The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, January 4, 2018, 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

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

CHAIRMAN: We will call the January 4, 2018 Owensboro Metropolitan Board of Adjustment to order. The first thing we're going to do is to have the prayer and pledge.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: First item on the agenda is the election of officers. At this point I'll turn it over to Ms. Knight.

MS. KNIGHT: Thank you, Madam Chair.

As you all know, we have election each year. We always do it in January. It is required by KRS and by our bylaws. We have the following officers:
Chairman, vice chairman and secretary/treasurer; so we will take the nominations and elect in that order.

At this time I will open the floor for nominations for Chair.

MR. REEVES: I nominate Judy Dixon.

MR. YEISER: Second.

MS. KNIGHT: Ms. Dixon, do you accept the nomination?

MS. DIXON: I do.

MS. KNIGHT: Any other nominations?

(NO RESPONSE)

MS. KNIGHT: There being none I will close the floor and we will have a vote. All in favor of Ms. Dixon as chair, please raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MS. KNIGHT: Congratulations.

CHAIRMAN: Thank you.

MS. KNIGHT: We will open the floor for nomination for vice chairman.

MR. YEISER: I nominate Robynn Clark.

MR. REEVES: Second.

CHAIRMAN: Ms. Clark, do you accept the nominations?

MS. CLARK: I do.

MR. KNIGHT: Are there any other nominations?
(NO RESPONSE)

MS. KNIGHT: Hearing none I will close the floor and we will have a vote. All in favor of Ms. Clark as vice chair please raise your right hand.  

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MS. KNIGHT: Congratulations.

Now secretary/treasurer. Nominations for that position.

MR. GLENN: I nominate Ruth Ann Mason.

MS. KNIGHT: Is there a second?

MS. CLARK: Second.

MS. KNIGHT: Ms. Mason, do you accept that nomination?

MS. MASON: I do.

MS. KNIGHT: Any other nominations?

(NO RESPONSE)

MS. KNIGHT: Hearing none I will close the floor and we will have a vote. All in favor of Ms. Mason as secretary/treasurer please raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MS. KNIGHT: Good deal.

Madam Chair, I turn it back over to you.

CHAIRMAN: Next item on the agenda is to consider the minutes of the December 7, 2017 meeting.
All members have been mailed a copy or received it one way or the other. So at this time I'll entertain a motion to dispose of this item.

MS. MASON: Move for approval of the minutes.

CHAIRMAN: Move for approval by Ms. Mason.

MR. JEAN: Second.

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

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

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

VARIANCE

ITEM 3

3485 Millers Fall Circle, zoned R-1C (postponed from December 7, 2017)
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. HOWARD: At the meeting last month there was a lot of discussion. I know the applicants is here tonight. There was a lot of discussion about what could happen. The Staff talked about the fact that the building code requires the 10-foot separation

Ohio Valley Reporting
(270) 683-7383
and all of that. We batted around a lot of ideas. I know that Trey from our Staff has talked with the applicant in the meantime and I know their surveyor, Joe Simmons, was in the office today or yesterday and talked to him. Of course, they can clarify. We've gotten the impression there may be a request for a postponement again maybe to allow some additional time to work things out.

If you all want to address that, that would be great.

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

MS. FULKS: Dianna Fulks.

(DIANNA FULKS SWORN BY ATTORNEY.)

MS. FULKS: I don't really think that there's a need for a request to carry over. We have come to a decision of, I guess, a suggestion of how we can resolve the issue.

We did receive a call from Trey from Planning and Zoning on December 20th inquiring as to what our intentions were to correct this issue. Since our meeting on December 7, 13 days earlier prior to that, we've been working very diligently trying to find someone who could modify our carport from the 22 foot width down to the 18 foot width. After contacting
numerous contractors to no avail, we were unable to
find any contractors who could do that type of thing.
They said that was not something that they would be
able to do. We were able to find one person who did
tell us that he thought he could possibly do it for
us. He gave us an estimate to do that; however, he
said that he could give us no guarantees because it
was not something he had ever done before. He gave us
an estimate of $3,600. This is a huge risk for such a
large sum of money. We are both retired and senior
citizens. Like many others we do live on a fixed
income. We feel that this would be too risky for us
to attempt to do this with no guarantees that he would
be able to get it done properly. So what we've
decided to do, we did call and get a price to replace
the current structure that we have with an 18 foot
carport from the same company that we got the current
structure from. We found that it would be less
expensive to go this route. Unfortunately, they will
not allow us any money for the current structure; nor
will they give us any discount towards a new one. So
we're basically just going to loose $5,660 that we've
already spent on the current structure.

As you can see, this is going to be quite
costly to us and a great inconvenience. We do feel
this is very unfair to us, but apparently we have no
choice in the matter but to make the necessary
changes. So to correct the situation we will be
ordering another carport from the same company to
replace the one that we have now. We will not be able
to do this however until January 15th as the
dealership is currently closed until then for the
holidays. Once we place the order with the dealer, it
will be out of our hands as to how soon it will get
done. The dealer will send the order to the company
and we will have to wait for them to contact us with a
delivery date of when they can make the delivery on
the carport. The last time on our current carport it
took two months. We ordered it in June; they didn't
get there and put it up until August.

