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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

JUNE 3, 2021

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, June 3, 2021, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: Fred Reeves, Vice Chairman
- Brian Howard, Director
- Terra Knight, Attorney
- Bill Glenn
- Tori Thompson
- Terra Knight
- Fred Reeves
- Lewis Jean
- Ruth Ann Mason

* * * * *

CHAIRMAN: We need to call the June 3, 2021 meeting to order. We always start our meeting with a prayer and pledge of the flag. Please join us.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: When we have a meeting here, we try to have an orderly meeting; a meeting where everybody can be heard fairly and be listened to. We ask that you please try to remain respectful of everyone. If you have questions, the questions always need to come to the chair. We don't like people talking back and forth in the audience because it's disruptive and we need to make sure we get everything properly in the record. If you need to ask a question or be heard,

1 you'll want to step up to the podium and be sworn in
2 and then we'll be glad to entertain any and all of
3 questions that we have that come before us.

4 At this sometime Mr. Howard.

5 MR. HOWARD: The first item would be to
6 consider the minutes from the May 6, 2021 meeting.
7 Each member should have been mailed a copy of those
8 minutes. Chair would be ready for a motion to approve
9 those, please.

10 MS. THOMPSON: Motion to approve.

11 CHAIRMAN: Motion by Tori.

12 MS. MASON: Second.

13 CHAIRMAN: Second by Ruth Ann. All in favor
14 raise your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: They are approved.

17 -----

18 CONDITIONAL USE PERMITS

19 ITEM 2

20 2411 French Street, zoned R-4DT Inner-City Residential
21 Consider a request for a Conditional Use Permit in
22 order to install a Class 2 Manufactured Home in an
23 R-4DT Inner-City Residential zone
24 Reference: Zoning Ordinance Article 8,
25 Section 8.2A 10B/7
26 Applicant: Prater Hardin Enterprises, LLC

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

1 MR. CRUM: David Crum.

2 (DAVID CRUM SWORN BY ATTORNEY.)

3 MR. CRUM: The subject property is a 0.154
4 acre parcel zoned R-4DT. Other properties in the area
5 are also predominately zoned R-4D Inner-City
6 Residential; however, there is I-11 Light Industrial
7 zoning and uses to the north.

8 The applicant wishes to place a 16 by 80 Class
9 2 Manufactured Home on the subject property. The
10 submitted site plan shows a home with two 10 by 10
11 wooden decks, along with two separate eight parking
12 spaces located on the property. Each will directly
13 connect to French Street.

14 This is an area where single-wide manufactured
15 homes are common with the Board having approved
16 single-wide homes for seven other properties on French
17 Street.

18 The applicant is requesting a set of waivers
19 for the use including a waiver of the sidewalk
20 requirement as the area does not have sidewalks. And
21 waiver from planting three required trees; however
22 Staff recommended that the three required trees be
23 installed.

24 Class-2 Manufactured Homes are required to
25 abide by specific zoning ordinance requirements. The

1 application submitted indicate all requirements will
2 be met with the exception of the two requested waiver,
3 for the sidewalks and trees.

4 If approved the Staff recommends including a
5 condition that the applicant obtain all necessary
6 building, electrical and HVAC permits, inspections and
7 certificates of occupancy and compliance.

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

10 CHAIRMAN: Thank you.

11 Is there anyone here representing the
12 applicant?

13 MS. HARDIN: Yes.

14 CHAIRMAN: Would you like to come to the
15 podium and be sworn in case there are any comments you
16 would like to make also?

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

19 MS. HARDIN: Amy Hardin.

20 (AMY HARDIN SWORN IN BY ATTORNEY.)

21 MS. HARDIN: I don't have anything to add.

22 CHAIRMAN: Does anyone have any questions of
23 the applicant?

24 (NO RESPONSE)

25 CHAIRMAN: Hearing none I'm ready for a

1 motion.

2 MS. MASON: Make a motion for approval with
3 the findings that it's consistent with several
4 previous conditional use permits. It's compatible
5 with the neighborhood as there are several other
6 manufactured homes and the applicant should be meet
7 all zoning requirements for a Class 2-A Manufactured
8 Home and that we can waive the sidewalk requirement,
9 but we do require the three trees as recommended by
10 the staff.

11 CHAIRMAN: Okay.

12 MR. JEAN: Second.

13 CHAIRMAN: We have a second by Mr. Jean.
14 Do you have any questions about the motion.

15 MS. HARDIN: No, sir.

16 CHAIRMAN: Do you understand that we are
17 requiring you to have trees?

18 MS. HARDIN: Yes.

19 CHAIRMAN: Any of the commissioners have any
20 questions for the applicant?

21 (NO RESPONSE)

22 CHAIRMAN: Anyone in the audience?

23 (NO RESPONSE)

24 CHAIRMAN: All in favor raise your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries.

2 ITEM 3

3 7765 Highway 56, zoned A-R Rural Agriculture
4 Consider a request for a Conditional Use Permit in
5 order to expand an existing silviculture industry
6 References: Zoning Ordinance Article 8,
7 Section 8.2H10/58
8 Applicant: Knott Farms, LLC

9 MR. CRUM: The subject property is a 47.145
10 acre parcel that is zoned A-R Rural Agriculture and
11 surrounded by other rural agricultural zoned
12 properties.

13 The applicant obtained a conditional use
14 approval in 2019 to establish a Silviculture Industry
15 on the property.

16 This use consists of two phases. First phase
17 - bedding process in which dried sawdust is stored in
18 bulk for use in poultry farms.

19 The second, briquetting process, in which
20 sawdust is processed into firelogs and packaged for
21 pickup.

22 The use originally proposed to take place
23 within two 96-foot structures. However, the applicant
24 has indicated that more space is needed in order to
25 accommodate for machinery in the storage.

 The applicant seeks to expand the operation to
take place within three structures; a 4,800

1 square-foot briquetting building, an 11,700
2 square-foot sawdust storage building, and a 12,000
3 square-foot package and product storage building.
4 Other site improvements including constructing a
5 loading dock, widening of the gravel drive, and
6 additional parking areas are proposed; as proposed
7 meet requirements for parking and landscaping.

8 Silviculture uses are held specific ordinance
9 requirements that are designed to protect the
10 agricultural character while preventing larger more
11 industrial fill operations from developing, it would
12 be out of character with the area

13 Requirements include limitation about
14 structure sizes, number of employees and limits the
15 type of activities that can take place on site. The
16 proposed use can meet all of the requirements with the
17 exception of the requirement that no building
18 associated with the use exceed 10,000 square-feet in
19 sides. In this instance two of the proposed buildings
20 exceed that limit. The applicant is applying for a
21 variance in order to allow the structures to be
22 constructed as proposed.

23 If the Board moves to approve the request, in
24 order to ensure that the use remains compatible in
25 this agricultural area, Staff recommends including the

1 following special conditions:

2 1. Obtain approval of an amended site plan.

3 2. Under no circumstances shall this
4 operation employ more than five total employees.

5 3. No future individual structures associated
6 with this development shall exceed 10,000 square-feet
7 in size.

8 4. The activities outlined in phase 1 and
9 phase 2 of the operation shall derive exclusively from
10 sawdust from the farming operation located on the
11 subject property.

12 5. All future expansions in conjunction with
13 this development shall require additional Conditional
14 Use permit applications heard by the Owensboro
15 Metropolitan Board of Adjustment which may include
16 limiting the total number of buildings allowed for the
17 use.

18 6. Obtain all necessary building, electrical
19 and HVAC permits, inspections and certificates of
20 occupancy and compliance.

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

23 CHAIRMAN: Thank you.

24 Mr. Kamuf, are you representing the applicant?

25 MR. KAMUF: Yes, I am.

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

3 MR. KAMUF: Are we going to hear both this and
4 the variance at the same time? How do you want to do
5 that, Brian?

6 CHAIRMAN: We'll have to vote on them
7 individual.

8 MS. KNIGHT: It will require separate votes.

9 MR. KAMUF: Please?

10 CHAIRMAN: I think you can give your testimony
11 in total and then we'll have to vote on each
12 individual item.

13 MR. KAMUF: That will be fine.

14 Are you going to swear me in?

15 MS. KNIGHT: You're sworn as an attorney.

16 MR. KAMUF: Thank you.

17 I represent Knott Farms, LLC. Knott Farms has
18 a large family farming operation in Western Daviess
19 County and also in McLean County. The Knott brothers,
20 since the death of Billy Joe Miles, I would say is the
21 most progressive farming operation in Daviess County
22 are the Knott brothers.

