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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

JULY 5, 2001

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, July 5, 2001, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: C. A. Pantle, Chairman
- Marty Warren
- Judy Dixon
- Tim Miller
- Bill Williams
- Ward Pedley
- Gary Noffsinger,
- Planning Director
- Stewart Elliott
- Attorney

\* \* \* \* \*

CHAIRMAN: Want to welcome you to the Board of Adjustment meeting this evening. Set up a few guidelines to operate the meeting better.

If you want to speak on any particular item, come to the microphone and state your name for the record. You will be sworn in and then everyone will have a chance to be heard unless you keep duplicating comments and then we'll cut you off.

First item on the agenda this evening is the minutes of the last meeting. They're on record in

1 the office. I don't think there's been any faults  
2 found by anybody.

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: If not the Chair will entertain  
5 a motion to dispose of the item.

6 MR. WILLIAMS: Make a motion to approve.

7 MR. PEDLEY: Second.

8 CHAIRMAN: Motion has been made and a  
9 second. All in favor raise your your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries.

12 -----

13 CONDITIONAL USE PERMITS

14 ITEM 2

15 1117, 1121, 1125 Allen Street, in an R-4DT zone  
16 Consider request for a Conditional Use Permit for  
17 operation of a halfway house for 8 to 14 single women  
18 recovering from alcohol and drug abuse.  
19 Reference: Zoning Ordinance, Article 8, Section 8.2C1  
20 Applicant: Jennifer House, Inc., Jeanne Owers, CEO

21 MR. NOFFSINGER: Mr. Chairman, this  
22 application I will clarify for the record pertains  
23 only to 1125 Allen Street. It is for six women  
24 residents. I'll ask legal counsel to comment as to  
25 whether or not that is correct based upon the  
26 agreement that we have.

MR. ELLIOTT: Yes, that is correct. For

1 the record and for the board this matter is back on  
2 the agenda. The Board is well aware of this Boards,  
3 its individual members, City of Owensboro, Mayor over  
4 the granting of this Conditional Use Permit.

5 There was also a complaint filed with HUD  
6 over the granting of this Conditional Use Permit. In  
7 that the individuals of this board were individually  
8 named in the lawsuit, and the Board was individually  
9 named in the lawsuit, it was referred to our insurance  
10 carrier. Our insurance carrier provided legal  
11 counsel, Dave Whalin out of Louisville. After he had  
12 done a research of the case filed and talked with the  
13 plaintiffs in the lawsuit, recommended to this board  
14 that this matter be settled. I looked at that  
15 recommendation and I too recommend to this board this  
16 matter be settled. As a part of that settlement  
17 agreement, it provides that the Conditional Use Permit  
18 as amended and submitted for a maximum of six  
19 recovering women for the address of 1125 Allen  
20 Street. The permit would be granted. The permit  
21 would also be subject to all requirements of the state  
22 and local ordinances. It's my recommendation to this  
23 board based upon the Settlement Agreement that this be  
24 approved, the Conditional Use Permit be approved and  
25 is granted. I'd like to submit as part of the record

1 that Settlement Agreement that was entered into and  
2 signed by the parties. Make that a part of this  
3 record if anyone would like to see that.

4 CHAIRMAN: The settlement does state for a  
5 maximum of six people only?

6 MR. ELLIOTT: Yes, it does. In Paragraph  
7 Number 2 it says, "for use as a half-way house for a  
8 maximum of six women recovering from alcohol and drug  
9 abuse." Then it refers to the half-way house at 1125  
10 Allen Street. That's the Settlement Agreement. So  
11 that should be fairly indicated in record as to what  
12 the Conditional Use Permit should be granted for.

13 CHAIRMAN: Want to be sure that is  
14 correct.

15 MR. ELLIOTT: Make sure that the record  
16 indicates that I am aware of the Board's feelings on  
17 this matter. That the Board has denied this  
18 Conditional Use Permit and this board is acting on  
19 advice of legal counsel in granting this Conditional  
20 Use Permit. I listened to Mr. Whalin, the attorney  
21 that researched this matter. He recommended it be  
22 settled. I'm recommending it be settled. I think the  
23 public should know that the board is acting under  
24 legal advice when they grant this Conditional Use  
25 Permit.

1                   CHAIRMAN: Let the record show that this  
2                   is a federal Fair Housing Act and it overrides  
3                   anything we could - - our personal feelings or ideas  
4                   here.

5                   Is the applicant here and do they have any  
6                   comments?

7                   State your name for the record.

8                   MS. OWERS: My name is Jeanne Owers.

9                   (MS. JEANNE OWERS SWORN BY ATTORNEY.)

10                  MS. OWERS: Do you gentlemen and ladies  
11                  have any questions at this time? I wanted to just  
12                  state that we appreciate the board hearing us and we  
13                  appreciate the Conditional Use Permit. We will be  
14                  eventually building onto the property that is adjacent  
15                  to 1125 and when we do we'll gather the correct  
16                  information and come back and resubmit for that  
17                  particular piece of property, but six is the correct  
18                  number for 1125, and as it is stated that is correct.

19                  CHAIRMAN: Any board members have any  
20                  questions of the applicant?

21                  (NO RESPONSE)

22                  CHAIRMAN: Thank you, ma'am.

23                  Does anyone have any objections or  
24                  comments they want to enter into the record?

