The Owensboro Metropolitan Board of Adjustment

met in regular session at 5:30 p.m. on Thursday, December 7, 2017, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

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CHAIRMAN: Call the November Owensboro Metropolitan Board of Adjustment meeting to order.

The first item on the agenda will be a prayer and pledge to the flag.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: First item on the agenda is to consider the minutes of the November 2, 2017 meeting. Members have been mailed a copy and have had time to check it out. With this I'll see if anyone has any corrections or not; otherwise, we'll entertain a motion.

MS. MASON: Move to approve.
CHAIRMAN: Move to approve by Ms. Mason.

MR. GLENN: Second.

CHAIRMAN: 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.

Mr. Howard.

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CONDITIONAL USE PERMITS

ITEM 2

8753 Mulligan Road, zoned A-R
Consider a request for a Conditional Use Permit for agri-tourism activities specifically farm education events, weddings, fruit and vegetable sales, and a winery/wine tasting room.
Reference: Zoning Ordinance, Article 8,
Sections 8-2H9
Applicant: Suzanne M. And Eddie M. White, Jr.

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

MR. PEDLEY: Trey Pedley.

(TREY PEDLEY SWORN BY ATTORNEY.)

MR. PEDLEY: The subject property, currently zoned A-R Rural Agriculture, is a 38.5 acre agricultural parcel. In 2005, the subject property was rezoned from EX-1 Coal Mining to A-R Rural
Agriculture to allow agricultural and residential uses.

The applicant is requesting a Conditional Use Permit for agri-tourism activity in order to host educational events, weddings, fruit and vegetable sales, and a winery/wine tasting room.

The applicant has provided a site plan that includes location of all existing and proposed buildings, drive lanes and parking areas. The site plan shows 25 spaces including 1 ADA space in the parking area of which majority is graveled.

All surrounding properties are zoned EX-1 Coal Mining or A-R Rural Agriculture and appear to be used agriculturally or for coal mining, with the exception of one property to the west that is zoned EX-1 Coal Mining and appears to be residential in use.

For an agri-tourism use the zoning ordinance does not require any landscaping for this property; however, it does require a minimal of five parking spaces to be located on a hard surface such as gravel, asphalt or concrete. Additional parking requirements may be determined by the Board of Adjustment based on the projected occupancy of the use. The Board may also choose to require any landscaping deemed necessary to provide a buffer or screening from
adjoining properties.

Special conditions include approval of a site plan, and requirement to obtain all necessary building electrical and HVAC permits, inspections and certificates of occupancy and compliance.

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

CHAIRMAN: Thank you, Mr. Pedley.

Is there anyone here representing the applicant?

MR. KAMUF: Yes, Charlie Kamuf.

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

MR. KAMUF: I represent Suzanne Cecil White and her husband concerning the Conditional Use Permit for an agri-tourism of Daviess County.

Many of you have probably heard of Suzanne White. She's been involved in the agri-business in the Owensboro/Daviess County community for the last six years. She's probably best known with Cecil Farms. Cecil Farms is owned by Suzanne Cecil White and Gary Cecil. She has been continually involved in the Owensboro community and she is presently Chair of the Agricultural Committee for the Owensboro Chamber of Commerce. Many times you read about Suzanne White
in the Owensboro Messenger-Inquirer.

I have some handouts.

The first photograph that I show you is a photograph of the Owensboro Messenger-Inquirer; I just picked it up. It was recent, on November 13th. It shows Suzanne in the Agricultural Committee community. I think she was showing at that time the position that they would take as far as delivering products here in Owensboro.

The second photograph that you see is Suzanne is on the front of this magazine that you see recently. What it shows there, it includes the young leaders in Owensboro and how they're changing the Owensboro community.

Suzanne has also been president of the Owensboro Farmers Market. She was appointed by the board member of the Daviess County Extension Committee in the last year. Suzanne has been appointed as a Kentucky Center for Agriculture and Rural Development. She was appointed to serve on the Commission of Agriculture for Human and Hunger Ag Force and she's registered with the state Agriculture Tourist Commission.

As you can see, she's very much active in the Owensboro Community. Agri businesses are popping up
all over the county.

In the next year Brescia University is looking to have a complete course in agri-business. I think it takes two years maybe at the Community College and two years later you can graduate from Brescia College. That's on the deal right now.

So you can see that agri-business and agri-tour business is very important in Daviess County.

Now, the location of the property that we have, if you look at this map that you have here, and you have one in front of you. The location of the property, and that's this particular map that you see. In the area is West Louisville. This is where the Whitaker Gun place is. Diamond Lake comes down. There's about 145 acres at Diamond Lake. Over here is Mount St. Joseph. Just in that one tract there's over 420 acres.

Now, why did I point these particular points out to you? One, they have the same -- if you go to the Mount frequently, you go to retreats, different type social events out there, they have the same type roads at the Mount. They have the same type roads that you see over at Diamond Lake that campers travel it every weekend.
We've talked to the neighbors and I think all of the neighbors that adjoin the property, any neighbor adjoining the property, and there are nine of them, all of them but one, and we don't know about one, have agreed and have not objected to the rezoning.

The history of the property, as you can see, is kind of set out in the Staff Report. In 2005 the subject property was rezoned from EX strip mining to AR. All the surrounding properties have been or are presently agriculture or coal mining with the exception of one property which is residential and that's on the west side.

Suzanne bought this property in 2016 to fulfill a great mission she had to establish an agri-tourism in Daviess County. It's important to note that an agri-tourist business is important to be in a rural area and not on a main road.

Recently I went up to Rockport and visited a wine tasting facility, four or five people there. It's on a rural area off of a main road.

You go to the one up at Tell City, it's the same deal.

We're looking and we think this is one of the finest places that you could put a project of this
How is the project being used at the present time? I might point this one out. You also have this exhibit in front of you. It shows the location. This is the other exhibit that I have showing the surrounding property. If you can see, that's just what I testified to just a second ago. All of these neighbors in this particular area have agreed. They don't have any objection. There could be one on the entrance down there that might have some objection. So we think that's important.

The next exhibit that I show to you is the one that shows the aerial photograph of the subject property. Here is what we'll have. What will we have on the property? There will be educational, farm educational events such as strawberries you pick, blueberries you pick, and as far as the Girls and Boys Club in Owensboro, they're able to go out on the property, have a little plot of ground, raise whatever food, vegetables and fruit that they want to and they can take it and bring that to town and sell it on their own. We also have a camp. It's a one six-hour experience for children. They have a garden path, a walking path and a nature path. Suzanne will give you an update on exactly how that takes place.
In addition to the farm educational events, there will be wedding events, fruit and vegetable sales, and the location has already been approved by the Farm Bureau for roadside market, a winery and a wine tasting room. There will not be any hard liquor sold on the property. You can't bring any hard liquor to the property. The property will be open from 10 in the morning until 6:00 at night.

Any of the activities that I spoke to you about, as far as the fruit and vegetable sales and the farm exhibits and the farm events, we can do that without any conditional use whatsoever. What we have to get the conditional use for is for the building which inside the building there will be wine tasting and also maybe wedding events.

Pursuant to the Planning and Zoning regulations we were required to file a site plan. I think all board members, Brian, I think all board members, do they have a copy of the site plan?

MR. HOWARD: Yes.

MR. KAMUF: This site plan was prepared by Jim Riney of Riney Engineers. And what the plan shows, it shows the location of the parking and event building. It shows 25 parking places with one ADA space required. How did they arrive at that? Matt Warren
at the planning office, he reviewed the type of
building that we would have. The building outside
from side to side is a little over 4,000 square feet.
There will be 1,800 square feet that will be involved
in the events that we have out there. It was
determined from the size of the building exactly how
many parking places we would be required to have. We
are required to have 25. That's what we'll have, and
it shows on the plat.

Suzanne will make an investment of over
$500,000 on this property. We think that will be a
great asset to the Daviess County and Owensboro
Community.

What we'll be doing is transferring Cecil
Farms activities over to this area. Cecil Farms now
has their project over several miles from this
property. The old farm on the Cecil had a shared
driveway which didn't work too well. The building
that we have here will be substantially less than the
barn that's on the other property.

Now, the traffic issue. Before I ever got in
this case, I met with the county engineer. I took the
county engineer to this property and showed it to him.
I showed him a copy of the plat, a copy of the plan.
He went to the property and he made measurements. No
later than this week he went out again because somebody had questioned something. Here is the letter that I wrote to the county engineer.

"Mark, I represent Suzanne Cecil White who is requesting a conditional use for her property at 8753 Mulligan Road. This property includes 38.50 acres and Mrs. White will be requesting a conditional use for agri-tourism activities." I wrote all of this in my request. "They'll have farm educational experimental events, wedding events, fruit and vegetable sales, winery and wine tasting room. I have delivered to your office a plan prepared by Hale, Riney & Gilmore which shows the following aspects of the conditional use for the property at Mulligan Road.

"1. The proposed entrance."

"2. The proposed building."

"3. The proposed parking lot."

"4. The general layout of the said property."

Here is what I asked him to do. "Would you please review the site plan prepared by HRG and forward a letter to Matt Warren at OMPC with a copy to myself setting out your opinion as follows: Whether there is adequate visual distance for ingress and egress at the entrance of said property on Mulligan Road and whether Mulligan Road is adequate to provide
for safe travel for patrons visiting the property at
8753 Mulligan Road." That was on November 13th.

On November 15th he wrote me this e-mail, he
sent me this e-mail. "I have done a field review of
this entrance and it appears to have sufficient
stopping, site distance at it's present location. The
road also appears to be sufficient to handle traffic
from this limited scope size project. Let me know if
you have any questions or concerns."

So there was some issues. So I talked to him
again this week. He said to me, he said, if this is
safe enough for a family reunion, it's safe enough for
the sizes of this project. So the county engineer has
no problem whatsoever with this project. He knows not
only there's going to be events there; he knows
there's going to be a winery and a wine tasting
facility there.

I think where we are at this time is that I
would like to get Suzanne and she will tell you what
she intends to do with this project. I think it will
be a great asset for Daviess County. She's willing to
spend a lot of money and make it where it's first
class and people in the area would be happy to have
this type of activity next to them.

