

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

AUGUST 3, 2017

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, August 3, 2017, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: Judy Dixon, Chairman
- Ruth Ann Mason, Secretary
- Brian Howard, Director
- Terra Knight, Attorney
- Jerry Yeiser
- Fred Reeves
- Bill Glenn
- Lewis Jean

* * * * *

CHAIRMAN: We will call to order the Owensboro Metropolitan Board of Adjustment August 3, 2017 meeting to order. The first item on our agenda is going to be a prayer and pledge and Mrs. Mason is going to lead us.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: The first item on the agenda is to consider the minutes of the July 6, 2017 meeting. All members have been given a copy of them and had time to check them over. At this time I'll entertain a motion.

MS. MASON: Move for approval.

1 CHAIRMAN: Move for approval by Ms. Mason.

2 MR. GLENN: Second.

3 CHAIRMAN: Second by Mr. Glenn. All in favor
4 of the motion raise your right hand.

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries.

7 -----

8 CONDITIONAL USE PERMITS

9 ITEM 2

10 3779 Thruston-Dermont Road, zoned A-U
11 Consider a request for a Conditional Use Permit in
12 order to operate a landscaping service business.
13 Reference: Zoning Ordinance, Article 8,
14 Sections 8.2H8/33a
15 Applicant: Larry Roberts

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

18 MS. EVANS: Melissa Evans.

19 (MELISSA EVANS SWORN BY ATTORNEY.)

20 ZONING HISTORY

21 The subject property is currently zoned A-U
22 Urban Agriculture. The original property of 10 acres
23 was rezoned from R-1A Single-Family Residential to A-U
24 Urban Agriculture in May of 2017. The original
25 property was then divided into three tracts at the
July 2017 OMPC meeting resulting in the creation of
this 2.930 acre property.

1 The applicant is requesting to operate a
2 landscaping business on the newly created parcel. The
3 proposal includes construction of an 11,200 square
4 foot building. Although no outdoor storage is shown
5 on the proposed site plan at this time, if there is
6 outdoor storage on the property it shall be screened
7 by a 6 foot tall continuous wall or fence and where
8 adjoining residential property shall also include a 10
9 foot buffer adjacent to all common boundaries and one
10 tree per every 40 linear feet of the boundary.

11 LAND USES IN SURROUNDING AREA

12 The surrounding properties to the north and
13 west are zoned A-U Urban Agriculture and are vacant
14 farmland. The property to the east, across
15 Thruston-Dermont Road, is zoned R-1C Single-Family
16 Residential and is a proposed residential subdivision.
17 The properties to the south are zoned R-1A
18 Single-Family Residential and are single-family
19 residential uses within the Locust Hill subdivision.

20 ZONING ORDINANCE REQUIREMENTS

21 1. Parking - There is no established parking
22 requirement.

23 2. Landscaping - Vehicular use area
24 landscaping where the vehicular use area adjoins
25 residential property or public right-of-way. All

1 outdoor storage shall be screened with a 6 foot tall
2 solid wall or fence and where adjoining residential
3 property include a 10 foot buffer adjacent to the
4 common boundary with one tree every 40 linear feet of
5 the boundary.

6 SPECIAL CONDITIONS

7 1. Obtain all necessary building, electrical
8 and HVAC permits, inspections and certificates of
9 occupancy and compliance before occupancy of any of
10 the proposed uses.

11 2. Approval of a Final Development Plan.

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

14 CHAIRMAN: Is there anyone here representing
15 the applicant?

16 MR. KAMUF: Charles Kamuf.

17 MS. KNIGHT: Mr. Kamuf, you're sworn as an
18 attorney.

19 MR. KAMUF: We agree with everything in the
20 report, and we agree to all the conditions.

21 The property was divided, if you recall, I
22 think was talked about a second ago, on May 11, 2017
23 the property was zoned and then we had a lot division
24 and this property was a 10 acre tract and it was
25 divided up into a 2.93 acre tract and a .99 acre tract

1 and a 5.95 acre tract.

2 The only thing involved in this conditional
3 use is the 2.9 tract. That's the lot division that
4 you see up there. You had the site plan up there just
5 a second ago.

6 Now, a little history on the property. The
7 property used to be Bernard's TV Shop. Some of the
8 people here that have known that. It's been there for
9 about 40 years. The property has had basically
10 commercial activity on it for 30 or 40 years. I
11 personally went out there and bought a TV in the '70s.
12 I would like now to introduce some documents, if I
13 can.

14 This is a photograph of the subject property.
15 The reason I show that, you can see the screening on
16 the north and on the south, and also there is a
17 little, it looks like a former sign in the middle.
18 That's the sign that's still on the property and
19 that's the one that I talked to you about just a few
20 minutes ago and it used to have Bernard's TV Repair
21 Shop. That's the first photo.

22 Then on the back you'll see this, it will be
23 the second photo that you see. It's a picture of the
24 front. It shows a house back. The house that you see
25 will be on the .99 acres, and then on the left and

1 right there's a natural screening that you have there.

2 Now, we've talked to the neighbors and also
3 you'll find in your package we've talked to all the
4 neighbors that adjoin the property. As you see,
5 there's five letters that we have in there.

6 The first one is signed by Mrs. Church.
7 There's five letters. Mrs. Church, "I, Phyllis
8 Church, have met with Larry Roberts, II and he has
9 shown me the plans and he has the property located at
10 3779 Thruston-Dermont Road. I have reviewed the plans
11 that he has for the shop, the entrance and the
12 landscaping buffer that will be placed for the shop.
13 I am in agreement with the plans and I believe that
14 they are sufficient and the placement of the shop will
15 not affect the adjoining lots." That's one neighbor.

16 We have one from Mr. Howton. He has made the
17 statement, "Jerry and Gayle Howton have met with Larry
18 Roberts II," and it's the same, these letters are all
19 the same, but it shows all the neighbors that adjoin
20 this property have signed an agreement; 1) that they
21 do not object to it, but 2) they've looked at the
22 plans. The plans was up there a second ago. This is
23 the plan that you see. We'll talk about it in just a
24 second. That's only involved in the 2.9 acre tract.

