviess Street and also 17th Street, there's no way that
two cars can pass at all. And it does become a little bit
of a problem partly due to the fact that a lot of the
fences and a lot of the access to those alleys are closed.
And you have to be very, very careful when you're driving
through there, even today, or somebody will come out of a
driveway or back out or whatever it may be.

So we are concerned about the traffic, we are
concerned about the parking, and we are concerned about
our neighborhood. We understand progress. We all sit
here representing one opinion; and that is, we would like
to see that parcel of land remain professional one. And I
believe that all the concerns have been raised. I think
that staff did a great job in reviewing this and not
passing it.

One concern that I do have that I would say, as
a business person, is that we haven't seen the building. We don't have a site map for the building. We don't know how many seats are going to actually be there. We don't know if there's going to be live music. Is there going to be beer served there? Are they going to apply for an alcoholic beverage license?

Where are they going to park their employees?

If there are 30 employees - which, ideally there probably will be at start - where will they park? There's not enough parking for even the customers if the employees take up the parking lot. So you have Phillips Court, you have 17th, and that's really where the parking is going to be.

So I would move that you all would consider this in not passing the proposed ordinance to change zoning on that piece of property.

MR. CHAIRMAN: Thank you, Mr. McQuarrie.

Does anybody have any -- any commissioners have any questions of Mr. McQuarrie?

Would anyone else like to speak?

Thank you.

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

MR. PELPHREY: Thomas Pelphrey.

(MR. PELPHREY SWORN BY ATTORNEY.)
MR. PELPHREY: I'm Thomas Pelphrey. I live at
203 West 17th Street. My house faces 17th Street; but the
alley that runs north and south between Phillips Court and
Daviess and 17th Street runs right beside my home. It
runs between my home and the home at 1617 Frederica
Street. And that alley is at best probably 14 feet wide.
Probably 12. It is very much a single lane. I've lived
there 24 years. Bought it from Judge Griffin, who raised
his family there. And know that that alley is a one-way
alley there. And that was one of my concerns.

The other concern that I have -- there are
multiple concerns I have, but the other one was addressed
by the question about the level and the elevation on that
property. It is a small property; and to put a building
like that on there and not build a retaining wall seems
very difficult in my mind. I'm not an architect, not an
engineer; but it would seem to be very difficult. And I
would be worried having to back out of my carport into the
alley that's small already if there's a retaining wall
right up against that alley. And that has not been ruled
completely in or completely out here tonight.

I do want to thank Sean for coming -- he did
come to my house, and we did have a conversation. And I
told him that I liked Donato's pizza. I grew up in Ohio,
been eating Donato's pizzas for a long time. We would
love to have them in our city. I just don't think that's the location for them to be. I told him that I would be coming and speaking in opposition to that.

Colby also mentioned, as I'm about to reiterate, that there is no traffic light, as has been indicated here tonight. There is no traffic light at the Phillips Court turn signal for people -- when you go there, there's a traffic light coming out of Griffith. There's a traffic light for both sides, north and south, on Frederica. But Phillips sits over here. There is no traffic light to guide you there. Colby's exactly correct. You take your life into your own hands if you try to go south there.

Same way on the central -- well, you've been using the word "central access" -- is that right? -- for the access in the middle of the block. Going south there, as has already been mentioned, would be very difficult, particularly with the turn lane for Griffith.

I would like to say that I'm one of those engrained residents in Owensboro as well. There's been mentioned that the person who'll be running this establishment is engrained in the neighborhood. Well, we all are too. I've been there 24 years. Been there 29. My neighbor has been there about 22 or so. So a lot of people around there have been there a long time. And we would like to keep our residence as we have it now.
Again, there was no building size, and all of that was not exactly detailed tonight. I want to say that the seven additional parking spaces that have been mentioned are at my property line from 203 17th Street. My north property line is one of the borders for that section of parking. It was originally -- it was originally granted a conditional approval for that. And at the time, I asked how long would that be. And people said, well, it'll be forever. So am I hearing tonight that we're going to change that conditional use and now it's going to be parking for any one of those two businesses?

