

1 OWENSBORO METROPOLITAN PLANNING COMMISSION

2 OCTOBER 8, 2009

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday,
5 October 8, 2009, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

8 MEMBERS PRESENT: Drew Kirkland, Chairman
Judy Dixon, Vice Chairman
9 David Appleby, Secretary
Gary Noffsinger, Director
10 Madison Silvert, Attorney
Ward Pedley
11 Irvin Rogers
Wally Taylor

12 * * * * *
13

14 CHAIRMAN: I would like to welcome everybody
15 to the October 8, meeting of the Owensboro
16 Metropolitan Planning Commission. Will you please
17 rise for our invocation, please. Our invocation will
18 be given by Ms. Judy Dixon.

19 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

20 CHAIRMAN: Our first order of business is to
21 consider the minutes of the September 10, 2009
22 meeting. Are there any questions, additions,
23 corrections?

24 (NO RESPONSE)

25 CHAIRMAN: If not the chair is ready for a

1 motion.

2 MS. DIXON: Move to approve.

3 CHAIRMAN: Motion for approval by Ms. Dixon.

4 MR. TAYLOR: Second.

5 CHAIRMAN: Second by Mr. Taylor. All in favor
6 raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 Next item, Mr. Noffsinger.

10 ITEM 2

11 Presentation by Carolyn Franklin about the 2010 Census
12 Complete County Committee.

13 MS. FRANKLIN: Thank you for letting me come
14 and present about the 2010 census. It's the ten year
15 census count. It is how \$425 billion is divided up
16 annually based on the ten year census. That's over \$4
17 trillion. So in nine years our 2010 censuses
18 population comp figures will still be being used to
19 divide up the amounts. So it's critical that we get
20 the amounts correct for the communities to get your
21 fair share of the funding.

22 What a complete count committee is, is just
23 that. It's the trusted voices, the leaders of the
24 community, the people that know the people or how to
25 get out to all aspects of the community seniors,

1 children, faith based. All the community leaders to
2 make sure that we get the word out, get the word out,
3 get the word out so that in March and April of 2010,
4 April 1st of 2010 is census day. The forms start
5 going to the homes in March.

6 You have a sample in your packets. It's a
7 sample, only a sample. Please don't return them.
8 This is not the real form, but it's pretty much what
9 it's going to look like. It's the honor system. It's
10 self-reporting. So when everyone gets their form next
11 year, just fill it out and send it in. That's all.

12 If someone does not want a visit to their
13 home, that's all they have to do is fill out the form.
14 If the form is not returned, a follow-up postcard
15 comes or another form. If that's not returned, that
16 activates an actual in-person visit which cost us \$90
17 million for every one percent of the population that
18 we have to follow up with. So that's why we're doing
19 this ahead. We're partnership folks out partnering
20 across the state and across the country to get the
21 word out for everyone to return their forms so we get
22 our correct population counts.

23 Whoever you all know for the complete count
24 committees, that is exactly who we are looking to do
25 the outreach to. You all have the committee. You set

1 the agenda. You all know your communities better than
2 anybody. That's what this is all about. It's all
3 about when this happens next year everyone has been
4 somehow informed, touched, got the word out. You all
5 know how to do that. You're the planning folks.

6 Whatever I can provide, whatever feedback we
7 can do, that is the whole point. To get the funding
8 for your community. All the population figures are
9 delivered to the president at the end of 2010.
10 Starting April 1, 2011 those population counts go back
11 to the states. That is then for potential
12 redistricting. Then the population numbers are
13 distributed like that. It's just critical. We have a
14 whole program for census in the schools because the
15 children are the undercounted population. So we have
16 special outreach for that as well.

17 Do any of you all have any questions?

18 (NO RESPONSE)

19 CHAIRMAN: Very good. Thank you very much.

20 MS. FRANKLIN: I have something else. You all
21 have a packet. In the information in your packet,
22 it's got various information. Any information in
23 there you can use all or in part for drop-in articles,
24 newsletters, quotes, anything like that. You all have
25 a partnership agreement on one side, on the left side

1 of your packet. On the back of it is a variety of
2 ways you can partner, folks you know can partner with
3 the census. My name is on one side of it. You can
4 fill out the other side. Feel free to copy and
5 distribute. This is how we get the word out. Whether
6 it be a link to your website, a link to your
7 organization or people you know website. Drop-in
8 article. There's a variety of ways. So please look
9 at your partnership agreement and we will be following
10 up to pick up partnership agreements. Thank you.

11 CHAIRMAN: Thank you.

12 Mr. Noffsinger, our next item, please.

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14 CELLULAR TELECOMMUNICATIONS FACILITIES PER KRS 100.987

15 ITEM 3

16 3560 Hayden Road (Postponed September 10, 2009)
17 Consider approval of a wireless communications tower.
18 Applicant: Daviess County School District Finance
19 Corp.; AT&T Wireless

19 MR. SILVERT: State your name, please.

20 MR. HOWARD: Brian Howard.

21 (BRIAN HOWARD SWORN BY ATTORNEY.)

22 MR. HOWARD: This application comes before you
23 as a mono pole cellular antenna tower that is 199 feet
24 tall. They're seeking placement on the Meadow Lands
25 Elementary School property. The lease site area that

1 they're proposing is a 100 by 100 foot lease area.