25 We have Michael and Melanie Smith have signed

1 one. Then Mr. Quisenberry has signed one, and Gary
2 Montgomery, who lives across the street on the corner
3 of Fields Drive. We think we're in good shape with
4 the neighbors because everyone that adjoins on this
5 side of the road has agreed and signed that they do
6 not have any objection.

7 The screening that you see on the plat, let me
8 go over that. I have a copy if you'd like to see it,
9 but I talked to the Staff and they said that they
10 would have this one. It's on the screen. It will be
11 complete screening from the neighbors. We know that
12 we have to qualify under the report, as far as the
13 private drive, as far as a tree every 40 feet, and a
14 shrub along the gravel driveway. There will be a
15 gravel driveway. It will go back into the area right
16 about where the old barn is that you see. The old
17 barn is listed on that screening area. There will be
18 no retail here. It will all be delivered. The shop
19 will be upscale. It will either be steel or a pole
20 barn. It will be located away from all the houses.
21 There will be screening on both sides. The parking
22 will be in front of the shop building, and any storage
23 of mulch will be behind the shop.

24 Now, here is a picture, the last one that you
25 have there is a picture of the old barn. Hold on just

1 a second.

2 Anyway, here is what it looks like. Do you
3 all have a picture of the barn?

4 CHAIRMAN: Yes.

5 MR. KAMUF: I knew there was one of them I
6 didn't have enough copies.

7 This is what the old barn looks like. We're
8 going to improve the area. We're going to put a shop
9 back there. The shop will be directly behind this old
10 barn that you see. We think basically we have
11 improved the property substantially.

12 Compatibility: The proposed use of the
13 property is compatible with the adjacent properties
14 which are used for residential and farming. The
15 proposed use will not increase the traffic along
16 Thruston-Dermont Road because the application does not
17 provide for retail. The proposed use will not have an
18 adverse effect on the neighborhood.

19 Now, to approve this I've got three examples
20 that I'll use. The examples show landscaping
21 businesses in the general area, some little far away,
22 but one right down the road where you all approved
23 this, and we'll go over those exact terms.

24 The first example; now, this is the
25 Flashpoehler property. It's approximately one mile

1 down the road. It's on the intersection of
2 Honeysuckle Drive and Thruston-Dermont Road. This
3 property was originally a 16 acre tract and it was cut
4 off, a 1.57 acre tract was cut off. When this
5 property was, the conditional use was performed, it
6 was approved by you all in 1998, but the importance of
7 this is that you can see in this particular area, all
8 of the area that you see around it was R-1A and it's
9 been zoned since the time that this property, the
10 conditional use was issued. The point being is that
11 it proves that if you have a landscaping business it
12 will not have, one, an adverse effect on the
13 neighborhood and it will be compatible. Because the
14 important point of this is all of these houses, and
15 directly across from that yellow sheet that I showed
16 you, houses are for sale for 7 and \$800,000 directly
17 across from that property.

18 Here is another plat that shows, if you look
19 at this particular one here. You can see all the
20 houses that are around this area. Do you all have
21 that one? You can see all the houses. All of those
22 houses, nearly all of them have been built since the
23 property was, a conditional use was made and approved
24 by you all for this property.

25 The other area that I show you is this -- I

1 think in front of you, you have one other document
2 with the Flashpoehler property. Let me tell you what
3 that shows you. That's it. I don't have it with me.
4 That shows exactly what the Flashpoehler property
5 looks like. In the photo, you can see the shop. You
6 can see it from the road. The surrounding area that
7 you have you can see that basically there's no adverse
8 effect.

9 Now, this Board on April 6, 2006 approved this
10 conditional use that you see on this 1.5 acre tract.
11 At that time there was a finding made that it would be
12 compatible with the uses in the neighborhood. It
13 proves by the fact that all of these houses have been
14 built since the conditional use was approved, that
15 it's compatible with the neighborhood.

16 The second example is the one that you have of
17 Evergreen. This property here is out on Fairview
18 Drive. It contains 5.25 acres. All of the
19 surrounding that you see, this is the A-U that you see
20 that we have in the red and all surrounding the
21 property is Evergreen Landscaping here, and all around
22 it, I think it's Brookhill subdivision, which is an
23 upscale neighborhood. Those houses in that
24 subdivision have been built since the conditional use
25 was approved there.

1 On January 22, 1998 you approved the
2 conditional use permit and you did not require even
3 screening around it. The findings were that the
4 location of a landscaping service would not change the
5 character of the neighborhood. That's exactly what
6 you found.

7 So the point, again, by the fact that all of
8 these houses have been built around it would indicate
9 that it's compatible with the neighborhood. You've
10 got Brookhill Subdivision that's been built since that
11 time and that it would not have any adverse effect.

12 Now, the last one that you have is Outback.
13 The reason I put this one up here because it's not too
14 far away from the subject property, but you can see
15 all around it is A-U. This is all residential that
16 you have there. The property has a pole barn on it,
17 storage of material. August 3, 2010 you approved the
18 conditional use on that property. The findings were
19 that the conditional use was compatible with the
20 neighborhood. The Board specifically pointed out at
21 that time, this Board, that the approval of the
22 conditional use would not have an adverse effect.

23 Again, by the fact that we see all of this
24 particular area shows that a landscaping business is
25 compatible.

1 I found something interesting in trying to
2 find where the location of different landscaping
3 businesses was. I looked in the telephone book and
4 when I looked at the telephone book they had the
5 telephone numbers, but many of them did not have the
6 addresses. The reason for that is that many of them
7 in Owensboro, and I won't list where they are, they
8 are in a residential neighborhood but, what? I
9 checked with Planning and Zoning. They haven't had
10 any complaints. The reason they haven't had any
11 complaints is because the neighborhood considers it
12 compatible. I thought that was unusual, that you look
13 in the telephone book, the Yellow Pages or whatever it
14 is, and none of them, they don't have addresses.
15 They've got telephone numbers. Many of the
16 subdivisions that I looked at in that particular area
17 do have a landscaping business in a residential
18 neighborhood, but there's not a problem. I checked
19 with Planning and Zoning and they had not received any
20 calls, as far as these technical violations.