25                  (NO RESPONSE)

1 CHAIRMAN: Hearing none what's the board's  
2 pleasure?

3 MS. OWERS: Thank you very much.

4 CHAIRMAN: You're welcome.

5 MR. MILLER: Mr. Chairman, on  
6 recommendation of legal counsel and in accordance with  
7 the lawsuit settlement my motion to approve the  
8 Conditional Use Permit.

9 CHAIRMAN: You've heard the motion. Is  
10 there a second?

11 MR. PEDLEY: Second.

12 CHAIRMAN: A motion has been made and a  
13 second. Any other questions or comments by the board  
14 members?

15 (NO RESPONSE)

16 CHAIRMAN: Hearing none all in favor of  
17 the motion raise your right hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries.

20 MS. OWERS: Just have one question. Will  
21 that be sent to us at the 1125 Allen Street address?

22 CHAIRMAN: That's the address, location  
23 that you can only use at this time.

24 MS. OWERS: Right. And that will be sent  
25 to us.

1                   CHAIRMAN: You'll have to pick that up at  
2 the office.

3                   MR. NOFFSINGER: Ms. Owers, that  
4 Conditional Use Permit application may go to the  
5 address of the Jennifer House, Jeanne Owers, CEO, 6962  
6 Leslie Lane.

7                   MS. OWERS: That's incorrect. 1125 Allen  
8 Street is correct.

9                   CHAIRMAN: You have a mailbox and  
10 everything there?

11                  MS. OWERS: Yes. Thank you.

12                  CHAIRMAN: Next item.

13                  ITEM 3

14                  1030 Oglesby Street, in an R-4DT zone (Map N-7)  
15 Consider request for a Conditional Use Permit for  
16 permanent placement of a 16'x84' Class B manufactured  
17 home.

18                  Reference: Zoning Ordinance, Article 8, Section  
19 8.2A10B, Section 8.4/7

20                  Applicant: Herman Ann Wilson

21                  MR. NOFFSINGER: Mr. Chairman, this  
22 application has been reviewed by the Planning Staff.  
23 It's found to be in order. All adjoining property  
24 owners have been notified and it has been advertised  
25 for public hearing at this date.

                  The Board of Adjustment considered a  
request on this property last month and granted the  
Conditional Use Permit for placement of a smaller

1 manufactured home on the property. However the size  
2 that was included in the application was incorrect.  
3 The applicant does intend to place a larger home on  
4 the property which is a 16x84. The only alternative in  
5 order to do that was come back to this Board of  
6 Adjustment to reconsideration.

7 Just remind the applicant that the site of  
8 the development requirements include the removal of  
9 the tires, tongue, hitch assembly wheels from the unit  
10 as well as a concrete or masonry type skirting around  
11 the perimeter of the home.

12 CHAIRMAN: Doe the applicant have anything  
13 you want to say?

14 APPLICANT: No.

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

17 (NO RESPONSE)

18 CHAIRMAN: Anyone here speaking in  
19 opposition of the Conditional Use Permit?

20 (NO RESPONSE)

21 CHAIRMAN: Hearing none the Chair will  
22 entertain a motion to dispose of the item.

23 MR. WILLIAMS: Mr. Chairman, I make a  
24 motion we approve this Conditional Use Permit under  
25 the conditions as stated.



1 At the public hearing the Board of Adjustment denied  
2 the request. The applicant has decided to come back  
3 before this board tonight, he's represented by legal  
4 counsel, to discuss the matter further with you. With  
5 that it's ready for your consideration.

6 CHAIRMAN: Is the applicant here? Come  
7 forward, please.

8 MR. PACE: Pat Pace, attorney for the  
9 applicant. Also Mr. Raymer is here. You might swear  
10 him in as well.

11 (PACE PACE AND STEVE RAYMER SWORN BY  
12 ATTORNEY.)

13 MR. PACE: I am Pat Pace and represent the  
14 applicant and his wife on this matter.

15 As you were told, this regards the  
16 addition of a sun room. Mr. Raymer was here  
17 previously. At that time there were some matters that  
18 were not brought to your attention or placed in the  
19 record which we think are very significant and which  
20 we'll demonstrate that there are special circumstances  
21 that affect this application.

22 This is in Owen Park Subdivision. Mr.  
23 Raymer and his wife when they purchased this property  
24 did so with the intention to add a sun room on the  
25 back. In doing so they inquired of all the neighbors

1 to make sure that they were in agreement with such an  
2 addition. Mr. Raymer spoke to two different builders  
3 about this matter. I've got quotes from them and  
4 assurances that he could build this sun room  
5 addition. He spoke with Steve Lambert of Lambert  
6 Remodeling, and also Jimmy Bowlds of Four Seasons.  
7 They advised him that there were no problems. In  
8 fact, he did enter into an agreement with Four Seasons  
9 and need \$4,000 down for the purchase of this sun  
10 room.

11 There's no evidence on the plat of a 20  
12 foot setback line and he did make inquiry. There was  
13 no reference to a setback peculiar to this subdivision  
14 in the Deed of Dedication for the subdivision as  
15 recorded.