At this point we won't have any idea when that
it will be done once we order it. As I said, it will
be out of our hands at that point.

We would ask and hope that, as we were told at
the last meeting, that the board members and Planning
and Zoning would work with us, be patient and grant us
leniency until we can get this corrected.

If possible, we would like to ask for a
contact person to keep in touch with as we know more.
I will, as I did before, stay on top of this and keep

Ohio Valley Reporting
(270) 683-7383
in touch, keep constant contact with the company to try and speed up this process. The last time I called them on a weekly basis for any updates to see if they could tell me more about when they would be making our delivery. I will be glad to pass this on to that contact person as I get those updates.

We are making every effort to get this resolved, but as you can see, we do not have full control over the situation.

We do apologize for the delay, but this seems to be the only way that we can get this fixed that we can feasibly afford to do. This is a bad time of year, as you all know, being winter and all, but we hope that you can see we are making every effort to try and get resolved. We hope this is acceptable to everyone involved and ask that you will please be patient with us while we work and trying to put this to rest.

CHAIRMAN: Ms. Fulks, we appreciate your cooperation and efforts and hope you realize that our hands are tied in this too.

Mr. Howard, I'm sure you don't have a problem.

MR. HOWARD: No, we don't have a problem. You know, Trey can be our contact. We can put it down on our calendar and check back in in May or something.
That's not a big deal. We can work with you and give you whatever time you need.

MS. FULKS: As long as we can have the time because, like I said, once we make -- we're going to be losing $5,660 anyway because they're not going to give us anything for the carport that we have. The only option to have would be to try, once we get it taken down, to maybe try and find someone that might buy it from us. With any luck, maybe we can and recoup a little bit of the cost. If not, then we've just lost that money. Once we do make the order, place the order, then we have to go with the dealer to let him send the order in and then we're just at their mercy to wait on them to contact us and let us know when they'll be back in the area to do the switch out, take the old one down and put the new one up.

MR. HOWARD: That's not a big deal.

MS. FULKS: We just want to make sure that we're going to be allowed the time and not be pressured or anything like that because we don't have any control over it.

CHAIRMAN: Certainly.

MR. HOWARD: If you want to give Trey updates, that's fine. We won't bug you. If we haven't heard from you by May sometime, we may give you a call, but
otherwise, you can give us updates whenever. We'll 
work with you. It's not a big deal.

MS. FULKS: As I said, the last time when we 
placed the order, I called them diligently every week. 
I said, you know, they have a scheduling department 
and their scheduling department schedules the 
deliveries, when they're going to be able to be in the 
area, if they're even in the state. They may not even 
be in our state, in the State of Kentucky for a month 
or two or three or whatever. But they have a delivery 
department or scheduling department and they schedule 
whenever they're going to be in the area, and then 
they contact us and let us know. At that time, once 
we know that, then I can call Trey, if that be the 
contact. I can call you and keep you updated. As I 
said, I'll check with them every week, just like I did 
before, and try to speed up the process.

Also, when we order this, I will also ask the 
dealer if he will please put in a request that this is 
a Planning and Zoning issue and that we would like for 
him to try and put it to the top of the list, if they 
can at all possibly do that. That way we can try and 
just speed this along, get it done and be done with 
it.

CHAIRMAN: Thank you.
MR. HOWARD: That sounds good.

I think from this board's perspective, all we need from you tonight then is a request to withdraw this application, and you can do that verbally. Then it will be withdrawn. Because what you're going to do will meet the setback requirements, and then we can coordinate with Trey and move on and no big deal.

MS. FULKS: Are there any other issues other than the width, before we go and invest any more money? Are there any other issues, other than the width, that we need to --

MR. HOWARD: The only other thing, and we talked about a little bit last week, there's that 6 foot side yard easement and there's that utility encroachment permit will need to be granted, but you've got plenty of time and we can help walk you through that process too.

To my knowledge, Staff, anything else that you all are aware of or can think of?

MS. EVANS: No.

MR. HOWARD: I don't know of anything so that would be it.

MS. FULKS: Didn't we say last time, didn't we agree that the 18 foot would give that room that was needed?
MR. HOWARD: If you're outside that 6 foot -- there were two things that we were talking about last week. One was the 10-foot separation between structures. Then the other is that platted 6-foot public utility easement. If you're outside of that, you don't need the utility encroachment permit either. If you're inside that at all, you would need to get that.

I guess we need to maybe get some kind of drawing or something just to show how wide that thing is going to be. Will it be in that easement; and if it's not, then you'll be fine there. If it is, then we can help you through that process.

MS. FULKS: There will be a total of 10 foot between the neighbor's house and the side of our. When we move it back to the 18 foot, there will be a 10 foot easement in there.

MR. HOWARD: That's great. So that satisfies that. You won't need the variance for that. The only thing you would need is that 6-foot public utility easement is from the property line over into your lot. If you're going to be in that at all, that's what you need, a utility encroachment permit for.

Maybe Ms. Evans has a comment to make.

