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

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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.
CHAIRMAN: Move for approval by Ms. Mason.

MR. GLENN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

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CONDITIONAL USE PERMITS

ITEM 2

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

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

MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is currently zoned A-U Urban Agriculture. The original property of 10 acres was rezoned from R-1A Single-Family Residential to A-U Urban Agriculture in May of 2017. The original property was then divided into three tracts at the July 2017 OMPC meeting resulting in the creation of this 2.930 acre property.
The applicant is requesting to operate a landscaping business on the newly created parcel. The proposal includes construction of an 11,200 square foot building. Although no outdoor storage is shown on the proposed site plan at this time, if there is outdoor storage on the property it shall be screened by a 6 foot tall continuous wall or fence and where adjoining residential property shall also include a 10 foot buffer adjacent to all common boundaries and one tree per every 40 linear feet of the boundary.

LAND USES IN SURROUNDING AREA

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

ZONING ORDINANCE REQUIREMENTS

1. Parking - There is no established parking requirement.

2. Landscaping - Vehicular use area landscaping where the vehicular use area adjoins residential property or public right-of-way. All
outdoor storage shall be screened with a 6 foot tall solid wall or fence and where adjoining residential property include a 10 foot buffer adjacent to the common boundary with one tree every 40 linear feet of the boundary.

SPECIAL CONDITIONS

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

2. Approval of a Final Development Plan.

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

CHAIRMAN: Is there anyone here representing the applicant?

MR. KAMUF: Charles Kamuf.

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

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

The property was divided, if you recall, I think was talked about a second ago, on May 11, 2017. The property was zoned and then we had a lot division and this property was a 10 acre tract and it was divided up into a 2.93 acre tract and a .99 acre tract.
and a 5.95 acre tract.

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

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

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

Then on the back you'll see this, it will be the second photo that you see. It's a picture of the front. It shows a house back. The house that you see will be on the .99 acres, and then on the left and
right there's a natural screening that you have there.

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

The first one is signed by Mrs. Church.

There's five letters. Mrs. Church, "I, Phyllis
Church, have met with Larry Roberts, II and he has
shown me the plans and he has the property located at
3779 Thruston-Dermont Road. I have reviewed the plans
that he has for the shop, the entrance and the
landscaping buffer that will be placed for the shop.
I am in agreement with the plans and I believe that
they are sufficient and the placement of the shop will
not affect the adjoining lots." That's one neighbor.

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

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

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

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

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

CHAIRMAN: Yes.

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

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

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

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

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

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

The other area that I show you is this -- I
think in front of you, you have one other document with the Flashpoehler property. Let me tell you what that shows you. That's it. I don't have it with me. That shows exactly what the Flashpoehler property looks like. In the photo, you can see the shop. You can see it from the road. The surrounding area that you have you can see that basically there's no adverse effect.

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

The second example is the one that you have of Evergreen. This property here is out on Fairview Drive. It contains 5.25 acres. All of the surrounding that you see, this is the A-U that you see that we have in the red and all surrounding the property is Evergreen Landscaping here, and all around it, I think it's Brookhill subdivision, which is an upscale neighborhood. Those houses in that subdivision have been built since the conditional use was approved there.
On January 22, 1998 you approved the conditional use permit and you did not require even screening around it. The findings were that the location of a landscaping service would not change the character of the neighborhood. That's exactly what you found.

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

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

Again, by the fact that we see all of this particular area shows that a landscaping business is compatible.
I found something interesting in trying to find where the location of different landscaping businesses was. I looked in the telephone book and when I looked at the telephone book they had the telephone numbers, but many of them did not have the addresses. The reason for that is that many of them in Owensboro, and I won't list where they are, they are in a residential neighborhood but, what? I checked with Planning and Zoning. They haven't had any complaints. The reason they haven't had any complaints is because the neighborhood considers it compatible. I thought that was unusual, that you look in the telephone book, the Yellow Pages or whatever it is, and none of them, they don't have addresses. They've got telephone numbers. Many of the subdivisions that I looked at in that particular area do have a landscaping business in a residential neighborhood, but there's not a problem. I checked with Planning and Zoning and they had not received any calls, as far as these technical violations.