2 They've submitted a minor subdivision plat to
3 the office, it's a related item on the agenda, for the
4 creation of that lease area. They state in their
5 application material that there are no other suitable
6 locations in the vicinity, no other collocations that
7 they could use within the vicinity and that the new
8 tower will provide better cell phone service to the
9 community.

10 The application materials are complete. They
11 meet all guidelines and requirements in regards to
12 residential structure, setbacks.

13 Height at 199 feet is below the 200 foot
14 maximum allowed by ordinance.

15 Their screening plan calls for a 6 foot tall
16 chain-link fence and a double row of staggered pine
17 trees. No signs proposed on the site.

18 They are providing opportunities for
19 co-location and they are not requesting any waivers.

20 With that we have the findings that:

21 1. The application is complete with all
22 materials in accordance with the Owensboro
23 Metropolitan Zoning Ordinance;

24 2. The site is in compliance with all design
25 criteria of the Owensboro Metropolitan Zoning

1 Ordinance; and,

2 3. The permanent tower will improve cellular
3 telephone service for users within the community; and,

4 4. By providing the opportunity for three
5 additional service providers on this tower, we are
6 promoting the goal of the Comprehensive Plan to
7 encourage collocation in order to minimize the number
8 of telecommunications tower.

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

11 CHAIRMAN: Are there any questions?

12 (NO RESPONSE)

13 CHAIRMAN: If there are no further questions,
14 the chair is ready for a motion.

15 MR. ROGERS: Motion for approval based on
16 Planning Staff Recommendations and with the Findings 1
17 through 4.

18 CHAIRMAN: We've got a motion for approval by
19 Mr. Rogers.

20 MR. PEDLEY: Second.

21 CHAIRMAN: Second by Mr. Pedley. All in favor
22 raise your right hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: The motion carries unanimously.

25 Next item please, Mr. Noffsinger.

1 Related Item:

2 ITEM 3A

3 3560 Hayden Road

Consider approval of a minor subdivision plat.

4 Applicant: Daviess County School District Finance
Corp.

5

6 MR. NOFFSINGER: Mr. Chairman, this plat has
7 been reviewed by the Planning Staff and Engineering
8 Staff. It's found to be in order. The plat comes to
9 you as an exception to the subdivision regulations in
10 that the lot does not have frontage on public
11 right-of-way. It is an undersized lot from the zone
12 that it's in. However, it is for a cell tower. There
13 is a notation on the plat that states that it's for
14 that purpose and not for building, residential
15 building activity. So with that we would recommend
16 that you grant approval.

17 CHAIRMAN: Is anybody here representing the
18 applicant?

19 MR. SULLIVAN: Yes, sir. I'm Terry Sullivan
20 with SBA Network Services.

21 MR. SILVERT: Let me swear you in, Mr.
22 Sullivan.

23 (TERRY SULLIVAN SWORN BY ATTORNEY.)

24 CHAIRMAN: Mr. Sullivan, why don't we wait and
25 see if there are any questions. If there are any

1 technical questions, we'll call them up.

2 Are there any questions of the applicant?

3 (NO RESPONSE)

4 CHAIRMAN: If not the chair is ready for a
5 motion.

6 MR. APPLEBY: Move for approval.

7 CHAIRMAN: Motion for approval by Mr. Appleby.

8 MS. DIXON: Second.

9 CHAIRMAN: Second by Ms. Dixon. All in favor
10 raise your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries unanimously.

13 Next item, please.

14 ITEM 4

15 343 Sutton Lane
16 Consider approval of a wireless telecommunications
17 tower.
Applicant: William R. Mathis; AT&T

18 MR. HOWARD: This application comes before you
19 tonight as a temporary cellular on wheels tower. It's
20 115 feet tall.

21 This site has previously had a temporary tower
22 approved. They are in the process of working on a
23 permanent location. The temporary tower came as a
24 result of the water tower that was removed on Fourth
25 Street. So they're asking for another extension of

1 six months while the final lease is worked out.

2 Basically this site will have the two "boat
3 trailer" type of things on the site. One will house
4 the tower and the other will have the support
5 equipment. The tower will not require illumination.
6 It meets setback requirements, the residential
7 structure requirement. It's below the maximum height
8 requirement.

9 They do ask for a couple of waivers. One is
10 on the evergreen requirement for screening around the
11 site. In their application materials, they state that
12 there is existing trees in the area, and due to the
13 temporary nature of the site they would request that
14 those be waived. I guess, that's the only waiver.
15 I'm sorry, I thought there was a second. Those
16 waivers have previously been granted from the Planning
17 Commission.

18 We present this with findings that:

19 1. The application is complete with all
20 materials in accordance with the Owensboro
21 Metropolitan Zoning Ordinance;

22 2. Compliance with all design criteria of the
23 Owensboro Metropolitan Zoning Ordinance; and,

24 3. Temporary in nature, the proposed tower
25 will provide much needed cellular phone service while

1 plans for a permanent tower are completed and
2 approved.

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

5 CHAIRMAN: Is there anybody here representing
6 the applicant?

7 MS. JACOBS: My name is Kathy Jacobs with
8 Retail Brokerage Services. I work for AT&T.

9 CHAIRMAN: Let me see if there are any
10 questions.

11 Are there any questions of the applicant?

12 (NO RESPONSE)

13 CHAIRMAN: Anybody from the commission have
14 any questions?

15 (NO RESPONSE)

16 CHAIRMAN: If not the chair is ready for a
17 motion.

18 MR. APPLEBY: Motion for approval.

19 CHAIRMAN: Motion for approval by Mr. Appleby.

20 MR. TAYLOR: Second.

21 CHAIRMAN: Second by Mr. Taylor. All in favor
22 raise your right hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries unanimously.