Suzanne is here. If you have any questions on
the exhibits, ask me and I'll try to answer them.

MS. KNIGHT: Mrs. White, if you would state your name for the record.

MS. WHITE: Suzanne Cecil White.

(SUZANNE CECIL WHITE SWORN BY ATTORNEY.)

MS. WHITE: Mr. Kamuf explained a lot of what we're about. I definitely, since six years ago when I joined the farm business, prior to that I was a high school math teacher and teaching is my passion. I think anyone in this community that's encountered me in the last six years and a half years joined I've joined this team and has been back in Owensboro probably can see that in me. That teaching and educational are at the forefront of everything I do. Even though I'm not in a standard classroom anymore, somehow I transform every opportunity I have on the farm or in this community into an educational opportunity, and that is what I plan to continue to do.

One of the things I'm most proud of that we do right now is, as he mentioned, with the Cliff Hagan Boys and Girls Club. We are rolling into our fourth year. It's a phenomenal program that I only feel fortunate that they chose us almost four years ago to start this, and it's just flourished.
These kids come out to our farm and start the seed in the spring. They come back. They transplant them into their own vegetable patch on our property. They come every week, sometime multiple days a week because that is their patch and their project. They are learning. We're just guiding. They harvest it. They take it to the Farmer's Market. They sell it. They get the money and they are so proud. As a teacher and educator, you light up inside when you see a full circle like that. We will continue that on this farm.

Other agri-tourism activities that we currently do that are outdoor, open air activities that we will continue to do, because it is a wide open space.

We have a lot of visiting tour groups every year. Organizations that we're connected with bring in people every year to learn from our farm because of the diversity of its offerings; such as Kentucky Farm Bureau, Leadership of Kentucky. The Dietetic Association was here for a convention. They brought their whole group to our farm for an educational opportunity this past spring.

As he said, we have had farm camps, seed day, and we plan to continue to that. Out Reach to
Children. Our spring flower sell on the farm. Our pumpkin patch event and activities including you pick pumpkins. We'll continue to have those events because we want people out there touching the dirt.

Produce sales at the farm. Just this year in 2017 back in the spring we became a certified roadside farm market for Kentucky Farm Bureau, we'll continue that.

We have planted over 150 blueberry bushes, and table grape vines at the front of this property. You have this paper here that has the white rows on it. You can see that the road, the road is here at the bottom. So between the road and the white lines is where we have 20 rows of blueberries, blackberries, raspberries, and small amount of table grapes. That will be the front of this property is produce.

The white rows are 14,000 strawberry plants for next spring. After that, we currently have lettuce and greens. We will have tomatoes, peppers, cucumbers, a wide array of our vegetables, continuing all the way back past the red building to where you see more of a dirt line going across the property. The whole front half of this property, fruits and vegetables. Still a farm. Then further back there closer to the woods is where we want to set this
building, this structure that we are seeking approval for this evening.

Why do I want to do this? One, it's a passion. Two, I see an ever increasing need because people are disconnected from food and farming. The demands from the consumers on us as farmers and the population and on production are real. Most people only experience farming online. They're never actually on a farm. The consumer will continue to demand without a clue as to how to produce it. We want to engage in conversation. We want to create real connections to the farm and where your food and beverages come from. We want to provide Owensboro with an authentic experience and hospitality showcase to visitors to and enjoy with family and friends. We want something that Owensboro is going to be proud of and want to show off. We want to add something positive to this thriving community. Owensboro just recognized by the Business Insider as one of the top communities that people are coming to. We're going to create just one more thing to make Owensboro attractive.

You know, we've joined the Bourbon Trail in 2018. OZ Tyler is on the Bourbon Trail. Well, I know that wineries and wine tasting are very attractive to
visitors that are visiting for bourbon as well. Husbands can always try the bourbon, and the wives are going to say, war of leverages, we're hitting the winery next, Honey.

So what we'll be doing he's already stated. We're looking at approval just for this small scope building. We'll continue everything with our fruits and vegetables and our one farm event in the open air. That will continue. That's our agri-tourism. We want to add and take this to the next level by adding the wine tasting room and offer this space for events such as weddings and meetings.

CHAIRMAN: Mr. Kamuf, do you have someone else that is wanting to speak?

MR. KAMUF: Not right now. I have Mr. Cecil. We have the people here that will answer any questions on rebuttal. I think that's pretty well what we have to say. If you have any questions of me right now, I'll be glad to answer them. I don't know whether there's any objection here or not. We'll find out here in a minute.

CHAIRMAN: Is there anyone in the audience that wishes to impose an objection or questions to this item?

MR. BRANCATO: My name is Frank Brancato.
MS. KNIGHT: Mr. Brancato, you're sworn as an attorney.

MR. BRANCATO: I'm an attorney with Bamberger Brancato & Cureton here in Owensboro. I represent neighbors who are down the road from this property; Jamie and Nicole Murray, Gary and Angie Murphy, Burley Mitchell, Bernie and Vickie Mulligan, and Brad Payne.

I hope today to show the board some information that I think is relevant to the property. We've heard a lot of good things about our community and about what our the applicant does in the community, but I think the focus of this presentation and the meeting tonight is about this property.

So the first question would be whether what we really have is agri-tourism and whether it is something that is appropriate for this location.

Like Mr. Kamuf, who by the way is a tough act to follow, I do have some handouts that I would like the board to look at progressively as I go through this.

The first one is a copy of KRS 247.801. I would like the board to look at this because the assumptions here in the presentation that has been made starting out is that it's a foregone conclusion that if it's agri-tourism it gets approved, and that's
not what the statute says.

If you look at the history of the statute in agri-tourism, it was developed as a mechanism to help farmer find another cash crop from existing businesses. The focus of it is farming, a farm, a ranch, an agricultural operation or horticultural operation. As Mr. Kamuf said earlier, for those activities they really don't need your approval. They really don't need a variance. What they need a variance for is the wedding and party barn that they want to build on the property. That's really what the variance is for.

If you look at KRS 247.801 when it talks about an agri-tourism activity, I'm going to ask you to look at Sub-Part B, third line, the first word is "may." Not "shall." "May." The reason the statute says "may" is there are other things that should be considered when looking at either a zoning change or agri-business, an agri-tourism as some community requires or a variance as presented here with the Board of Adjustments.

Now, one of the concerns of my client is the road. The road is 18-feet wide at its widest point. Narrows down to about a foot at some point, but it's 18-feet. I have some pictures of the road, and I ask
you pass these around to note the traffic signs that show the curves ahead, the hills that approach this property, and that this is the road that people will be traveling to go to the wedding events and the party barn.

You can tell from the pictures that those were fairly recent. They were taking about a week ago.

One of the things mentioned was that the existing activities of Cecil Farms, which would be transferred to this location, there are evening weddings at Cecil Farms. Mr. Kamuf said that the operation would be 10 to 6. I think that needs to be clarified and maybe should be a part of any approval from the board.

In the past there was not much agri-tourism because the people who lived out in the country were the people who agri-lived there, and that's where they made their home. What we're really asking this board to consider is to keep the ag in agri-tourism so that agri-tourism applies to the people who are living out there and actually making their business off the land.

Another factor I would like to bring to your attention is that the Department of Agricultural for Kentucky on its website and its publication focuses on how agri-tourism is important to farmers to supplement
their income or broaden their business ventures.

One of my concerns about the party barn and wedding aspects out there is the fact that people in the agri-tourism business, the true agri-tourism business are accorded a benefit that the rest of us who are in business and really who go about our lives are not accorded and that is a no liability for accident provision.

The reason for the no liability for accident provision is that I think many people know farming is one of the most dangerous activities in the country. More people are injured on farms than in any other industry.

So under 247.809, the statute that I most recently passed out to you, agri-tourism professionals are not liable for injury to or death of a participant resulting exclusively from the inherent risk of agri-tourism. When you look up agri-tourism, you're now getting back to farming. There's two ways that they, two things they have to do to avail themselves of that no risk. One is they would post the sign and the second is, the alternative is to have each participant that comes on the property to sign a release.

KRS 247.8091 sets forth the language that must
be on your sign to avail yourself of the no liability provision that's accorded to agri-tourism business. The warning sign has these big letters of the "Warning. Under Kentucky law, there is no liability for an injury to or death of a participant in an agri-tourism activity conducted at this agri-tourism location if the injury or death results exclusively from the inherent risks of the agri-tourism activity and in the absence of negligence. You are assuming the risk of participating in this agri-tourism activity."

If you comply with that statute as agri-tourism business, assumption of the risk is a complete defense to anybody who is injured or killed on your property, unless that injury or death is result of negligence.

I think that's a significant thing to bring to your attention and for the public to be aware of.

There was another bill that was introduced this last session that did not get out of the committee, but it's going to be reintroduced again, and this concerns me as well, about public protection in the community. It's a proposed amendment to KRS 227.300.

I put a mark out to the edge there because the
highlighting didn't come through very closely, but the
essence of this bill is that --

MR. KAMUF: Hold on one second. Is this a law
or is this a bill.

MR. BRANCATO: It's a bill.

MR. KAMUF: It's not the law so what are we
talking about?

MR. BRANCATO: I think I said it was a bill.

The essence of this bill is to propose for
agri-tourism industry, that they are not subject to
the building code. They are not subject to the safety
code. Now, that may strike you as strange, but,
again, if you look back at the history of the
agri-tourism business, the focus was on existing farms
and existing operations, many of which were already
constructed. There are a lot tobacco barns that are
no longer used because tobacco is no longer the cash
crop it once was. That kind of farm needed help as
agri-tourism expansion.

As this bill will be reintroduced again, it
would have a preclusion in it that the commissioner,
and that is the commissioner at the Department of
Housing, Buildings and Construction in Kentucky, shall
not promulgate any regulation or rule that requires a
building, including a barn or agricultural building as
being renovated or wired for electricity to install
fire protection systems or otherwise comply with the
code.

So I think all of these factors must be
considered when this board is evaluating this
operation at this location and under these
circumstances.