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

MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

MS. EVANS: I wanted to point out; looking at the site plan, the current structure is 22-feet wide and they're asking for a .4 foot variance. If they're only going down to an 18-foot wide carport, that's only 4 feet. So that still doesn't meet the 5 yard required setback.

MR. HOWARD: There is a gap between the current structure and your house, correct?

MS. FULKS: Okay. And referring back to the last meeting. We brought pictures in showing where that we measured from the neighbor's house over to where the edge of the carport is now, and there was a 6 foot measurement, which it should be on record. There was a picture showing there was 6 foot there. So that should mean that we would only need another 4 feet to make that 10 foot.

MR. HOWARD: That's true. Again, there are two things we're talking about. There's the 10 foot separation between structures, and then the setback and that utility easement on your property. At the end of the day, I know you all, you've had Joe Simmons do work. If he could just put together a real simple
drawing that will show where your house is, where the property line is, where that 6 foot public utility easement is, how wide that structure is, then that would satisfy everything and we can make sure that we're moving in the right direction there. For that matter, if we want to wait and postpone this tonight until that can be prepared, I'm fine with that.

In theory, what Melissa is talking about, in theory if it's not -- maybe they need to go down to 4 feet 4 inches or whatever it is instead of 5, if the variance is still active, you all could take action to approve that while still meeting that 10 foot separation. Maybe tonight, I'm thinking tonight may be best to postpone and then work with Joe Simmons, talk with Trey, and Trey can help you through this as well. We probably need some kind of drawing from Joe Simmons to show all those dimensions and then we can figure out the game plan from there. Do we need to keep this variance active and actually request that the board grant something next month, and then we'll know something about that public utility easement as well.

I think from Staff perspective, I would say postpone it again tonight, work with Joe and Trey and we'll come up, you know, we need some kind of drawing.
Then we'll know exactly what you need to do and give you the guidance from there.

MS. FULKS: Okay. So, Trey, will you be contacting Joe then and letting him know exactly what we're needing? That way we'll know that he's got, that we're getting exactly correct what we need in case we're not sure and we don't get the right thing. Once we order this, we have to pay a 10 percent deposit before they even order it, and that's nonrefundable. You know, we want to make sure.

MR. HOWARD: I would say, yes, let's not do anything today. Of course, you said you can't order until the 15th. We talk to Joe every day so we'll talk with him and make sure he knows what he needs to measure. Of course, he'll have to coordinate that with you and do all of that stuff on your end. We can have that conversation too. Just so he knows from this board and Staff perspective what needs to be measuring for. Yes, we can do that.

I would recommend, and you all as a board tonight let's postpone this. Then next month we'll either withdraw it and move on or potentially grant a much smaller variance than the one initially requested.

CHAIRMAN: We need a motion to postpone.
MR. HOWARD: Yes, a motion to postpone.

MS. FULKS: In doing that then, we won't be required to pay for another application?

MR. HOWARD: That's correct. That's what I'm trying to do. If you withdrew it tonight and then we found out that you need it, you would have to do another one and I'm trying to keep that from happening.

MS. FULKS: Thank you. We appreciate it.

CHAIRMAN: Do we have a motion to postpone?

MR. JEAN: Motion to postpone.

CHAIRMAN: We have a motion to postpone from Mr. Jean.

MS. MASON: Second.

CHAIRMAN: Second by Ms. Mason. 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.

MR. REEVES: The structure you have right now is a very valuable sellable structure. I'd suggest, maybe some farmer might be thrilled to death to pay you a pretty good amount for that and just come take
it apart. I would put it Facebook. I'd try to sell it because everything you have there has a value to it, and you should recover everything. Quite candidly, the dealer ought to help you do that because they've already led you astray one time.

MS. MASON: My parents were members, had a motor home and members of a motor home club and a lot of people had those. So you might check with some of the motor home clubs in Kentucky and see.

MS. FULKS: Thank you.

MR. HOWARD: Thank you.

ITEM 4

1805 West Parrish Avenue, zoned B-4
Consider a request for a Variance in order to reduce the front building setback line from 75 feet from the centerline of West Parrish Avenue of 51 feet from the centerline of West Parrish Avenue and to reduce the roadway buffer from 60 feet from the centerline of West Parrish Avenue of 51 feet from the centerline of West Parrish Avenue
References: Zoning Ordinance, Article 8, Section 8.5.16c and Article 13.6221
Applicant: West Parrish Plaza, LLC

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

MR. PEDLEY: Trey Pedley.

(TREY PEDLEY SWORN BY ATTORNEY.)

MR. PEDLEY: The subject property is zoned B-4 General Business and is a vacant corner lot located at the intersection of West Parrish Avenue and
Independence Avenue with road frontage and building setback on three sides.

The largest of these setbacks is along West Parrish Avenue where a building setback is 75 feet and roadway buffer is 60 feet, each from the centerline of the road are required.

The applicant proposes to construct a 3,600 square foot building with 5 parking spaces on the subject property. In order to do so, the applicant has requested a variance to reduce the front building setback and the roadway buffer each to 51 feet from the centerline of West Parrish Avenue.