23 What they have here is not only do they farm,
24 raise tobacco, corn, soy beans, they have 33 chicken
25 houses. As part of raising the chickens they use

1 sawdust. That's in two parts and it's all laid out
2 very well in the Staff Report. They take the wet
3 sawdust and dry sawdust and mix it. What they do
4 then, they use that for the poultry. Then they have
5 another position that they have called briquetting.
6 What they do there is they dry the sawdust and the wet
7 sawdust and package it into firelogs. I have a couple
8 of exhibits that I would like to pass out.

9 The first one that I'll pass out will be, I
10 show a picture of exactly what's taking place down
11 there. In other words, we two years ago we had this
12 approved with a Conditional Use Permit. Nothing has
13 changed as of now. Then I have a couple of other
14 exhibits I would like to pass out.

15 As you see this Exhibit A, the building to the
16 left is where they store the dry sawdust that they use
17 for poultry. The right part is where you see there is
18 a pressing machine and it goes into the other building
19 to the right and that's where they have the firelogs.

20 The operation, as stated in the Staff Report,
21 I think it was adopted, the ordinance, in 2019. I
22 might say the first case that was ever presented under
23 this ordinance was the Knott brothers in July of that
24 year. And there's four things that are required under
25 the statute.

1 Must be at least 25 acres; no more than 50.
2 Cannot be over 10,000 square foot in each structure.
3 Cannot have over five employees, and the operation
4 shall be limited to agriculture and agriculture
5 accessory uses.

6 In July of 2019, this Board unanimously
7 approved a conditional permit for the Knott operation
8 at Sorgho so they could manufacture firelogs.

9 Let's look at Exhibit Number 1, if you will.
10 Exhibit Number 1 that you have in front of you shows
11 the existing building. It shows that it's off of
12 Highway 56. It's located in a remote area, as you can
13 see. To the right what is called Timbrook Woods.
14 There are three or four neighbors. None of the
15 neighbors have any objection. The Knotts own on three
16 sides of this property which is very helpful for us.

17 What we're asking for is twofold. One, we
18 propose to amend the existing Conditional Use Permit
19 to expand their operation. Number two, for a Variance
20 from the existing conditional permits so we can have
21 two buildings over 10,000 square-feet. However, I
22 might point out that the three buildings could have
23 30,000 square feet, but the buildings we're going to
24 build will be three, but they'll be less than the
25 30,000 square-feet.

1 Since the posed building is over 10,000
2 square-feet, we don't fully qualify of the
3 requirements of Article 8, but it meets all of the
4 other requirements; five employees no more, and less
5 than 50 acres.

6 What's included in the proposed amendment that
7 we made today. I show you Exhibit Number 2. Exhibit
8 Number 2, the building to the north, and that would be
9 the building that you see on there where it would be
10 12,000 square-feet, we propose there's existing
11 building of 4,800 square-feet. Our proposal is to
12 make an addition of 12,000 square-feet, and on the
13 other existing building to the south there's a
14 proposed addition of 6,900 square-feet.

15 We feel that even though we're just a little
16 off, that we make the spirit of the zoning ordinance.
17 It's only slight. The new building to the north will
18 be 12,000 square-feet instead of 10, and the southern
19 building will be 4,800 square-feet plus a total of
20 6,900 square-feet, for a total of 11,700 square-feet.
21 The fact that the operation that they have will still
22 be five employees we think is a certain restriction on
23 the scope if we wanted to expand.

24 The Knotts would not need more than five
25 employees in this situation because of the automation.

1 If you look at Exhibit Number 2, it shows that
2 what they have is a conveyer at the end of that 4,800
3 square-foot building that would be taking the packages
4 of the firelogs to a proposed packaging storage area.

5 Most of the operation that they have, the
6 request is because of increase of business that I'll
7 get into, but basically there will be automation. The
8 five employee restriction we have no problem with.

9 The buildings are in a remote area. If you
10 look in that area, you'll see tobacco barns, many
11 tobacco barns that are larger what we have requested.

12 If you had to pick a location in Daviess
13 County to put an area, a proposed silviculture as we
14 have, I think you couldn't pick one that is any
15 better. It has easy access to Highway 56. There's a
16 small increase in the size, but no increase in the
17 number of employees.

18 Here is the reason that they are requesting
19 for the increase in size. Knotts have had an increase
20 in their business due to the demand of firelogs. They
21 supply Home Depot 200 different units of Home Depot
22 and they supply all over the Southeastern United
23 States. The firelogs also are delivered to the Dollar
24 General and Ace Hardware. The project that we have
25 here is approximately \$3 million.

1 The background: Due to the increase in their
2 firelog business, Kenny Knott met with Matt Warren
3 over at the enforcement area. Kenny met with him
4 frequently because we have a conditional use. Kenny
5 wanted to be sure we were in line with everything over
6 there. So he met with him on a frequent basis. He
7 went over to talk to him about a 10,000 square-foot
8 building. That's what he thought that he was going to
9 do, but at the time he left, the building code says
10 you can have a 1,200 square-foot building. So when we
11 left and after he met with Matt, he was under the
12 understanding that he could have a 12,000 square-foot
13 building. Matt was very helpful. He's always helpful
14 to Kenny. They went back and forth. There was a
15 complete kind of a misunderstanding because the
16 building code is in conflict, as far as the size. One
17 requires a max of 12, and the other one requires a max
18 of 10. Both of them were acting in good faith. Matt
19 Warren was trying to help Kenny because he advised him
20 as he was going along since July of last year. Kenny
21 went ahead and in the construction mood he ordered a
22 12,000 square-foot building. He had a certain cost of
23 28,000, another cost to upgrade a dryer. He order the
24 12,000 square-foot building at 300,000, and the
25 building will be delivered in July of this year. The

1 architectural design of the building was in effect
2 too. So basically he has spent, the project will be
3 about \$3 million.

4 Based upon his understanding of the law, Kenny
5 immediately ordered the building. Here are the
6 reasons that he ordered it. You say why did he -- he
7 was understanding that he could get the 12,000
8 square-foot building. He knew their busy time for
9 Home Depot, Ace Hardware and Dollar General they would
10 have to have supplies in by September. So what he did
11 he immediately ordered it. The cost of the building
12 was going up. At that time you had a delay because of
13 the vaccine. So he went ahead. He didn't find out
14 that there was an issue until David Weaver went over
15 and he went over to get the permit and talked to them
16 about the site plan and he was advised by the Staff
17 that the max was 10,000 square feet.

18 Here is where we are. If this conditional use
19 is not approved as we can see, Kenny will be in a real
20 fix because the building will be here in July and he
21 will incur other money and expenses that he has. If
22 he cancels the building, we haven't checked on that
23 yet, but if he cancels the building, he won't be able
24 to get a new building until March because they're so
25 far behind. Why should this conditional use be

1 approved?

2 I've got Kenny here. Kenny will explain to
3 you everything that went on. Everybody acted in good
4 faith. We just had a mutual mistake.

5 But why should you approve it? There's only a
6 slight variance. 1,700 square-feet on one, 2,000
7 square-feet on the other. I might say, we can have
8 three buildings of 10,000 square-feet, and our
9 building square footage is less than that that we're
10 requesting. The five employee requirement will keep
11 the project within the scope. The present operation
12 of Knotts has been very successful. We're relying
13 that we have a good track record down there. We have
14 no objection from the neighbors. At this time, the
15 reason for the request is that we've had an increase
16 in business, but the size of the buildings we think
17 are very slight and contrary to what might be our
18 problem.