And I have a further question that someone can address. It's been mentioned by the counsel that the building at 1601 is a business, it's a professional business. And in counsel's own words, they will probably never change that because they don't want to rebuild. My question is, why is that being changed? Why is it going from P-1 in existing property to B-4? I think the obvious answer to that is that's the only way they can come up with even 1.5 acres. Because if you just try to make the parcel of land where the pizza place is going to be a B-4, it would be very much less than one acre. So I have a question about, you know -- - I understand there are options. But my question to the Commission is, why would
that be done if it's going to remain a business and be professional?

MR. CHAIRMAN: I don't think we can answer your second question because only the owner can do that. I will ask Mr. Howard to answer the issue about the conditional use on the small parcel back there.

MR. HOWARD: And I don't have the file in front of me on that, but I do remember when it happened. You can get a conditional use permit for parking, and that was granted. So it is parking and it was shown on the government plan that was submitted.

MR. PELPHREY: So that is parking for anybody or just the owner?

MR. HOWARD: It could be for customers. Is that what you mean? It could be for customers of anybody that would be using either of those businesses.

MR. PELPHREY: So it's available for -- even though there's going to be two pieces of property, one's going to be owned by the rental company and one's going to be owned -- if it were to pass, it would be owned by someone else, Sean. I'm just trying to understand here. So that means that he could have access to this conditional parking even though he doesn't own it. Is that correct?

MR. CHAIRMAN: I think that was the intent. Mr.
Meyer, am I correct that the restaurant would have access to this additional parking that's conditionally permitted right now?

MR. MEYER: It would be. It's property owned by Ashley Worth or the Bosleys, and it's been conditionally permitted to serve as a parking structure, additional parking now to service the existing parcels. So if there are -- if the property is sold, certainly from a legal perspective, arrangements will be made with the owners of the property to allow and permit, you know, Tristate Pizza to utilize that parking as well as overflow parking.

MR. CHAIRMAN: I have a question for Mr. Howard. Would there be any requirement for buffering on this lot for the conditional parking?

MR. HOWARD: They were required to put in screening based on zoning ordinance requirements when that was done.

MR. CHAIRMAN: So it already has buffering there?

MR. HOWARD: It should, yes.

MR. CHAIRMAN: I'm sorry, sir.

MR. PELPHREY: So my understanding is that even though it was rezoned when the building was built, it would not matter who owned that extra property.

MR. CHAIRMAN: That would be a business
agreement between the various owners as to the use of that property. That would be worked out with their rental or sales agreement.

MR. PELPHREY: All right. I understand. Thank you for clarifying that.

I do want you to know -- I would like to make the Commission aware that we have a petition of I'm not sure how many names -- probably 15, 20 names -- in opposition to this change in zoning.

And the last thing -- two other things I'd like to say. We talked a lot about if it's B-4, what it could be in the future if this were not to go well. And we've mentioned a lot of different things, but it could be a liquor store. Is that correct?

MR. HOWARD: A liquor store would be a permitted use in a B-4 zone.

MR. PELPHREY: Would a liquor store be a permitted use that close to the school?

MR. HOWARD: We don't dictate the ABC requirements. That would go through the ABC licensure.

MR. PELPHREY: The reason I just bring that up, my understanding -- -- and I may be wrong, sir. But the potential builder of this also has some of these businesses, and that concerns me as someone who is going to be living by that. And the question that Colby brought
up about liquor licenses, etc., living beside that is a
very big concern to me.

The last issue that I would bring up to you is,
this is a community. I understand that we are trying to
live together well, and I want to do that. But I also
need for the Commission to remember that those of us who
would be affected by changes like that financially as
well. The property at 17th Street, do we know whether
that would go up? Or my property or my property at 203
West 17th? Now, that may not be your concern, my
property. But it sure is as a resident of the community,
my property value. I'm a minister. I'm not a rich man.
My biggest asset is that house. If that house goes down
in value, I'm in trouble. So I have that concern, and I
just want to bring that up, that other people who are
sitting here tonight have concerns about their value of
their property as well. And I would know and assume and
be assured that you would take those things into
consideration as well.