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

That plat that Melissa put up awhile ago shows all the screening around it. It's got screening around the road that goes to the back where the storage building is. Screening on both sides and screening around the other side.

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

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

Here is our contention: We have taken a skinny piece of property which hadn't been used in a long time, grown up and made something out of it. I think it's important that all of the neighbors, if you look at that plat that we have up there on the screen, all the neighbors around there have agreed and they've signed a letter stating not only do they do not
object, but they asked you to approve it and we have shown the plat to them and they agree with the plat.

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

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

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

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

MR. KAMUF: Thank you.
CHAIRMAN: Is there anyone here wishing to express opposition to this item or have questions of this item?

(NO RESPONSE)

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

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

MR. KAMUF: Please, ma'am?

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

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

MS. MASON: I have one other question. Will there be people coming and going? I know some of the landscape people like Evergreen, you can go and get mulch from them. Will there be people coming in and out to get mulch?

CHAIRMAN: You'll need to come to the podium, sir.
MS. KNIGHT: State your name for the record.

MR. ROBERTS: Larry Roberts.

(LARRY ROBERTS SWORN BY ATTORNEY.)

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

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

MR. ROBERTS: On the average, and don't get me wrong, we travel, of course, we travel Thruston-Dermont Road every day, in and out twice a day. We leave in the morning, come back in the afternoon. Same way with my guys. They come to the shop in the morning, most of them live in Whitesville. Some of them live in Philpot. A couple live in Owensboro. Of course, the ones that live in Owensboro do not travel to the shop down Thruston-Dermont, but
when they leave the shop they go down Thruston-Dermont. Typically, I mean the only person that comes in and out of the shop is me throughout the day, my secretary, and my superintendent. The rest of the guys, they leave out in the morning and they don't come back until the afternoon.

CHAIRMAN: Any other board members have questions?

Mr. Reeves.

MR. REEVES: Yes, I've got two questions. What kind of, if any, chemicals will you be storing in that building and how will they be stored?

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

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

MR. ROBERTS: Absolutely. As long as the neighbors understand that they can't come buy mulch
from me, but I can give it to them.

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

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

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

CHAIRMAN: Thank you.

Any other questions? Yes, sir.

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

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

(WAYNE TUTOR SWORN BY ATTORNEY.)

MR. TUTOR: I have a question.

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

MR. TUTOR: Looking at your proposal you're
not going to access your property, your business
property from either of the streets that are part of
the residential subdivision, Locust Hill. Will that
remain the same or at some point are you planning on
extending through the back end of that property and
accessing with your commercial vehicles and delivery
vehicles through our neighborhood?
CHAIRMAN: Mr. Roberts, you want to come up and answer that?

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

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

MR. TUTOR: Yes, sir.

CHAIRMAN: Thank you.

Anybody else have comments or questions?

(NO RESPONSE)

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

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

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

MR. JEAN: Second.

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

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, Mr. Howard.

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Ohio Valley Reporting
(270) 683-7383
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.
The applicant states this site has existed this way for more than two decades with required landscaping located in the public right-of-way. They are asking for the vehicular use area landscaping to be eliminated and if the variance is approved the existing landscaping will be removed from the public right-of-way as well.

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

The granting of this variance may not adversely affect the public health, safety and welfare or cause a hazard or nuisance to the public because this is a mixed commercial and industrial area at the end of a cul-de-sac with a larger right-of-way where the landscaping has existed for more than two decades in the public right-of-way. The variance will alter
the essential character of the general vicinity
because the required landscaping does appear to be
located on private property at other locations along
Commonwealth Court. It will cause an unreasonable
circumvention of the requirements of the zoning
regulations because the parking can be reconfigured
using angled parking which would allow for the parking
spaces, drive lane and landscaping to all fit on the
property as required.