19 I always said this is a hardship board. If
20 people act in good faith and everybody is trying to do
21 the right thing and a mistake is made, I think it's
22 your all's job to look into it and try to help those.
23 The applicant's actions, and there's a request in the
24 variance that says, was the action willful. It wasn't
25 willful. When we went over, the only request that we

1 had was we're going to get a 10,000 square-foot
2 building. Existing now each one of the buildings are
3 4,800 square feet. I think everybody acted in good
4 faith. I think the Staff Report is favorable to us
5 and we would like for you to approve it.

6 Kenny Knott is here. You can ask him any
7 question that you might. We have a purchase order
8 that we were going to make in January, January 5th of
9 2021 for the 10,000 square-feet. We didn't do it
10 because we were under the understanding that we could
11 have the 12. You understand? The 12,000 square-foot
12 is over to the right. It's on the north side and we
13 will use that for storage of these firelogs until
14 somebody can pick them up. The other one that we have
15 is on the south side.

16 If you have any questions, we're here to
17 answer them. David Weaver is here to say whatever,
18 anything about the meeting. Everybody acted in good
19 faith. I might say that nobody has been more helpful
20 in the operation of this conditional use since 2019
21 than Matt Warren. He's always very helpful.

22 CHAIRMAN: Is anyone in the audience here with
23 regard to this issue?

24 (NO RESPONSE)

25 CHAIRMAN: Any of the board members up here

1 have any issues with regard to these two items?

2 MS. THOMPSON: I just have a question.

3 You said the 12,000 square-foot building is
4 ordered. What about the 8,900, has that one been
5 ordered too?

6 MR. KAMUF: I don't know.

7 Has it? Come up here.

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

9 MR. KNOTT: Kenny Knott.

10 (KENNY KNOTT SWORN BY ATTORNEY.)

11 MR. KNOTT: That building has not been, but
12 we've done the engineering plans on that as we speak.

13 CHAIRMAN: Any other questions?

14 (NO RESPONSE)

15 CHAIRMAN: I think the Board has heard a very
16 good explanation. I think we're ready to act on each
17 of these items individually.

18 Does anyone have a motion to make on the
19 Conditional Use Permit?

20 MR. JEAN: I would like to make a motion.

21 CHAIRMAN: Mr. Jean.

22 MR. JEAN: I would like to make a motion that
23 we approve this Conditional Use Permit based on the
24 Staff Report, the site visit and the testimony
25 presented here this evening with Special Conditions 1

1 through 6 and Findings of Fact 1) the applicant will
2 comply with the zoning ordinance requirements. This
3 use is a logical expansion of the existing use in an
4 A-R Rural Agricultural zone and this use will have no
5 appreciable traffic impact on Kentucky 56.

6 CHAIRMAN: Do I have a second?

7 MR. GLENN: Second.

8 CHAIRMAN: We have a second by Mr. Glenn.

9 Mr. Kamuf, I have one question of the
10 applicant.

11 Are you prepared to fully comply with the
12 conditions that are on the permit?

13 MR. KNOTT: Yes.

14 CHAIRMAN: That's my only question.

15 Anyone else have any questions?

16 (NO RESPONSE)

17 CHAIRMAN: All in favor raise your right hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries.

20 Let's look at the variance.

21 Related Item

22 ITEM 3A

23 7765 Highway 56, Zoned A-R Rural Agriculture
24 Consider a request for a Variance in order to
25 construct two structures that exceed the 10,000 square
foot maximum size requirement for a silviculture
industry

1 References: Zoning Ordinance Article 8,
2 Section 8.2H 10/58
3 Applicant: Knott Farms, LLC

4 MR. HOWARD: Mr. Kamuf, went over the case.
5 You all have a copy of the Staff Report.

6 MR. KAMUF: We agree with the Staff Report.

7 MR. HOWARD: We're in agreement as far as
8 recommending approval. The proposed findings that we
9 have would be that:

10 1. It will not adversely affect the public
11 health, safety or welfare because the proposed
12 buildings are located to the rear of the property
13 meeting the building setbacks and relatively well
14 screened from Highway 56.

15 2. May not alter the essential character of
16 the general vicinity because any increase in permitted
17 structure size should not lessen the agricultural
18 nature of the area.

19 3. Will not cause a hazard or nuisance to the
20 public because a condition limiting the size of any
21 future structure should ensure that the activity does
22 not become industrial in nature.

23 4. May not allow an unreasonable
24 circumvention of the requirements of the zoning
25 regulations because the use is still limited to five
26 employees and the proposal consists of only three

1 buildings with an average building size that is less
2 than 10,000 square feet; which is the point that
3 Mr. Kamuf made earlier, which should ensure that the
4 use operates at a scale that meets the intent of the
5 ordinance.

6 Then we had three recommended conditions,
7 which are similar to what was included on the
8 Conditional Use Permit.

9 1. Obtain approval of an amended Conditional
10 Use Permit, which they just did, and an amended Site
11 Plan;

12 2. That any future structures shall not
13 exceed 10,000 square feet in size; and,

14 3. Obtain all necessary building, electrical
15 and HVAC permits, inspections and certificates of
16 occupancy and compliance.

17 We'd like to enter that Staff Report into the
18 record as Exhibit C. So we're recommending approval.

19 MR. KAMUF: We're in agreement. We're in
20 agreement with all of the conditions.

21 CHAIRMAN: Anyone in the audience have a
22 concern or question about this particular item?

23 (NO RESPONSE)

24 MS. THOMPSON: I make a motion to approve
25 based on findings and as long as they abide by the

1 three conditions.

2 CHAIRMAN: We have a motion. Do I have a
3 second?

4 MR. JEAN: Second.

5 CHAIRMAN: Second by Mr. Jean. Any questions
6 about the motion?

7 (NO RESPONSE)

8 CHAIRMAN: All if favor raise your right hand.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: It passes.

11 Thank you, Mr. Kamuf.

12 ITEM 4

13 2978 Highway 140 East, zoned A-R Rural Agriculture
14 Consider a request for a Conditional Use Permit in
15 order to operate a yoga studio and day retreat
16 business from an existing 384 Square-foot detached
17 structure as a home occupation.
References: Zoning Ordinance Article 8,
Section 8.2D5a
Applicant: Jennifer Schultz & Dan Schultz

18 MR. CRUM: The subject property is 69.55 acre
19 residential parcel that is zoned A-R Rural
20 Agricultural and surrounded by other A-R Rural
21 Agricultural zoned properties.

22 The applicants reside at the property and are
23 seeking to incorporate a yoga studio/day retreat uses
24 at their property.

25 This use would involve yoga classes being

1 taught in an existing 384 square-foot detached
2 structure with nature walks provided around the
3 property. The use will operate on Saturday mornings,
4 but specific hours of operation were not provided.
5 The use will be staffed by the applicants with no
6 outside employees. The applicants have indicated the
7 use will have not more than four participants at a
8 time.

9 Staff recommends including conditions related
10 to the hours of operation and number of participants
11 to ensure the use will properly integrate with the
12 area.

13 No landscaping is required for this use;
14 however, the Board may require landscaping as
15 necessary to ensure compatibility.

16 Parking for the use is access to a 10-foot
17 gravel drive. The property has an existing paved
18 parking area for the residence and is proposing to add
19 four parallel gravel spaces along the drive to
20 accommodate for the parking for the yoga use.

21 Normally only 10 percent of the required
22 parking is permitted to be parallel parking spaces,
23 but the Board may waive that requirement as they see
24 fit.

25 The use is required to abide by a series of

1 Ordinance Requirements pertaining to a Conditionally
2 Permitted Home Occupations.

3 Staff finds that the use meets all ordinance
4 requirements with the exception of the waiver to allow
5 the parking spaces associated with the use to be
6 parallel spaces.

7 Staff suggests the following conditions for
8 the use:

9 1. Limit the number of customers/clients that
10 may come to the site at one time, as well as the hours
11 of operation that customers/clients may come to the
12 subject property;

13 2. Require that the applicants provide
14 off-street gravel or paved parking areas sufficient to
15 accommodate the four parking spaces required for the
16 use and the two parking spaces for the residence; and,

17 3. Obtain all necessary building, electrical
18 and HVAC permits, inspections and certificates of
19 occupancy and compliance.