16 The situation that makes this unique is  
17 there are lots to the northeast of this lot on this  
18 street, Bryant Court, which are much deeper than the  
19 lot purchased by the Raymers. In fact, it's  
20 approximately 40 foot deeper. The one immediately  
21 adjacent actually has an addition built on the back.  
22 It's not a sun room. It's an actual building  
23 condition that extends back approximately to where the  
24 Raymers' sun room addition would extend towards the  
25 rear lot.

1                   Apparently what happened is during the  
2                   development of this unit there was a decision made by  
3                   the developer to increase the lot number or size lots  
4                   on the cul-de-sac which is at the rear of this  
5                   particular lot and an extension of Bryant Court. As a  
6                   consequence of that, Mr. Raymer's lot and the one  
7                   immediately to the other side of his lot were  
8                   shortened.

9                   In effect what you have at his rear lot  
10                  line is a side lot line for his neighbor to his rear.  
11                  It's his neighbor side lot line and his rear.

12                  This variance if granted would be more  
13                  than 10 feet. 13.4 feet from that line and would  
14                  actually constitute that that neighbor's rear line.

15                  Every one of the abutting land owners have  
16                  agreed with this variance and has signed a petition in  
17                  support of it and I would like to make that a part of  
18                  the record. I can give that to the report. Mr.  
19                  Raymer can confirm that each and every owner of the  
20                  lot on Bryant court is in support of this.

21                  I'll just take a moment briefly to read  
22                  this to you. "We, the undersigned are the owners and  
23                  residents of the indicated lots on Bryant Court and  
24                  the neighbors of Steve Raymer and Rebecca Raymer who  
25                  live at 3313 Bryant Court. In our opinion, the

1 granting of the variance 1) will not adversely affect  
2 the public health, safety or welfare; 2) will not  
3 alter the essential character of our neighborhood or  
4 the general vicinity; 3) will not cause a hazard or a  
5 nuisance to the public; and 4) will not allow an  
6 unreasonable circumvention of the requirements of the  
7 Zoning Ordinance. We support the addition of the sun  
8 room at 3313 Bryant Court and request that you grant a  
9 variance to the rear setback requirement to permit its  
10 construction."

11 I also have a plat of Bryant Court in this  
12 unit which I'll submit that corresponds to each of the  
13 owners that have signed off on requesting an  
14 approval. As to make that a part of the record.

15 Now, during the last consideration of this  
16 variance, there was a statement that the staff was not  
17 aware of any violations of the setback lines in this  
18 area or any variances. There was a reference in our  
19 application, but the address was incorrect. At one  
20 time our application we were referring to two  
21 different properties in this subdivision. The correct  
22 reference should have been to an address of 941 Rogers  
23 Court where there is a sun room addition. This is two  
24 blocks from Mr. Raymer's property. It is  
25 approximately nine feet from the rear lot line.

1                   Mr. Chairman, if I may approach the  
2                   commission I want to show you an aerial photo that  
3                   will lay out what I've been telling you here.

4                   This street here, and I'll take this down,  
5                   is Burlew Boulevard that runs right here, and then  
6                   comes into Byers Avenue. Then this is Bryant Court.  
7                   The lot in question seeking variance is this lot right  
8                   here. As you can see the neighbors, and I'll bring  
9                   this back around for you all. The neighbors to his  
10                  northeast both have much deeper lots. When this was  
11                  modified Mr. Raymer's lot was the one to the southwest  
12                  was shorter. So these are 40 feet deeper here.

13                  Now, the one that presently has a sun room  
14                  is just over here right off of, in fact, the side of  
15                  the lot is on Burlew Boulevard and you can actually  
16                  see the sign there. I have a picture for you.

17                  Mr. Raymer can tell you that it is nine  
18                  feet from the rear lot line.

19                  MR. NOFFSINGER: Mr. Pace, what's the  
20                  address of that property?

21                  MR. PACE: The address of that property is  
22                  941 Rogers Court. I have a plat too.

23                  MR. NOFFSINGER: Is that included in your  
24                  application, that address?

25                  MR. PACE: We said there were sun rooms in

1 the area. The address that was given at one time we  
2 had two references. The wrong reference was taken out  
3 when that was modified. It's on the same street.

4 MR. NOFFSINGER: The only example you've  
5 given us in terms of addresses is the - -

6 MR. PACE: We're not faulting the staff at  
7 all for that. That was a mistake.

8 MR. NOFFSINGER: It's a situation that the  
9 staff needs to check out to be able to fairly report  
10 to this board whether or not there's a violation that  
11 exist at that site and whether or not the unit was  
12 permitted, the particulars involved. Certainly if  
13 you're bringing up new sites to us, we'd have to have  
14 the opportunity to check those sites out to see what  
15 the situation is.

16 MR. PACE: This certainly wasn't done  
17 intentionally.

18 MR. NOFFSINGER: I understand.

19 MR. PACE: You know, we could present this  
20 to the board and then if it's necessary that you check  
21 this out. We also have some photos of the area.

22 MR. MILLER: Mr. Pace, could I see the  
23 plat that you entered into evidence?

24 MR. PACE: Yes. This is the plat of the  
25 Bryant Court area. I have a plat of the other area

1 too that I will introduce.