Certainly there is a lot of interest in farm
to table businesses or farm to fork businesses as
they're sometimes called. But for liberation on these
event centers and wedding venues, it also increases
tension between landowners and the surrounding farms.

Mr. Kamuf pointed out that the surrounding
contiguous property owners have no objection. I would
point out to you that only two of them live there.
The rest of them are absent owners.

So their enjoyment and their use of their
property would be unaffected by virtually anything
built on this property. The right of people to enjoy
their existing homes and property should count no
less, no less than the right of property owners who
want to make more money on their property. We don't
begrudge that. I think when you look at the totality
of the circumstances here, that the road is hilly.
The road is curvy and it's not very wide. That there
are conditions on the property that would become a
nuisance or a bother to neighbors. That the
protection for the public coming to this business
could be very limited by the statutes that I have
passed out and asked you to read and that there are
negative impacts on the real farms and farmers who
adjoin this property.

I think when you consider all of that, that
something more needs to be done than a broad brush
that's been expanded here. I don't know very many
weddings that don't go into the evening. Maybe they
do. I don't know very many weddings that don't go
into the evening. Hours 10 to 6, maybe that's their
farm business and not related to the wedding business
and the party business. I don't know. I think you
have questions to ask about those things.

How many weddings a year are being budgeted
and planned? How many parties are being budgeted and
planned? You have a lot of money to investment, you
have to have a revenue screen to produce your capital
and pay your bills in something like that. How many
events really will be hosted is an important part of
it.

Some of my clients really have as many
questions as they do issues with it, and I hope some
of that gets figured out here tonight.

In closing, I want to again thank the Staff.

Every time I've called the Staff they've been very helpful and very cordial, and I think you have a very good professional staff and was a pleasure to do business with them.

CHAIRMAN: Thank you. We know that.

Mr. Brancato, do you have someone else that wishes to speak?

MR. BRANCATO: No, ma'am, I do not.

MR. REEVES: Let me clarify something, if you don't mind.

CHAIRMAN: Yes.

MR. REEVES: Mr. Brancato, in the KRS that you gave us in Section 2(b) where it says, "Qualifying activities may include civic or ceremonial activities including but not limited to weddings and ancillary events, harvest-your-own operations, farmers' markets." Were you suggesting that their proposed use is not consistent with that, number one, and number two, were you saying that use is consistent and should only be those that live in the surrounding area?

MR. BRANCATO: No. What I'm saying is that their use may be consistent with that because the statute says "may," not "shall." It doesn't "say
shall include all of these things." It says "may include all of these things." The reason for that is there are other factors other than the activity itself, particularly in a rural community.

MR. REEVES: I don't think that's what the statute says. It says it may include.

MR. BRANCATO: That's correct. It may include those.

CHAIRMAN: Anyone else on the board have a question of Mr. Brancato?

(NO RESPONSE)

CHAIRMAN: Mr. Kamuf, I'm assuming you're going to rebut.

MR. KAMUF: The most important thing that I did in this case, and I did this before I filed it. I got the county engineer out there to look at this property. He's your man. He's the county person. He's the person you look up to to decide whether this road is safe or whether it's not safe. Not only did he go out there one time. These people or somebody called the county judge and said, what about -- he looked at it the second time, and I talked to him this week. What did he say? He said that he had looked and reviewed the fact that they would have what? Wedding events. I might say that the time frame that
I gave from 10 to 6 was for the winery. I believe I'm telling you that, as far as the event situation, that will be open until 10:00. That takes care of that.

As far as the winery and wine tasting, in other words, I laid that all out for the county engineer to look at. He looked. He knew there was going to be winery and wine tasting events. He knew there was going to be wedding receptions out there. He looked at the parking lot that Matt laid out. The parking and all if that is set out because of the size of the building and the location and he gave, that was all prepared by Riney Engineering and laid out on the property. What did he say? He reviewed all of that. I asked him these two questions so I would know how to answer Mr. Brancato tonight.

Whether there is adequate visual distance for ingress and egress at the entrance of said property onto Mulligan Road? Whether the road is adequate to provide safe travel for patrons visiting the property? What did he say? "I have done a field review of this entrance and it appears to be sufficient stopping sight distance at its present location. The road also appears to be sufficient to handle traffic from this limited size scope project. Let me know if you have any questions."
How clear could it be? You know they're talking about this road being crooked or not being straight. Here's a picture of the property. You decide for yourself.

Here is Mulligan Road. Here is Highway 56. It has one little turn as you get to that property. I don't believe that's a crooked road. It's not going like going to Knottsville or someplace that you have a lot of curving. That's Number 2.

Fred mentioned about the statute. The statute allows us to do what we're doing, and I think Brian will tell you that. This is a type of activity, the type of project that was mentioned in the statute. We are okay with this type of activity under the statute and ordinance that you all have.

Am I not right Brian?

MR. HOWARD: Yes. The definition for agri-tourism includes everything that you've mentioned. Of course, as Mr. Brancato pointed out, the purpose of the Board of Adjustments is to make sure that the use can properly integrate into that neighborhood. Some communities would require rezoning. We do the conditional use permit, and that's why we're all here tonight.

MR. KAMUF: We're not here to ask for rezoning
for commercial activity. It's a conditional use in an agricultural area. Most of these, other than the winery and event, if we didn't have the building, we could always keep on doing what we're doing.

You know, these issue about liability, we're not having liability insurance. Keep your eye on the ball. Mr. Brancato brings issues up that are not relevant. The liability situation, we will have liability insurance to cover it.

As far as accidents. Accidents, according to the county engineer, his exact statement to me, he said, "Charlie, accidents happen all over the county. We can't keep accidents from happening."

As far as any alcohol, this board does not have the authority to make laws concerning the dispensing of alcohol. That will be up to the sheriff, that will be up to the ABC Board. We will have beer and wine. No heavy drinking on the property.

I'm trying to cover those issues. If you all have any issues that Mr. Brancato hit.

The liability issue is not for this board. The liability issue is between what we have to carry as far as liability on the property. We'll do that. We're not responsible for accidents that take place at
Mount St. Joe. They act like this is a big deal.

I go to Mount St. Joe to social events. I go
to retreats at Mount St. Joe. I go to social events
where there's liquor involved. They have the same
type of road. It is the same type of road that goes
around Cummings Road which is in Mount St. Joe. Here
we have Diamond Lake. That's 145 acres. You see
campers coming in and out of that place all the time,
and they dispense alcoholic beverages down there more
than we are. These are adequate county roads to do
what our project allows us to do.

Do you have any questions along the line? We
need to keep our eye on the ball and not on bills or
something that's going to take place. Is this an
adequate place to have a project such as Suzanne White
told you about. We think it is. I think it's the
perfect spot. You've got an area, according to your
Staff Report, if you look at your Staff Report, what
does it say? It says, the subject property zoned A-R
Agriculture is 35.5 acres. The property was rezoned
from EX strip mining to A-R. The property around it,
how does it describe the property around it? The
properties to the north are zoned EX Coal Mining and
AR Agriculture. The properties to the east are zoned
what; coal mining. The property to the south is zoned
A-R Rural Agriculture. All surrounding properties appear to be used agriculturally or for coal mining with the exception of one property to the west which is zoned EX Coal Mining, but appears to be residential.

Where could we find a better place in Daviess County to put in a rural setting a winery and tasting facility and an event such as we're having. Gary Cecil and his daughter have a good record. We're not telling you what we're going to do. Suzanne told you what they have been doing, and isn't that a great benefit to Daviess County, economic development in Daviess County? I'm here to answer any questions. I think Suzanne can answer most any of them that you have.

CHAIRMAN: Any board members have questions of Mr. Kamuf or Mrs. White?

MR. REEVES: Question for Mr. Howard, and Mr. Kamuf needs to listen to this.

Would it be a legal condition for us to add to the two current conditions, should we approve it, that would prohibit the commercial sell of package spirits other than wine on this property?

MR. HOWARD: I will defer to legal counsel on that.
MS. KNIGHT: I would think so. The statute say you can provide any conditions you think are reasonably necessary.

To Mr. Kamuf's point, the ABC Board is going to say whether they can sell any alcohol or not, what they have to do to be able to sell it. I think this board could put those type of restrictions on here.

MR. KAMUF: I'm sorry, I didn't hear what you said.

MS. KNIGHT: I think the statute, and I'm referring to 100.237, Charlie, governing the conditional use permit says that this board can put any conditions, attach any necessary conditions that one or more things be done for the request to be initiated or conditions of a continuing nature, which I think would be what Mr. Reeves is asking about.

MS. WHITE: My question on this: So we will be a federal bonded property. What that means is no one can bring alcohol onto our property for their own personal event, anything. It all has to go through us.

So say a wedding or meeting wants beer. I have to purchase that and they have to purchase that from me.

MR. REEVES: That doesn't concern me.
MS. WHITE: You're saying not to have retail sales?

MR. REEVES: Can't have retail sales of packaged alcohol spirits.

MS. WHITE: Other than for the wine.

MR. REEVES: I understand that they have to furnish liquor for the event. They have to be properly licensed and so forth, properly insured; you're probably trained to do that. I'm just simply saying to put a condition that would limit you to selling any packaged retail spirits other than wine.

MS. WHITE: On my shelf?

MR. REEVES: On your shelf, right. I'm talking about retail sales only.

MR. KAMUF: I want to be sure I understand what you're talking about. Are you talking about beer?

MR. REEVES: I'm talking about being able to go into the winery and purchase a fifth of vodka, go to your car and drive home.

MRS. WHITE: We will not be licensing ourselves for liquor. We will have the ABC License for beer and wine.

MR. REEVES: Are you willing to live with the condition that that be in there?
MS. WHITE: That I don't sell bottles of liquor?

MR. REEVES: Yes. That you don't sell retail packaged liquor.

MS. WHITE: Yes.

CHAIRMAN: Anyone else have questions of Mr. Kamuf.

(NO RESPONSE)

CHAIRMAN: Mr. Brancato, do you have anything else?

MR. BRANCATO: I want to follow up on a couple of things.