20 Staff would like to enter the Staff Report
21 into the record as Exhibit D.

22 CHAIRMAN: Is the applicant in the audience?

23 MS. SCHULTZ: Yes.

24 CHAIRMAN: Step to the podium, please, in case
25 we have any questions.

1 MS. KNIGHT: Could you state your name,
2 please?

3 MS. SCHULTZ: I am Jennifer Schultz.
4 (JENNIFER SCHULTZ SWORN BY ATTORNEY.)

5 CHAIRMAN: Is there anything else you feel
6 like we need to know before we open it up for
7 questions?

8 MS. SCHULTZ: Maybe the hours operation. I
9 just intend on each yoga class is one hour. I only
10 want to have one or two classes per day; so it's very
11 part-time, and not too many people will be out there.
12 As you can see, the studio is not very big. I only
13 want four people in the studio at a time.

14 CHAIRMAN: Thank you. Anyone in the audience
15 have any questions?

16 MS. MASON: I have a question.

17 When you said "not very many days," at one
18 point in here it said just Saturday. Are you wanting
19 to do it more than just Saturday?

20 MS. SCHULTZ: Yes. I want to have like a
21 retreat, a yoga retreat on Saturdays, but then during
22 the week I want to have yoga classes.

23 MS. MASON: Okay. So do you have specific
24 hours that you want to do the classes and what days of
25 the week?

1 MS. SCHULTZ: Hopefully I would like to do the
2 classes Monday through Sunday, if possible, if I get
3 enough people, but just one or two classes a day.

4 CHAIRMAN: So the hours that you want?

5 MS. SCHULTZ: Maybe a class in the morning and
6 a class in the evening and that's it.

7 MS. THOMPSON: Like 7 to 5?

8 MS. SCHULTZ: Say like maybe one class will be
9 from 7 to 8, and another class maybe from 10 to 11 in
10 the morning.

11 CHAIRMAN: So the 7 to 8 is in the evening?

12 MS. SCHULTZ: Yes.

13 CHAIRMAN: Say those again for me. Give us
14 the morning and then give us the evening.

15 MS. SCHULTZ: The morning from like 10 to 11,
16 and then in the evening 7 to 8.

17 CHAIRMAN: Okay. Any other information?

18 (NO RESPONSE)

19 CHAIRMAN: Can you meet the conditions that
20 are on here, the suggested conditions?

21 MS. SCHULTZ: Yes.

22 CHAIRMAN: I'll ask counsel. We probably need
23 to include hours in the motion?

24 MS. KNIGHT: Yes.

25 CHAIRMAN: Just to be fair to you, you said

1 probably in the morning about what time?

2 MS. SCHULTZ: 10 to 11.

3 CHAIRMAN: In case you want to -- to give you
4 some flexibility let's say from nine to noon.

5 MS. SCHULTZ: Okay. Thank you.

6 CHAIRMAN: Then in the evening from --

7 MR. HOWARD: She said 7 to 8. I was thinking
8 6 to 8.

9 CHAIRMAN: Six to eight, something like that.
10 We want to make sure that you're in compliance.

11 MS. SCHULTZ: Yes. So I can have some
12 flexibility with the time?

13 CHAIRMAN: Yes.

14 MS. SCHULTZ: Yes, that would be great.

15 CHAIRMAN: So then suggest in the motion would
16 be like in the evening from 6 to 9 be okay. So
17 whoever makes the motion, if you would include those
18 specifics, please.

19 MS. THOMPSON: Leave it open-ended, from 6
20 a.m. to 8 a.m.?

21 CHAIRMAN: I'm fine with that. It's not a
22 problem with me. If you want to just say from 6 in
23 the morning and, what, 7, 8 in the evening? Why don't
24 you make a motion, Tori.

25 MS. THOMPSON: I'll make a motion to approve

1 as long as you follow the suggested conditions; four
2 people in a class at a time, and then your operating
3 hours 6 a.m. to 8 p.m.

4 MS. SCHULTZ: That would be great. Thank you.
5 I didn't think about that.

6 MS. THOMPSON: Seven days a week.

7 CHAIRMAN: Do I have a second?

8 MS. KNIGHT: You need some findings and there
9 was also an issue with the parking spaces that need to
10 be addressed.

11 MR. HOWARD: Waiver on parallel.

12 MS. KNIGHT: The finding like that it's not
13 going to --

14 MS. THOMPSON: Based on the rural nature of
15 the area it's not going to -- it will be compatible
16 with the area. It won't cause any harm to anyone.

17 CHAIRMAN: You did wonderful. Thank you.

18 Do we have a second on that motion?

19 MS. MASON: Second.

20 CHAIRMAN: Anyone in the audience have any
21 questions?

22 (NO RESPONSE)

23 CHAIRMAN: Are those conditions you're
24 prepared to meet?

25 MS. SCHULTZ: Yes.

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

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Motion passes.

5 ITEM 5

6 10275 & 10745 US Highway 431, zoned A-U Urban
7 Agriculture
8 Consider a request for a Conditional Use Permit in
9 order to operate a landscaping business in an A-U
10 Urban Agriculture Zone.
11 Reference: Zoning Ordinance Article 8,
12 Section 8.2H33a
13 Applicant: Franklin Jared Dockery, James M. &
14 Charlesa M. Yeiser

15 MR. CRUMB: The subject property consist of
16 two 1.205 acre undeveloped parcels that are zoned A-U
17 Urban Agriculture. In the immediate area, properties
18 to the north, south and east are also zoned A-U Urban
19 Agriculture. To the west across US 431 B-4 General
20 Business zoning is present.

21 The applicant is proposing to use the
22 properties for a landscaping business with accessory
23 landscaping material sales. The applicant has
24 indicated that the use will operation seven days a
25 week with no set hours of operation.

Staff recommends establishing the conditions
related to hours of operation to ensure that the use
integrates properly.

The site plan submitted details a 40 by 60

1 office and storage structure with a gravel parking
2 area.

3 There's no set for parking requirements for
4 landscaping businesses; however, where the use gravel
5 parking areas adjoin US Highway 431, a 3-foot tall
6 continuous landscaping element with 1 tree every
7 40-feet is required. These will be served by a gravel
8 drive. Staff recommends that this drive be located in
9 line with the northern drive at 10734 US Highway 431
10 be at least 24-feet in width to accommodate two-way
11 traffic and have a 50-foot long paved driveway apron
12 to ensure the gravel does not spill onto the roadway.
13 The site plan details several open storage bays that
14 will be used to store and display landscaping
15 materials. Display areas that are paved with asphalt
16 or concrete are not required to be screened; however,
17 any outdoor storage or display areas with a gravel
18 surface are required to be screened with a 6-foot tall
19 solid wall or fence.

20 It's important to note that while the property
21 at 10745 Highway 431 was included within this request,
22 the submitted site plan drawing and application for
23 the use does not show any parts 10745 US Highway 431
24 being used in connection with the proposed landscaping
25 business. Expanding the business operations or

1 storage onto 10745 US Highway 431 will require
2 amending this conditional use permit and submission of
3 a revised plan. In the event that the activity
4 includes both properties in any capacity, then a
5 Development Plan shall be required.

6 If approved Staff suggest the following
7 Special Conditions:

- 8 1. Obtain approval of a site plan or final
9 development plan;
- 10 2. Limit the permitted hours of operation of
11 the use;
- 12 3. The driveway for the site shall be
13 constructed in-line with the northern access point for
14 10734 Highway 431, shall be a minimum of 24-feet in
15 width, and shall include a 50-foot long paved driveway
16 apron where the drive connects to US Highway 431;
- 17 4. Expansion of the landscaping business or
18 outdoor storage onto 10745 US Highway 431 shall
19 require approval of a revised conditional use permit
20 and amended site development plan detailing the scope
21 of the proposed expansion; and,
- 22 5. Obtain all necessary building, electrical
23 and HVAC permits, inspections and certificates of
24 occupancy and compliance.