The subject property is located in an area that was developed prior to the zoning ordinance. All properties spanning from 1807 West Parrish Avenue to 1903 West Parrish Avenue appear to have structures that encroach into both required building setback and when applicable the required roadway buffer.

Granting this variance 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 existing structures on neighboring lots that encroach into the front yard building setback and into the required roadway buffer.
as a result from structures that predate the Zoning
Ordinance.

Staff recommends approval under the conditions
that a site plan or final development plan must be
approved and 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
the record as Exhibit A.

CHAIRMAN: Is there someone here representing
the applicant?

MR. KAMUF: Charles Kamuf representing the
applicant.

I agree with the findings. I'm here to answer
any questions that anybody would have.

CHAIRMAN: Thank you.

Is there anyone here wishing to speak in
opposition to this item?

(NO RESPONSE)

CHAIRMAN: Any member of the commission have a
question?

(NO RESPONSE)

CHAIRMAN: If not, I'll entertain a motion to
dispose of this item.

MR. GLENN: I make a motion to approve the
variance based on the two conditions that are stated there.

MR. HOWARD: Including the findings of fact in the Staff Report?

MR. GLENN: I'm sorry, yes. And including the four Findings of Fact.

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

MS. MASON: Second.

CHAIRMAN: Second by Ms. Mason. 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.

Next item.

ITEM 5

501 & 701 Reid Road, zoned I-1
Consider a request for a Variance in order to eliminate the required vehicular use area screening element of one tree per 40 linear feet of vehicle use area along the Reid Road frontage.
Reference: Zoning Ordinance, Article 17.312
Applicant: Jonathon A. & Janice F. Lawson

MR. PEDLEY: Because this is a recommendation for denial, the entire Staff Report will be read into the record.
SPECIAL CIRCUMSTANCES? Are there special circumstances that do not generally apply to the land in the generally vicinity, or in the same zone? No.

The subject properties form a contiguous 10.733 acre site near the Highway 144 and Reid Road intersection across from the Town and Country Trailer Park. The properties are zoned I-1 Light Industrial and the applicant intends to demolish the existing structure and develop storage unit facilities on the site. The proposed operation is located on a large, open site that is believed to be a buildable lot due to the flatness of the land and distance away from the floodplain.

The site plan submitted illustrates that the applicant wishes to limit the current development of the facilities to the southern portion of the properties where the tract are most narrow. With the current configuration of the site plan, the vehicular use area runs parallel with the public right-of-way. Article 17.312 of the zoning ordinance states that when any public or private right-of-way adjoins any vehicular use area, a three feet wide landscape easement shall be located along that portion of the vehicular use area. Within the landscape easement, the ordinance calls for screening requirements
consisting of a continuous element a minimum of 3 feet in height, and one tree per 40 linear feet of the vehicular use area along the right-of-way. The trees do not have to be equally spaced, but may be grouped.

The site plan submitted shows a Big Rivers Electric Corporation easement running along the property line that adjoins the Reid Road right-of-way, which includes the location of the required landscape easement. The applicant states that the Big Rivers Electric Corporation will allow the three foot tall continuous element to be installed within their easement, but will not allow any trees. And so, the applicant is requesting a variance to eliminate the required vehicular use area screening element of one tree per 40 feet of vehicular use area along the Reid Road frontage.

Granting the variance to eliminate the required vehicular use area screening element of one tree per 40 linear feet of vehicular use area along the Reid Road frontage will alter the essential character of the general vicinity as other commercial properties in the area have been required to meet the screening requirements; will cause a hazard or nuisance to the area as a Mobile Home Park zoning classification is across Reid Road and so proper
screening is necessary; and will be an unreasonable circumvention of the requirements of the zoning ordinance because it is possible for the site plan to be reconfigured in a way to allow the site to be developed without the need for a variance.

HARDSHIP? Would strict application of the regulations deprived 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 can reorganize their site plan in a way that would not require the variance request. The property is large and buildable, and so the facilities can be shifted further north on the site where the property is less narrow and the design can allow the required VUA screening to be out of the Big Rivers Electric Corporation easement.

APPLICANT'S ACTIONS? Are the circumstances from which relief is sought a result of the applicant's actions taken after the adoption of the zoning regulation? No.

IF YES: WILLFUL ACTIONS? Did the applicant take willful actions in the violation of the zoning regulation? If so, the board shall deny the variance.

FINDINGS:
1. Granting this Variance may adversely affect the public health, safety or welfare because although the parking spaces are directed away from the public right-of-way, car lights still may shine onto the highly trafficked road.

2. Granting this Variance will alter the essential character of the general vicinity because other commercial properties in the area have been required to meet the screening requirements.

3. Granting this Variance will cause a hazard or nuisance to the public because a Mobile Home Park zoning is across the street.

4. Granting this Variance will allow an unreasonable circumvention of the requirements of the zoning regulations because it is possible for the site plan to be reconfigured differently to negate the need for a variance.

Staff recommendation: Denial.

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

CHAIRMAN: Thank you, Mr. Pedley.

Anyone here wishing to speak on behalf of this application?

MR. STARNES: I am Mark Starnes. I'm attorney for Mr. and Mrs. Lawson. This application was
prepared by Mr. Jim Riney. I think the report of the Planning Staff does a good job of explaining some of the background of this property.