25 Next item, please.

1 ITEM 5

2 121 Woods Road
3 Consider approval of a wireless telecommunications
4 tower.
5 Applicant: Herman R. & Martha L. Miller;
6 Powertel/Memphis, Inc. d/b/a T-Mobile Kentucky

7 MR. HOWARD: This tower comes before you as a
8 199 foot tall lattice type cellular structure. It is
9 located on U.S. Highway 60 West closer to Henderson
10 County boundary.

11 The lease area that they were proposing is an
12 80 by 80 foot lease area. They have submitted a minor
13 subdivision plat that should create that lease area of
14 tract. Their application is complete with all
15 materials submitted to the office.

16 They are requesting a couple of waivers with
17 the application. They meet all the requirements as
18 far as illumination, staffing and signs; however, due
19 to the lease area size, the lattice type tower
20 structure setback is one-half the height of the tower.
21 With only an 80 by 80 lease area that cannot be
22 accomplished within the 80 by 80 lease area. However,
23 within the boundary of the parent tract the setback
24 could be accomplished. So with that we would feel
25 that the waiver request is reasonable. Otherwise, it
26 meets all the requirements as far as screening and
27 other applicable signs, location. They are providing

1 co-location opportunity on the tower as well.

2 With that we enter the Staff Report into the
3 record with the following findings:

4 1. The application is complete with all
5 materials in accordance with the Owensboro
6 Metropolitan Zoning Ordinance;

7 2. The site is in compliance with all design
8 criteria of the Owensboro Metropolitan Zoning
9 Ordinance; and,

10 3. The permanent tower will improve cellular
11 telephone service for users within the community; and,

12 4. By providing the opportunity for three
13 service providers on this tower, we are promoting the
14 goal of the Comprehensive Plan to encourage
15 co-location in order to minimize the number of
16 telecommunication towers.

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

19 CHAIRMAN: Is anybody here representing the
20 applicant?

21 APPLICANT REP: Yes.

22 CHAIRMAN: Let's see if there are any
23 questions.

24 There are any questions?

25 (NO RESPONSE)

1 CHAIRMAN: If there are no questions the chair
2 is ready for a motion.

3 MR. APPLEBY: Motion for approval.

4 CHAIRMAN: Motion for approval by Mr. Appleby.

5 MR. ROGERS: Second.

6 CHAIRMAN: Second by Mr. Rogers. All in favor
7 raise your right hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimously.

10 Next item, please.

11 Related Item:

12 ITEM 5A

13 121 Woods Road
14 Consider approval of a minor subdivision plat.
Applicant: Herman R. & Martha L. Miller

15 MR. NOFFSINGER: Mr. Chairman, Planning Staff
16 and Engineering Staff have reviewed this plat. It's
17 found to be in order. It comes to you as an exception
18 to the subdivision regulations in that it does not
19 have frontage on the public right-of-way and it is
20 undersized to meet the minimum lot size of the zone
21 that it's located; however, there is a notation on
22 this plat that states it is to be used for cell tower
23 purposes only, and they have provided an access
24 easement from public right-of-way to this lot. So
25 with that we would recommend it be approved.

1 CHAIRMAN: Is anybody here representing the
2 applicant?

3 APPLICANT REP: Yes.

4 CHAIRMAN: So noted.

5 Are there any questions?

6 (NO RESPONSE)

7 CHAIRMAN: If not the chair is ready for a
8 motion.

9 MS. DIXON: Move to approve.

10 CHAIRMAN: Motion for approval by Ms. Dixon.

11 MR. TAYLOR: Second.

12 CHAIRMAN: Second by Mr. Taylor. All in favor
13 raise your right hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries unanimously.

16 Next item, please.

17 -----

18 ZONING CHANGES

19 ITEM 6

20 2901 Veach Road, 0.193 acres
21 Consider zoning change: From B-4 General Business to
22 R-1B Single-Family Residential
23 Applicant: William & Joan Kolok; Kolok Wood & Stone,
24 LLC

25 PROPOSED ZONE & LAND USE PLAN

26 The applicant is seeking an R-1B Single-Family
27 Residential zone. The subject property is located in

1 a Business Plan Area, where urban low-density
2 residential uses are appropriate in very-limited
3 locations.

4 SPECIFIC LAND USE CRITERIA

5 (A) Building and lot patterns - Building and
6 lot patterns should conform to the criteria for "Urban
7 Residential Development" (D6)

8 (B) Existing, expanded or new sanitary sewer -
9 Urban Low-Density Residential uses should occur only
10 where sanitary sewer systems exist or may be expanded
11 or where new systems may be properly established.

12 (C) Only logical expansions - In Business plan
13 areas, completely new locations of Urban Low-Density
14 Residential use should not be established. However,
15 existing areas of this use may be expanded onto
16 contiguous land.

17 PLANNING STAFF REVIEW

18 GENERAL LAND USE CRITERIA

19 Environment

20 * It appears that the subject property is not
21 located in a wetlands area per the US Department of
22 Agriculture Soil Conservation Service, map dated March
23 6, 1990.