Mr. Kamuf read twice from the letter from Mr. Brasher, that this road was suitable to handle the volume of traffic. Have you all heard anything about what the volume of traffic is, because I haven't. I don't know how you make a conclusion. Is it 2 cars an hour to 20 cars an hour, 50 cars and hour. I don't know the basis of that conclusion, and unfortunately he's not here. I don't think he can answer that question.

I don't believe in my presentation I said anything about the liquor or concerned about it; although Mr. Kamuf assured you that there wouldn't be any heavy drinking. I don't know about that. Our

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concern of focus is the volume of traffic, the road, the condition that may not protect the public in the operation of the wedding venue and party barn on this location. Twenty-five cars for a wedding or a party doesn't seem like a very big wedding or party to me. Now we were told with clarification the weddings can go on until 11:00 at night. So, I guess, the neighbors there can hear announcements through the loud speakers about what's going on into the evening. I'm asking to you consider all of these things. And maybe the best thing to do is table it and hear from Mr. Brasher and let's see if there's a traffic study or what conditions he was told. The sentence is road is adequate for the traffic. How much traffic? I just haven't heard one word about how much traffic there would be or what Mr. Brasher's assumption or conclusions were in that regard.

CHAIRMAN: Mr. Kamuf.

MS. WHITE: I believe the traffic has been addressed when we met with Matt Warren a couple of months ago and he defined, based on the square footage and the capacity of how many persons this event space could hold, that it needed 25 parking spaces. Based on the location, people will carpool. He determined, based on the square footage and how many bodies will
fit into that small square footage, that that is how
many vehicles we should expect at a given time.

The building will not hold a huge capacity.
Furthermore, the county roads are made to hold 1800
cars per lane per hour. I don't think we'll be seeing
that.

I do want to address as well; there will be no
disruption to the neighbors with us closing at 10,
gates locked at 11. I showed you on this paper
there's 20 rows of bushes, do you know how tall
blueberry bushes get, of screening, surrounding by
trees, off to the back of the property and the woods.
So I do not see a concern at all of any disruption.
This is a classy project.

CHAIRMAN: Thank you.

MR. KAMUF: Have we adequately answered that
for the board, for Mr. Reeves?

CHAIRMAN: Any board members have any further
questions?

(NO RESPONSE)

MR. KAMUF: I think it's 10:00. It's not
11:00.

CHAIRMAN: I was going to ask: Can you state
those hours for the winery and for the wedding.

MR. KAMUF: The winery will be from 10 to 6.
The events will be closed at 10:00, gates locked at 11.

CHAIRMAN: Thank you.

MR. KAMUF: He doesn't want to disagree with the engineer, but if he wanted to have somebody here, he should have had his own engineer or he should have called the county engineer. I filed that report as part of this application and anybody could have seen the Staff Report. It's part of the Staff Report. The county engineer is your man. He says it's safe. He's not going to make any statement and put it in writing, as far as the traffic. He says what? This road appears to be sufficient from handling the traffic from this limited scope and size project. Not only did he have in front of him the site report, he had this site plan that was prepared by Hale Riney & Gilmore, and he had the report for Matt, what Matt said in front of him. That's how we were able to say 25 parking places when your own people looked at the project and looked at the building and said, this would be 25 parking places. That's the size of the traffic.

CHAIRMAN: Thank you, Mr. Kamuf.

MR. KAMUF: Thank you.

CHAIRMAN: Let's see if we can't bring this to
some sort of conclusion.

Is there anyone else in opposition that wishes
to speak?

(NO RESPONSE)

CHAIRMAN: Mr. Brancato, do you have anything
to add, rebuttal?

MR. BRANCATO: No, ma'am. I would ask if the
board is considering ruling in favor of this, in
addition to the one suggestion and additional
condition be put on there, that the condition be that
the business closed down at 10:00 every evening. If
that's what they're saying they would do, that
wouldn't seem to be a restriction to them and that
there wouldn't be more than 25 cars on the property at
any point in time because that seems to be what
they're espousing here to the board. It's going to be
limited scope and operation and no more than 25 cars.
If that's their presentation and representation to the
board, it shouldn't have a problem with those
conditions being put into the approval.

CHAIRMAN: Let's see if I can find that out.

Mr. Kamuf.

MR. KAMUF: I don't have any problem about the
hours, that's not a problem. We don't know how many,
it's based upon the building and everything, and I
don't want to get tied down. We lose, if we put down
25 cars and there's 26 there. This is the best I can
do for the board, as far as coming up with an
estimate. We don't know how many will be there
completely. This is our best estimate. Really I
think what is required is five parking places
according to, I think I'm right, Matt. I don't want
to be tied down to that. That's a lawyers dream on
the other side, is to have somebody out there counting
cars every night. I cannot agree to that. I didn't
prepare this 25 parking. It was prepared by your own
all's own Staff based upon the size of the building.

CHAIRMAN: Thank you.

Board members have any questions?

(NO RESPONSE)

CHAIRMAN: Anyone else want to speak?

(NO RESPONSE)

CHAIRMAN: We're ready for a motion.

Mr. Reeves.

MR. REEVES: Bear with me, please.

I make a motion to approve this conditional
use permit based on the following facts:

1. This use is an example to the merging
agri-tourism business and agricultural land.

2. There will be educational activities and
events that are consistent with enabling KRS legislation.

3. The county engineer concludes that the road is adequate as well as ingress/egress to the land for the anticipated traffic.

I would add Condition 1 and 2 as spelled out in the Staff Report.

Condition 3. That the commercial retail sale of packaged liquor, other than wine, is prohibited on this property.

Condition 4. That all business activities will close at 10:00 and the gates will be locked at 11.

CHAIRMAN: Thank you. Is there a second to the motion?

MR. GLENN: Second.

CHAIRMAN: 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.

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VARIANCE

ITEM 3
1608 Parrish Court, zoned R-1A
Consider a request for a Variance to reduce the side yard building setback lines from 10 feet from the side property lines to 5 feet from the property lines on both, the north and south boundaries of the property. References: Zoning Ordinance, Article 8, Section 8.5.5(d)
Applicant: Charles A. Lefler

MR. PEDLEY: The subject property is located in an area established before the current zoning requirements were in place. Current zoning regulations in R-1A zone require 10 feet interior side yard building setback and a minimum lot frontage of 75 feet.

According to the PVA records, the residence on this property was built in 1905 and has existing side yard setback of 6.8 inches from the southern property line, and 7 feet from the northern property line on a lot that's only 50 foot way in an R-1A zoning classification.

The applicant proposed to demolish all existing structures on site and construct a new residence of a 40 foot wide foundation. Consequently, the proposed foundation will encroach into the side yard building setback on both sides, creating the need for a variance to reduce the setback from 10 feet to 5 feet from the side property line.

Because the property is in the area predate
the zoning ordinance, the majority of the lot on Parrish Court are 50 foot in width and the majority of the homes encroach into the required side yard building setback.

Granting the variance to reduce the interior side yard building setbacks will not alter the essential character of the general vicinity, will not significantly impact the area, nor will it be an unreasonable circumvention of the requirements of the zoning ordinance because there are many existing structures on neighboring lots that encroach into their own side yard building setbacks as a result from narrow lot sizes and structures that predate the zoning ordinance.

Staff recommends approval with the condition that all necessary building, electrical and HVAC permits, inspections and certificates of occupancy and compliance are obtained.

We would like to enter the Staff Report into record as Exhibit B.

CHAIRMAN: Is there anyone here to speak on behalf of this application?

MS. KNIGHT: If you could state your name, please.

MS. LEFLER: Sarah Lefler.
MS. LEFLER: I don't really have a whole lot to say. Everything he read is pretty much it. We just want to be able to build a house in order to have it where it's not a row house or stacked up. We just need that extra 5 feet. That's all.

CHAIRMAN: Hold on and we'll see if anyone has any questions.

Any board member has questions to Ms. Lefler?

(NO RESPONSE)

CHAIRMAN: Is there anyone else speaking in reference to this application?

(NO RESPONSE)

CHAIRMAN: Board members any questions?

(NO RESPONSE)

CHAIRMAN: If not I'll entertain a motion.

MR. JEAN: I'll make a motion that we approve this variance based on the Staff Report with the Findings of Fact that it will not alter the essential character of the general vicinity, it will not significantly impact the area, nor will it be unreasonable circumvention of the requirements of the zoning ordinance, and with Condition Number 1.

CHAIRMAN: We have a motion. Is there a
second to the motion?

MS. CLARK: Second.

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

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

ITEM 4

3485 Millers Fall Circle, zoned R-1C
Consider a request for a Variance in order to reduce a side yard building setback line from 5 feet from the side property line to 0.4 feet from the property line.

References: Zoning Ordinance, Article 8, Section 8.5.7(d)

Applicant: Joyce Dianna Estes-Fulks

MR. PEDLEY: Because the Staff Report is recommending denial, the entire Staff Report will be read into the record.

A. SPECIAL CIRCUMSTANCES? Are there special circumstances that do not generally apply to the land in the general vicinity or in the same zone? No.

The subject property is located in the Old Mill Subdivision near the southeastern corner of the Highway 54 and Millers Mill Road intersection. All of the lots on Millers Fall Circle range from 50 to 100 feet wide. The subject property is 72 feet wide by
122 feet deep and the home was constructed in 1986 according to PVA records.

The applicant is requesting to reduce an interior side yard building setback from 5 feet to 0.4 feet in order to allow a recently installed detached carport to be located 0.4 feet from the side property line. The required side yard setback in an R-1C zone is 5 feet from the property line; however, The Old Mill's subdivision plat indicates that this property line serves as the center of a 12-foot wide public utility and drainage easement. Consequentially, the easement spans 6 feet from the property line in both directions, creating a 6-foot easement on the subject property. The zoning ordinance states that neither principal nor accessory buildings shall be erected in a public utility easement without obtaining an encroachment permit. As a result, while the R-1C zoning classification allows structures to be located as close as 5 feet from the interior property line, no structures shall be permitted within 6 feet of the eastern property line of the subject property unless an encroachment permit has been obtained.