21 Let me just make some comparison, if I can.
22 We will compare this property at 3779 Thruston-Dermont
23 Road and it's a 2.9 acre tract. The storage that we
24 have here will be behind the shop. It will not be in
25 plain view of Thruston-Dermont Road. You won't be

1 able to see it. There will be a fence around it.
2 That plat that Melissa put up awhile ago shows all the
3 screening around it. It's got screening around the
4 road that goes to the back where the storage building
5 is. Screening on both sides and screening around the
6 other side.

7 The Flashpoehler property, as you can see from
8 that photo that I gave you, is not screened at all.
9 People bought houses out there looking directly at
10 what the Flashpoehler property looked like where
11 there's no screening. The buildings were in plain
12 view.

13 The third one that we have is, this is the one
14 on Fairview Drive. The shop that you see, I don't
15 have a photo of that, but the shop there on Fairview
16 Drive is in plain view of anybody that drives back
17 from across the street from the Brookhill subdivision.
18 Then, of course, the Outback.

19 Here is our contention: We have taken a
20 skinny piece of property which hadn't been used in a
21 long time, grown up and made something out of it. I
22 think it's important that all of the neighbors, if you
23 look at that plat that we have up there on the screen,
24 all the neighbors around there have agreed and they've
25 signed a letter stating not only do they do not

1 object, but they asked you to approve it and we have
2 shown the plat to them and they agree with the plat.

3 We've taken down an old barn and replaced it
4 with a steel or a pole barn that will have a good
5 effect on the neighborhood.

6 This property has had a long history of
7 noncommercial. Harry Roberts is here. The property
8 was bought by Harry and then it was bought by his
9 nephew, Larry Roberts. He can testify how long that
10 this property has had a nonresidential use. We're
11 asking you to find and approve the conditional use
12 that it will not have an adverse effect on the
13 neighborhood and it's compatible with the
14 neighborhood.

15 Some of the neighbors are here. Mr. Howton is
16 here, If you have any questions of him. He lives
17 directly next to it. The road doesn't go down his
18 side. He lives on the north side. I'm here to answer
19 any questions. Larry Roberts is here. He'll give a
20 statement. Harry is here, Harry Roberts, to state his
21 familiarity with the commercial activity on the
22 property.

23 CHAIRMAN: Let's see if we've got any
24 questions.

25 MR. KAMUF: Thank you.

1 CHAIRMAN: Is there anyone here wishing to
2 express opposition to this item or have questions of
3 this item?

4 (NO RESPONSE)

5 CHAIRMAN: Anyone on the commission have
6 questions, anyone on the board have questions?

7 MS. MASON: I have a question for Mr. Kamuf.
8 Is there going to be anyone living in the
9 residence?

10 MR. KAMUF: Please, ma'am?

11 MS. MASON: Is there going to be anyone living
12 in the home that's on the property?

13 MR. KAMUF: Yes. There's a home on the .99
14 acre tract, and Larry Roberts' son will live in that
15 house. The road goes around to the left or to the
16 south of the house back to the conditional use area.
17 The .99 is not involved and neither is anything behind
18 the 2.9 acre tract.

19 MS. MASON: I have one other question.

20 Will there be people coming and going? I know
21 some of the landscape people like Evergreen, you can
22 go and get mulch from them. Will there be people
23 coming in and out to get mulch?

24 CHAIRMAN: You'll need to come to the podium,
25 sir.

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

2 MR. ROBERTS: Larry Roberts.

3 (LARRY ROBERTS SWORN BY ATTORNEY.)

4 MR. ROBERTS: 99.9 percent of the time, unless
5 I have a -- we apply every bit of the mulch that we
6 sell, unless I have a customer that just says, hey,
7 can I come and get a yard of mulch? We do not sell
8 there at the shop nor do I sell at the shop I am now.
9 I can't sit here and say that I've never sold a
10 trailer of mulch. Just like the Howtons, if they
11 wanted some or whoever, if they pulled in the driveway
12 and wanted mulch instead of driving all the way to
13 Watkins, I'm not going to tell them no.

14 MS. MASON: On the average how many times will
15 trucks be coming and going from the property during
16 the day in the peak season?

17 MR. ROBERTS: On the average, and don't get me
18 wrong, we travel, of course, we travel
19 Thruston-Dermont Road every day, in and out twice a
20 day. We leave in the morning, come back in the
21 afternoon. Same way with my guys. They come to the
22 shop in the morning, most of them live in Whitesville.
23 Some of them live in Philpot. A couple live in
24 Owensboro. Of course, the ones that live in Owensboro
25 do not travel to the shop down Thruston-Dermont, but

1 when they leave the shop they go down
2 Thruston-Dermont. Typically, I mean the only person
3 that comes in and out of the shop is me throughout the
4 day, my secretary, and my superintendent. The rest of
5 the guys, they leave out in the morning and they don't
6 come back until the afternoon.

7 CHAIRMAN: Any other board members have
8 questions?

9 Mr. Reeves.

10 MR. REEVES: Yes, I've got two questions.

11 What kind of, if any, chemicals will you be
12 storing in that building and how will they be stored?

13 MR. ROBERTS: I am licensed to spray yards,
14 but I do not. I've got enough stuff going on that I
15 usually sub that out to either Weedman, Lawn Masters
16 in Newburgh does some for me, and so does Perfection.
17 The only chemical that I'll have there on occasion is
18 Round-Up, and that's just to spray beds and they'll be
19 in a storage bin.

20 MR. REEVES: I'm not sure that I am planning
21 to put a condition, but if there was a condition on
22 this added that no retail sales will be permitted on
23 this operation, would you be agreeable with that?

24 MR. ROBERTS: Absolutely. As long as the
25 neighbors understand that they can't come buy mulch

1 from me, but I can give it to them.