24 * The subject property is located in a special
25 flood hazard area and floodway per FIRM Map

1 21059CO276D.

2 * It appears that the subject property is
3 outside the Owensboro Wellhead Protection area per the
4 GRADD map dated March 1999.

5 * The developer is responsible for obtaining
6 permits from the Division of Water, The Army Corp of
7 Engineers, FEMA or other state and federal agencies as
8 may be applicable.

9 Urban Services

10 All urban services, including sanitary sewers,
11 are available to the site.

12 Development Patterns

13 The subject property is surrounded by B-4
14 General Business zoning classification on all sides.
15 The B-4 zoned property to the north is an existing
16 single-family residence. All other surrounding land
17 uses are consistent with B-4 zoning classifications.

18 The applicant states in their findings that
19 the property to the south is a single-family residence
20 being used as an insurance office. An insurance
21 office is permitted within B-4 zoning classification
22 and although the structure may have been a
23 single-family residence at one point, it has been
24 converted to a commercial structure. The subject
25 property also has a history of commercial use. It

1 appears as though the property has been used as a
2 gifts and ceramics shop since around 2001.

3 The applicant proposes to use the subject
4 property as an art studio and single-family residence
5 and to construct an addition on the existing
6 structure. The use of the property as an art studio
7 with an accessory dwelling is permitted in a B-4
8 General Business zoning provided that required parking
9 can be met on site. The applicant was unable to
10 develop a plan with sufficient parking due to a tree
11 on the property that the applicant did not want to
12 remove.

13 The applicant is seeking a residential zone in
14 order to eliminate on-site parking that would be
15 required in the B-4 zone. An art studio could also be
16 conditionally permitted in an R-1B zone allowing
17 employees and customers, but under the conditional use
18 permit, parking requirements must be met. An art
19 studio can be accomplished as a home occupation within
20 a residential zone provided that specific requirements
21 of the zoning ordinance are followed. The following
22 criteria apply:

23 1. The use is clearly incidental and
24 secondary to use for dwelling purposes;

25 2. The use is conducted entirely within a

1 dwelling and not in an accessory building;

2 3. The use is carried on only by residents of
3 the dwelling, with no non-resident employees or
4 agents;

5 4. No commodities are sold except as are
6 produced on the premises;

7 5. The use does not require external
8 alteration of the dwelling; and,

9 6. The use does not adversely affect the use
10 permitted in the immediate neighborhood by excessive
11 traffic generation or noise.

12 If used as a home occupation, the applicant
13 should be aware of each criterion and understand that
14 customers are not permitted, retail sales is not
15 permitted, and no additional employees other than
16 residents of the dwelling are permitted.

17 The rezoning of the subject property to a
18 residential zone will require a ten foot landscape
19 easement, six-foot element and one tree every 40
20 linear feet where adjoining commercial zoning to the
21 north, east and south. The applicant has submitted a
22 variance in conjunction with the rezoning to eliminate
23 all buffers and screening requirements as stated. If
24 developed under the commercial zoning classification,
25 the proposed use of the property would not require any

1 screening from the adjoining properties.

2 In the vicinity of the subject property, Veach
3 Road is classified as a major collector roadway with a
4 250' access spacing standard. The site currently
5 shares a drive with the property to the south.

6 The subject property is located within the
7 floodway. The applicant proposes to construct an
8 addition to the existing structure on the subject
9 property. Since the addition will be within the
10 floodway, a conditional use permit is required along
11 with supporting documentation from appropriate
12 regulating agencies for construction in a floodway.
13 The applicant has submitted an application for
14 conditional use permit.

15 SPECIFIC LAND USE CRITERIA

16 The applicant's proposal is not in compliance
17 with the Comprehensive Plan. The surrounding property
18 is zoned entirely B-4 General Business which is
19 appropriate within a Business Plan Area. With the
20 exception of the property to the north, which is still
21 maintained as a single-family residence, land uses in
22 the vicinity are consistent with B-4 zoning
23 classification. The subject property has a history of
24 use for non-residential purposes. The use of the
25 property as proposed by the applicant can be

1 accomplished within the current zoning classification
2 if adequate parking is provided on-site. The subject
3 property does not adjoin any single-family residential
4 zoning and is therefore not a logical expansion.

5 PLANNING STAFF RECOMMENDATIONS

6 Staff recommends denial because the proposal
7 is not in compliance with the community's adopted
8 Comprehensive Plan. This recommendation is made
9 subject to the findings of fact that follow:

10 FINDINGS OF FACT:

11 1. The subject property is located in a
12 Business Plan Area, where urban low-density
13 residential uses are appropriate in very-limited
14 locations;

15 2. The current zoning of the property and all
16 surrounding properties is B-4 General Business which
17 is consistent with the Business Plan Area in which the
18 property is located;

19 3. With the exception of the property to the
20 north, land uses in the vicinity are consistent with
21 B-4 zoning;

22 4. The subject property has a history of
23 non-residential use as a gifts and ceramics shop;

24 5. The proposed use of the property can be
25 accomplished under the current zoning classification;

1 6. The proposed rezoning does not satisfy the
2 logical zoning expansion criteria of the Comprehensive
3 Plan; and,

4 7. The current zoning is appropriate for the
5 proposed use and accessory dwelling and the proposed
6 zoning is less appropriate.