2 CHAIRMAN: Mr. Pace, going back one  
3 statement. You made a statement that two contractors  
4 said there would be no problem. Did they check the  
5 zoning ordinance to be sure there's no problems or did  
6 they just say there'd be no problems?

7 MR. PACE: I certainly don't know. Mr.  
8 Raymer I think probably went beyond what most laymen  
9 would do in checking this out. He checked the plat  
10 itself. He looked at the Deed of Dedication. He  
11 checked with the neighbors. Then he asked the  
12 builders if there'd be any problem.

13 CHAIRMAN: Did he check the zoning  
14 regulation is what I'm getting at?

15 MR. PACE: Obviously he didn't know that  
16 was there, no, sir.

17 CHAIRMAN: I would say, your his legal  
18 counsel, he may have reference to go back if somebody  
19 by chance if it's not granted because it is stated in  
20 the regulations. If somebody gives you bad advice for  
21 whatever reason.

22 MR. PACE: Yes. We merely introduced that  
23 to show that he was operating in good faith when we  
24 talked about hardship and the money that he's been out  
25 and the planning that he did and checking with the

1 neighbors which has been confirmed by their  
2 submission.

3 CHAIRMAN: Thank you.

4 MR. PACE: I have two photos of the 941  
5 Rogers Court property that - -

6 CHAIRMAN: Do you know when those were  
7 constructed?

8 MR. PACE: No, I do not know when this was  
9 constructed. It's also part of Owen Park Subdivision.

10 Start one at each end and I'd ask that  
11 these be made a part of the record as well. These  
12 were taken by Mr. Raymer if you want to ask him any  
13 questions about them.

14 MR. WILLIAMS: This picture is it one on  
15 Rogers Court?

16 MR. PACE: Yes, it is.

17 MR. NOFFSINGER: What is that address  
18 again, please?

19 MR. PACE: 941. I have a plat here that  
20 will show you that.

21 CHAIRMAN: Have anything else you want to  
22 say?

23 MR. PACE: Yes, I do.

24 Maybe just one comment, suggestion. I  
25 think it might be very helpful for these type of

1 situations if the developers were required to show  
2 these setback lines on their plats. It seems like it  
3 would be not that - - might avoid these types of  
4 situations because I think Mr. Raymer was, if he would  
5 not have bought this house, if he had known this, he  
6 could have done more and he could have hired a lawyer  
7 and checked it out. I think he was acting in good  
8 faith. We ask you to approve this. I have him here  
9 if you would like him to confirm any of this, the  
10 measurements, the pictures, his discussions with the  
11 builders. Be glad that he advise you in answering any  
12 questions that you have, but we respectfully request  
13 that you reconsider this matter and under the  
14 circumstances approve it.

15 Gary, did you have anything else that you  
16 found out on 941?

17 MR. NOFFSINGER: Yes, I do if I might, Mr.  
18 Chairman. I would like to address first one that Mr.  
19 Pace's is making about developer showing all setbacks  
20 on the plat. There's a reason that all setbacks are  
21 not shown on the plat. The front yard setback in  
22 rural subdivision is the only plated setback shown  
23 because that is a definite setback for all structures  
24 whether they be principal structures or homes or  
25 whether they be accessory structures. You have 25

1 foot front setback in this development and in this  
2 zone. The setback will vary depending on the the side  
3 yard setbacks and the rear yard setbacks. Those will  
4 vary depending on the matter of construction. For  
5 example, principal building is to set 20 feet off the  
6 rear line and in this particular zone 5 feet off of  
7 each side line. An accessory building that's not  
8 attached to the principal building can set within 3  
9 feet of the rear property line or within 3 feet of the  
10 side property line. So the reason you don't show the  
11 side of the rear setback lines is because it varies  
12 depending on the matter of construction. If that  
13 developer shows a 20 feet rear yard setback and then a  
14 5 foot side yard setback, then they've restricted a  
15 lot in terms of its development over what the zoning  
16 ordinance would actually leave allow. So we've looked  
17 into the matter, but I don't think we could recommend  
18 the developer show all the setback lines that pertains  
19 to a particular piece of property since we don't know  
20 the matter of the development. That's to address that  
21 situation.

22 In terms of 941 Rogers Court, we cannot  
23 find any evidence of a building permit being issued at  
24 that site. The Planning Staff and Zoning Staff would  
25 have to look into that particular address further

1 before we could comment because since we don't have a  
2 building permit it could be that the structure was  
3 built in violation of an ordinance. It could be  
4 grandfather use, but those particulars of it we  
5 couldn't comment on any further until we investigate  
6 what's taken place at that location.

7 Now, in terms of proximity to this  
8 particular piece of property, I think it's off on  
9 another street in another section of the  
10 development. I think that section was developed  
11 earlier than this section of Owen Park. To get back  
12 to the shape of the lot, you hear correct. That the  
13 lots were shaped as they are and these two lots are  
14 not quite as deep as the other lots because the  
15 developer chose to maximize the number of lots in that  
16 development. It had more lots created along that cul-  
17 de-sac. In order to do so, he had to reduce the depth  
18 of these two particular lots. That was a choice made  
19 by the developer at the time this property was  
20 subdivided. So in terms of a basis for granting the  
21 variance, I don't think that is a particular the board  
22 should get into or the Planning Staff is going to have  
23 to look at each and every development within this  
24 community. Only recommend that we have lots that are  
25 equally sized and equally shaped. I don't think

1 that's the intent of the zoning ordinance.