2 MR. REEVES: My concern was we don't become
3 like on --

4 MR. ROBERTS: Absolutely. I understand
5 completely. I just don't have time to do retail.

6 MR. REEVES: I don't have a problem giving it
7 away to these folks.

8 CHAIRMAN: Thank you.

9 Any other questions? Yes, sir.

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

12 MR. TUTOR: Wayne Tutor. I live at 3755 West
13 Locust Hill Drive.

14 (WAYNE TUTOR SWORN BY ATTORNEY.)

15 MR. TUTOR: I have a question.

16 CHAIRMAN: Direct it to us and then we'll get
17 the answer.

18 MR. TUTOR: Looking at your proposal you're
19 not going to access your property, your business
20 property from either of the streets that are part of
21 the residential subdivision, Locust Hill. Will that
22 remain the same or at some point are you planning on
23 extending through the back end of that property and
24 accessing with your commercial vehicles and delivery
25 vehicles through our neighborhood?

1 CHAIRMAN: Mr. Roberts, you want to come up
2 and answer that?

3 MR. ROBERTS: That's why we made this 2.9
4 acres, so I would have plenty of room for what I'm
5 doing.

6 My intentions are in the future to possibly
7 build a house back behind the shop. So whenever I
8 build a house behind the shop, I will access my house
9 through the neighborhood. But as far as any
10 landscaping, now, don't get me wrong, if I need to
11 drive my company truck back there to work on my
12 property, I'm going to do so or if I'm going to -- but
13 it's not going to be for business purposes. It's
14 going to be for personal purposes. Whenever I go to
15 build a house, I'm sure there will be company trucks
16 coming in and out due to the fact that construction is
17 going on. I hope I've answered your questions.

18 MR. TUTOR: Yes, sir.

19 CHAIRMAN: Thank you.

20 Anybody else have comments or questions?

21 (NO RESPONSE)

22 CHAIRMAN: I think we're ready for a motion.

23 Mr. Reeves.

24 MR. REEVES: Move for approval based on the
25 following facts:

1 All the neighbors have submitted a written
2 agreement that they are comfortable with this
3 proposal. Historically there had been a retail
4 operation on that property, specifically Bernard's
5 TV. There's other similar businesses and similar
6 relationships in residential areas and other areas of
7 the county. It will not have an adverse impact on the
8 neighborhood. I would add Conditions 1 and 2, as
9 specified in the Staff Report: 1) Obtain all
10 necessary building, electrical and HVAC permits,
11 inspections and certificates of occupancy and
12 compliance before occupancy of any of the proposed
13 uses; 2) Approval of final development plan.

14 CHAIRMAN: We have a motion by Mr. Reeves. Do
15 I have a second?

16 MR. JEAN: Second.

17 CHAIRMAN: Second by Mr. Jean. Any question
18 on the motion?

19 (NO RESPONSE)

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

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item, Mr. Howard.

25 -----

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VARIANCE

ITEM 3

3149, 3155 Commonwealth Court, zoned B-4 & I-1
Consider a request for a Variance in order to
eliminate the required vehicular uses area landscaping
between the parking lot and the road right of way
References: Zoning Ordinance, Article 17,
Section 17.312
Applicant: Pedley Rental Properties, LLC

MS. EVANS: This Staff Report is for denial
and it is typical when a Staff Report has been denied
that we read the entire thing into the record.

SPECIAL CIRCUMSTANCES

Are there special circumstances that do not
generally apply to the land in the general vicinity or
in the same zone?

The Staff believes, no. The applicant
recently had rezoned a portion of the subject property
to B-4 General Business. Upon his rezoning a Final
Development Plan was required documenting the
different zones and uses on the property; however, no
new buildings or vehicular use areas have been
proposed. The submitted Final Development Plan showed
existing vehicular use area landscaping along the road
right-of-way to be located in the public right-of-way
rather than on private property. The development plan
could not be approved with the required landscaping
located in the public right-of-way.

1 The applicant states this site has existed
2 this way for more than two decades with required
3 landscaping located in the public right-of-way. They
4 are asking for the vehicular use area landscaping to
5 be eliminated and if the variance is approved the
6 existing landscaping will be removed from the public
7 right-of-way as well.

8 The required landscaping will not fit on the
9 private property with the parking and drive lane as
10 shown to be existing on the site currently with 90
11 degree parking. However, if the parking were
12 reconfigured to 60 degree angled parking the drive
13 lane, parking spaces and landscaping could all fit on
14 the subject property as required by the ordinance. If
15 parking spaces are lost in this area of the property
16 due to the reconfiguration, there is room to relocate
17 some of the parking still meeting the parking
18 requirements for the uses on the property.

19 The granting of this variance may not
20 adversely affect the public health, safety and welfare
21 or cause a hazard or nuisance to the public because
22 this is a mixed commercial and industrial area at the
23 end of a cul-de-sac with a larger right-of-way where
24 the landscaping has existed for more than two decades
25 in the public right-of-way. The variance will alter

1 the essential character of the general vicinity
2 because the required landscaping does appear to be
3 located on private property at other locations along
4 Commonwealth Court. It will cause an unreasonable
5 circumvention of the requirements of the zoning
6 regulations because the parking can be reconfigured
7 using angled parking which would allow for the parking
8 spaces, drive lane and landscaping to all fit on the
9 property as required.

10 HARDSHIP? Would strict application of the
11 regulations deprive the applicant of the reasonable
12 use of the land, or create an unnecessary hardship on
13 the applicant?

14 Staff believes, no. The required parking,
15 drive lane and landscaping can fit if the parking is
16 reconfigured to angled parking.

17 APPLICANT'S ACTIONS? Are the circumstances
18 from which the relief is sought a result of the
19 applicant's actions taken after adoption of the zoning
20 regulations? That should actually probably say, "Yes,
21 the business has only been there for two years." If
22 yes, were they willful actions? And, no, we do not
23 believe they were willful actions.

24 FINDINGS: Granting this Variance:

25 1. May not adversely affect the public

1 health, safety or welfare because the landscaping has
2 been located in the public right-of-way for two plus
3 decades and has yet to cause any issues.