25 Staff would like to enter the Staff Report

1 into the record as exhibit E.

2 CHAIRMAN: Anyone here representing the
3 applicants?

4 MR. DOCKERY: I guess that's me.

5 CHAIRMAN: You want to come to the podium,
6 please.

7 MS. KNIGHT: Sir, could you state your name
8 for the record, please?

9 MR. DOCKERY: Franklin J. Dockery.

10 (FRANKLIN DOCKERY SWORN BY ATTORNEY.)

11 CHAIRMAN: Anything you would like to add to
12 what's in the report, sir?

13 MR. DOCKERY: He pretty much covered it.

14 CHAIRMAN: Anyone have any questions?

15 Mr. Jean.

16 MR. JEAN: What are your hours of operation?

17 MR. DOCKERY: Well, I'm seasonal. Considering
18 I'm a landscaping company, in the wintertime we do do
19 snow. Hours of operation is kind of tricky based on
20 weather as well. Usually we're out and about. Not
21 all the time right now am I at the shop. We plan on
22 in the future to be at the shop doing other things.
23 Probably about 7 to 5 or so.

24 CHAIRMAN: Do you typically get your business
25 by phone or people showing up at your site?

1 MR. DOCKERY: Right now mostly by phone, word
2 of mouth. I mean while I'm out and about people
3 approach me.

4 MR. JEAN: So that will be five days a week,
5 six days a week?

6 MR. DOCKERY: Preferably just five days a
7 week, like I said, weather permitted. If it rains for
8 three days, then Sunday is my day I've got to make up
9 for or whatever. I would like to be off on the
10 weekends, but that's not really feasible when you're a
11 seasonal business.

12 CHAIRMAN: We just want to make sure we don't
13 lock you into something to prevent you from doing your
14 job.

15 MR. DOCKERY: In that case, I don't like to
16 work on Sundays for starters. If I can put in for 7
17 days a week. I don't want to work 7 days a week. I
18 prefer to work as little as possible.

19 CHAIRMAN: Don't we all.

20 MR. DOCKERY: Five days a week is typical.
21 Like I said, seasonal it just all depends on the
22 weather, just like farming.

23 MR. GLENN: Exactly what are you doing during
24 the day at this property?

25 MR. DOCKERY: I'm starting to sell landscaping

1 materials. I sell landscaping materials now, deliver,
2 install. We do landscape. A lot of times we're out
3 in the field at the shop I'm at now. We're on Daniels
4 Lanes. We're going to start having sales at the shop.
5 We're wanting to have clientele that actually comes to
6 the shop and I can load them up with materials there.

7 MR. GLENN: So you'll have customers coming
8 there throughout the day?

9 MR. DOCKERY: Yes, sir.

10 MR. GLENN: Are you talking about that you do
11 lawn work and all of that; is that what you're talking
12 about with this landscaping?

13 MR. DOCKERY: Yes.

14 MR. GLENN: Okay. So when you're doing the
15 lawn work where if you get behind because of rain,
16 you're not mowing the lawn where you're working.
17 You're out in the city or the county doing something?

18 MR. DOCKERY: Correct.

19 MR. GLENN: So the operation actually of your
20 business --

21 MR. DOCKERY: With employees.

22 MR. GLENN: Would be what?

23 MR. DOCKERY: With employees.

24 MR. GLENN: With employees being there. Not
25 that you're doing really anything. It's not

1 obnoxiously or stuff going on like that?

2 MR. DOCKERY: No.

3 MR. GLENN: It's just that you're open because
4 you're having to go mow lawns or take landscaping
5 materials somewhere or somebody has come to pick it up
6 and they're doing this on Sundays too, Saturdays and
7 Sundays?

8 MR. DOCKERY: Preferably, no. Like I said,
9 I'm in the field. Hours of operation at the shop will
10 be more so me on Sunday. My daughter helps me, and my
11 better half helps me. Usually we're just working
12 throughout the week. Like I said, I'll have people
13 coming in, getting their materials or whatever that we
14 offer. I do want room to kind of -- I don't want to
15 be locked in to just say landscaping materials, but I
16 might even have shovels or something.

17 MR. GLENN: Correct.

18 MR. DOCKERY: Little bit of room to move a
19 little bit. On Sundays and stuff I don't mind to have
20 hours operation, but if I can keep it open seven days
21 week. I'm not wanting to work like that, like seven
22 days a week.

23 MR. GLENN: So you're comfortable being in
24 operation as far as time, limited time from like 7 in
25 the morning until 5, 6 in the evening?

1 MR. DOCKERY: Yes.

2 MR. GLENN: Seven days?

3 MR. DOCKERY: Yes.

4 MR. GLENN: Would Saturdays and Sundays be
5 different than that?

6 MR. DOCKERY: Not with this. I probably
7 personally will restrict that myself.

8 MR. GLENN: You're looking at 7 to 6, seven
9 days a week max?

10 MR. DOCKERY: Yes. Like I said, I can do
11 things myself off premises.

12 MR. GLENN: Correct.

13 MR. DOCKERY: I don't necessarily have to have
14 people on my premises all the time. Preferably, like
15 I said, I don't want them always on the premises
16 because I can still make my money and do things
17 elsewhere.

18 If I do go ahead and sign up for 7 days a
19 week, you know, there might be something going on or
20 something that I might have to have somebody be there
21 to do something. Not that I want to do every weekend.

22 CHAIRMAN: Anybody else have any questions?

23 (NO RESPONSE)

24 CHAIRMAN: Does anyone in the audience have
25 any concerns after hearing his testimony?

1 Yes, ma'am. Come up and be sworn in.

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

4 MRS. AUSTIN: Karen Austin.

5 (KAREN AUSTIN SWORN BY ATTORNEY.)

6 MRS. AUSTIN: Our home borders this property
7 on two sides; the north and the east side. We've been
8 there 14 years. We built this home here along with,
9 there are five of us there. These are all residential
10 surrounding this property. We all go out 431 to exit
11 as well. I'm concerned about a business being open
12 that often, that long, seven days a week when we've
13 all got our homes and family there. Traffic, you
14 know, I thought the intention was for this whole area
15 to be family homes. I understand that it's across
16 from the post office. We're across from storage
17 facilities. I thought it was intended to be homes is
18 our concern.

19 CHAIRMAN: You choose to respond? You don't
20 have to, but if you'd like to respond.

21 MR. DOCKERY: I completely understand their
22 concerns. I don't blame them. We've spoke. They're
23 fantastic people. They've got a beautiful home. I
24 have told them that I would like to compliment the
25 town. The reason I picked the location is it's kind

1 of off of the four-way. There's a Dollar General.
2 There's a post office, fire station, all this stuff
3 within this area. I don't intend to be open that
4 often. I do want to restrict that. Like I said, I'm
5 not planning on ever being open seven days week. We
6 go to church Sunday mornings. We do things, try to do
7 things all day Sundays, and things on weekends as
8 well. I'm not anticipating having a lot of heavy
9 machinery and stuff like that. I have skid-steer that
10 loads up mulch, things of that nature. The area, it's
11 kind of in the hub of Utica right there. I've
12 actually lived in the house next to the old fire
13 department years and years ago. There's been a lot of
14 development in that area. It's a beautiful community.
15 I don't want to disturb that community. I want to add
16 to it. Like I said, I completely understand their
17 concerns. Don't blame them at all. I want to
18 compliment that area as best as possible. I want to
19 keep it a neat environment. Like I said, I'm a
20 landscaper by trade. So, you know, I can keep the
21 grass green and trimmed, mowed and lined out. I do
22 want to have earth materials. That's basically what I
23 want. I want to offer mulch, dirt and different kind
24 of nice decorative rock and stuff like that. I do
25 want it organized and clean.

1 Barriers and stuff, fences and things like
2 that, I do want to make sure that those things -- I
3 can't promise it's going to be right away. It takes
4 time and money to do those things, but those are the
5 goals for this property. As of now, there's two
6 properties there side by side and it's only on one of
7 those properties.