7 MR. HOWARD: We would like to enter the Staff
8 Report into the record as Exhibit D.

9 CHAIRMAN: Thank you.

10 Is there anybody representing the applicant?

11 MR. KOLOK: Yes. My name is Bill Kolok.

12 (BILL KOLOK SWORN BY ATTORNEY.)

13 MR. KOLOK: I am an artist. I have lived in
14 Owensboro for 30 years. I teach at Kentucky Wesleyan.
15 I'm shortly going to retire and I'm looking for a
16 space to continue my profession as an artist.

17 The space that I chose, this building has had
18 two businesses in it before. Neither of them were
19 successful in that area. The space is small. It is
20 on a floodway so it would be difficult for another
21 business to take it. So I'm not sure -- so I don't
22 think it would be an adequate space for a new
23 business.

24 My daughter is recently back from the Peace
25 Corp in Africa and is going to school in Owensboro and

1 plans on living there.

2 Although both structures are, on either side
3 of the yard, are businesses, they both look like
4 houses. I have spent a lot of time and money and
5 effort making the front of my building look like a
6 house again. Grass and bushes, etcetera, etcetera.

7 I don't sell here in Owensboro. I sell out of
8 galleries in Nashville, Chattanooga and Cincinnati. I
9 need a place to work and be able to store my work
10 while I'm waiting for exhibition space on other
11 places.

12 I don't plan on selling retail out of
13 Owensboro to be quite frank. Owensboro doesn't have a
14 very good retail market for the kind of art that I do.

15 If anyone has any questions, I will gladly
16 answer them now.

17 CHAIRMAN: It seems like to me, based on the
18 case, that it would be, if you would maintain to be
19 for classification and put in the parking, you've got
20 a piece of property that's valuable not only to you
21 but to you in the future when you ultimately decide to
22 retire/retire.

23 MR. KOLOK: The problem is the parking is the
24 problem. I'm a one person artist. I don't plan on
25 opening up a retail store, but I am required to have

1 five parking places, which if I build that building in
2 the back, which I have approval from the Division of
3 Water and Corp of Engineers, there isn't enough room
4 to build those five places without me digging up my
5 front yard, which both my neighbors still have and
6 putting parking in the front, which I think would make
7 it a non-attractive place. If I could find a way to
8 eliminate the parking problem, I would be happy to
9 stay with B-4. This was the only alternative that we
10 could think of at the time.

11 CHAIRMAN: Mr. Noffsinger, aren't there
12 ramifications with him doing or not doing as far as --

13 MR. NOFFSINGER: Mr. Chairman, I think
14 Mr. Mischel and Mr. Howard worked with the applicant.
15 It was my understanding that the parking could be
16 gained on site in the rear. I did not work with the
17 applicant and I think we would need different
18 information.

19 CHAIRMAN: Would you sit down, please.

20 Mr. Mischel, which one of you wants to come to
21 the podium first?

22 MR. SILVERT: State your name, please.

23 MR. MISCHEL: Jim Mischel.

24 (JIM MISCHEL SWORN BY ATTORNEY.)

25 MR. MISCHEL: Yes, we have worked with the

1 applicant in the past on the parking situation. We
2 worked with Mr. Weaver, David Weaver, with Bryant
3 Engineering on that. He's worked on the parking.

4 I think where one of the problems is there's a
5 tree in the backyard. The applicant would like to
6 save that tree instead of removing it. You would have
7 to ask Mr. Weaver, but I think if that tree was
8 removed, he's been working on a layout where the
9 parking could be met. You're allowed to have ten
10 percent parallel parking. I think he was going to
11 allow one space for parallel parking. You might ask
12 Mr. Weaver. We had a lot of discussions. We tried a
13 lot of different angles and he worked on it. We did
14 not receive a final layout for a B-4 zone. We've had
15 discussions and at the last minute they decided to go
16 for the residential zoning.

17 CHAIRMAN: Thank you, Mr. Mischel.

18 Mr. Weaver, would you step to the podium,
19 please.

20 MR. SILVERT: State your name, please.

21 MR. WEAVER: David Weaver.

22 (DAVID WEAVER SWORN BY ATTORNEY.)

23 MR. WEAVER: We did prepare a conceptional
24 layout for Mr. Kolok. He is correct in stating that
25 to meet the required parking that was discussed with

1 Mr. Mischel, we would have to put one space in the
2 front. There's really not room for parallel parking
3 along the side because of the shared drive.

4 I've got a conceptional parking layout that
5 shows how it could work with parking. Mr. Kolok also
6 is right, he would have to eliminate his large maple
7 tree in the back.

8 If you guys would like to see it, you're
9 welcome to.

10 CHAIRMAN: Why don't you bring it forward.

11 (MR. WEAVER COMPLIES WITH REQUEST.)

12 MR. WEAVER: If you look, you can see where
13 there's a Number 1. That indicates the parking spot
14 that has to be created in the front of the property.
15 The remaining four required spaces could be put in the
16 back with the elimination of the oak tree. Of course,
17 the reality is that that parking is real congested and
18 really doesn't meet all the required dimensions.

19 MR. KOLOK: Mr. Chairman, can I speak?

20 CHAIRMAN: Yes, sir.

21 MR. KOLOK: I'm sort of stuck between a rock
22 and a hard place. That maple tree, which is old and
23 beautiful, as an artist I find it difficult to take
24 that tree down. If I could eliminate some of the
25 parking places, which would not be a problem because

1 it's not a retail store so I'm not going to have
2 people coming and going. I've been a teacher for
3 almost 40 years now. I certainly don't want to teach
4 after I retire so I'm not going to bring students in.