Additionally, Section R302.1 of the Kentucky Residential Building Code states that both, exterior walls without a fire-resistant rating and exterior
walls with unlimited openings, such as an unenclosed
carport, are required to maintain a separation
distance of 5 feet or greater from the property line.
Placing a carport 0.4 feet from the property line
would place the structure approximately 5'5" from the
neighboring property's side yard building setback line
and could make access to the side of the neighboring
home difficult.

There have been no variances within the area
approved to allow an encroachment of a side yard
setback and all other known structures on Millers Fall
Circle appear to comply with the zoning ordinance
requirements.

Granting the variance to reduce the side yard
building setback will alter the essential character of
the general vicinity and be an unreasonable
circumvention of the requirements of the zoning
ordinance because the other structures in the area
appear to meet the required setback, and no other
variance requests for the reduction of a side yard
setback have been granted in the area. Granting the
variance will also affect public safety and cause a
public hazard by constructing a non-fire rated
structure within the required separation distance from
the property line.
B. 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? No.

If the application is denied, the applicant could construct a smaller carport.

C. APPLICANT'S ACTIONS? Are the circumstance from which relief is sought a result of the applicant's actions taken after adoption of the zoning regulations? Yes.

IF YES: WILLFUL ACTIONS? Did the applicant take WILLFUL actions in violation of the zoning regulation? IF SO, the Board SHALL DENY the variance.

FINDINGS: Granting this Variance:

1. Granting this Variance will adversely affect the public health, safety or welfare by constructing a non-fire rated structure within the required separation distance from the property line.

2. Granting this Variance will alter the essential character of the general vicinity because all other known structures in the area appear to conform to the required side yard setbacks.

3. Granting this Variance will cause a hazard or a nuisance to the public welfare because constructing a structure so close to the neighboring
home may create issues accessing the side of the neighboring home.

4. Granting this Variance will allow an unreasonable circumvention of the requirements of the zoning regulations because all other structures within the area appear to meet the required side yard building setback and there have been no other variance requests in the area.

STAFF RECOMMENDATION is for denial.

We would like to enter the Staff Report into the record as Exhibit C.

CHAIRMAN: Thank you.

Is there anyone here to speak in regards to this application?

MS. KNIGHT: Ma'am, if you could state your name for the record please.

MS. FULKS: Yes. Dianna Fulks.

(DIANNA FULKS SWORN BY ATTORNEY.)

MS. FULKS: First off, I would like to clarify a little a couple of things that was just mentioned, and this was on the letter that we received from the Owensboro Planning and Zoning Commission.

Just kind of clarify the exact location of our property. It states that it's near the eastern corner of Highway 54 and Millers Mill Road. I believe that
the board members may have some paperwork that may
have been provided to you by Mr. Simmons. I'm not
sure. Mr. Simmons is also here. He actually
submitted our application for the variance for us. So
I'm not quite sure what all he has presented to you.

In essence, the location of our property, if
you're familiar with, if the board is familiar with
Highway 54, where Thruston-Dermont and Millers Mill
Road is located, if you are traveling towards
Whitesville, coming from Owensboro going out towards
Whitesville, you will pass on past Millers Mill and
continue on past Old Mill Subdivision, and then there
are four other houses off of Highway 54 before you
actually get to the road that comes to our property;
that road being Kings Mill Drive. So you have to
actually turn off of Kings Mill and go down the small
little street and turn onto Miller Falls Circle, which
is the street that we live on. So there's a large
area between where we're located and where Millers
Mill is. I don't know if that matters, but I just
wanted to kind of clarify exactly where our location
is.

I apologize that I'm not a little bit more
prepared for this. I did bring with me, there were
some notices it's were sent to our neighbors. I
didn't know how many of you would be here so I only
have one copy, but I would like to present that to
you.

CHAIRMAN: We can share.

MS. FULKS: May I bring it up?

CHAIRMAN: Certainly.

MS. FULKS: These are the notices that were
sent -- I don't know who to give these to. These are
the neighbors that noticed were sent to, and they have
all signed off on these stating that they have no
complaints or no problems of any sort.

The first one being the neighbor who has the
adjoining yard right beside of where our carport is.
That would be the one first one.

The second one would be the gentleman who has
the property directly behind us that adjoins our
property.

The third one would be the neighbor who lives
directly straight across the street. I would like to
pass those down. They have written comments on there,
their opinions of our carport.

I would also like to give you this. This is
showing you the exact type of carport that we
installed right here.

Also further on down in here it is stating
something that there are no other structures in the
area that -- let me see, if I can find that. That are
out of variance that have had request, have had any
request for variance granted. I do have copies of
some or pictures that I have taken that I would like
to present to you that shows structures.

Actually the first one being a structure that
you have to usually pass to get to our property. This
shows that there are other structures in our
neighborhood that are like what we have put up. I
have marked on the back of these where these
properties are located. I also have issued or -- this
is a tape measure where this is our neighboring house
right here. This is a tape measure showing the exact
amount distance from our carport to the neighbor's
home. So I will let you look at these if you would,
please. I put on the back where are properties are
located.

The very first picture is actually on Kings
Mill, which you have to come down Kings Mill to get to
our property to get to Millers Fall, which is the
street that we're located on. There are other
structures in the area that are like the structure
that we installed.

I will give you a moment for everyone to have
an opportunity to look at them.

CHAIRMAN: Do you want these in the record?

MS. FULKS: Yes.

And while you're doing that, I would like to just thank each of you for your time this evening and for allowing us the opportunity to present our case to you.

First off, it's very important to the board members that you know that this was not intentionally done out of trying to hide anything from anyone. We were not aware that Planning and Zoning needed to be contacted. I don't think that your normal everyday citizen knows that this is something that you need to do, but we were not, we did not know that we were supposed to contact Planning and Zoning. We did not do this intentionally to try and get away with anything or do anything that we felt we were going to try to hide from anyone. We unfortunately were given some incorrect information apparently from the dealer that we purchased the carport from and from a contractor, that a permit was not required to build this structure; so therefore, we did not seek one.

We didn't know the proper channels to go through other than that. We were not aware of any rules or regulations pertaining to this. After being
told by many different ones that permits were not
required, we just assumed that it was okay to go ahead
and proceed with what we had planned to do.

The only purpose for our carport, if you'll
notice in the picture, I believe, I think maybe
Mr. Simmons provided you with, we have a motor home
along with a golf cart and trailer. We have in the
past, we have stored those in storage which had become
quite costly. So we decided that we would drive
around and look in different neighborhoods to see what
other people with motor homes, what they did, what
kind of provisions they did. We saw carports with
motor homes under them so thought that might be a good
idea and it might be something less expensive that you
to go through. My husband just recently retired a
year ago and I'm retired as well so therefore we're on
a fixed income now. So we thought this might be an
easier thing to do and wouldn't be as expensive as
placing it in storage each year as we had done in the
past.

The reason that we went with a 22-foot wide
structure is because we couldn't make it any longer in
length. We couldn't park the two units behind each
other so we have to put them side by side, which
requires the 22-foot distance that we have. So that's
the purpose for that.

We did not make the unit permanent because we felt if we were to ever want to move, we would want to take the structure with us. So we left it where it could be mobile or it could be moved if we should ever want to do that.

When we purchased the unit, we purchased the color that we could get to match our home trim so that it would be nice looking to the neighborhood. We also put trim on the unit so that it would be decorative. We got that to match the color of the roof on our home. So everything that we did when we had this unit installed, we did to the best of our ability to try to fix it so that it would not be what would be considered an eyesore to the neighborhood.

In my previous employment history, I worked in a rental department for Steve Fulkerson at K&W Equipment. My primary position there was dealing and conversing with many contractors so I'm familiar with several contractors. So I did reach out to those contractors, some of them, and inquired to them if a permit would be required for this, and was told no, that it was not require as long as it was detached, unenclosed, and mobile structure, that no permit was required. So after being told by the contractors, by
the dealer, by different owners that we saw had
carports, we didn't proceed it any further. We just
supposed that was the way it was. We didn't need a
permit; so therefore we didn't pursue getting a
permit. There again, as I said, this was not done out
of trying to hide anything from anyone. It was simply
done because of the information we were given.
Apparently we didn't go through the right channels,
which we apologize for that.

We are avid campers of Diamond Lake Resort and
members of Daviess County Fish and Game. As I said,
we had in the past, we stored our units and we decided
to try to do this to maybe be a little bit less
expensive on our part.

We purchased this unit on June 13th of this
year; however, we were not able to get the unit
installed until August. The reason for that was the
procedures that are done these on these particular
units, I don't know if the board is familiar with it
or not, but you purchase these units from the dealer.
They have local dealers here in Owensboro and Daviess
County. The companies out of various areas. The one
that we got ours from was from Muncie, Indiana.
There's one also I believe in Carolina. There's one
in Texas. There's one in Ohio, and I found out just
recently there's one in a place called Nancy, Kentucky, which I've never heard of.

Anyway, you purchase the unit from the dealer and you pay the dealer a deposit for the unit. The dealer then sends the order to the company. The company then, their employees travel, from what I understand, what we were told, the employees travel all over the United States putting these units up, which is why that it takes a length of time to get the unit once you purchase it. You can't just purchase it today and get it next week. It may take, in our case it took from June to August before we actually got ours. Then the company will contact you and they'll say, we're going to have our people in your neighborhood on such and such date. Are you going to be available so we can come in and install your unit. If you are, then they come out and they put that unit up.

Now, when we purchased this structure, it also came with a 12-year warranty, and we have recently found out since that if the board were to reject our request and we were to have to do anything, any kind of modifications or anything of this nature to our unit, that warranty will become null and void because the company that installed it for us does not do
modifications. They just do installation.

So in order to make any modifications, we would have to hire someone else to do that for us, which would make our warranty that we got on the property null and void. Well, we would hate to lose that warranty, of course, because we have invested a lot of money in the unit. We did a lot of extra work in trying to make it to where it would look nice to the neighborhood, and in no way be an eye sore to the neighborhood.