8 CHAIRMAN: Sir, you need to step up here,
9 please. I don't mean to be hard to get along with,
10 but we have to get it on the record and you need to be
11 sworn too.

12 MS. KNIGHT: State your name, please.

13 MR. AUSTIN: Charles Austin.

14 (CHARLES AUSTIN SWORN BY ATTORNEY.)

15 MR. AUSTIN: I just want to know if it's the
16 north piece of property, the north acreage or the
17 south acreage that you're looking?

18 MR. DOCKERY: South. Left-hand.

19 MR. AUSTIN: If you're looking at the post
20 office, is it to the right or to the left?

21 MR. DOCKERY: Right.

22 MR. AUSTIN: The one that borders. I just
23 wondered which one it was.

24 CHAIRMAN: Did we determine if it's the north
25 or the south?

1 MR. HOWARD: It looks like it's the north.

2 CHAIRMAN: Any other questions for the
3 applicant?

4 (NO RESPONSE)

5 CHAIRMAN: If not, I'll entertain a motion.

6 MS. MASON: I actually have a question.

7 CHAIRMAN: Sure.

8 MS. MASON: So the hours you're saying 7 to 6,
9 7-days a week. That's when you may be, some of those
10 days you won't be having people come on the property
11 to get landscaping?

12 MS. DOCKERY: Yes. I'm only working, usually
13 I only work eight months out of the year. When it
14 snows -- I mean I'm not a big outfit. I've mowed
15 everything in this town. I don't want to be that
16 size. We had, you know, 10 or 12 employees. I ran
17 five crews a day. I'm down to pretty much one truck
18 or two trucks a day.

19 MS. MASON: Your employees come there and park
20 and --

21 MR. DOCKERY: At this time I don't even have
22 employees. It's technically just me. It's hard to
23 find employees. It's hard to depend on people to show
24 up. It's gotten worse and worse and worse. So
25 basically I just want to be able to stay myself. I'm

1 not trying, I'm not attempting to be a ginormous--
2 that location is not going to accommodate a ginormous
3 facility.

4 MS. MASON: But people will still be coming
5 there though the 7 to 6 seven-days a week to get
6 landscaping?

7 MR. DOCKERY: The only reason I'm saying seven
8 days a week is there might be a weekend I might have a
9 special sale or something. I'm not planning on being
10 open seven days week. Preferably Monday through
11 Friday. But I'm just saying according to the rains,
12 if it rains three days I'm not working. So I have to
13 have catchup time. I just want to make sure I'm cover
14 myself. I don't want to be rained out for three days
15 and then I can't work on that weekend either. Selling
16 mulch is different. If it rains for three days and
17 I'm only open Monday through Friday, you know. I'll
18 will be open Monday through Friday, but I can sell
19 mulch. Most people buy mulch on Saturday. Sundays is
20 something definitely I don't want to be open for
21 people to come in. But when it is raining three days
22 a week and then it's not raining, I can go out
23 Saturday and Sunday if I have to. That's not going to
24 bring people to the location. Preferably I said five
25 days a week is idea. I'm not anticipating being open

1 seven days. I just want to cover myself just in case
2 there's anything that comes up in a month. Maybe one
3 weekend I might have something special to do or
4 something.

5 MS. MASON: So how many customers do you
6 anticipate coming?

7 MR. DOCKERY: Oh, I have no idea. I couldn't
8 tell you. I have no idea. I couldn't tell you. It's
9 in a pretty busy intersection. There's a lot of, like
10 I said, there's a gas station, there's Dollar General.

11 MS. MASON: Yes.

12 MR. DOCKERY: It's in that general vicinity
13 where all of those businesses are.

14 CHAIRMAN: Do you all have any further
15 questions or concerns?

16 (NO RESPONSE)

17 CHAIRMAN: Any board members?

18 Mr. Jean.

19 MR. JEAN: I have a question for Mr. Austin.

20 CHAIRMAN: If you don't mind to step up to the
21 podium again, please.

22 MR. JEAN: After hearing his testimony, are
23 you comfortable with what he's going to do there as
24 far as --

25 MR. AUSTIN: I mean I can't stop him from

1 doing whatever he wants to do. We have our concerns
2 about what it's going to look like, what he's going to
3 do, what he's going to build. Like I said, we've
4 lived there 14 years. We're just kind of concerned
5 about what's going to happen there is all we're really
6 concerned about.

7 MR. JEAN: After his testimony, are you better
8 satisfied?

9 MR. AUSTIN: Do you all have a plan of what he
10 plans to do? Do you all have a layout of what he's
11 planning on doing? I would like to see that if
12 possible. I don't know if there's one or not.

13 CHAIRMAN: Mr. Crum or somebody can show you.
14 The plan that was submitted with the application is
15 very rudimentary you might say. A more detailed site
16 plan is one of the conditions and will be required to
17 demonstrate more fully what's going to happen.

18 MRS. AUSTIN: His shop is going to be right
19 next to our driveway. It's right on top of us
20 basically. If he puts fencing around it, okay, but he
21 stated that that will have to come when he has time
22 and money. There's no stipulation there. It's right
23 next to our property and our driveway. When
24 Mr. Yeiser purchased this land originally, he brought
25 in a lot of fill to try to raise that property up and

1 dump the water on us. So now are we going to have
2 even more of that from him building this?

3 MR. AUSTIN: Mr. Yeiser went in and put a big
4 culvert, concrete culvert built in the ground and a
5 lot of that runoff comes straight on us now and when
6 we get a real heavy rain. He was perfectly legal to
7 do that. We're just concerned on what's going to
8 happen is all.

9 CHAIRMAN: We understand.

10 MR. AUSTIN: Until it happens, we don't know
11 what it's going to do with us. We're okay.

12 MR. HOWARD: And I can answer part of that
13 question on the drainage for what he does now.

14 Like I said, a more detailed site plan will be
15 required. That will be reviewed by the county
16 engineer. It will have drainage calculations as part
17 of that site plan review. So the county engineer will
18 be aware of what's going on. Any new and impervious
19 surface, roof, you know, downspouts and all of that
20 will be taken into account, as far as anything new out
21 there.

22 MS. THOMPSON: Can anything be required?

23 MR. HOWARD: So this board has the ability to
24 impose any -- as Staff we've recommended several
25 conditions. This board has the opportunity to

1 consider any factors that would in their mind -- the
2 idea or the concept of a conditional use permit is a
3 use that may work in an area, but what does it take to
4 properly integrate that into that vicinity. The board
5 has the option to make any conditions that would, you
6 know, may be use to fit into the area. I can't speak
7 for the board. I'm Staff. These five board members,
8 that's certainly something they could consider or not.

9 MRS. AUSTIN: Would we be able to see that
10 final site plan? I mean will that be another meeting?

11 MR. HOWARD: It's not a meeting, but we can
12 certainly let you know when it's submitted. Our Staff
13 can track that. Whenever that site plan were to come
14 in, we can let you know that it's been submitted so
15 you can see what's being proposed.

16 MRS. AUSTIN: Okay.

17 CHAIRMAN: We certainly appreciate your
18 concerns. There's certain things we can do and
19 certain things that we cannot require.

20 MRS. AUSTIN: I understand.

21 CHAIRMAN: We have to trust in the goodness of
22 the people in the community to do the right thing.
23 Vast majority of the time they do that.

24 MR. DOCKERY: And I will keep in consideration
25 there. I understand their concerns. I know they

1 don't want anybody up there. It's a beautiful
2 location. They have a nice house. They have open
3 property up there. I grew up in the county. It's
4 stinks if you've got somebody coming in imposing on
5 that. Like I said, I will keep all their concerns in
6 consideration.

7 Fencing is something maybe not the entire
8 property, but there are some areas that will be
9 initially fenced in. Like I said, it's not going to
10 be like the first week I'm going in there or anything,
11 but it will be one of the priorities as far as getting
12 that fence up most definitely.