2 MR. PACE: Mr. Chairman, I might just say  
3 we certainly understand that and I think that's the  
4 reason for the variance process, in that the neighbors  
5 to the northeast of this property, the line of the  
6 rear of their homes would be consistent with this. So  
7 I think as far as scheme and why you do this, that  
8 would not be controverted by doing something like this  
9 variance.

10 CHAIRMAN: Any board member have any  
11 questions of Mr. Pace?

12 (NO RESPONSE)

13 CHAIRMAN: You have anything, Mr. Raymer,  
14 you want to add?

15 MR. RAYMER: Yes. I would like to add  
16 that the testimony Mr. Pace gave that I would have not  
17 purchased this home is correct. I thought I was doing  
18 enough research and I didn't. I had a plat lot prior  
19 to purchase. I had the builders come to look at the  
20 home prior, two months prior to purchasing the home  
21 before I went to any purchase agreement to see if I  
22 could add a sun room to it. I received estimates  
23 those dates. The deed of dedication was looked up.  
24 It didn't refer to - - refer to a plat. The plat  
25 didn't show it and I thought I was okay. The builders

1 thought I was okay. So I entered into an agreement to  
2 purchase the home. At this time my other home sold.  
3 I entered the agreement to build the room when all of  
4 this came up.

5 I just ask what - - it's a hardship on my  
6 wife and I. This was going to be our last purchase  
7 and retire here.

8 CHAIRMAN: Not to be disagreeable or  
9 anything, but just for our information, did the  
10 builder state that he had no problem with building or  
11 it wouldn't be any problem with the zoning  
12 regulations?

13 MR. RAYMER: Exactly. Both builders said  
14 there would be no problem with building the room.  
15 That's the the reason I had them over there. They  
16 said it would be well in the five foot setback.

17 CHAIRMAN: What I'm trying to get to is  
18 did they refer to the zoning regulations or they just  
19 said, we'll have no problem with building it?

20 MR. RAYMER: They didn't refer - - I don't  
21 know if they referred to the zoning regulations or not  
22 because I was just taking them at their word that they  
23 knew. They build all the time, both of these people  
24 do in Owensboro. Of course, any builder is going to  
25 say, I have no problem building it, but they both

1 assured me it could be built on this lot. We were  
2 looking at a place where we could build a home, build  
3 a sun room addition. We were looking for a home that  
4 we could do that. We wanted a smaller lot so we  
5 wouldn't have to mow.

6 CHAIRMAN: Not being critical of any of  
7 the builders because I know nothing about them, but  
8 I've in past history have had builders that make  
9 statements that they knew were wrong on the zoning  
10 records in years past. So I wanted for the record  
11 whether they referred to the ordinance or anything is  
12 the reason I was asking that question.

13 MR. RAYMER: The adjoining lot line to my  
14 home is my rear neighbor, Mr. Ed Ballard. It's his  
15 side line. His house, he's not within five feet of  
16 side line. He's 22 feet from the side line. Even  
17 with my addition our homes would be 33 feet apart, 34  
18 feet apart even after it was constructed. Whereas  
19 some of the side lines over there, they're on the five  
20 foot line. So there's only 10 feet between the homes.  
21 Then the sides of my home are still - - from my site  
22 setback I'm 12 feet on each side. There's a lot of  
23 green space around my home. Even with the addition  
24 there will still be a lot of green space.

25 CHAIRMAN: I appreciate your answer.

1 Does any board member have any  
2 questions?

3 (NO RESPONSE)

4 CHAIRMAN: Any comment from anyone else in  
5 the audience, objections or otherwise?

6 (NO RESPONSE)

7 CHAIRMAN: Does the Staff have anything  
8 else?

9 MR. NOFFSINGER: I have one comment. It's  
10 unfortunate that the Messenger-Inquirer is not here  
11 tonight. This is an example of the need for  
12 contractors registration program for this community.  
13 Planning Staff and the building department has been  
14 working for some time to put together a program  
15 requiring contractors to register and having the board  
16 set up to review these types of matter. If we had a  
17 review board like that in place, I think these  
18 contractors would be held to a higher standard. We  
19 might prevent some of these problems. It certainly  
20 not to cure all of them, but it would certainly help.  
21 That's just a plug for that program. I certainly wish  
22 that we could hear more from the public, people that  
23 have been in a position where they would appreciate  
24 this type of board to speak out. Thank you.

25 CHAIRMAN: Any board member have any

1 questions or comments?

2 (NO RESPONSE)

3 CHAIRMAN: Chair entertain a motion to  
4 dispose of the item. What's the board's wishes?

5 MR. PEDLEY: Mr. Chairman, I have a  
6 comment or two to make on this item. I for one am  
7 sympathetic with Mr. Raymer. The problem we have is  
8 if we approve this and then we open the door for  
9 anyone else in that subdivision and ask for the same,  
10 then how do we deny it. This is a little unusual for  
11 reason it is a shallow lot. It doesn't have much  
12 room, and the one at 941 Rogers Court might be  
13 violation. We don't know that. I don't know how we  
14 can do this without opening a door for others to come  
15 in and we have to do the same for them. If we do that  
16 then we just throw the ordinances out the window.