We understand that the main issue here, we understand, is the setback. If you were to actually come to the property and take a tape measure and measure from the actual runner that the posts are mounted into or bolted into, not mounted, but bolted into, to the neighbor's house, Mr. Hendrix's house, there is a 6-foot easement there. Now, Mr. Hendrix, along with the remaining neighbors who received notices have all signed their notices stating that they have no complaints about our carport and we received many compliments from them about how nice it looks. It is very neat and certainly not an eye sore to the neighborhood. We keep our property very neat and clean. Both my husband and myself work very diligently to keep it that way, and will always
continue to do so. We've had many compliments from
all of our neighbors about how nice and clean things
always look at our property.

In speaking with Matt with Planning and
Zoning, I asked Matt, would there be anything that we
could do to possibly keep our carport as is? He
stated to me that if we could possibly get signatures
from our neighbors stating that they had no issues
with this and there were no issues, that there was a
good possibility that we could keep our structure as
is. Well, I did receive those signed and I issued
those to you, which you have all of those.

We contacted my nephew, Jay Velotta, who is a
city commissioner to ask him for guidance on what to
do on this matter because we obviously wanted to make
sure we were doing the right thing, and not do
anything that was illegal or against the law. He did
come to our home and look at the property, look at the
unit. He advised us to get with Mr. Simmons, which is
what we did, to have him survey our property, locate
our property pins, and try to make the situation
right. Mr. Simmons came and did all of that for us,
and I believe provided you with everything that we
have, I think.

I did also contact several of the dealers
where these carports are sold to find out if we maybe
grew to the only one who said we didn't need a permit.
I contacted several. In fact, I contacted True Value
54 on Highway 54. The gentleman there told me that a
permit was not required. We purchased our unit from
RV Medic on Highway 60. We were told by them a permit
was not required. Spoke with Professional Pool and
Spa on Highway 54, and this was her wording to me, her
name was Christina. She said, "Per Planning and
Zoning, as long as the structure is detached,
unenclosed and the runners are left so that it can be
unbolted from the ground, it is considerable a
portable and mobile structure and does not require a
permit. If you were to pour concrete or something
over the runners and bolts so that they could not be
removed, then it would become a permanent structure
and would require a permit." She said that's exactly
what Planning and Zoning told her.

In speaking with, the gentleman I spoke with
at True Value was Scott. The gentleman at RV Medic
was Randy. I contacted Carol at Barns-N-More, who is
a dealer for these structures. Carol said, her
comments to me was, she said, what she had been told
from Planning and Zoning is if they drive by your
property and they see a structure such as yours on

Ohio Valley Reporting
(270) 683-7383
your property that they feel was maybe not permitted,
if there has not been anyone call in or complain or if
they have not received any complaints from anyone in
reference to that property or how that property looks,
they're just going to drive on by and let it go.
They're not going to do anything about it.

Now, I spoke with Angie at Diggers. Angie
told me the same. She said, if there have been no
complaints from any neighbors or any complaints from
anyone to that effect, they're not going to do
anything about it. They're just going to drive on by.

I spoke Tim Powers whose is a contractor. He
said to his knowledge no permit was required for the
structure, if it was detached, unenclosed and mobile.

So, as I said, after all of these people told
us that we didn't need a permit, then we didn't feel
we needed a permit. So that's what I'm saying; we
didn't do this intentionally because we just didn't
want to get a permit and we didn't want to deal with
Planning and Zoning. We simply did not know.

I have provided you with pictures of other
carports in the area, along with addresses on the back
of them where you can see that there are a couple that
apparently are even closer than what our carport is,
one in particular. We did speak to that person. They
said that they were not required to get a permit. They purchased their unit from Gordon's True Value Hardware at Philpot on Highway 54, and they were not required to get a permit.

I did also prepare a little bit of a pricing list on things that we have in the past, as far as storage on the unit when we were storing it. At Danco on Highway 54, a storage unit of the size that we needed would be $125 per month. Typically you store your units, most people that have campers you store them from November until either March or April. So you're looking at five or six months storage there, times $125.

Paul Lynn has storage units for the size that we needed at $90 per month, but he requires a five month minimum. You have to rent it for at least five months. So if you multiple that times 90, you've got $450 for the storage there.

As far as covers for the motor home, we've also done that in the past, material covers. To purchase a cover for the motor home that we have is a 32-foot length. To purchase a cover for that home, and I have a booklet here to verify the price that I'm giving you, is $629 plus tax. Those covers will, being out in the weather during the winter months and
in the sun during the summer months, those covers may
last, if you're lucky, two years. The ones that we
have had we've gotten maybe two years out of them, two
and a half, if you're real lucky and don't have any
bad weather.

As far as covers for the golf cart that we
have, those covers are $130 plus tax. Those covers
typically, depending on how careful you remove them
and put them on, they may last a year to a year and a
half. So that's what I'm saying. If you calculate
the amount that it cost to purchase covers to put on
these units versus a carport to store it under, it
became quite costly. So that is the reason that we
decided to go ahead and get a carport.

Again, as I said, we had to get the 22-foot
size width because we had to put the units side by
side, not end to end, because we didn't have enough
room to put them end to end. So that's the reason
that we have the size that we have.

With all of this being said, we are graciously
asking the board, members of the board to carefully
consider and review our request, along with the
letters from our neighbors that we have provided to
you, to review our request and please approve our
application for the variance and allow us to keep our
carport as is.

CHAIRMAN: Thank you.

Mr. Howard, can you address the permitting responses from all of these places?

MR. HOWARD: You know, we have made an effort certainly in the past to educate those folks from these entities. It sounds like that needs to be a yearly thing or something like that. It sounds like when they have staff turnover that message is not conveyed. A permit has always been required for a carport.

The nomenclature thing, you know, temporary to one person means something that might be able to be moved, but according to the code, temporary just means, a temporary restructure just means something that you're allowed to have for 180 days in a calendar year and the rest of the time it's not there. There's an issue there as far as what that word means.

We're going to have to, I don't know whether we need to yearly send out a letter to the folks just to remind everybody that permits are required, but that's always been a requirement. The building code requires it. Of course, the permit at the end of the day is not the big issue.

CHAIRMAN: The setback.
MR. HOWARD: Yes. I can tell you, you're not the first person that's put something up without a permit. It happens. We can deal with that aspect of it. The issue or, I guess, the couple issues we have is relating to the setback itself. On the site plan that Mr. Simmons prepared, he shows a 6-foot dimension over there on that side of the property line, but it's not labeled. As we were researching and look at that, that's a public utility easement. In order to put anything in a public utility easement, you have to have approval from those utilities. You have to get an encroachment permit.

Just so our board knows, this doesn't pop up that often. If this were to be recommended for approval, it would have to be on the contingency that they get the utility improvement permit approved from every utility and it's signed off by the zoning administrator. If any, for any reason, were to deem it's not acceptable, it couldn't be there.

MRS. FULKS: May I interrupt you just one moment?

MR. HOWARD: Sure.

MRS. FULKS: First, I need to let you know that all of the utilities on the side of Miller Falls Circle that we live on are above ground utilities.
MR. HOWARD: That's fine. The utilities may not care, but whether they're above ground or below ground, they still have to sign off on it. OMU doesn't have a line in there. You're probably not OMU.

MRS. FULKS: We're not OMU.

MR. HOWARD: Kenergy. Kenergy doesn't have a line there now, but they may want one in the future and they may want to reserve that right. I don't know. I can't speak for them.

The other concern is that the building code, the Kentucky Building Code, which is adopted from the International Building Code has a requirement that principle and accessory structures that are side by side maintain a minimum of 10-feet separation between entities. The tape measure you were talking about, it's a little over 6 feet, it's not quite 7. So that doesn't meet the state building code requirement which, and I don't know. I haven't really talked to legal counsel about that, but I'll defer to you.

Could this board even approve something -- if they wanted to approve the variance, but there still had to be a minimum of 10-foot separation based on building code, could this board go beyond that or could they modify this variance request and say, you
could reduce it down to the point that there's a
minimum of 10-foot separation between the two?

MS. KNIGHT: I think it's safe to say this
board doesn't have the authority to waive requirements
of the building code. That's not within our powers.
That's set by higher power. We don't have the ability
to do that.

MS. MASON: So are you saying we can't make
this recommendation on this then?

MR. HOWARD: Well, you can make a
recommendation on this, but with legal counsel, her
advise, the building code requires, again, that's
adopted at the state level. There's nothing in the
building code that's adopted at the local level.
Nothing. Our office is tasked with enforcing that
building code, but we don't adopt anything locally.
It all comes from state level. There's the
International Building Code. The State of Kentucky
adopts an amendment to that building code, and
whatever the end result is, is what we're tasked to
enforce.

You could potentially allow a variance to take
place, provided that the minimum separation between
the carport and Mr. Hendrix, I guess is the adjoining
on that side.
MRS. FULKS: Yes.

MR. HOWARD: As long as the minimum separation between those two things was 10-feet, and typically in an instance like that, what we've seen is a plat that a surveyor would prepare that would show on his property, because you as a board would in essence be placing a requirement on him that he's not here to speak to. So what would happen would be, a plat would be prepared and recorded that would show on his side of the property line that he would have to sign off on that plat basically a no-build zone. So he could never build anything in that area. So at the end of the day there's a minimum of 10-feet between the carport and his house regardless of what he might do in the future. Again, that doesn't happen that often. We've seen those no build things on -- I think there's down at Kohl's. There's one down on Subway on Frederica Street, Subway and Sonic, that one. So we see those no build easements take place on plats.

Again, the permit is not the bigger issue. According to legal counsel's advice, it's that 10-foot minimum separation between their carport and Mr. Hendrix's house.

MS. FULKS: Mr. Howard, if I might point out on the picture, if you can look at your picture, you
will notice, this is the edge of Mr. Hendrix's house right here. His air-conditioner unit is right beside of his house and then there's our carport. So there's really no way that anything could be built in that area.

MR. HOWARD: Sure. I understand that. In theory, he could relocate that unit and try to put something in there. We would just need some kind of assurance, you know, something that he's going to sign off on saying that he agrees and understands that he can't build anything on that side yard.