4 2. It will alter the essential character of
5 the general vicinity as it appears the required
6 landscaping is located on private property elsewhere
7 along Commonwealth Court.

8 3. It may not cause a hazard or a nuisance to
9 the public because the properties are located at the
10 end of a cul-de-sac where the right-of-way area is
11 larger.

12 4. It will allow an unreasonable
13 circumvention of the requirements of the zoning
14 regulations because the parking spaces, drive lane and
15 landscaping will all fit on the property as required
16 if the parking is reconfigured to angled parking.

17 Staff recommends denial of the application and
18 we would like to enter the Staff Report into the
19 record as Exhibit B.

20 CHAIRMAN: Do we have someone here
21 representing the applicant?

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

24 MR. PEDLEY: Ward Pedley.

25 (WARD PEDLEY SWORN BY ATTORNEY.)

1 MR. PEDLEY: First I want to give you some
2 history of this property. I bought this property 42
3 years ago. The reason I did buy it, my brothers and I
4 were in heavy construction business. We had a lot of
5 equipment. We wanted to build a shop to do repairs of
6 our equipment. This piece of property, this street
7 was not there. This piece of property over here was
8 nothing. Highway 54 at that time was still two lanes.
9 Nothing but a big eyesore. There was three abandoned
10 houses there. It was low. It was grown up in bushes.
11 This property over here on the other side was an old
12 drive-in theater, Oasis Drive-in Theater. It was a
13 mess all around this old drive-in. This whole area
14 here, both sides was absolutely nothing but an
15 eyesore.

16 So I bought this property over here to build
17 our construction office. Actually it wasn't an
18 office. It was our repair shop, which is this
19 building right here. At that time there was no street
20 in here. So we went back and built this building
21 here. Nothing but an A-frame pole building is all it
22 was. We would drive our trucks, lowboys all the way
23 through the building with backhoes and dozers and such
24 on it. We started cleaning this property up. Cleaned
25 up all the old, we tore down all the old houses and

1 cleaned it up and started filling it. It was below
2 the road about four or five feet. This street goes
3 all the way to Highway 54. This goes all the way to
4 Highway 54. We filled it. Cleaned it up. Started
5 filling it.

6 At that point there was a group of investors
7 which is George Thacker, Tommy Covington, Tom Riney,
8 Bruce Peters, they bought this side and started
9 cleaning it up. We got together and we built
10 Commonwealth Court. My brothers and I did all the
11 construction on it and we paid half of the cost. Then
12 my brothers and I, we brought the sewer in here. Then
13 we brought the water line in here. Then we brought
14 the gas line in here. So this whole area started
15 looking better. They were getting ready to five lane
16 Highway 54. So this group built the old Pantry store
17 out here.

18 As far as I know this was all I-1 at that
19 time. I don't know. We did not change it to I-1. I
20 guess it was adopted when the zoning ordinance was
21 adopted, but this was all I-1.

22 So when they started over here, then got this
23 street in. Then about that time my brothers and I
24 decided to split our operation. So I took the land on
25 this side all the way and I took that building and

1 they took all the equipment. So they were gone.

2 They built the Pantry store over here. Then
3 they built a small metal building here. It did not
4 meet any of the landscape or at that time, as far as I
5 know, there was no requirement for a development plan.
6 There was no requirement for landscaping. There was
7 no requirement for sidewalks. So there was none put
8 in here.

9 So still back here, my building is here. Then
10 after this was in, I decided to build the rental
11 storage business and rentals in this building here.
12 So in 1942 we built this building here. Somewhere in
13 1935 (sic) or 1936 (sic) I built this building here
14 and all these mini warehouses back here, all of this,
15 all this, all this, and this is that building there.
16 At that time there still was no requirement for a
17 development plan. There was no requirements for
18 landscaping. There was no requirement for sidewalks
19 that I knew of. So building this building here, I set
20 it too close to the street to have landscaping at a
21 later date, and this is why we're here tonight. This
22 is all I-1.

23 Then Mike Martin and I built this strip center
24 here all the way down Commonwealth Drive, all the way
25 to Highway 54, and 200 feet down 54 and we were

1 partners on this. Every time we did we changed from
2 an I-1 zone to a B-4 zone as we worked our way back.
3 Okay. Same thing happened over here.

4 This development right here is an approved
5 development plan that Mike Martin and I did. It has
6 all of the required landscaping. It has all of the
7 required parking. Then we built Dr. Bradley's medical
8 building here. Then we have built the State Farm
9 Insurance office here. Now I just finished this
10 building here. It's Diane's Family Bakery.

11 So we have taken an absolutely nothing but a
12 swamp eyesore and cleaned it up and turned it into
13 about a \$10 million tax space. This is a beautiful
14 street.

15 As we do that, we've been taking out the I-1
16 zone and making it B-4 zone. So this in here is still
17 I-1, this is I-1, and this is I-1. Lensing Wholesales
18 out of Evansville has been in this building for 31
19 years. I was in compliance in an I-1 zone. It was
20 wholesale. It was in compliance. When I built this
21 building, landscaping wasn't required, sidewalks
22 wasn't required.

23 So my wife, Minnie, ran, operated this
24 business here for 31 years. Her office is right
25 there. Then last year we decided to sell our home out

1 on 231 at Copper Creek because of our age, and I have
2 built our residence up here. I totally redid the
3 front of this building. So she was always very proud
4 of this. If you look here, she always had these
5 benches, she always had flowers, live flowers in that.
6 This didn't have any curb appeal. That's why the
7 landscaping was put in here in the public
8 right-of-way. There is a flowering crown right here.
9 We had one right here, a truck hit it about three
10 months ago and broke it down. We kept that really,
11 really nice because she loved the flowers and she
12 loved that and she loved this business and she wanted
13 some landscaping in there.