17 I'm going to make a motion to deny it for  
18 reason that it will allow unreasonable circumvention  
19 of the requirements of the zoning regulations.

20 MS. DIXON: Second.

21 CHAIRMAN: Any any other comments or  
22 questions?

23 (NO RESPONSE)

24 CHAIRMAN; Be sure these are made of  
25 record.

1                   Hearing none all in favor of the motion  
2                   raise your right hand.

3                   (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4                   CHAIRMAN: Motion carries.

5                   ITEM 5

6                   1206 St. Ann Street, in an R-4DT zone  
7                   Consider request for a Variance to reduce the rear  
8                   building setback from 20 feet to 8 feet in order to  
9                   construct an addition.

10                  Reference: Zoning Ordinance, Article 8, Section  
11                  8.5.11(e)

12                  Applicant: Nita Kincaid & Perry Hagan

13                  MR. NOFFSINGER: Mr. Chairman, this  
14                  application has been reviewed by the Planning Staff.  
15                  There were some complications with this application.  
16                  I think those have been addressed and I'll get into  
17                  them in just a minute; however, it has been advertised  
18                  for public hearing at this time and all adjoining  
19                  property owners have been notified. The application  
20                  came in originally for the construction of a garage  
21                  with living space above the garage. Any time you have  
22                  living space above a garage that has to be counted in  
23                  your lot coverage. Within this particular zone and  
24                  the type of use that you have there, there's a 35  
25                  percent maximum lot coverage. Well, the existing home  
                  on the property already exceeds that maximum lot  
                  coverage; therefore, we could not have additional  
                  living space built onto this property. This applicant

1 has amended the application which allows this board to  
2 consider the variance with an attached letter that  
3 states, "Please amend my application to limit the new  
4 construction to a garage with no havable space above  
5 it." That would be signed by Nita Kincaid.

6 So with that this application is ready for  
7 your consideration. It is proposed to be an attached  
8 garage, no living space above, and if this variance is  
9 approved by the Board of Adjustment, I think there  
10 should be a condition that the building be built with  
11 premanufactured trusses so as to prohibit occupancy of  
12 that upper level in the future and a conversion of  
13 that adding space, if you will, for human occupancy.  
14 Things are a whole lot tougher to do a conversion down  
15 the road if you have that type of system as opposed to  
16 custom built frame. So with that it's ready for your  
17 consideration.

18 CHAIRMAN: Is the applicant here?

19 MS. KINCAID: Yes.

20 CHAIRMAN: Just a second before we swear  
21 you in.

22 Is anyone objecting to this application?

23 (NO RESPONSE)

24 CHAIRMAN: Any objections been filed in  
25 the office?

1 MR. NOFFSINGER: No, sir.

2 CHAIRMAN: Thank you. State your name for  
3 the record.

4 MS. KINCAID: Nita Kincaid.

5 (MS. NITA KINCAID SWORN BY ATTORNEY.)

6 MS. KINCAID: Basically as you said we're  
7 amending our application to add a 24 by 24 garage and  
8 I'm sure all of you are aware that in our neighborhood  
9 we're a bit unique. It's an old neighborhood. We're  
10 not asking to be an exception. It seems to be the  
11 rule in our neighborhood that most of the alleys have  
12 fences, garages, primary structures on the alley  
13 right-of-way. If you were to drive down our alley,  
14 and you all have photos and copies and I think a photo  
15 is worth a thousand words in this case. It shows you  
16 exactly what is going on in our neighborhood. It's  
17 that simple. I'm not asking to be an exception. It's  
18 already there.

19 CHAIRMAN: Thank you. Any board member  
20 have any questions of the applicant?

21 (NO RESPONSE)

22 CHAIRMAN: Any other person in the  
23 audience have anything to add to it?

24 Come forward and state your name for the  
25 record, please, sir.

1 MR. HAGAN: Perry Hagan.

2 (MR. PERRY HAGAN SWORN BY ATTORNEY.)

3 MR. HAGAN: Something that's got me, and I  
4 don't understand what it is. The room that we have on  
5 the back of our house right now is 14 by 18. Now, what  
6 we're doing is we're tearing that room off in order to  
7 put a two-car garage in the back. Now, my  
8 understanding is we've already got the 14 by 18 there  
9 and we can't put that 14 by 18 above the garage? Is  
10 that what you're saying, Gary, because that's all  
11 living space there? We're totally eliminating. That  
12 puts us back to a two bedroom home, but we've got no  
13 parking space. If you ever go down our street, down  
14 St. Ann Street you'll see that Lila Jean takes up the  
15 whole entire street just about every night of the  
16 week. It's hard when I come home from work, my wife  
17 comes home from work and our neighbors that came down  
18 with us that also signed, you know, the agreement  
19 because they have their garages all the way up against  
20 the alley. There's one place that's on our street  
21 that is an apartment that is all the way up against  
22 the alley. We're not asking for anything other than  
23 what's right. I mean we would like to be able to park  
24 our car in the back of our house. Not just one car  
25 but two cars. I don't understand why we can't have

1 the 14 by 18 above the garage so we don't lose that  
2 portion of our living space. We're driving up in to  
3 our yard because there's no way you can drive straight  
4 into it. So you have to drive up and in. So it would  
5 be like a side loader that would be attached to the  
6 house.