MS. FULKS: Now, he did tell us that. I didn't get him to sign anything, but he did say that he has no intentions of building anything through there. I can get that if that's required.

He was going to come down with us. We felt like with the letter, his approval on the letter, that we didn't feel that it was necessary for him to be here.

MR. HOWARD: Legal Counsel, what would we need from Mr. Hendrix for him to certify -- I think we need a recorded document.

MS. KNIGHT: The only way to make it binding would be to have it recorded on the plat or something. We've had people often to do licensing and things
before, but those are temporary in nature. This would
have to essentially run with the land to make sure
that there was nothing there when those houses and
structures are still there. Just to have, you know, a
letter from him or something like that. It would have
to be something in record able form.

MR. REEVES: I have a question. I dealt with
the exact same issue this lady did back here. My
issue was probably 25 years ago. I understand time.
I wanted to put one of these units on the back of my
garage and put my boat underneath. I was told at the
time by the person I was working with that if I
attached it to my garage, which I wanted to do, I
could not go as far as back as I wanted to. If I
detached it, because it was portable, I could just lay
it down on a slab I was going to build. There's a
real issue with these things.

Mrs. Fulks, you've done a marvelous job. You
should be an attorney. Regardless of how this turns
out, I commend you on the work you've done. We're
trying to work with you.

These structures are issues, and I don't know
how we get a handle on it. This lady has been
mistreated to the point, we'll do what we probably
have to do; other than go see a lawyer, I guess, to
I don't know what we need to do about these. Is there anything we need to do in terms of the ordinance or whatever? They're real a issue. I dealt with the exact same thing she did. Yes, you can put it back there, but the first time they come back on you, you have to move it. They're useful. They're a useful item to have. I got my boat covered for 100 bucks at the time as opposed to the other thing I could have done, but I couldn't do what I wanted to do because of regulations, which I understood. They're really difficult to deal with. These dealers don't understand what the regulations are. I don't think we can excuse the fact they need to be told every year. I think they're smarter than that. I think they just choose to sell a piece of equipment and let the buyer beware.

MRS. FULKS: That could very well be. I don't know.

MS. KNIGHT: I think what I'm hearing from Mr. Reeves, again going back to permitting issue as opposed to the setbacks sort of. I'm just wondering if on this property, assuming that the encroachment permit would be granted, again, it's the placement with the neighboring house that's the issue.
MRS. FULKS: One thing I wanted to ask, because I'm not real sure on this, and maybe you can clarify it for me. I have been told 3 foot and then I've been told 5 foot.

MR. HOWARD: That was something that I was going to mention to Mr. Reeves' comment. It depends on where the structure is. In this instance, the one that you all have installed is adjacent to the house. It's not behind the house. Anything that goes beyond the rear line of your home needs to be 6 feet away from the house, but you can go down to three feet from the property line, as long as it's not in the easement. So even in this instance if you went to the rear of the house, if you came in the office, we would say, you need to be 6-feet from the house. You're going to have to be 6-feet off that east property line because there's a public utility easement there. If that easement wasn't there, you could go down to 3-feet from that, but that's because it's to the rear. Anything to the side of the house, really anything forward of that back line has to meet the minimum setback requirements of the zoning ordinance; which in your instance is 5 feet. The variance that was heard right before yours, they were in an R-1A zone and it requires a 10-foot side yard, but they request it to
go to a minimum of 5. Again, that 5 foot on either
side of the property line would maintain a 10 foot,
which the building code requires, which we don't have
the authority to waive. Bringing it full circle, that
gets back to the root of what the question is. Of
course, I don't know your instance exactly. It sounds
like if it was to the rear of the garage, it was
likely to the rear of the line of the home.

MR. REEVES: Yes.

MR. HOWARD: There are different requirements
depending on the actual location.

MR. REEVES: Mine was a building setback is
what mine dealt with. I was going to encroach past
the building setback and there was an easement behind
there also.

MS. KNIGHT: You probably wouldn't have had to
deal then with the building code issue because this
building code issue, you weren't --

MR. REEVES: Yes.

MRS. FULKS: As I stated, all of the utilities
on the side of Millers Fall that we live on, all of
our utilities, and I'm not sure if that's a good thing
or a bad thing. All of the utilities on our side of
the street are above ground or in the air; the cable,
the TV, the phone, all of that stuff is above ground.
The other side of the street everything is underground. You know, our neighbors, we comment back and forth, well, they say, you're better off because they don't have to dig up on your side. Well, you're better off because you don't have ice and snow that freezes on your lines, you know. So I'm not sure who is better off here, but I kind of feel like that's to our advantage, that our utilities are above ground so nothing has to be dug. The only one that would be would be the sewer. The sewer is in front of our house. It's actually in the middle of our house. Nowhere near where the carport is. So that would be the only one if anything should ever happen as far as anything needing to be dug or anything of that nature, the sewer would be the only one, and that's very accessible because it's in the middle of the front of our house.

MR. HOWARD: A question I would have is, I know this would not be desirable, is it possible for the carport, if it were to be relocated on the lot, would it be possible to relocate it to the rear of the home so that you wouldn't have, you would be to the rear of his house, Mr. Hendrix's house, and your house for that matter, and the 10-foot separation wouldn't be an issue there.
MRS. FULKS: That would not be possible only because on our property on the backside we have the misfortune of having a large ditch that runs down behind our property that takes up a good portion of our backyard. That is between us and Mr. McBrayer, who is the property owner behind us. There is a large ditch that goes down through there. I've actually encountered a battle with the county on this in the past. When we first moved there, we were told that it was a county ditch because there are weeds and things that grow up in that ditch. It's actually, it's quite a nuisance with mosquitos and things of that nature because water stands in that ditch continuously. I had contacted them to see if they could come and clean that ditch out. Well, they did that on two different occasions, and then they didn't come out any more. Maybe I dropped the ball and didn't continue to ask them to come to do it so they never came back out. Well, about a year and a half or two years ago I contacted them again and asked them, because it's starting to wash up into our yard. So we're losing part of our property to that ditch. Because all of the water that comes down through that ditch comes off of the hill where Old Mill Subdivision is; because Old Mill water drains into the ditch behind our property.
The county then told me that it was none of their concern because the property, the ditch was on our property. So therefore it was our deal to take care of it. So that eliminates us from being able to put it in the rear of the property. There's just simply no room there to put it.

Mr. Hendrix, as I said, he did state to us that he has no intentions of ever building on that little strip of property there. I would be more than happy to get that in writing from him to present to you. I wish that we had had him come down here now because they did offer to because they don't want to have to do anything with it. They said it's a very nice building or carport. Not building. It's not a building. It is very nice and very attractive. As I said, we chose the colors to match our home so that it would be enticing to the neighborhood and not devalue the neighborhood or be an eyesore or make anything look bad in the neighborhood because we don't want that. We know we don't want anything like that, surely the neighbors don't want anything like that either. They don't want us to have to do anything either. They offered to come with us, but we felt with the letter, the signed letter, that we wouldn't need them to be here. I can certainly get something
in writing from them, if that would suffice what you need.

CHAIRMAN: Thank you.

Is there anybody that you have with you that you want to add anything?

MRS. FULKS: The only other person that's here would be Mr. Simmons whose filed our application for us. I don't know if there's anything that he has to add.

CHAIRMAN: Do you have anything to add, Mr. Simmons?

MR. SIMMONS: No, ma'am.

CHAIRMAN: Board members, how are we going to deal with this?

MS. MASON: Should we postpone it to get in writing what she's talking about and then the easement from the utilities?

MR. HOWARD: I think right now, yes, the best course of action is postponement. We're trying to figure out a solution here tonight, and it's not happening. We don't have enough information to make that happen.

CHAIRMAN: We're trying to help you.

MRS. FULKS: If there's anything you can ask think of to help me, I'll certainly answer, if I can.
MR. HOWARD: At the end of the day for you all to be able to approve a variance we need, one, approval from the utilities to be located in that public utility easement, that's done through a utility encroachment permit.

Two, based on the building codes that we cannot alter locally, there has to be from the wall edge of the carport to Mr. Hendrix's house 10 feet. So if there's a way to make that happen, then you all could, it would be clearer than for you all -- the path would be open for you all to recommend a variance to reduce that side yard setback, but we need the 10 feet and we need that public utility easement taken care of.

MR. REEVES: Can you get 10 feet without Mr. Hendrix having to tear off part of his house?

MR. HOWARD: That's the question. They said that they don't want to alter it. The question I would have is: Is it possible? I know it's not desirable, but to keep it there, you said it was 6 point something feet.

MRS. FULKS: I think it's about six and a half foot, I believe.

MR. HOWARD: So you need three and a half feet. Is there a possible way to move that side
barrier, whatever would have to be done to modify it, scoot that over three and a half feet. I know it's not desirable.

MRS. FULKS: Well, it's not possible to scoot it over three and a half feet. You're saying closer to the house?

MR. HOWARD: Could someone that knows what they're doing reengineer that structure, take that side wall and basically, and I'm not a building guy so forgive me. You know, scoot that end three and a half feet so that that wall would meet the 10-foot spacing requirement. That would require work and reconfiguration and all of that. At the end of the day, this board couldn't issue a variance for anything less than a 10-foot separation between Mr. Hendrix's house and the side wall of the carport. It sounds like they want it to. They want to figure out a way to make this work, but they can't vary from the building code which is adopted at the state level. We just don't have the authority to do that here.

MRS. FULKS: So what do we need to do then? As I said, I can get the letter from Mr. Hendrix stating that he has no intentions of building anything, but then what else do I need to do?

MR. HOWARD: One would be --
MRS. FULKS: To be able to keep it like it is.

Is there any way to be able to keep it like it is?

MR. HOWARD: That's what I'm trying to see, and I don't see it. That's why I was asking. If you could go to the rear of the house, you can meet the 10 foot from Mr. Hendrix's house.

MRS. FULKS: Now, if you'll notice in that picture, if you'll notice in that picture there is a privacy fence there. That privacy fence actually belongs to Mr. Hendrix.