MS. KNIGHT: Mr. Starnes, first of all, you're sworn as an attorney. The second, do you mind to speak up.

MR. STARNES: As was mentioned, the plan for this property, which right now is undeveloped property, is to at this point install six commercial storage unit facility on the property. They'll be well-designed, well-constructed. There will be five parking spaces, which are maybe hard to see on that particular plan.

Mr. Riney is going to indicate where those parking spaces will be located.

MS. KNIGHT: State your name for the record.

MR. RINEY: Jim Riney.

(JIM RINEY SWORN BY ATTORNEY.)

MR. RINEY: There is five spaces that will pull into the proposed building.

MR. STARNES: And then where are the ingress/egress?

MR. RINEY: Ingress/egress would be in this area. The spaces are just immediately off the ingress/egress, right at the end of the proposed
MR. STARNES: As the report correctly, the Planning Staff reports correctly stated, this variance request is limited solely to the one tree per 40 linear feet along the vehicle use area on the Reid Road side of the property and only to this portion of the property that is being developed. You will see actually there is more land there. We're not asking for a variance with respect to that portion of the land. We just don't know what's going to be done with the rest of the property, as far as development goes at this point.

This is arising from some unique circumstances, and that is that we've got this large Big Rivers Electric Corporation power line easement that is 50 feet wide. As you will see, it runs directly along the southwestern portion of the property along Reid Road. It is exactly within that 50-foot easement in which the 3-foot landscape easement that is required would be placed. We have every intention of putting trees, complying with the ordinance, but we've run into a situation that is entirely beyond our control, and that is that Big Rivers for what they say are safety reasons will not allow trees of any type within their easement. We
offered to put in shorter trees, trees that would not
grow, but got a flat refusal of no. It's their policy
or at least at the time it's their policy, we are not
going to allow trees within our easement.

The plan shows that the property is going to
contain the continuous 3-foot elements all along the
vehicular use area on Reid Road. So it will have that
portion of the green screening elements. Trees will
be placed on the northeast side of the property along
Highway 60 at the correct distance and number.

Of course, as the board is aware and very
familiar, the four criteria that need to be considered
in connection with the variance application. Not
withstanding the Staff Report, we do believe the
application satisfies this criteria and should be
approved. I will attempt to address each briefly in
turn, and please stop me if there's questions as I go
along.

First of all, that the requested variance,
whether it would or would not impact the public
health, safety or welfare in an adverse way. We
certainly don't see how that would be the case.

Initially we note that Big Rivers purportedly
does not allow those trees, it would not allow us to
comply with the ordinance by putting trees within the
landscape easement for public safety and welfare reasons. I'm sure they don't want trees growing into power lines. They have run into problems with that.

We think that the screening purpose of the ordinance is satisfied for all intents and purposes with the 3-foot continuous elements that will be placed along the Reid Road side of the property. One of the reasons being the mobile home park on the other side of Reid Road and this property have the same elevation. Nominal difference, if any. That headlights, as we know, typically are not above 3 feet. We're not going to have coal trucks or 18-wheelers down at the storage facilities. So any danger or harm from car lights that may be within the storage unit area would be sufficiently screened by the 3 foot high continuous element.

We further think that the design of the parking spaces, those five spaces that Mr. Riney showed you, they face away from Reid Road forcing cars to parked in the opposite direction. Lights won't shine on Reid Road.

So I don't think that this variance request in any way creates a danger or adds to an existing danger, and would note that the mobile home park across the street has no landscape screening element.
Not that it has to, but it has none. It is much more heavily traffic used than this property would be, just by the nature of sight size and the number of people that live there. There is no real, apparently no danger from lights coming from that area onto Reid Road more commonly because there's no landscape element to shield those. We will have the continuous 3-foot element that will do that.

We do have pictures of the mobile home park to indicate the lack of the landscape screening there.

Jim just corrected me. There will be vehicle use areas adjoining that public road on the mobile home park side.

To summarize that, the variance, we don't see in any way, shape or form would lead to adverse impact on the public health, safety or welfare.

With regard to the second criteria as to whether the variance alters the essential character of the general vicinity, we would claim that it does not. That the area largely rural. It's large undeveloped. There are only a few properties within the area of the vicinity that are zoned for commercial purposes. One of those is a lot, an existing lot that has storage units on it, which is just to the south of the existing mobile home park.
There is also at the northern end of the mobile home park a small portion that is zoned I believe B-4 for general business, and that houses an office for the mobile home park and so forth. Neither one of those properties have any landscaping elements of any sort. No screening elements I should say. We do have pictures of both of those. What appears from a practical viewpoint, there are only a couple of commercial properties, none of which have landscape elements. We will, again, have a 3-foot screening element that will be more than what those have.

MR. HOWARD: If I could ask a question there, just for clarification.

What about on the north side of this property, there is an office building built up there recently, does it have appropriate screening and all of that?

MR. STARNES: Yes. What you're speaking to is the Daviess County Farm Bureau office that is -- well, it's the B-1 zoned lot just above the subject lot. That was recently constructed, and I believe Mr. Riney was involved in that, and it does have the screening element along the Highway 144 side to the north, but that is a different situation than ours. That property does not have a 50-foot wide electric easement running through it that would impact where...
the screening element would go.