7 MR. NOFFSINGER: That option has not been  
8 brought to my attention. This the first I've heard of  
9 that. With the existing living space that's on the  
10 property that may be an option for you. I'm going to  
11 ask that question of Mr. Mischel. Give me his opinion  
12 as to whether or not that can be done. My concern  
13 would come from the use, if you have a portion of it  
14 that's used for human occupancy above, then how do you  
15 design the balance of it so that it can't be converted  
16 in the future for human occupancy.

17 MR. HAGAN: That wouldn't be any problem  
18 according to some of the contractors I talked to. 14  
19 by 18 would be placed above the garage and part of the  
20 rest of the garage would be flat or would come off at  
21 an angle where that there wouldn't be anything that  
22 you could build there.

23 MR. NOFFSINGER: Excuse me. Mr. Mischel,  
24 would you address this option, please.

25 MR. ELLIOTT: State your name, please.

1 MR. MISCHEL: Jim Mischel.

2 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

3 MR. MISCHEL: Let me see if I understand  
4 the question first. Basically you're asking, Mr.  
5 Hagan is asking if he could build a garage down low  
6 and not put the living space above. Is that correct  
7 assumption?

8 CHAIRMAN: No. What he's asking, he's  
9 tearing off part of the house now and he's questioning  
10 why he can't put the additional space above the garage  
11 as a living area.

12 MR. MISCHEL: Well, basically the zoning  
13 ordinance as far as you have a nonconforming on the  
14 first floor and that's not counting toward the 35  
15 percent. When you add that garage area and you put  
16 that room up above it - - would that 14 by 18, how big  
17 - -

18 MR. HAGAN: Probably be half the size of  
19 the garage above it. That's a bedroom that we would  
20 have to totally eliminate. Go back to a two bedroom  
21 home. The way it stands right now I mean we're asking  
22 for 24 by 24 and all you're going to have in there is  
23 cars. The only thing that you might enough room might  
24 be a stairway going up. So you're not getting the  
25 full 24 by 24. You're getting like a 24 by 20 because

1       you have a stairway that would have to go up a four  
2       foot stairway that would have to go up to the room  
3       above which is going to take off an additional four  
4       feet off the living space that we have now.

5                   MR. MISCHEL:  So the downstairs 14 by 18  
6       is used as living space now?

7                   MR. HAGAN:  Right.

8                   MR. MISCHEL:  The only thing I might read  
9       this into the - - section here that might cover what  
10      we're talking about here.

11                   Under Article 4.32, and this certainly  
12      nonconforming uses.  "Low nonconforming use shall be  
13      moved in whole or in any part to a portion of the lot  
14      or parcel other than that occupied by such use at the  
15      date of adoption or amendment to the zoning ordinance;  
16      however, said use may be moved to another position on  
17      the lot or parcel through a filter or adjustment or  
18      Section 7.4 here and below."

19                   That might my raise the question to where  
20      that living space could be moved to another portion of  
21      the lot.  The downstairs could be used for the  
22      garage.

23                   MR. NOFFSINGER:  I would like to state for  
24      the record:  According to your survey drawing and your  
25      site plan, that area is 14 by 16.3.  So it sounds to

1 me like that this board could consider the variance  
2 based upon the construction of a 24 by 24 garage with  
3 living space above the garage not to exceed the 14 by  
4 16.3.

5 MR. HAGAN: Correct.

6 MR. NOFFSINGER: If this variance would  
7 need to be approved so that the garage would be  
8 constructed so that the remaining area above the  
9 garage could not be converted to residential  
10 occupancy.

11 MR. HAGAN: That's right.

12 MR. NOFFSINGER: Now, how we do that is  
13 going to have to be determined through your builders  
14 and through the Building Department. I also state for  
15 the record that the applicant has submitted a number  
16 of pictures in the application showing setback  
17 encroachments within the area. Now, many of these  
18 encroachments are from side yard setbacks and they've  
19 been there for some time. Our staff did note that  
20 there is an encroachment on the rear yard setback at  
21 the home at 115 East Parrish Avenue. Also that  
22 encroachment on the rear yard setback at 109 East 14th  
23 Street. I think that's the only rear yard setbacks we  
24 were able to determine in your application for that  
25 particular encroachment from your yard. Those are

1 principal buildings. They're encroaching upon your  
2 yard setback.

3 CHAIRMAN: Possibly one answer to your  
4 question awhile ago about some of the others being  
5 closer to the line. If that area right there was an  
6 older location and that was done before the adoption,  
7 then it could be grandfathered in and there's nothing  
8 we could do.

9 MR. HAGAN: See, actually there is a  
10 foundation for a two-car garage we tore down, but the  
11 way you would come in my backyard put that garage back  
12 exactly where it was. You've got a doctor's office  
13 parking lot over there and people coming through that  
14 alley. Of course, we're going to be eight foot, after  
15 everything is said and done and over with we're still  
16 going to be eight foot off the alley, but we come up  
17 and into a side load. What would happen if we put  
18 that garage back to where it was, we would probably be  
19 in a rout about every other week. Every time we back  
20 out or something you'd get hit because the alley is  
21 used quite a bit. That's about the only way we could  
22 do it on side load. That's just about doing away with  
23 our entire backyard.