5 I think one of the things that has happened is
6 a language problem. Artists call the space they work
7 a studio, but under the guideline a studio is an
8 assembly, like a music studio or a dance studio. My
9 idea is a space to work and a space to store my work
10 so that I can keep it clean, keep it fresh until I
11 bring it to a gallery, studio. If we could call it a
12 storage place, I would happy to do it that way.

13 CHAIRMAN: Let me ask.

14 Mr. Mischel, would you return.

15 Are there restrictions that we could place on
16 this deed and this property? Very obviously he has a
17 case where he's not going to do or we could put
18 restrictions where he actually couldn't do retail.
19 You know, have restrictions where we, you know, where
20 we could reduce the parking spaces based on maybe
21 reducing the square footage of his working space. Is
22 there any criteria or any area where we could?

23 MR. MISCHEL: Just by nature of him applying
24 for a home occupation, that would limit retail
25 business. We just had some discussions. I don't know

1 if this would help, but if he had -- he was talking
2 about having a residence there. If he had a residence
3 there, you could have that in a B-4 zone if he kept it
4 B-4. I don't know if this would help. You're to have
5 two parking spaces for a residence. If he limited his
6 studio to 400 square feet, that would be 1 to 200,
7 that would be two. Instead of five he could take it
8 down to four spaces.

9 CHAIRMAN: What would be the criteria?
10 Obviously I'm not an artist. Is the criteria for his
11 studio actually where he is doing the work as opposed
12 to where he stores his work? Like I assume he's going
13 to be doing many pieces and projects, but he's only
14 going to be working on one or two at a time.

15 MR. MISCHEL: Well, we originally agreed under
16 B-4, at one time it was 1 to 200 square feet for the
17 entire structure. We told him, I think, Mr. Weaver,
18 that if they could show us where the studio was, we
19 could do the 1 to 200 for that and the rest of it, if
20 they set up storage, we would count that for storage.
21 I think that's what the parking is based on, right?

22 MR. WEAVER: Yes, I believe that's correct.

23 MR. MISCHEL: It would have been more.

24 MR. WEAVER: Yes. Mr. Kirkland, your comment
25 as opposed to an avenue where you wouldn't have, where

1 you could eliminate the ability to have retail sales.
2 That was kind of the whole premise for the rezoning.
3 To put it back into a residential zoning
4 classification. I believe Mr. Kolok stated his
5 daughter intends to live there after she comes back
6 from the Peace Corp and that he's going to use the
7 rear addition for his studio space.

8 CHAIRMAN: Is my sort of assumption or my
9 question about the amount of square footage that's
10 actually used for studio work area, etcetera, can that
11 be defined as opposed to area that's used for storage,
12 accumulation or just storage?

13 MR. WEAVER: You would have to ask Mr. Kolok,
14 but I believe the intent is for the addition to be a
15 studio space, and then the remainder to function as
16 living space for his daughter and for storage.

17 I also think, Mr. Kolok could speak to this,
18 but it's my understanding that he does large rock
19 carvings and that's part of the intent of keeping the
20 oak tree because a lot of what he does will be
21 outside.

22 MR. KOLOK: True.

23 CHAIRMAN: Mr. Noffsinger.

24 MR. NOFFSINGER: Mr. Chairman, I think you're
25 on the right track. I'd like to ask Mr. Mischel a

1 couple of questions.

2 One, the five parking spaces that are shown
3 here, is that a minimum amount that they have to
4 provide or is that parking requirement calculated
5 based upon square footage used? In other words, do
6 they have to have at least five and maybe more or
7 could they have three or four depending on how much of
8 the building is used for the studio?

9 MR. MISCHEL: I believe the way we calculated
10 it, we were counting the studio. He would show us on
11 the drawing a studio square footage and we would do
12 that 1 to 200. Then the rest of it supposedly is
13 going to be storage and we calculated that on that.

14 MR. NOFFSINGER: Some uses require a minimum
15 of 5 spaces and 1 per 200. Is this that type of use?

16 MR. MISCHEL: This is not a minimum.

17 MR. NOFFSINGER: So it depends on how you
18 allocate the use in that building as to how many
19 parking spaces are required?

20 MR. WEAVER: That's correct.

21 MR. NOFFSINGER: If it is rezoned to
22 residential, then the only, the residence can only be
23 occupied by the folks doing the work. If your
24 daughter is employed there, part of it, then certainly
25 she could live there, but if not it creates a zoning

1 issue. It might be in your best interest to keep the
2 zoning you have and to work with this parking
3 calculation to make sure you allocate your space so
4 that you meet the minimum say four spaces and only use
5 for the art studio and the business use that area
6 where you can meet the parking and then the rest of it
7 remain residential.

8 Of course, as we're working with the downtown
9 plan, we're making provisions for this type of use
10 that the applicant is requesting. For those types of
11 uses to be located in the downtown area. This is
12 certainly outside of the downtown master plan, but I
13 think you can still do what you want to do, but I
14 think you can do it better under the zone you're in,
15 but take a look at that parking allocation and
16 requirement based upon, and using a maximum square
17 footage devoted to that studio as you can get parking.