   I do have a picture of that from our property. So you'll see certainly in relation to this property it's quite a bit away, particularly from the development we are talking about. Certainly if development continues on through this tract of land and approaches that, that's a completely different situation and we'll address the ordinance with respect to that at that time.

   Other than that Farm Bureau building, which was recently done and just has the landscape element on the north side of Highway 144, there is none around there. That property is in a different situation than the property we're dealing with.

   Next, the third criteria is whether the variance would cause a hazard or nuisance to the public. I would note that the Planning Staff review report does not identify what hazards or nuisance would be created. I believe I said previously, we don't see how it would create a hazard or a nuisance. We'll have the 3-foot element to shield lights. Trees per the ordinance would not assist that in any way. They're 6 feet, well above the level of any vehicle headlights. So we don't think that would add to any addition protection for that purpose. We don't see
what the additional hazard would be for absence of the
trees or how they would reduce some type of hazard.

Lastly, the fourth criteria is whether the
variance would allow an unreasonable circumvention of
the ordinance requirement. I would say this is not
unreasonable, first of all, because the requested
variance is limited in scope. We're talking only
about the portion of this property that is addressed
in the site plan that is going to be developed. It is
the only portion that is impacted by this existing Big
Rivers easement, and by the fact that Big Rivers will
not allow us to put trees in that easement and comply
with the ordinance.

I would then note that the Planning Staff did
mention that it was possible to modify the site plan,
to move the proposed development north away from the
more narrow part of the property ostensibly to then
have a landscape easement further back, avoid the Big
Rivers easement. Although that is possible, it is not
particularly practical nor is it reasonable. That
will necessarily eliminate much of the property that
would be available for future development. Move it
north. Now we've got the southern end where it comes
into a triangle. That portion is going to be useless.
Not going to be able to do anything with it. Much
less land on the northern side to be able to use for
future development. And with regards to the criteria
for consideration by the board for variance
applications, I would argue that requiring them to
move that development further north on the property
would deprive the owner of reasonable use and it would
create an unnecessary hardship. Again, although
reconfiguring the development could be possible; it
wouldn't be the best and most beneficial use of the
property. Place an undue burden and restriction on
potential development of the remainder of the lot.
Simply reduces further development options due to
having less land, less size. That is also necessarily
going to diminish the value of the property. Again,
it renders the southern most portion of the property
just useless. Cannot use it. Have less land to the
north. Consequently the value of the property as a
whole is going to be unfairly reduced just by default.

Development of the entire property was the
goal when it was acquired. It remains the goal. It
was a key factor in Mr. Lawson's decision as to what
he would pay for the property. And now, for no fault
of his own and for what we can see is no public
benefit given the circumstances, rather unique
circumstances, he would be forced to alter his
potential development, lose the value of his
investment, and offer what seems to be none to nominal
benefit from the compliance with the tree requirements
would add.

Lastly, as is noted in the Planning Staff's
Report, the variance is not a result of any action or
request for the Variance is not the result of any
actions that were taken by Mr. Lawson. The applicant
subsequent to the adoption of the ordinance had done
nothing that would cause this. It's the result of a
pretty unique circumstance. In that we've got a large
bigger easement running adjacent to Reid Road. It is
within that easement where the landscape element would
fall, and Big Rivers is refusing to allows us to plant
trees there.

For those reasons, we think that the board
should approve the Variance and we would respectfully
request that they do so.

CHAIRMAN: Thank you.

For clarification, Mr. Howard, the mobile home
park and that office, those parcels predate the zoning
ordinance, do they not?

MR. HOWARD: I would assume so.

CHAIRMAN: I know they've been there 50 years.

MR. HOWARD: I'm not from this community, but
I know they've been here for a long, long time.

CHAIRMAN: Mr. Reeves.

MR. REEVES: Couple of questions for Mr. Starnes, if you don't mind. Maybe two. Possibly just one.

Were it not for the easement issue with the Big Rivers power line, would you be seeking this variance?

MR. STARNES: No, we would not.

MR. REEVES: Then if we were to place a condition that starting with a continuous 40-foot element on the south end going down towards the easement, that a tree be planted within 5 feet of the easement on the south side, within 5 feet of the easement of the north side, and then a continuous element continuing on to the property line; would the owner be agreeable to that?

MR. STARNES: I'll let Mr. Riney speak to that.

MR. REEVES: Do you understand what I'm saying?

MR. STARNES: I'm afraid I got a little lost.

MR. RINEY: Little bit of history, if you bear with me.

MR. REEVES: Sure. Absolutely.
MR. RINEY: We didn't go into this with disregard for the regulation. Our initial plan had exactly what the regulations called for. This is a unique situation, and I'll try not to burden you with a lot of history.