MR. CHAIRMAN: Thank you, Mr. Pelphrey.

Appreciate it.

MR. PELPHREY: Does any commissioner have a
question of me?

MR. CHAIRMAN: Would anyone else like to speak
to the issue?
Commissioners, if you have any additional questions for either the applicant or anyone else in the audience --

Mr. Boswell?

MR. BOSWELL: Just a point of clarification. I think the gentleman that just spoke mentioned something about a retaining wall. And your understanding was it was at the back part of the lot? I want to get clarifications because I thought I heard something different from the applicant.

MR. PELPHREY: There is not one there now. It goes up on a grade. There's an alley from the center -- from the center point of the alley, running north and south, it goes up between our homes and then pretty steeply down to 17th Street. Probably drops ten feet at least. And my concern is, if it's a full depth from Frederica back to the alley is used for the business, then I would assume that there would be some kind of retaining wall built there. And I'm just concerned about backing my car out in a 12-foot wide alley with a retaining wall there.

And my concern is, because that really hasn't been addressed tonight, we don't have the final plans here, we don't have site plans that say, "This is what we're going to build." And we did have that when the
other property at 1601 was brought to us. It was completely designed; "This is what we're going to build."

MR. CHAIRMAN: One thing I do want to point out to you, they may have brought a site plan to you. That would not have been binding. Okay? Site plans come after the zoning. They can bring you pretty pictures, ugly pictures. They may change the picture completely once it's rezoned. That's up to the owner, who must come to our staff to get site plans approved by this Commission.

MR. PELPHREY: Well, I thank you. I appreciate the information.

MR. BOSWELL: The question I have for you folks is, I thought I heard you say there would be a retaining wall that would be between the 1617 property and the 1611 that would run east/west.

MR. WEAVER: Yes. I could probably clarify the retaining wall issue. We haven't done any design as far as the site goes, but I would anticipate the need for a retaining wall along the south border of our property. And that retaining wall would not continue in height all the way to the alley to the east. It would obviously taper down. The site grade would have to match up with the alley.

In addition, I'd like to clarify just a few things on the relationship of the alley and the access to
the property. The alley to the south of the development
is narrow. I don't really anticipate that being used for
commercial purposes in relationship to the restaurant.
But the alley going to the north, that takes you back out
to Phillips Court, has been widened as part of our
development. And that is a 24-foot width. That's street
width.

And once you get out to Phillips Court, they are
correct that Phillips Court and Griffith Avenue are offset
at the intersection. The light is with Griffith Avenue.
However, that light does assist you in coming out from
Phillips Court because it gives you the ability to turn
right. Now, I believe what's needed at Phillips Court at
that intersection is a sign that disallows left turns, but
that's a decision for the Highway Department and the City
Engineer to make.

MR. BOSWELL: Can you at this point -- you may
not be able to do that at this point, but can you
determine whether there would be a need to put the
retaining wall around the corner, which was his concern at
this point in time?

MR. WEAVER: I don't anticipate it would go
along the corner, just along the south side. It would
taper down as you go back toward the alley and back toward
Frederica Street.
MR. MEYER: But it would not obstruct the view?

MR. WEAVER: Would not obstruct the view.

MR. MEYER: There already is a little bit of a grade drop-off there, just the natural topography of the land.

MR. BOSWELL: Thank you. I just wanted to make sure there was a clarification because I was confused myself about where that was at.

MR. CHAIRMAN: Mr. Pelphrey, did you have another issue?

MR. PELPHREY: I do. One of the discussions I had with Mr. Payne, and my understanding is too -- two issues. I would like to know the difference between a walk-up window and a drive-through. They said there was not going to be a drive-through.

MR. CHAIRMAN: There would be a driveway that would let you go up to the walk-up window.

MR. PELPHREY: Okay. So you just have to park and go up there?

MR. CHAIRMAN: Right.

MR. PELPHREY: All right. Thank you. And then I don't think we've had any mention tonight of the business -- would probably about a third of the business be delivery?