MR. HOWARD: The back line of his house is basically in line with the back line of your house.

MRS. FULKS: Yes.

MR. HOWARD: I was looking to see if there's a way that, you know -- I don't know. I'm not seeing it based on this.

MRS. FULKS: So there you have the issue as far as utilities. That fence is there. Now, that actually -- utilities, if were necessary to get through there, as I said there are none, but if they need to get through there could get through our carport because it's open and unenclosed, but they wouldn't be able to get past that fence. I don't know how that would be -- you see what I'm saying?

MR. HOWARD: Yes. The utilities have the
ability, if something is located in their easement and
they need to get in, they'll remove that fence and
then it will be up to the property owner to replace
it. They're not going to replace it. It's in their
easement. The land is reserved for their right.

MS. KNIGHT: I would also point out that the
utility encroachment permit process we were referring
to was just recently adopted. So I'm sure that fence
has been there for --

MRS. FULKS: It's been there for many years,
yes.

MR. HOWARD: The biggest issue that I see is
not permit or Mr. Hendrix agreeing to allow that
space. It's how do we get 10 feet between the wall of
your carport to the wall of your house. Where I was
going to awhile ago, if it were me, I would -- you've
talked a lot of carport people. Talk to them and see
if there's a way to do that. I don't know.

MRS. FULKS: The only thing I know or the only
way I would know would be to downsize the carport. As
I stated, if we are to have to do that, of course, we
do lose our warranty that we got with the carport when
we purchased it, which would really stink.

MR. REEVES: You may lose your warranty, but
you may also need to call your lawyer to have a
conversation with the people that sold you the thing. They gave you some misinformation that they should have known. To reconfigure this carport basically means taking it down and buy a new one. They're not going to reconfigure it.

MRS. FULKS: That's what I was saying. The company doesn't do modifications. So that means we have to get someone else to redo it for us.

MR. REEVES: Everything is pre-engineered when it comes in. You're not going to modify it.

MRS. FULKS: Well, what we would have to do, if I understand correctly, we would have to order new trusses, shorter trusses in length, which would downsize the carport.

MR. HOWARD: At the end of the day what you really need, what you needed is an 18-foot carport instead of a 22.

MRS. FULKS: Well, we can get a 20 foot is the next size down from a 22.

MR. HOWARD: From his house to the property line is only six and a half feet. You're only going to gain two feet here. You're still going to be a foot and a half short. I don't know if they make an 18 foot.

MRS. FULKS: They do. They do make an 18, I
believe.

MR. HOWARD: And 18 would allow this board
to -- you're still going to be in that utility
easement so you're still going to have to get the
approval there, but that would eliminate Mr. Hendrix
really from -- but it would allow this board to act on
it because you had ten feet from his house to your
carport, if you get an 18 footer. I don't know.
Again, I'm just going off the cuff here.

Do you all have any ideas or suggestions?

MR. REEVES: If could be longer. You would
have to front to back instead of side by side.

MRS. FULKS: Well, if we have to take it down
to an 18 foot, currently the way it is right now at 22
foot there is just enough room between the motor home
and the golf cart and trailer to be able to get our
garbage totes down between them to take around to the
curb for the garbage to pick up. If we move it in any
closer, we're not going to have any way to get --
unless we go around on the outside, I guess. If we
move it in, then we would be going around the outside.
That's the way it's set up right now. We have just

enough room to be able to get it down through there.

It sounds like apparently we're going to have
to do something to decrease the size of it. I guess
my question to you would be then, we have been told by Planning and Zoning that once the decision is made we have 30 days to get this issue corrected, and I think you all know as well as we do that's certainly not possible to get done in 30 days, especially this time of year going into the winter months.

MR. HOWARD: That's why, as I said earlier, I would recommend that this be postponed for now. It's still on the table.

Mrs. Evans, one of our staff members, looks like she has an idea.

MS. EVANS: I have a little piece of information. The site plan, as you can see, shows a little bit of space between that house and that carport there running between the two.

MRS. FULKS: There's like about two foot down through there.

MS. EVANS: I just asked Mr. Simmons and he said there is a little over a foot. That's not mentioned on the site plan, but there is a little over a foot. So potentially --

MR. HOWARD: A 20 footer might work is what you're saying.

MS. EVANS: There is a foot there to work with that you could move it a little bit closer to the
MRS. FULKS: Yes, there is that, and I will explain the reason I said there wasn't. Because the contractor who put it up for us said that law required them to leave it that distance from our house because when the wind would blow and everything the carport, you know, would do this and it will rub against the side of the home. So they said they were required to put it that distance from the home. So that's the reason for that.

MR. HOWARD: Let me ask Matt Warren a question real quick, if I could.

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

MR. WARREN: Mathew Warren.

(MATHEW WARREN SWORN BY ATTORNEY.)

MR. HOWARD: Just going off the fly here. If there is a foot separation there, could they, again, we've got to figure out how to get down to the 10 feet separation. If they scooted over a foot, can it be so that there's not an issue with wobble or whatever?

Could it be physically attached to the house?

MR. WARREN: Yes. There's nothing prohibiting the column of the carport being structurally bolted to the side of house.
MR. REEVES: Mine is, Mr. Howard.

MR. HOWARD: So that would eliminate any of the movement issues.

MRS. FULKS: The overhang on the house would stop that because we have an overhang on our house. So we cannot go against the side of the house because of the overhang on the house.

I apologize, Matt, I didn't know you were Matt. Nice to meet you. I've talked to Matt a few times on the phone. I didn't know it was you.

MR. HOWARD: I'm really trying. We're not going to solve it tonight. I think you all need to postpone it. That way figure out ten feet. At the end of the day we've got to get ten feet.

MR. REEVES: Madam Chairman, are you ready for a motion?

CHAIRMAN: I sure do.

MR. HOWARD: It looks like we may have a quick question.

MR. JEAN: I have a question. Would it be better to postpone it or for her to withdraw?

MR. HOWARD: If you withdraw it, they have to pay to resubmit it. We don't want them to do that.

CHAIRMAN: Mr. Reeves, are you ready?

MR. REEVES: Motion to postpone this
application.

MR. JEAN: Second.

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

MRS. FULKS: I have a question, please. If this is going to be postponed, do we have a time frame of when we need to do what we need to do to get whatever you need from us or when will this be postponed to, I guess? Do I need to contact the utility company and get something from them? What do I need to do?

MS. KNIGHT: It will be postpone until the January meeting.

MR. HOWARD: Which is the 4th.

MRS. FULKS: January 4th. Okay. Will we need to come back down here on January 4th then?

MR. HOWARD: Yes.

MRS. FULKS: And what do I need to bring with me? I need to bring a letter from Mr. Hendrix.

MR. HOWARD: More so than anything else from Mr. Hendrix at this point, you need to figure out a way to get 10 feet. That's the overall arching paramount issue, we've got to have ten feet. If you can figure out a way to, and they're talking to Joe. I don't know. If we can figure out a way to get ten
feet, then we'll worry, and this can be postponed again next month if you've got part of it and not the rest of it. If we can figure out 10 feet, then we would move on to encroachment permit for the utility easement, and likely a plat of some sort that shows, if you don't have the five on your side, Mr. Hendrix signs a recorded plat document that says that there is a no-build zone on his lot. Those are two and three, but number one, the big one, is we've got to come up with ten foot.

MS. EVANS: Also --

MS. KNIGHT: Let me swear you in, Ms. Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

MS. EVANS: We just spoke with Mr. Simmons also, and he is going to do -- I know you said you don't think that there's room for the carport to be moved to the rear of the house, but Mr. Simmons is willing to go out there and maybe figure out where the ditch is and where the bank is and take some measurements to see, actually real life measurements to see if it could potentially be moved back. It looks like you have the room with Mr. Hendrix's house, if you could get this behind your house.

So Mr. Simmons going to get some measures to you all and to us both to see if there's a way to make
it work without modifying it, but just moving it behind your house.

MRS. FULKS: There are also some other structures that are back there as well that would have to be taken down in order to do that, behind our house.

MRS. EVANS: We're just talking about moving it straight back.

MRS. FULKS: Oh, you're talking about moving it where it is but just straight back?

MRS. EVANS: Right.

CHAIRMAN: We have a motion on the table.

MRS. FULKS: It looks like based on what we're coming up with here, what we're going to have to do is probably go down to an 18 foot structure is what it's looking like because I don't think there's going to be a way -- if we're moving it back, it's 36 foot in length and there's not 36 foot back there.

MR. HOWARD: If Joe can do some quick measures.

MRS. FULKS: That's fine for him to come and do that. That's perfectly okay. I don't think it will work, but we'll have to wait and see. Just let him check.

I guess my question to you is: If it's not
able to do that and we have to go down to 18 foot,
then what kind of time frame do we have there as far
as getting that corrected, because obviously this time
of year, first off, we have to order the trusses and
things to do it with and we have no control over how
long it takes to get those in.

MR. HOWARD: We can work with you on that.
That's not a big deal. If we can figure out the 10
feet, then that's the big deal. As Staff and you guys
and Joe, we can talk. Again, we're not going to solve
it right here right now.
Postpone it for tonight and we'll meet back
next month and we can certainly have the conversations
in the office or whatever and see where we can end up.
We're trying.

CHAIRMAN: We have a motion on the floor and a
second. Any question on the motion?
(NO RESPONSE)
CHAIRMAN: All in favor of the motion to
postpone raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries.
One more motion.
MR. GLENN: Motion to adjourn.
MS. MASON: Second.
CHAIRMAN: 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, LYNETTE KOLLER FUCHS, Notary Public in and
for the State of Kentucky at Large, do hereby certify
that the foregoing Owensboro Metropolitan Board of
Adjustment meeting was held at the time and place as
stated in the caption to the foregoing proceedings;
that each person commenting on issues under discussion
were duly sworn before testifying; that the Board
members present were as stated in the caption; that
said proceedings were taken by me in stenotype and
electronically recorded and was thereafter, by me,
accurately and correctly transcribed into the
foregoing 91 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the
3rd day of January, 2018.

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

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

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