You've heard over and over again, Big Rivers transmission line easement is the issue here. Big Rivers is good people. It's just the transmission line. Typically you don't see on these site plans, development plans Big Rivers having to sign off. When we went with our routine usual and customary utility recruit people, Kenergy said, we've had some requests from Big Rivers. We need for them to review this as well. So I've got a contact person. I contacted him. Said I'm going to send the plan. When I called him back he says, we don't want any trees. We've got shrubs and trees. I said, trying to compromise and still try to meet the intent of the regulation, I said, we would put a cap on those in the fact of a species of tree that will typically not grow very tall to meet the intent of the regulation or we'll put a note on the plan that says, once they grow to a certain height that they be trimmed. That would be the obligation of the owner to do that. It took him a millisecond to think about that and said, no. He
said, we don't want any trees. We've had trouble with
trees.

Then we came back, Mr. Reeves, and I think I'm
understanding what you're talking about. I'm going to
approach this in just a minute.

An option to put some trees in there, but they
would not be in the landscape easement area because
it's within the Big Rivers' easement, but it would
still be along the property. So I'll come forward and
see if I understood what you were asking.

This did not meet the planning definition.
What we had since the trees can be clustered, this
line right here, and I apologize for the rest of the
board for not being able to see, is the easement line.
We put the trees just east of that. We cluster four
here, four here, and two here, and that met the ratio
for the one to 40 for tree planting. But since it
wasn't within the landscape easement, it could not be
accepted by Staff. I'm not faulting Staff. I'm just
saying, without some sort of a waiver. At that point
we took those off because economically to develop this
and have -- it didn't make sense to start scooting
this whole development. Mr. Lawson had somebody
that's very familiar with storage units and so forth,
called a land planner, to do the study on this to come
up with a layout. So we felt like he had done the
highest and best use for property development.

Now, have I understood what you were talking
about, moving the trees, Mr. Reeves?

MR. REEVES: Where is the easement?

MR. RINEY: The easement, see these dash lines
here?

MR. REEVES: Yes. What I was saying is could
you put a tree say within 5 feet of the easement there
and 5 feet of the easement here? We understand you
can't plant where Kenergy won't let you, but could you
do that?

MR. RINEY: Yes, sir. And that was what the
intent was here, yes, sir. Where the storage is,
that's what we done. Even 2 feet outside the easement
we propose, but it's not within, we've got a whole lot
going on. It's not within -- that little green, and
again, I apologize to the board, that little green
crosshatch there is the landscaping easement where the
trees have to be to meet the regulations; that little
green strip right there. That's clearly within the 50
feet that Big Rivers controls their easement.

MR. REEVES: So you're saying Big Rivers also
controls what goes along this area too?

MR. RINEY: Yes sir. It comes from 144 --
MR. REEVES: I thought it was just simply this piece right here.

MR. RINEY: No, sir. No. The main transmission line, Mr. Reeves.

MR. HOWARD: Right now their site plan has vehicular use areas on their parking and landscaping within that easement, but as Mr. Starnes and Mr. Riney has stated, they won't allow the trees. As Mr. Riney stated, they did submit a version of the plan that had trees in the vicinity that total number meeting one tree per 40 feet. We certainly understood the intend, but it doesn't meet with the ordinance. I did not feel administratively that I could approve that type of plan. Now, certainly you've made that request. If they're willing to put them in the vicinity, that's certainly something you all as a board could consider for, you know, a compromise in place of putting them within that landscape easement.

MR. REEVES: I'm just focusing on the intend. I think the intend was, as it should be, wondering if there's -- because I don't think this board should ever pretend to tell a developer how to use their land. To say, to move this development north, that would be way out of our area of expertise. We should never suggest that.
If we can make it work the way the development is here. That's kind of where I am at this point in time.

MR. STARNES: Mr. Reeves, to your point, this is not a situation where the applicant does not want the tree, doesn't want to spend the money on trees. We have every intention of doing that. It's simply beyond our control to comply with strictly.

Certainly is willing to put the trees as set forth on the alternative plan.

CHAIRMAN: Anybody else wishing to speak to this item?

MR. REEVES: At this point in time, Mr. Howard, and I guess Mr. Starnes and Mr. Riney, are we concerned about trees going on the undeveloped part right now or just in the developed part?

MR. HOWARD: Right now the only thing, as Mr. Starnes has mentioned tonight, the only thing that this variance is a request on is for the trees to be eliminated on the portion that is currently proposed for development. Any development that would take place on the northern portion that is undeveloped will be done on its own merit and reviewed at that time. This is just for the portion, the southern portion that is proposed tonight for development.
MR. REEVES: I was thinking we were going to do the entire property while they were at it.

MR. HOWARD: No. The only reason the trees are requirement, as part of the screening element for four vehicular use area, there's nothing in the ordinance that would require anything on the north portion that's undeveloped.

MR. REEVES: Okay.

MR. GLENN: I have a question again.

Can I have you bring your board back up here and your picture. Your board there that you were showing us. Flip over to where you were talking about trying to meet the intention of everything by planting a group of trees in the developed area, but not in the area that the ordinance actually calls for.

MR. RINEY: Precisely. Just to try to meet the intent.

MR. GLENN: You would be willing to do that to meet that tree requirement?