14 So that's why the landscaping is in there.
15 The landscaping is not in there because I was trying
16 to meet the zoning ordinance. That wasn't our
17 purpose. It was strictly curb appeal. That's why we
18 did it. In 31 years and we kept it low, the shrubs,
19 the hollies, and when they would start getting too big
20 and bush out and maybe be a nuisance, we would take
21 them out. Over 31 years we probably took it all out.
22 As you could see, those are not 31 years old. You're
23 going down here, these are probably 8 years old and
24 look at the size of them. So we maintained that. Got
25 a driveway here, some mailboxes. It was not a

1 nuisance to anyone. I think the appearance of the
2 whole area was enhanced by what she wanted to do and
3 what I did.

4 So that is why the landscaping is in the
5 public right-of-way. That is why there is no sidewalk
6 and landscaping back here; because 35 years ago when I
7 built that building, a development plan was not
8 required and the landscape requirements, as far as I
9 know, didn't exist. I got a permit to do that. So if
10 it did exist, why didn't they let me know?

11 So I got that building a little bit too close
12 to the street to have 90 degree parking here, and put
13 the sidewalk in, and then the landscaping, and have
14 the 24 feet in here. This is what this is all about.
15 I've taken nothing but a total eyesore, disgrace to
16 this community to drive down Highway 54 and turned it
17 into a \$10 million taxation; beautiful buildings and
18 beautiful street.

19 So I'm here and I decided last month I went
20 before Planning for a zoning change on this. They
21 granted a zoning change with the condition of a
22 development plan. I did the same on this. They
23 granted that with the condition of the development
24 plan. When we did a development plan it showed there
25 wasn't enough room here on 90 degree parking to put

1 the sidewalk in and put the required landscaping. So
2 they denied it based on that. So they come back with
3 angled parking. Here's the angled parking here. With
4 angled parking, they give me 16 feet here for my
5 traffic drive-thru. I put the sidewalk in. I put the
6 landscaping in with angled parking.

7 Here I have 10 parking places, and I can get
8 11. When you angle park, I was reduced to 8 parking
9 spaces here. Eight parking spaces. Not only that,
10 this plan here, when you look at this point right here
11 coming out here, if I'm parking here, this is access
12 here to all of the storage in the I-1 zone and
13 everything back here. There's not room for large
14 semis to go through here.

15 Then out on this end, I also own this building
16 here. It's a hair salon. If you'll look how they
17 park going in here, and their access is a joint access
18 coming out here. When you take this and turn it on a
19 60 degree, it kicks it over to here. Basically
20 there's no way they can back out of here and get out
21 through here. What it means is I've got to have 20
22 feet to this here. When I do, I take out 20 feet of
23 landscaping here.

24 The big issue is with 8 parking places here,
25 when you go to the zoning ordinance, I'm going to go

1 to the zoning ordinance and read this to you.

2 There's very little use I can use that
3 building with 8 parking places here. It does meet the
4 ordinance for certain uses. There's one parking place
5 for every 400 square feet. So this 8 gets me in
6 compliance, but it's very, very, very limited to what
7 I can put in that building, and I'll read it here in
8 just a minute. With the 90 degree parking I can have
9 11 places here and I can have 2 places right here. I
10 can have 11, 2 is 13, and I can go over here and use
11 one of these because this building doesn't require
12 that much. It gives me 14, and I can put 2 over here.
13 I can get 15 places. Okay.

14 Now, with this ordinance here there's many,
15 many uses, and I'll read it to you here in a minute.
16 Many, many uses that I can use this building for
17 because the other uses requires every 200 square feet
18 of floor space requires one parking. So that means
19 I've got to have 15. I can have 15 by 90-degree
20 parking. There's no way I can get on 60 degree
21 parking, 15 parking places. So I'm very, very limited
22 to what I can put in this building. I voluntarily
23 came up changing from I-1. This is not any more, this
24 street, the I-1 zone, is absolutely not appropriate
25 anymore. We've basically taken the I-1 zone out of

1 the entire thing. When I do this, there will only be
2 one piece of property that's still I-1. I don't own
3 that. I do own this building here.

4 So the reason I've been back and forth with
5 Melissa and Staff on withdrawing this and go ahead and
6 try to do this. When I go to the ordinance and read
7 how it limits what I can put in here, it creates a
8 hardship. There's no doubt. It's a huge hardship
9 because I can no longer put wholesale stuff in here.
10 It does create a hardship.

11 After looking at the HRG layout here and what
12 it does in here on the 60 degree parking and over
13 here, it cuts down to where I can't get through there,
14 and over here this angle comes plumb over to right
15 here where these people can't get in and out. Then
16 I've got to come in here and take out 20 feet of
17 landscaping here.

18 I am 100 percent in compliance on everything
19 we've done here. This is signed off by Brian Howard.
20 This is signed off with the county engineer.
21 Everything here. And I've got a \$4,000 landscape bond
22 as we build these buildings. It's been there eight
23 years. So I've done the right thing. I've 100
24 percent been in compliance except one little item
25 right here. Lensing Wholesale out of Evansville was

1 that building 31 years and I was in compliance. I've
2 been in compliance with everything that we've done
3 after the tremendous expense of us building the street
4 and everything and what we turned that mess into out
5 there.

6 I was talking early on, until HRG did this for
7 me, about withdrawing this and go ahead and do the
8 angled parking; until I looked at what he did here for
9 me, and what it does here, and what it does here, and
10 what it does here, I said, I can't do that. Then it
11 limits what I can do with this building.

12 So that's why I've come here; for a variance,
13 a landscape variance on 50 feet right here. That's
14 all.

15 Now, I'm in agreement to put this sidewalk in
16 on my development plan. I'll put the sidewalk in as I
17 have put sidewalks from here all the way to Highway 54
18 and down this side here. As we built these buildings,
19 you go look, and the landscaping is in. What is not
20 in, I got a \$4,000 cash bond laying at Planning to
21 make sure that it is put in.

22 Then here, this is my home now. I came out
23 here and redid this building. It was nothing but an
24 old A-frame pole building. I've turned it into a
25 really, really nice looking building, and upstairs my

1 home is beautiful and my wife loved it. We did that
2 because of our age of 82, 83 years old, we knew one of
3 us was going to have problems. We didn't want that
4 big home any more. We didn't want to fool with all of
5 that stuff. We moved out here. My daughter is down
6 here in this office, and her office is there and it
7 always will be there and will never be touched. What
8 we've done out there, I'm asking for one little thing.