24 CHAIRMAN: Any board member have any  
25 questions?

1 (NO RESPONSE)

2 CHAIRMAN: You have anything else you want  
3 to add?

4 MR. HAGAN: No. Thank you.

5 CHAIRMAN: Anyone else in the audience  
6 have anything else they want to add?

7 MR. ELLIOTT: State your name, please.

8 MR. FREE: Keith Free.

9 (MR. KEITH FREE SWORN BY ATTORNEY.)

10 MR. FREE: Good evening. I'm here with my  
11 wife Susan and we live at 1214 St. Ann Street which is  
12 just two houses south of the applicant's property.  
13 We've seen the plans on what they plan on doing as far  
14 as their garage. We have no problem with that.

15 The area we live in really it's unique as  
16 compared to a lot of other different areas, older home  
17 and it's very dense. The existing zoning  
18 classification on the property now was one that was  
19 just a best fit. It just kind of best fit the area,  
20 but the area is in excess of 100 years old when it was  
21 constructed and the area was built. There's a lot of  
22 encroachment in the side yards, front yards, and rear  
23 yards as to what the existing zoning is.

24 So there's some unique things. As far as  
25 us living down the street, we have no problem with

1 what the applicant wants to do and it would be an  
2 improvement into the area and wouldn't cause any  
3 problems.

4 CHAIRMAN: Thank you.

5 Anyone on the board have any more comments  
6 comments or questions?

7 (NO RESPONSE)

8 CHAIRMAN: From the audience?

9 (NO RESPONSE)

10 CHAIRMAN: Chair will entertain a motion  
11 to dispose of the item.

12 MS. DIXON: I move for granting the  
13 variance of new construction 24 by 24 with living  
14 quarters not to exceed 14 by 16.3. The remainder to  
15 be constructed so that it cannot be turned into  
16 additional living space.

17 MR. MILLER: I'll second.

18 CHAIRMAN: You understood the motion?

19 MR. HAGAN: Yes.

20 CHAIRMAN: Any other questions or comments  
21 by any board members or staff?

22 (NO RESPONSE)

23 CHAIRMAN: Hearing none all in favor raise  
24 your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries unanimously.

2 Next item, please.

3 ITEM 6

4 1502 Wrights Landing Road, in an R-1A zone  
5 Consider request for a Variance to reduce the interior  
6 side yard building setback from 10 feet to 6 feet in  
7 order to construct an extension to the attached  
8 carport and storage structure.

Reference: Zoning Ordinance, Article 8, Section  
8.5.5(d)

Applicant: Frank & Rita Boehman

8

9 MR. NOFFSINGER: Mr. Chairman,, this  
10 application has been reviewed by the Planning Staff.

11 It's found to be in order. All adjoining property  
12 owners have been notified and it has been advertised  
13 for public hearing at this time. With that it's ready  
14 for your consideration.

15 CHAIRMAN: Before we ask the applicant,  
16 have there been any objections or anything filed in  
17 the office?

18 MR. NOFFSINGER: No, sir.

19 CHAIRMAN: No objections. Anything you  
20 all want to add?

21 MS. BOEHMAN: We brought some pictures of  
22 the property if you would like those.

23 CHAIRMAN: Board wish to see the  
24 pictures?

25 (NO RESPONSE)

1                   MR. NOFFSINGER: Mr. Chairman, I will  
2                   state for the record that the Staff did visit the  
3                   property and the area and did find similar  
4                   encroachments within the area and have recommended  
5                   that the board approve it and would recommend that if  
6                   you do that you attach the proper findings.

7                   CHAIRMAN: Chair will entertain a motion  
8                   to dispose of the item.

9                   MS. DIXON: Move to approve because it  
10                  will not affect the public health; will not alter the  
11                  essential character; will not cause a hazard or a  
12                  nuisance; and will not allow an unreasonable  
13                  circumvention of the requirements.

14                  MR. WARREN: Second.

15                  CHAIRMAN: You've heard the motion and a  
16                  second. Any other discussion?

17                  (NO RESPONSE)

18                  CHAIRMAN: All in favor raise your right  
19                  hand.

20                  (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21                  CHAIRMAN: The variance is granted.

22                  Any other items come before the board?

23                  (NO RESPONSE)

24                  MR. MILLER: Motion to adjourn.

25                  MR. WILLIAMS: Second.

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

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Meeting is adjourned.

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

3 I, LYNNETTE KOLLER, Notary Public in and for  
4 the State of Kentucky at Large, do hereby certify that  
5 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 the  
14 foregoing 39 typewritten pages; and that no signature  
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this  
17 the 27th day of July, 2001.

18

19

\_\_\_\_\_  
LYNNETTE KOLLER, NOTARY PUBLIC  
OHIO VALLEY REPORTING SERVICE  
202 WEST THIRD STREET, SUITE 2  
21 OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES:  
DECEMBER 19, 2002

23

COUNTY OF RESIDENCE:  
24 DAVIESS COUNTY, KENTUCKY

25