MR. RINEY: Mr. Lawson has confirmed that while I was sitting back there. We would resubmit a plan, if that was the pleasure of the board, to have that tied down and still have your trees. The trees over here would not have to be there because of the elevation of Highway 60, but trying to in good faith
try to beat it, it would have had to show those. We thought we were doing good here, but they can't sign off on something that's not in writing. I understand that. If the board will allow that compromise for approval, then I say you've got a deal here.

MR. GLENN: This is part of the developed area then, this is included in this?

MR. RINEY: I put those there, Mr. Glenn, because there's a vehicular use area here.

MR. GLENN: That's part of the developed area?

MR. RINEY: Yes, sir.

Brian, do you want to see it?

MR. HOWARD: I know what you're talking about. From the Staff perspective, we're fine with that. Again, I couldn't approve that administratively. If you all are willing to do that as a compromise, we don't have any objection certainly.

MS. KNIGHT: I would just point out that the board will have to make its own findings of fact for approval.

MR. REEVES: Can we make them slowly?

MS. KNIGHT: Absolutely. Take a few minutes and get your thoughts together.

MR. HOWARD: From a Staff perspective I'll
just recommend that somewhere in your findings
language crafting include the fact that this is an
easement that is not typical. I do not want this to
create a situation, if a waiver is granted tonight,
where then we see a 10-foot utility easement that is
on a site on a green fill site with nothing on it and
we start seeing variances to eliminate landscaping
certainly in an area that could be worked around. You
know, a 50-foot easement is much larger than normal
easement.

CHAIRMAN: This is not typical.

MR. HOWARD: This is not typical, but please
include something like that in your findings so that
there's not a precedence set tonight that would then
allow maybe some future circumvention that really
might be.

MR. RINEY: Might I suggest you include the
word unique situation because of the highly unusual
power transmission line.

MR. HOWARD: Yes. Mr. Starnes I think had
used the term that this was a unique circumstance;
that it was on the property that would not typically
be found everywhere certainly. As Mr. Riney stated,
Big Rivers' easements aren't, they're not found
everywhere. There's Kenergy and public utility
easements, but Big Rivers' easements are typically larger, bigger lines, and that type of thing that aren't your standard public utility easements found throughout the community. So if you work some of that in, then that makes this --

CHAIRMAN: Mr. Reeves.

MR. REEVES: Make a motion to approve this request for a variance based on the findings of fact that due to the uniqueness of this land-shape and the easement requirements, while it may adversely affect the public safety and health because the parking spaces are directed away from the public right-of-way, car lights will not still shine on the highly trafficked road. It will not alter the essentially character of the general vicinity because other commercial properties in the area have been required to meet the screening element; such as the Farm Bureau office. It will not cause a hazard or nuisance to the public because a mobile home park zoning is across the street. It will not allow an unreasonable circumvention of the requirements of the zoning regulations because it is possible for the site plan --

COURT REPORTER: Say again.

MR. REEVES: Number 4, will not allow an
unreasonable circumvention of the requirements of the zoning regulation; with this condition -- I can put condition on this motion, can't I?

MR. HOWARD: Yes. And if I could interpret on that fourth one. You may want to say, will not allow an unreasonable circumvention of the requirements of the zoning regulations because of the unique circumstances on the site including the 50 foot Big Rivers' easement or something along those lines.

MR. REEVES: And will not allow an unreasonable circumvention of the requirements of the zoning regulations because of the unique circumstances on the site including the 50 foot Big Rivers' easement or something along those lines.

With the following condition: That the trees be placed, the landscaping trees be placed per the proposed development plan presented at this meeting.

CHAIRMAN: Are you in agreement with that motion?

MR. STARNES: Yes, ma'am, I am.

CHAIRMAN: Does anyone on the board have a question of that motion?

MS. CLARK: Excuse me. Should we say it's on the south side of the property where the easement is only, that way they have to continue with the regular
if they want to?

MR. REEVES: I think they'll have to come back with us for that one.

MR. HOWARD: Yes. Any future development would have to come back regardless.

MR. REEVES: That was my understanding. Thank you.

CHAIRMAN: Anybody else have a question on this motion?

(NO RESPONSE)

CHAIRMAN: Is there a second to the motion?

MR. GLENN: I'll second it.

CHAIRMAN: Any questions on the motion?

(NO RESPONSE)

MR. HOWARD: Staff understands.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Anything else to come before the commission?

(NO RESPONSE)

CHAIRMAN: If not, we'll entertain one more motion.

MS. MASON: Motion to adjourn.

CHAIRMAN: We have a motion to adjourn by

Ohio Valley Reporting
(270) 683-7383
Ms. Mason. Is there a second?

MR. GLENN: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

I, Lynnette Koller Fuchs, Notary Public in and
for the State of Kentucky at Large, do hereby certify
that the foregoing Owensboro Metropolitan Board of
Adjustment meeting was held at the time and place as
stated in the caption to the foregoing proceedings;
that each person commenting on issues under discussion
were duly sworn before testifying; that the Board
members present were as stated in the caption; that
said proceedings were taken by me in stenotype and
electronically recorded and was thereafter, by me,
accurately and correctly transcribed into the
foregoing 47 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the
29th day of January, 2018.

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

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

Ohio Valley Reporting
(270) 683-7383