MR. CHAIRMAN: Mr. Meyer?
MR. PELPHREY: And my understanding is that it would be a lot of delivery. So we going to have not only patrons come to this place, but delivery cars. And delivery cars are going to run through the alley. And that's another concern. And particularly the alley as it runs east/west from Frederica to Daviess. As has already been indicated, that is a single-lane alley. And if delivery vehicles are going to use it, that would be a real problem. And I don't think we've had any mention tonight here -- but when I had conversations with Mr. Payne, the indication was this would be delivery as well. So it's not just going to be people coming there; it's also going to be delivery and a lot of traffic.

MR. CHAIRMAN: Mr. Meyer, may we anticipate there are going to be deliveries from the restaurant?

MR. MEYER: There will be deliveries from the restaurant. Obviously we would instruct all of our employees to utilize the access points that we've discussed, being the shared access point on Frederica Street, exit out Phillips Court. We can control that so that that's not an issue or a problem.

MR. CHAIRMAN: Okay. Mr. Moore?

MR. MOORE: Thank you, Mr. Chairman. You mentioned that the alleyway going to Phillips Court was 24 foot and the one going to 17th is
12. Did anybody ever indicate what the size of the one coming off Frederica? What size is that one?

MR. CHAIRMAN: Get Brian back up here.

MR. HOWARD: I'm thinking that that's a 30-foot access point, but I don't know for certain.

MR. MEYER: It's a large one. I know that, Mr. Moore. It's 24 or larger.

MR. CHAIRMAN: Any other commissioners have any questions?

Mr. Meyer, did you have any further comments?

MR. MEYER: I have nothing further. Appreciate your time.

MR. CHAIRMAN: Thank you very much.

If there are no other questions, then the chair will entertain a motion.

MR. KAZLAUSKAS: Mr. Chairman?

MR. CHAIRMAN: Mr. Kazlauskas?

MR. KAZLAUSKAS: I make a motion that the application be denied based on the planning staff's recommendation and findings of fact 1 through 11.

MR. CHAIRMAN: Have a motion from Mr. Kazlauskas. Do we have a second?

MR. BALL: Second.

MR. CHAIRMAN: Have a second from Mr. Ball. Are there any questions or concerns from any commissioners?
regarding the motion?

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

Opposed, like sign.

(ALL BOARD MEMBERS PRESENT RESPONDED.)

The application is denied by unanimous vote.

Thank you, everyone, for your participation.

Mr. Howard.

ITEM 4

1611 Sunrise Drive, 0.225 acres
Consider zoning change:
From P-1 General Business to R-1C Single-Family Residential
Applicant: Sonrise Chapel, LLC

PLANNING STAFF RECOMMENDATIONS

Planning staff recommends approval subject to the approval and findings of fact that follow:

Condition:

1. Approval of an Amended Final Development Plan for 2624 New Hartford Road.

Findings of fact:

1. Staff recommends approval because the proposal is in compliance with the community's adopted Comprehensive Plan;

2. The subject property is located in an Urban Residential Plan Area where urban low-density residential uses are appropriate in limited locations;
3. The proposed use as a single-family residence is compliant with urban residential development;
4. The proposal is a logical expansion of existing R-1C Single-Family Residential zoning to the south and west; and,
5. Sanitary sewer service is existing on the subject property.

Staff recommends that the staff report be entered into the record as Exhibit B.

MR. CHAIRMAN: Is anyone here representing the applicant? Do you wish to speak, sir?

UNIDENTIFIED SPEAKER: No.

MR. CHAIRMAN: Anyone have any questions regarding this application? Anyone wish to speak in opposition to the application? If not, then the chair will entertain a motion.

Mr. Rogers?

MR. ROGERS: Mr. Chairman, I make a motion for approval based on planning staff recommendation with the one condition and the findings of facts one through five.

MR. CHAIRMAN: We have a motion by Mr. Rogers. Do we have a second?

MS. HARDAWAY: Second.

MR. CHAIRMAN: Second by Ms. Hardaway. Any questions about the motion? If not, all in favor, raise
your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

Opposed, like sign.

Application is approved unanimously.