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

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

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

FINDINGS: Granting this Variance:

1. May not adversely affect the public
health, safety or welfare because the landscaping has
been located in the public right-of-way for two plus
decades and has yet to cause any issues.

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

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

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

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

CHAIRMAN: Do we have someone here
representing the applicant?

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

MR. PEDLEY: Ward Pedley.

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

So I bought this property over here to build our construction office. Actually it wasn't an office. It was our repair shop, which is this building right here. At that time there was no street in here. So we went back and built this building here. Nothing but an A-frame pole building is all it was. We would drive our trucks, lowboys all the way through the building with backhoes and dozers and such on it. We started cleaning this property up. Cleaned up all the old, we tore down all the old houses and
cleaned it up and started filling it. It was below the road about four or five feet. This street goes all the way to Highway 54. This goes all the way to Highway 54. We filled it. Cleaned it up. Started filling it.

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

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

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

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

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

Then Mike Martin and I built this strip center here all the way down Commonwealth Drive, all the way to Highway 54, and 200 feet down 54 and we were
partners on this. Every time we did we changed from
an I-1 zone to a B-4 zone as we worked our way back.
Okay. Same thing happened over here.

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

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

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

So my wife, Minnie, ran, operated this
business here for 31 years. Her office is right
there. Then last year we decided to sell our home out
on 231 at Copper Creek because of our age, and I have built our residence up here. I totally redid the front of this building. So she was always very proud of this. If you look here, she always had these benches, she always had flowers, live flowers in that. This didn't have any curb appeal. That's why the landscaping was put in here in the public right-of-way. There is a flowering crown right here. We had one right here, a truck hit it about three months ago and broke it down. We kept that really, really nice because she loved the flowers and she loved that and she loved this business and she wanted some landscaping in there.

So that's why the landscaping is in there. The landscaping is not in there because I was trying to meet the zoning ordinance. That wasn't our purpose. It was strictly curb appeal. That's why we did it. In 31 years and we kept it low, the shrubs, the hollies, and when they would start getting too big and bush out and maybe be a nuisance, we would take them out. Over 31 years we probably took it all out. As you could see, those are not 31 years old. You're going down here, these are probably 8 years old and look at the size of them. So we maintained that. Got a driveway here, some mailboxes. It was not a
nuisance to anyone. I think the appearance of the whole area was enhanced by what she wanted to do and what I did.

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

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

So I'm here and I decided last month I went before Planning for a zoning change on this. They granted a zoning change with the condition of a development plan. I did the same on this. They granted that with the condition of the development plan. When we did a development plan it showed there wasn't enough room here on 90 degree parking to put
the sidewalk in and put the required landscaping. So they denied it based on that. So they come back with angled parking. Here's the angled parking here. With angled parking, they give me 16 feet here for my traffic drive-thru. I put the sidewalk in. I put the landscaping in with angled parking.

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

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

The big issue is with 8 parking places here, when you go to the zoning ordinance, I'm going to go
to the zoning ordinance and read this to you.

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

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

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

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

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

I am 100 percent in compliance on everything
we've done here. This is signed off by Brian Howard.
This is signed off with the county engineer.
Everything here. And I've got a $4,000 landscape bond
as we build these buildings. It's been there eight
years. So I've done the right thing. I've 100
percent been in compliance except one little item
right here. Lensing Wholesale out of Evansville was
that building 31 years and I was in compliance. I've been in compliance with everything that we've done after the tremendous expense of us building the street and everything and what we turned that mess into out there.

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

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

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

Then here, this is my home now. I came out here and redid this building. It was nothing but an old A-frame pole building. I've turned it into a really, really nice looking building, and upstairs my
home is beautiful and my wife loved it. We did that because of our age of 82, 83 years old, we knew one of us was going to have problems. We didn't want that big home any more. We didn't want to fool with all of that stuff. We moved out here. My daughter is down here in this office, and her office is there and it always will be there and will never be touched. What we've done out there, I'm asking for one little thing.