9 The Staff's findings, they did their job
10 exactly right, basically what they say is right. I'm
11 going to read you here, this is B-4 zone in a
12 business. What you can put in there is banks, credit
13 agency, security bond, brokerage and exchanges, credit
14 institutions, savings and loan companies, and holdings
15 and investment companies without driveways, but you've
16 got to have one parking space for every 200 square
17 feet. With the one parking place for 400 with this
18 you cannot put any of these in there.

19 The next thing is computer data processing
20 center, call center; one parking place for every 200
21 square feet. With this I can't put that in there.

22 The next thing is hairstyling, beauty and
23 barbershops, tanning salons, nail salons, body
24 piercing, tattoo parlor; one for every 200 square
25 feet. Cannot put that in there.

1 Home appliance and computer repair; that's one
2 every 600. It would be okay there.

3 A medical and dental offices, clinics,
4 laboratory; one for every 200 square feet. I cannot
5 put it there. Cannot.

6 Here is what you can put there: Office for
7 businesses, professional, government, social,
8 fraternal, political, religious and charitable
9 organizations; one for every 400 square feet.

10 I've got one thing that I can put in that
11 building. That's the reason why I've decided to come
12 and ask for a variance.

13 Another is office project professional, but
14 almost everything without the one and 200 square foot.
15 To do that I've got to have 15 parking places. This
16 is 3,000 square feet in this building, which means one
17 in every 200 is 15 parking spaces. You cannot do it
18 with 60 degree parking. You lose too much. Right
19 here is zoned just 8 and I've got to eliminate one
20 because I can't block this off. So I've got 7. I can
21 have 11 on 90 degree parking, but 90 degree parking
22 you can't have landscaping. I'm willing to take out
23 the shrubs in the public right-of-way. That's fine.
24 No problem with that. I will run this sidewalk all
25 the way through here and all the way around to here,

1 and we'll put the sidewalk in.

2 On the application here, the existing
3 landscaping to be removed from regulatory landscaping
4 waiver. Regulatory landscaping waiver along front of
5 3149 and 3155. We're eliminating 55 feet of
6 landscaping. That's all. I'm going to have to go
7 over here and take out 20 or 30 to get access into
8 this building.

9 That's why I'm here tonight. That's why I
10 decided to go for a variance. Basically that's about
11 all I can tell you about it.

12 Mike Martin, when I sold our strip center two
13 years ago, everything down there is 100 percent in
14 compliance with landscaping, parking, setback and
15 everything all the way down, 300 feet and 200 feet
16 down 54. We had the trees. We had the 3 foot
17 contingency element. We had a tree every 40 feet. We
18 kept it trimmed up and really neat and nice. We sold
19 it two years ago. You go out there today, the
20 maintenance has not been done. It is grown up across
21 the sidewalk and the trees with the low limbs, you
22 cannot walk down that sidewalk without getting in the
23 street. You need to be looking at something else
24 beside me.

25 There is a maintenance ordinance. Martin and

1 I, we did our maintenance. I guarantee the place was
2 beautiful. We had our landscaping down Highway 54.
3 Go out there and look, it's still there. You go down
4 here, you cannot walk down the sidewalk. You've got
5 to walk in the street. Also, the sidewalk on one end
6 is bucked up 8 inches like this. It's very dangerous.

7 Also down here the trees and shrubs are so
8 high you can't see the businesses in that building.
9 If you're coming out of that parking lot, you better
10 be careful because you can't see until you got your
11 nose of your vehicle right out in the street. The
12 same thing applies to Ole South parking lot. You're
13 coming out of Ole South parking lot and the
14 landscaping has grown out and bushed out where if you
15 pull out there and cars coming off Highway 54 making
16 that turn, you're going to get run over.

17 I'm a little bit miffed on this deal. There's
18 other things that needs to be looked at.

19 Like I say, we've got \$4,000 laying down at
20 Planning to make sure all of this landscaping is done.
21 Dr. Bradley's office building is a really super nice
22 building. State Farm Insurance is a super nice
23 building. I just finished building this building here
24 for Diane's Family Bakery and I mean it is really
25 nice. So everything up and down this street is really

1 nice.

2 As far as findings, I don't see it that way.
3 "Hardship? Would strict application of the
4 regulations deprive the applicant of the reasonable
5 use of the land, or create an unnecessary hardship on
6 the applicant?" It would create a hardship because
7 I'm not going to leave this with that one thing. The
8 business world is tough. The competition out on 54 is
9 tough. So I've got to get this building leased or it
10 will create a hardship. I don't believe it will
11 create a hardship because there's only one or two
12 items I can put in there. Where if I did 90 degree
13 parking and get a variance here, there's about 12, 15
14 items of different things I can put in there by one
15 and 200 feet.

16 "Will it adversely affect the public health,
17 safety or welfare because the landscaping has been
18 located in the public right-of-way for two plus
19 decades." No, it's been three decades. It's been 34
20 years.

21 So it wouldn't create a nuisance like this
22 mess down here. I've taken these bushes out four or
23 five times and kept them small and the trees trimmed.
24 As you can see, that tree is beautiful. It's a
25 flowering crown. I keep it trimmed, keep it low so it

1 won't be a nuisance in broad view and stuff like that.

2 "Will it alter the essential character of the
3 general vicinity as it appears the required
4 landscaping is located on private property elsewhere."
5 It is not. It is not. There's three other businesses
6 out there. It is not.

7 "It may not cause a hazard or a nuisance to
8 the public because the properties are located at the
9 end of a cul-de-sac where the right-of-way area is
10 larger." Well, we're eliminating this. I'm taking
11 this out. It will not create a hazard or nuisance.

12 "Will it allow an unreasonable circumvention
13 of the requirements of the zoning regulations because
14 the parking spaces, drive lane and landscaping will
15 all fit on the property as required if the parking is
16 reconfigured to angled parking." But it eliminates
17 what I can do with my building. It cuts it down by 80
18 percent of what I can do with my building.