13 CHAIRMAN: Yes, sir.

14 MR. AUSTIN: Right now our driveway, because
15 they let the grass grow up really tall, it's ready
16 hard to see. We live as you crest over that hill
17 there at the post office, there's a little hill there
18 and we live not in the low part, but it's a little
19 lower than where his driveway is going to be. They
20 don't mow that grass. That grass gets pretty tall and
21 you can't see down the highway. It's hard getting out
22 of our driveway. That would be a big help. I assume
23 you're going to keep it mowed. That's going to be a
24 big help, for us to at least to be able to see going
25 down the highway and not get hit by somebody coming 55

1 mile an hour in a 45 because they always fly through
2 there.

3 CHAIRMAN: I appreciate you making them aware
4 of that.

5 MS. THOMPSON: I have a question.

6 Are you locked into that lot 8?

7 MR. DOCKERY: What do you mean?

8 MS. THOMPSON: What they have labeled on that
9 drawing as lot 8, that north lot.

10 MR. DOCKERY: You talking about that one over
11 the other one?

12 MS. THOMPSON: Yes.

13 MR. DOCKERY: Not necessarily. Looking at the
14 property it's not as low. I'm worried about backfill
15 cost. Dirt is upwards to 300 bucks per 20 ton. So
16 I'm looking at trying to figure out. Depends on how
17 much I've got to grade and lift up. I'm not
18 necessarily opposed to work with them and work with
19 the other property. That's why I put both of them in
20 when we did this. That was kind of why I did that.
21 To kind of keep it open so maybe once we got past this
22 we could have a discussion with Jim Yeiser to see
23 which one and maybe what all it's going to entail, as
24 far as backfill. There's a lot of the things I want
25 to do up front. I've got to figure out what's what.

1 CHAIRMAN: Thank you very much.

2 Any other board members have any questions?

3 (NO RESPONSE)

4 CHAIRMAN: If not, we're ready to entertain a
5 motion.

6 MR. GLENN: I will make a motion to approve it
7 based on what we've heard here tonight, even with the
8 concerns that you all have and I understand that. I
9 don't think it falls out of line with what is in that
10 area to begin with. It's urban agriculture. It's
11 also residential uses and there's also some general
12 business uses in that area. Based on that, I would
13 make my motion to approve it and also that he meets
14 the special conditions that are 1 through 5. We
15 talked about the hours of business. Seven days a
16 week. I mean I could see where Monday through Friday
17 7 to 5, but I would like to see the weekends, Saturday
18 and Sunday, maybe more on something like 12 to 5 or 11
19 to 5 or something like that. I'm assuming the people
20 that are coming in on those days are picking up some
21 material to take back to their --

22 MR. DOCKERY: Saturday actually would be a big
23 sale date under these conditions. That's when people
24 are off work. That's when the homeowner are doing
25 their landscaping and such.

1 MR. GLENN: So 7 to 5 Monday through Saturday,
2 and then on Sunday shorter hours?

3 MR. DOCKERY: Yes.

4 MR. GLENN: 12 to 5 on Sundays. 7 to 5 Monday
5 through Saturdays.

6 MR. DOCKERY: Could we do 5:30?

7 MR. GLENN: 7 to 5:30 Monday through Saturday.
8 12 to 5:30 on Sundays.

9 MR. DOCKERY: Like I said, I don't plan on
10 being open on Sunday.

11 CHAIRMAN: I want to clarify one thing though
12 because I understand the business he's in.

13 You're talking about on-site operations.
14 Because if there's a snowstorm and he's called to come
15 out to city hall to clear the parking lot on Sunday.
16 We're not talking about him being off-site, if he
17 needs to be off-site working.

18 MR. GLENN: Correct. I'm just talking about
19 on-site work.

20 CHAIRMAN: You know his business, he can't
21 control the snow.

22 MR. GLENN: Correct. And I know he'll cut
23 lawns until it gets dark, in that time frame. I'm
24 only talking about on-site times.

25 CHAIRMAN: Are you comfortable with the

1 conditions?

2 MR. DOCKERY: Yes. If it poses an issue, then
3 we can revisit it later. Is that an option?

4 CHAIRMAN: Yes. You can come back to amend it
5 later if you feel like you need to.

6 MR. GLENN: You're okay with the five special
7 conditions that are on here?

8 MR. DOCKERY: Yes, sir.

9 MR. GLENN: Limited hours, driveway that has
10 to be done?

11 MR. DOCKERY: Yes.

12 CHAIRMAN: Anybody in the audience have any
13 additional questions or concerns?

14 (NO RESPONSE)

15 CHAIRMAN: Any board members?

16 (NO RESPONSE)

17 CHAIRMAN: We need a second.

18 MR. JEAN: Second.

19 MR. AUSTIN: I do have another question. The
20 building that's the 40 by 60, how far does that have
21 to sit back off the highway? That's not going to
22 interfere with the site to the --

23 CHAIRMAN: Ask Mr. Howard.

24 MR. HOWARD: No. It would be 75 from the
25 centerline of the road.

1 MR. AUSTIN: I wanted to make sure.

2 MR. HOWARD: That's the minimum building
3 setback; 75 from the centerline.

4 MR. DOCKERY: I guess 20 foot easement?

5 MR. HOWARD: Just for clarification, what do
6 you mean by "easement?" From the front property line?

7 MR. DOCKERY: Property line from there, from
8 the center property line of mine and theirs. I know
9 fences and stuff like that it's usually 10 feet, but
10 construction building or whatnot is it like 20?

11 MR. HOWARD: So on the side property line, the
12 property line to the north of your property that is
13 their south property line, the zoning ordinance would
14 require a 10-foot building setback there at a minimum.
15 Again, you can certainly go more if that's a concern.
16 If you say you'll be more than 20, then that may
17 alleviate some of their concerns and put you further
18 off that property line as well. The zoning ordinance
19 would allow you to go a minimum of 10. Any closer,
20 building code stuff kicks in and that makes things
21 worse. The ordinance would require 10. So are you
22 saying you'll be at least 20? Are you good with that?

23 MR. AUSTIN: I was just curious. I would like
24 to be as far as possible to make sure they're
25 comfortable as well. If I can get off that line.

1 Anything I can do. They were there before I. I want
2 to make them comfortable as well. I've visited the
3 home. It's a beautiful house. I completely
4 understand where they're coming from.

5 MR. HOWARD: You do have just, as a matter of
6 speaking, you have a 10-foot public utility easement
7 along that north property line as well. It would be a
8 building setback line. You would have to stay out of
9 that easement all together anyway.

10 CHAIRMAN: Any other questions?

11 (NO RESPONSE)

12 CHAIRMAN: I think we have a motion and a
13 second. All in favor raise your right hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion passes.

16 Thank you, sir.

17 -----

18 VARIANCE

19 ITEM 6

20 1121 Industrial Drive, zoned I-2 Heavy Industrial
21 Consider a request for a Variance in order to increase
22 the maximum driveway width for two-way industrial
drives with a median from 60-feet wide to 92-feet
wide.

23 References: Zoning Ordinance Article 13,
Section 13.231

24 Applicant: Swedish Match; Pinkerton Tobacco Company,
LLC

25 MR. CRUM: The subject property is a 44.592

1 acre industrial parcel that is zoned I-2 Heavy
2 Industrial. The site location industrial facility is
3 operated by Swedish Match. The site has four existing
4 access points along Industrial Drive, with the largest
5 being 92-feet wide without a median. That access
6 point was proposed to be reduced to 50-feet in width
7 in the most recent development plan that was approved
8 in 2020.

9 The applicant however reconsidered the design
10 of the access point and wishes to implement a 92-foot
11 wide access point consisting of an egress lane, a
12 median and two egress lanes. However, the ordinance
13 limits per two-way industrial driveway to a maximum of
14 60-feet in width.

15 The applicant is requesting this variance in
16 order to use the 92-foot wide access point as
17 proposed.

18 Both KYTC and the county engineer's office
19 have reviewed the plans and has given preliminary
20 approval contingent on installing sign marking as well
21 as re-evaluation of the access point if the function
22 of the access point changes.