**ITEM 5**

6876, 6980 and a portion of 6946 West Louisville Lane, 3.306 acres
Consider zoning change:
From R-1A Single-Family Residential and B-4 General Business to B-4 General Business
Applicant: Darrell and Rebecca Whittaker

**PLANNING STAFF RECOMMENDATIONS**

The planning staff recommends approval subject to the condition and findings of fact that follow:

**Condition:**

1. Approval of a plat consolidating 6980, 6976, and the B-4 zoned portion of 6946 West Louisville Lane.

**Findings of fact:**

1. Staff recommends approval because the proposal is in compliance with the community's adopted Comprehensive Plan;

2. The subject property is located in a Rural Community Plan Area where general business uses are appropriate in limited locations;

3. The proposed retail use conforms to the criteria for non-residential development;

4. This proposal is a logical expansion of
existing B-4 zoning to the east; and

5. At 3.306 acres, the proposal is not a significant increase in B-4 General Business zoning in the vicinity and should not overburden the capacity of roadways and other necessary urban services that are available in the affected area.

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

MR. CHAIRMAN: Is anyone here representing the applicant?

Any commissioners have any questions of staff with regard to this application?

If not, then the Chair will entertain a motion.

Mr. Boswell?

MR. BOSWELL: Thank you, Mr. Chairman. I move for approval based on the planning staff recommendations with the condition and the findings of fact one through five.

MR. CHAIRMAN: Have a motion by Mr. Boswell. Do we have a second?

MS. MCENROE: Second.

MR. CHAIRMAN: Second by Ms. McEnroe. Any questionings about the motion?

If not, all in favor, raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
Opposed, like sign.

This application is approved unanimously.

ITEM 6

612 East Fifth Street, 0.063 acres
Consider zoning change:
From R-4DT Inner-City Residential to B-4 General Business
Applicant: America's Car Mart, Inc. and Michael A. Harl

PLANNING STAFF RECOMMENDATIONS

The planning staff recommends approval subject to the condition and findings of fact that follow:

Condition:

1. Access to the property shall be limited to the alley only. No access to East Fifth Street shall be permitted.

Findings of Fact:

1. Staff recommends approval because the proposal is in compliance with the community's adopted Comprehensive Plan;

2. The subject property is located in a Business Plan Area where general business uses are appropriate in limited locations;

3. The proposed use as auto sales conforms to the criteria for nonresidential development;

4. The proposal is a logical expansion of existing B-4 General Business zoning to the south and east; and
5. At 0.063 acres, the proposal does not significantly increase the extent of general business zoning in the vicinity and should not overburden the capacity of roadways and other necessary urban services that are available in the affected area.

Staff requests that the staff report be entered into the record as Exhibit D.

MR. CHAIRMAN: Anyone here representing the applicant? Do you wish to make any comments, sir?

UNIDENTIFIED SPEAKER: No, sir.

MR. CHAIRMAN: Thank you.

Commissioners, do you have any questions of the applicant or questions of the staff?

If not, then Chair will entertain a motion. Mr. Moore?

MR. MOORE: Mr. Chairman, I would like to make a motion for approval based on staff's condition and finding of facts one through five.

MR. CHAIRMAN: I have a motion by Mr. Moore. Do I have a second?

MR. FRYE: Second.

MR. CHAIRMAN: Second by Mr. Frye. Any questions about the motion?

If not, all in favor, raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
Opposed, like sign.
This application is approved unanimously.

ITEM 7

301 East Ninth Street; 824, 828, 830 and 832 Crittenden Street; a portion of 817 J.R. Miller Boulevard, 0.844 acres
Consider zoning change;
From R-3MF Multi-Family Residential, R-4DT Inner-City Residential and B-4 General Business to R-4DT Inner-City Residential
Applicant: Cohen-Esrey Affordable Partners, LLC; City of Owensboro

PLANNING STAFF RECOMMENDATIONS

The planning staff recommends approval subject to the condition and findings of fact that follow:

Condition:

1. Approval of a Final Development Plan prior to any construction activity to address all site development requirements.

2. No access to the development from East Ninth Street or J.R. Miller Boulevard shall be allowed. Access to the development shall only be granted from Crittenden Street.