19 "Will it allow an unreasonable circumvention."
20 The zoning ordinance itself and the Board of
21 Adjustment, the Board of Adjustment, it was created by
22 the Kentucky statute to allow things like this. It's
23 acting in the zoning ordinance. It's not creating an
24 unreasonable circumvention because it is actually
25 allowed with the Board of Adjustments.

1 That's my findings. That's about all I can
2 tell you. I'm not in a good frame of mind lately. I
3 intended to withdraw on this, but after I got this
4 three days ago I said, no, I can't do that. It's
5 going to create a tremendous hardship, me trying to
6 get these leased.

7 If I'd known this, I would have left it I-1,
8 but I wouldn't be hurting anyone but myself. This
9 does not give me an I-1. It is inappropriate any more
10 to be an I-1 zone because of the growth of Highway 54.
11 There's a lot of I-1, I-2 zones out there that should
12 not be there any more. Right down the street,
13 straight across, BB&T Bank, Culver's, all of that, it
14 shouldn't be an I-1 zone in there. I don't know when
15 the I-1 zone was created. I didn't know anything
16 about it when I bought this, but I do know it's an I-1
17 zone. As far as I know, I did most of this before
18 they adopted the zoning ordinance. I'm not sure when
19 the zoning ordinance was adopted. 1979 or 1980. I
20 bought this land in 1982, 1983 and I built that
21 building. So I'm taking a cruddy piece of land and a
22 complete eyesore to this main highway to the entrance
23 of our city and turn it into about a \$10 million tax
24 space. I don't think I'm asking for anything
25 unreasonable.

1 CHAIRMAN: Mr. Pedley, let's see if we can get
2 some comments and talk about this a little bit.

3 Any board members have comments?

4 (NO RESPONSE)

5 CHAIRMAN: Questions?

6 MS. MASON: I have one.

7 CHAIRMAN: Go ahead.

8 MS. MASON: The Lensing that's there now, they
9 have moved out; is that what you said?

10 MR. PEDLEY: They finished moving out today.
11 I've been in 100 percent compliance until today for 31
12 years. They finished moving today. American Tax
13 Service, I let them move in back in April because over
14 where Dr. Mathew and Mike Koger, Dr. Mathew bought
15 that place over there and they went in told the
16 people, you've got 30 days to get out. It was the
17 first day of April. She didn't have anywhere to go.
18 So the Lensing people let her create a place right in
19 here and she's going to stay.

20 Then my granddaughter was in the same building
21 over there and she has a mortgage company. So she
22 didn't have anywhere to go. So she's moved into my
23 office over here. That's another reason I'm going to
24 B-4 so she can stay there. Guess what? She can't
25 even stay at my office with this because she has to be

1 where one space for every 200 square feet. She can't
2 stay in that office.

3 Now, this building here, if you look at the
4 parking, the zoning, that is not correct. There's
5 only 1100 square feet office space. The rest of it is
6 my garage for my vehicles and part of our laundry room
7 and the rest of it is residential, 1100 square feet.
8 It only takes five; 1, 2, 3, 4, 5, 6 and I can create
9 more over here and that is 7. But what this is
10 saying, she can't even be over there in my office.

11 CHAIRMAN: Mr. Howard, do you have any
12 comments on anything?

13 MR. HOWARD: No.

14 CHAIRMAN: Time to entertain a motion.

15 MS. MASON: I make a motion for approval of
16 this variance and my findings are it will not
17 adversely affect the public health, safety or welfare
18 because the landscaping has been located in a public
19 right-of-way for, according to Mr. Pedley, three
20 decades and hasn't caused any issues. It will not
21 alter the essential character of the general vicinity
22 as he would not be able to continue to find a use for
23 that building if he abides by the landscaping
24 ordinance. It will not cause a hazard or nuisance to
25 the public because the properties are located at the

1 end of the cul-de-sac where the right-of-way is and he
2 will be taking away the landscaping in the public
3 right-of-way. And strict application of the
4 regulations will deprive him from being able to use
5 that building in a number of ways.

6 CHAIRMAN: We have a motion by Ms. Mason. Is
7 there a second?

8 MR. YEISER: Second.

9 CHAIRMAN: Second by Mr. Yeiser. Any question
10 on the motion?

11 (NO RESPONSE)

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

14 (BOARD MEMBERS JERRY YEISER, RUTH ANN MASON,
15 BILL GLENN AND LEWIS JEAN RESPONDED AYE.)

16 CHAIRMAN: All opposed.

17 (BOARD MEMBER FRED REEVES RESPONDED NAY.)

18 CHAIRMAN: Motion carries five to one.

19 You have your variance.

20 MR. PEDLEY: Let me say this: Whichever way
21 you went on this, I thank you for sitting on this
22 board. I sat in those chairs 21 years. It is very
23 hard. It is very hard. Thank you for serving this
24 community.

25 I would like to say to Melissa and Staff, they

1 did a good job. They did their job. They did their
2 job exactly the way it should be. I don't see it that
3 way, but if you had denied this I would still thank
4 you.

5 CHAIRMAN: Thank you, Mr. Pedley.

6 Is there any other business?

7 MR. HOWARD: No.

8 CHAIRMAN: If not I'll entertain a motion to
9 adjourn.

10 MR. GLENN: Motion to adjourn.

11 MS. MASON: Second.

12 CHAIRMAN: Motion to adjourn by Mr. Glenn and
13 a second by Ms. Mason. All in favor raise your right
14 hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: We are adjourned.

17 -----

18

19

20

21

22

23

24

25

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

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and
4 for the State of Kentucky at Large, do hereby certify
5 that the foregoing Owensboro Metropolitan Board of
6 Adjustment meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 45 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 28th day of August, 2017.

18

19

LYNNETTE KOLLER FUCHS
20 NOTARY ID 524564
21 OHIO VALLEY REPORTING SERVICES
22 2200 E. PARRISH AVE., SUITE 106-E
OWENSBORO, KENTUCKY 42303

23 COMMISSION EXPIRES: DECEMBER 16, 2018

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25