23 Staff finds the proposed Variance will not
24 adversely affect the public health, safety or welfare
25 because the proposed median provides a buffer between

1 alternating directions of traffic. Will not alter the
2 essential character of the general vicinity because
3 the proposed access point is the same width as the
4 existing access point at this location. It will not
5 cause a hazard or nuisance to the public because the
6 required signage and directional arrows will guide
7 traffic. But may allow an unreasonable circumvention
8 of the requirements of the zoning regulations because
9 the previous site plan demonstrated that it is
10 possible for the access point to comply with the
11 ordinance requirements.

12 Staff is recommending approval of this request
13 with the following Special Conditions:

- 14 1. Obtain approval of an amended Site Plan;
- 15 2. The ingress and egress shall have dual "DO
16 NOT ENTER" signs installed. These signs must be
17 manufactured and installed per specifications of the
18 Manual on Uniform Traffic Devices;
- 19 3. The ingress and egress shall have
20 directional arrow markings as depicted in the concept
21 plan;
- 22 4. Any change in the function of the access
23 point will result in the reduction of the access point
24 to comply with current regulations; and
- 25 5. Obtain all necessary building, electrical

1 and HVAC permits, inspections and certificates of
2 occupancy and compliance.

3 Staff would like to enter the Staff Report
4 into the record as Exhibit F.

5 CHAIRMAN: Anybody in the audience?

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

8 MR. CHINCHILLA: Steve Chinchilla.

9 (STEVE CHINCHILLA SWORN BY ATTORNEY.)

10 MR. CHINCHILLA: I'm just here to answer any
11 questions. I did want to reiterate for what the
12 gentleman just mentioned. Both the county engineer
13 and the Transportation Cabinet has reviewed the access
14 modifications and given preliminary approval and also
15 David Weaver is here to answer any questions.

16 CHAIRMAN: You're here with Swedish Match?

17 MR. CHINCHILLA: Yes, sir.

18 CHAIRMAN: Anyone in the audience have a
19 question of this gentleman?

20 (NO RESPONSE)

21 CHAIRMAN: Any board members have any
22 questions?

23 (NO RESPONSE)

24 CHAIRMAN: Seeing none I'm ready for a motion.

25 MR. JEAN: I would like to make a motion we

1 approve this Variance based on the Staff Report, the
2 site visit and the testimony presented here this
3 evening with the five conditions and the four listed
4 findings of fact.

5 MS. THOMPSON: Second.

6 CHAIRMAN: We have ask second. Anyone have
7 any questions about the motion?

8 (NO RESPONSE)

9 CHAIRMAN: If not all in favor raise your
10 right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion passes.

13 -----

14 ADMINISTRATIVE APPEALS

15 ITEM 7

16 1600 West 4th Street, zoned B-4 General Business
17 Consider a request for an Administrative Appeal to
18 change from one non-conforming use to another
19 non-conforming use, specifically for retail sales and
a 4-plex residential use, at the subject property.
Reference: Zoning Ordinance Article 4, Section 4.53
Applicant: Murlyd Ross

20 MR. CRUM: This is a 0.155 acre parcel that is
21 zoned B-4 and is located at the intersection of West
22 Fourth Street and Castlen Street.

23 Surrounding properties appear to be
24 residential uses, R-4DT Inner-City Residential and B-4
25 General Business.

1 The property consists of commercial retail
2 space that fronts on Fourth Street, with four attached
3 residential uses attached to the rear. Original
4 structures on the site were constructed around 1927,
5 with subsequent additions constructed later.

6 The property does not currently meet ordinance
7 requirements for parking and building setbacks and
8 4-plex residential uses are not permitted within the
9 B-4 zone. However, it is assumed these uses were
10 established prior to the current zoning ordinance and
11 will consider to be legal nonconforming and will how
12 to continue to operate. However, the site has been
13 vacant for more than 18 months and so the site has
14 lost its legal non-conforming status.

15 An administrative Appeal is needed in order to
16 reestablish that same retail and 4-plex use.

17 The applicant is proposing site improvement to
18 bring this site closer to bring this site closer to
19 the zoning ordinance requirement; mostly it will be
20 parking. Uses require to provide eight paved spaces.
21 Currently the only off-street parking for the property
22 is a single concrete pad located to the rear. The
23 applicant is proposing to install six paved parking
24 spaces along the property line which is the maximum
25 number of spaces that the site can accommodate, and

1 will be access via a rear alleyway. In order to
2 prevent cars from backing out into the right-of-way
3 onto Castlen Street, the Staff recommends that the
4 green space along Castlen Street be retained.

5 Other structural renovations are proposed, but
6 no building expansions are planned.

7 A motion to approve the appeal would allow the
8 applicant to re-establish a retail use and a 4-plex
9 residential use, as illustrated on the submitted site
10 plan.

11 A motion to deny the appeal would prevent the
12 applicant from utilizing the subject property for any
13 use unless the site was brought into full compliance
14 with the zoning regulation.

15 If the Board moves to approve, Staff would
16 recommend the following conditions:

- 17 1. Obtain approval of a site Plan or Final
18 Development Plan;
- 19 2. The green space in the right-of-way along
20 Castlen Street shall be maintained in order to prevent
21 traffic from backing into Castlen Street; and,
- 22 3. Obtain all necessary building, electrical
23 and HVAC permits, inspections and certificates of
24 occupancy and compliance.

25 Staff would like to enter the Staff Report

1 into the record as Exhibit G.

2 CHAIRMAN: We rarely hear one of these so,
3 Counsel, we may need some guidance as we move forward
4 appropriately.

5 Anyone here representing the applicant?

6 Yes, sir.

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

9 MR. ROSS: Murlyd Ross.

10 (MURLYD ROSS SWORN BY ATTORNEY.)

11 CHAIRMAN: Anything you would like to add?

12 MR. ROSS: No. I just want to improve the
13 community and make it viable for the community.
14 That's all.

15 CHAIRMAN: Any board members have any
16 questions of the applicant?

17 (NO RESPONSE)

18 CHAIRMAN: Mr. Howard, any comments?

19 MR. HOWARD: No.

20 CHAIRMAN: Any particular reason why it was
21 recommended for denial?

22 MR. HOWARD: It's not we don't recommend
23 approval or denial. As Mr. Crum stated, we provided a
24 Staff Report. Essentially what you do now is you
25 either make a motion to approval or deny. You're not

1 required to have findings of fact. You're just
2 approving or denying an Administrative Appeal. We did
3 recommend some conditions. If you make a motion to
4 approve it, then we would recommend that you attach
5 those. We don't have any issues with it. We just
6 couldn't approve it in-house because of the 18-month
7 lapse.

8 MS. MASON: You don't have to have findings of
9 fact?

10 MR. HOWARD: No.

11 CHAIRMAN: Have you gotten any calls or any
12 inquiries at the office about this?

13 MR. HOWARD: Not that I'm aware of, no. The
14 building has been used for this forever. It's just
15 that it lapse and lost its grandfather clause. We as
16 Staff then couldn't give him the building permits and
17 whatever he needed to get going. This is the avenue.
18 We don't have an issue with it.

19 CHAIRMAN: We just need a simple motion to
20 approve or deny.

21 MR. HOWARD: With the conditions.

22 CHAIRMAN: With the conditions.

23 Mr. Jean.

24 MR. JEAN: I would like to a motion that we
25 approve this Administrative Appeal based on the Staff

1 Report, the site visit and with the three conditions.

2 MR. GLENN: Second.

3 CHAIRMAN: All in favor raise your right hand.

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion pass.

6 We need one final motion.

7 MS. MASON: I make a motion to adjourn.

8 MR. GLENN: Second.

9 CHAIRMAN: All in favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: We are adjourned.

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

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and
4 for the State of Kentucky at Large, do hereby certify
5 that the foregoing Owensboro Metropolitan Board of
6 Adjustment meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into foregoing 61
14 typewritten pages; and that no signature was requested
15 to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 30th day of June, 2021.

18

19

LYNNETTE KOLLER FUCHS
NOTARY ID 613522
OHIO VALLEY REPORTING SERVICES
2200 E PARRISH AVE, SUITE 205-C
OWENSBORO, KY 42303

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23 COMMISSION EXPIRES: DECEMBER 16, 2022

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

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