Findings of fact:

1. Staff recommends approval because the proposal is in compliance with the community's adopted Comprehensive Plan;

2. The subject property is located in a Central
Residential Plan Area where Urban High-density Residential uses are appropriate in general locations;

3. The proposal meets the goals of the Germantown Redevelopment Plan to revitalize the area; and

4. The proposed use as an apartment building meets the goals of the Comprehensive Plan to provide a wide variety of types of housing suitable to a wide range of people.

Staff requests the staff report be entered into the record as Exhibit E.

MR. CHAIRMAN: Anyone here representing the applicant? You want to make any comments?

MR. FREED: No, thank you, Chairman.

MR. CHAIRMAN: Anyone here in the audience like to speak on this issue?

Commissioners, do you have any questions of Mr. Freed?

We're very, very excited. I think all of you realize this is the old, original Ken-Rad building. And Keith has been working diligently for some period of time to get this done as a city staff member now with part of his company. So it's very, very exciting. I anticipate what the motion might be, but we'll go from there. Chair will entertain a motion.

MR. JEAN: Make a motion to approve based on the
staff report with conditions one and two and findings of facts one through four.

MR. CHAIRMAN: We have a motion. Do we have a second?

MR. BOSWELL: Second.

MR. CHAIRMAN: Second by Mr. Boswell. Mr. Howard, I assume the conditions are okay with the project?

MR. HOWARD: Yes, they are. Thank you.

MR. CHAIRMAN: Any questions about the motion? All in favor, raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED.)

Opposed, like sign.

The application is approved unanimously.

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

MAJOR SUBDIVISION PRELIMINARY PLATS

ITEM 8

Gateway Commons, Section 2, 201.98 acres
Consider approval of a major subdivision preliminary plat
Applicant: Gateway Land, LLC

MR. HOWARD: Mr. Chairman and Planning Commissioners, we received a request today and have decided to postpone until the July 14th, 2016 meeting. It is not in order at this point. They're still working out a couple of details. So we would request that you postpone this, please.
MR. CHAIRMAN: The Chair will entertain a motion to postpone. Mr. Rogers?

MR. ROGERS: Motion to postpone.

MR. CHAIRMAN: Do I have a second?

MR. KAZLAUSKAS: Second.

MR. CHAIRMAN: Second by Mr. Kazlauskas. All in favor, raise your right hand.

(ALL BOARD MEMBER PRESENT RESPONDED AYE.)

Opposed, like sign. Thank you.

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

MR. CHAIRMAN: Okay. We met Item 9 and we have considered approval of the amended OMPC personnel policy.

Mr. Howard, I'm going to have you, I think, deal with 9 and 10.

MR. HOWARD: Be glad to. All right. I have 9. I'm going to be real brief.

Due to a change in legislation in regards to how the Kentucky Retirement System calculates final pay for employees that retire, we have found that it is necessary to change the way we pay our employees. In the past, we've been paid every other week. This proposal -- and I included in your packet the change based on how the days fall this year and moving forward. We're proposing that it be that the employees are paid on the 15th and 30th of each month, so they will be paid twice a month. It won't
affect the total pay for each employee annually, but it will differ on how they are paid out. And if one of those dates were to fall on a Friday, employees would be paid on the Friday before.

So it's a change to the personnel policy. That's the only change of the nearly 100-page document. All I included in your packets was that one page with the change highlighted.

MR. CHAIRMAN: Any commissioners have any questions about this?

Yes, Mr. Boswell?

MR. BOSWELL: Thank you, Mr. Chairman. Just one question. The associate director will review each employee timesheet to verify time worked. How often is that done? Is it at each point in time that the pay is administered?

MR. HOWARD: It is.

MR. BOSWELL: Okay. Thank you.

MR. CHAIRMAN: Any other questions?

Chair will entertain a motion. Mr. Frye?

MR. FRYE: I'll make a motion to approve.

MR. CHAIRMAN: Motion by Mr. Frye. Do I have a second?