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

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

The next thing is hairstyling, beauty and barbershops, tanning salons, nail salons, body piercing, tattoo parlor; one for every 200 square feet. Cannot put that in there.
Home appliance and computer repair; that's one every 600. It would be okay there.

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

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

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

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

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

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

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

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

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

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

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

As far as findings, I don't see it that way.

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

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

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

"Will it alter the essential character of the
general vicinity as it appears the required
landscaping is located on private property elsewhere."

It is not. It is not. There's three other businesses
out there. It is not.

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

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

"Will it allow an unreasonable circumvention."
The zoning ordinance itself and the Board of
Adjustment, the Board of Adjustment, it was created by
the Kentucky statute to allow things like this. It's
acting in the zoning ordinance. It's not creating an
unreasonable circumvention because it is actually
allowed with the Board of Adjustments.
That's my findings. That's about all I can
tell you. I'm not in a good frame of mind lately. I
intended to withdraw on this, but after I got this
three days ago I said, no, I can't do that. It's
going to create a tremendous hardship, me trying to
get these leased.

If I'd known this, I would have left it I-1,
but I wouldn't be hurting anyone but myself. This
does not give me an I-1. It is inappropriate any more
to be an I-1 zone because of the growth of Highway 54.
There's a lot of I-1, I-2 zones out there that should
not be there any more. Right down the street,
straight across, BB&T Bank, Culver's, all of that, it
shouldn't be an I-1 zone in there. I don't know when
the I-1 zone was created. I didn't know anything
about it when I bought this, but I do know it's an I-1
zone. As far as I know, I did most of this before
they adopted the zoning ordinance. I'm not sure when
the zoning ordinance was adopted. 1979 or 1980. I
bought this land in 1982, 1983 and I built that
building. So I'm taking a cruddy piece of land and a
complete eyesore to this main highway to the entrance
of our city and turn it into about a $10 million tax
space. I don't think I'm asking for anything
unreasonable.
CHAIRMAN: Mr. Pedley, let's see if we can get some comments and talk about this a little bit.

Any board members have comments?

(NO RESPONSE)

CHAIRMAN: Questions?

MS. MASON: I have one.

CHAIRMAN: Go ahead.

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

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

Then my granddaughter was in the same building over there and she has a mortgage company. So she didn't have anywhere to go. So she's moved into my office over here. That's another reason I'm going to B-4 so she can stay there. Guess what? She can't even stay at my office with this because she has to be
where one space for every 200 square feet. She can't stay in that office.

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

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

MR. HOWARD: No.

CHAIRMAN: Time to entertain a motion.

MS. MASON: I make a motion for approval of this variance and my findings are it will not adversely affect the public health, safety or welfare because the landscaping has been located in a public right-of-way for, according to Mr. Pedley, three decades and hasn't caused any issues. It will not alter the essential character of the general vicinity as he would not be able to continue to find a use for that building if he abides by the landscaping ordinance. It will not cause a hazard or nuisance to the public because the properties are located at the
end of the cul-de-sac where the right-of-way is and he
will be taking away the landscaping in the public
right-of-way. And strict application of the
regulations will deprive him from being able to use
that building in a number of ways.

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

MR. YEISER: Second.

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

(NO RESPONSE)

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

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

CHAIRMAN: All opposed.

(BOARD MEMBER FRED REEVES RESPONDED NAY.)

CHAIRMAN: Motion carries five to one.

You have your variance.

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

I would like to say to Melissa and Staff, they
did a good job. They did their job. They did their
job exactly the way it should be. I don't see it that
way, but if you had denied this I would still thank
you.

CHAIRMAN: Thank you, Mr. Pedley.

Is there any other business?

MR. HOWARD: No.

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

MR. GLENN: Motion to adjourn.

MS. MASON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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STATE OF KENTUCKY)

SS: REPORTER'S CERTIFICATE

COUNTY OF DAVIESS)

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

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

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

COMMISSION EXPIRES: DECEMBER 16, 2018

COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

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