18 MR. MISCHEL: And I think, Mr. Noffsinger, you
19 had a point there with the home occupation. The
20 people that live in that home occupation should be the
21 one doing the work. So if he's not technically, if he
22 does not live there, he should not be doing the work
23 there under home occupation. Should be by the
24 occupants of that structure.

25 MR. NOFFSINGER: But you could get a

1 conditional use permit to operate the studio, I guess,
2 would be the next step. That you can get away from
3 that step if you keep the zoning, B-4 zoning in the
4 place that you have now.

5 MR. KOLOK: If I called the building storage,
6 which is about 960 square feet, and I want to build a
7 700 square foot space to make art, and I'm not going
8 to use it as retail, so I don't need parking,
9 according to this document, it says, individual
10 storage doesn't require any parking, if I call it
11 parking. If I call it individual storage. That's
12 what I was saying earlier. Part of this is me on
13 learning to speak the right language. I would be glad
14 to do it that way and leave it at B-4. I want a
15 studio and I want a place to store it. My daughter
16 certainly can live at my house. We have plenty of
17 room and she's there now.

18 MR. MISCHER: Just to clarify. That
19 individual storage area those are like those little
20 mini warehouses. It's kind of a different situation
21 than what we're talking about here on individual
22 storage.

23 CHAIRMAN: Mr. Kolok, would you return?

24 MR. KOLOK: Yes.

25 CHAIRMAN: How many parking spaces can we get

1 and save the tree?

2 MR. KOLOK: Three easily. We can do three.

3 CHAIRMAN: Mr. Weaver, would return to the
4 stand, please.

5 Can you work, instead of working like you
6 usually do, from the building out, can you work from
7 the parking lot in?

8 MR. APPLEBY: Can we not get four on there?

9 MR. WEAVER: It may be possible to get four.

10 MR. APPLEBY: And save the tree?

11 MR. WEAVER: You struggle with the handicap
12 spot, especially if you're making a handicap van
13 accessible spot.

14 MR. APPLEBY: Could we not possibly move that
15 handicap spot to the other side and put your other --
16 the handicap spot ideally is up closer to the
17 building. Could you not move it furtherest away?

18 MR. WEAVER: I think there's probably a way we
19 could get it to work.

20 MR. KOLOK: Because I share a driveway with my
21 neighbor, from what I understand, the parking lot has
22 to be all on my land, even though my neighbor can pull
23 out into my land and I certainly can pull in his land.
24 If we could eliminate that problem, I think we could
25 get four.

1 CHAIRMAN: Mr. Mischel, it seems like you've
2 got the look in your eye.

3 MR. MISCHEL: Let me throw one more thing. If
4 they can get three spaces, if they could limit
5 typically the studio to 600 square feet, that would be
6 three spaces. The rest of it if they say is storage,
7 in the past we have taken storage mechanical rooms,
8 usually in the past we do it for office buildings and
9 we discount file storage and mechanical rooms.

10 MR. APPLEBY: He's storing his supplies and
11 what have you in there. We can work back from that?
12 Say the studio is occupying 600 feet of that addition
13 and the rest of it is art supplies?

14 MR. MISCHEL: The 600 feet, the studio is 1 to
15 200 so you have to put a limit of 600 square feet on
16 the studio, which isn't far off I think from what he
17 said, 700 feet.

18 MR. NOFFSINGER: I think you could also pick
19 up a parking spot in front of the studio there by the
20 sidewalk. Pick up a parallel spot.

21 MR. WEAVER: It's kind of crowded with the
22 shared access drive. I understand what you're talking
23 about, Gary.

24 Let me make a suggestion. Instead of acting
25 on this item and the next item as well, what if we

1 postpone it to allow time for Bryant Engineering and
2 Mr. Kolok to work with the Staff to see if something
3 can be resolved as far as the required parking?

4 MR. APPLEBY: Then he could probably avoid
5 another meeting, if we can meet the criteria under the
6 existing zoning. He can get his building permit?

7 MR. WEAVER: Yes.

8 CHAIRMAN: And Mr. Noffsinger could sign off
9 on it?

10 MR. NOFFSINGER: Yes. We would be glad to do
11 that. I think that's a wise decision. If we can't,
12 we come back next month. If we can find a way of
13 doing it, then the applicant withdraws the application
14 and move forward.

15 CHAIRMAN: Mr. Kolok, would you step back to
16 the stand, please?

17 MR. WEAVER: That would be a postponement for
18 both items.

19 MR. MISCHEL: You would still have the
20 floodplain issue.

21 MR. APPLEBY: That's going to be a conditional
22 use, right?

23 MR. MISCHEL: Yes.

24 CHAIRMAN: Did you understand what --

25 MR. KOLOK: If I built a structure 600 square

1 feet, we would only need three parking places. Is
2 that basically --

3 CHAIRMAN: I don't think he was talking about
4 limiting your building size. I think he was talking
5 about limiting your activity size.

6 MR. APPLEBY: Allocate toward studio.

7 MR. MISCHEL: Instead of a 700 and some square
8 feet for a studio, you'd use 600 square feet for
9 studio and then 100 something would go towards the
10 storage.