MS. MCENROE: Second.

MR. CHAIRMAN: Second by Ms. McEnroe. All in
favor, raise your right hand.

(ALL COMMISSIONERS PRESENT RESPONDED AYE.)

MR. CHAIRMAN: Opposed, like sign.

Motion is approved.

MR. HOWARD: Item 10 is in consideration for approval of the fiscal year 2017 OMPC budget and salary chart. Each of you were given a copy of the proposed budget and salary chart. We did receive funding request from both the City of Owensboro and Daviess County Fiscal Court and the City of Whitesville in the amounts that we requested.

It does include a 2.75 percent raise for each OMPC employee as part of this. However, we were able to actually reduce some pay based on retirements. And then whenever we hire new people in, they'll start at a lower rate than people who have been working for a significant time. We're actually saving on employees' salaries over the year.

We are budgeting for one capital replacement for a new OMPC vehicle. The current car is, I think, a 2003; so it's quite dated and, you know, it's time to replace. Otherwise, the numbers are very similar to years past. We have updated the, you know, revenue source: the building, electrical, HVAC permit fees and filing fees and things like that.
But I'll answer any questions you might have about the budget.

MR. CHAIRMAN: Anyone have any questions?

Mr. Howard, I assume you're comfortable with this $25,000 allocation to the downtown administrator?

MR. HOWARD: I am.

MR. CHAIRMAN: Has that position been filled yet? I know you're working on it.

MR. HOWARD: We have been in negotiations with someone, and they have the contract. It's not signed yet, but I anticipate that will be done in the very near future.

MR. CHAIRMAN: Mr. Nunley is still in service through the end of this month, correct?

MR. HOWARD: June 30th is his last day.

MR. CHAIRMAN: Anyone else have any questions? If not, the Chair will entertain a motion. Mr. Kazlauskas?

MR. KAZLAUSKAS: Mr. Chairman, with the statement that I find Mr. Howard and staff are certainly fiscally-responsible, I make a motion that this be approved.

MR. CHAIRMAN: We have a motion by Mr. Kazlauskas. Do we have a second?

MR. JEAN: Second.
MR. CHAIRMAN: Second from Mr. Jean. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MR. CHAIRMAN: Opposed, like sign.

That motion is passed.

All of you received the April 2016 financial statements in your packet. Does anybody have any questions or concerns about anything in the financial statements?

Chair will entertain a motion. Mr. Moore?

MR. MOORE: Move to approve.

MR. CHAIRMAN: Do we have a second?

MS. HARDAWAY: Second.

MR. CHAIRMAN: Second from Ms. Hardaway. All in favor, raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MR. CHAIRMAN: Opposed, like sign.

Comments by the Chairman. I have none. Very good meeting. I appreciate everyone's participation tonight and your very diligent work on looking at all the issues before us.

Any comments by the planning commissioners? Mr. Howard?

MR. HOWARD: Real quick, I'll just say I appreciate the attendance we had at the state planning
conference down in Bowling Green last month. Several planning commissioners and board of adjustment members went down. They had a specific commissioner training session on Thursday, the whole day. And feedback, sounds like it was a good session. So I appreciate everybody that went down for that.

MR. CHAIRMAN: I'll take one last motion.

MR. JEAN: Motion to adjourn.

MR. CHAIRMAN: Motion to adjourn. Second?

MS. MCENROE: Second.

MR. CHAIRMAN: Second by Ms. McEnroe. All in favor, raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED.)

MR. CHAIRMAN: We are adjourned.

(The meeting adjourned at 7:13 p.m.)
STATE OF KENTUCKY )
   ) SS: REPORTER'S CERTIFICATE
COUNTY OF DAVIESS )

I, RHONDA SIMPSON, 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 76 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 14th day of July, 2016.

_____________________________
RHONDA SIMPSON, NOTARY PUBLIC
STATE-AT-LARGE
OHIO VALLEY REPORTING SERVICE
2200 E. PARRISH AVE, SUITE 106E
OWENSBORO, KENTUCKY  42303

COMMISSION EXPIRES:  AUGUST 17, 2019