11 MR. WEAVER: I think what needs to happen is
12 that you have to agree to a postponement on this item.

13 MR. KOLOK: That's sounds good to me.

14 CHAIRMAN: Would you repeat that, please.

15 MR. KOLOK: Yes. That sounds good to me.

16 MR. CHAIRMAN: You agree with that? In other
17 words, you are requesting a postponement?

18 MR. KOLOK: That's exactly what I meant to
19 say, yes.

20 CHAIRMAN: Thank you.

21 MR. APPLEBY: Move to postpone.

22 MS. DIXON: Second.

23 CHAIRMAN: Motion to postpone by Mr. Appleby.
24 Second by Ms. Dixon. All in favor raise your right
25 hand.

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries unanimously.

3 Related Item:

4 ITEM 6A

5 2901 Veach Road, proposed R-1B
6 Consider request for Variances in conjunction with an
7 application for zoning change to eliminate the
8 required 10' landscape easement, the 6' high
9 continuous element and one tree every 40' of linear
10 boundary along the north, east and south property
11 lines that adjoining B-4 General Business zoning.
12 Reference: Zoning Ordinance, Article 17,
13 Section 17.311
14 Applicant: William & Joan Kolok; Kolok Wood & Stone,
15 LLC

11 MR. NOFFSINGER: Mr. Chairman, the applicant I
12 believe also request postponement on Item 6A, which
13 was a related item.

14 MR. KOLOK: Yes, I would like to postpone that
15 also.

16 MS. DIXON: Move to postpone.

17 MR. APPLEBY: Second.

18 CHAIRMAN: All in favor raise your right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

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22 MAJOR SUBDIVISIONS

23 ITEM 7

24 Steeplechase, 37.759 acres
25 Consider approval of amended major subdivision
preliminary plat.
Applicant: Thompson Homes, Inc.

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2 MR. NOFFSINGER: Mr. Chairman, this plan has
3 been reviewed by the Planning Staff and Engineering
4 Staff. It's found to be in order. It's recommended
5 for approval.

6 CHAIRMAN: Is anybody here representing the
7 applicant?

8 MR. PEDLEY: Mr. Chairman, I need to
9 disqualify myself on this item.

10 CHAIRMAN: Just a moment.

11 Mr. Silvert.

12 MR. SILVERT: We would no longer have a
13 quorum.

14 CHAIRMAN: Could you state your issues,
15 Mr. Pedley?

16 MR. PEDLEY: Yes. I'm an adjoining property
17 owner so I think I need to disqualify myself.

18 MR. APPLEBY: You don't stand to gain anything
19 financially from this action on this issue?

20 MR. PEDLEY: Probably not.

21 MR. APPLEBY: Just being an adjoining property
22 owner, I wouldn't see how he'd have a --

23 CHAIRMAN: Mr. Silvert.

24 MR. SILVERT: I would not think so. If you
25 could state that you don't have anything to gain

1 whether this passes or doesn't pass.

2 MR. PEDLEY: I will hear it.

3 CHAIRMAN: So you have nothing to gain,
4 Mr. Pedley; is that correct?

5 MR. PEDLEY: No.

6 MR. SILVERT: Will you do any of the work
7 involved in the changes?

8 MR. PEDLEY: Probably not, but I've been
9 working with this issue for quite some time. It does
10 join our property. It's an issue that I've been
11 working with for two months.

12 MR. SILVERT: These changes involve the
13 connector into Lake Forest.

14 MR. PEDLEY: If you're okay with it --

15 MR. NOFFSINGER: This is transferring some
16 common area property in the Steeplechase subdivision
17 and attaching it to the Lake Forest development. It
18 also removes that portion of a roadway reservation
19 strip for the outer boulevard that is on paper, been
20 realigned to Millers Mill Road. So they're also
21 removing that. That's it. I don't know of any
22 controversial issues at all there. It's just swapping
23 of some property.

24 MR. PEDLEY: I withdraw my disqualification.

25 MR. SILVERT: Is the deed on the property

1 contingent upon the passing of this?

2 MR. NOFFSINGER: I don't know who stands to
3 gain in terms of the property acquisition. Brian
4 Howard has reviewed this plan.

5 CHAIRMAN: Mr. Howard, do you see any conflict
6 for Mr. Pedley on this issue?

7 MR. HOWARD: Not that I'm aware of. Mr. Riney
8 might be able to answer this. I believe the last name
9 of Frakes are the property owners within the Lake
10 Forest subdivision and would acquire some of the
11 common area from Steeplechase subdivision. They've
12 prepared an amended final plat that would address
13 that. To my recollection Mr. Pedley does not own a
14 lot that would gain any of the property from the
15 Steeplechase subdivision common area.

16 MR. PEDLEY: I withdraw my disqualification.
17 We do not own those lots any more. They have been
18 sold to individuals. It's joining their property. I
19 have no monetary gain on it.

20 (MR. SILVERT AND MR. PEDLEY CONVERSE.)

21 MR. PEDLEY: Under counsel's advice I
22 disqualify myself.

23 CHAIRMAN: If Mr. Pedley disqualifies himself,
24 then we do not have a quorum so the issue must be
25 postponed.

1 Mr. Silvert, do we have to have a motion for
2 postponement?

3 MR. SILVERT: It's tabled.

4 CHAIRMAN: The issue is tabled.

5 The next item we have is the chair will accept
6 a motion for adjournment.

7 MS. DIXON: Move to adjourn.

8 CHAIRMAN: Ms. Dixon has a motion for
9 adjournment.

10 MR. TAYLOR: Second.

11 CHAIRMAN: Second by Mr. Taylor. All in favor
12 raise your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: That motion carries unanimously.

15 We are adjourned.

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