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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

OCTOBER 3, 2002

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, October 3, 2002, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: C. A. Pantle, Chairman
- Becky Stone
- Marty Warren
- Judy Dixon
- Tim Miller
- Bill Williams
- Ward Pedley
- Stewart Elliott
- Attorney

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CHAIRMAN: Call the Owensboro Metropolitan Board of Adjustment to order. Want to welcome you all this evening. Want to set a couple of guidelines the way we're going to operate the meeting.

If you want to speak, come to the microphone and be sworn in. We'll listen to all of your for and against arguments, if there are any. With that we will proceed with our - - one other thing. If the testimony keeps, you keep saying the same things over and repeating yourself, we'll cut you off. We're not going to listen to a bunch of

1 testimony that's heard over and over. With that we'll
2 proceed with our meeting.

3 The first item on the agenda is consider
4 the minutes of the September 5th meeting. They are on
5 record in the office. Been found to be correct. Does
6 anyone have any additions or anything that you all
7 want to add to them?

8 (NO RESPONSE)

9 CHAIRMAN: If not we'll entertain a motion
10 to dispose of the item.

11 MS. DIXON: Move to approve.

12 MR. WILLIAMS: Second.

13 CHAIRMAN: All in favor raise your right
14 hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries.

17 First item on the agenda, please.

18 -----

19 CONDITIONAL USE PERMITS

20 ITEM 2

21 324 Clay Street, in an R-4DT zone
22 Consider request for a Conditional Use Permit to
23 operate a residential transitional living facility in
24 the existing residential structure.
25 Reference: Zoning Ordinance, Article 8, Section 8.2C1
Applicant: Roger Stacy, DBA Victory Properties, LLC

MS. STONE: This application is in order.

1 It has been advertised for public hearing. All
2 adjoining property owners have been notified. It is
3 ready for your consideration.

4 You'll notice that the site plan indicates
5 four parking areas that are required by the facility
6 to be off site across the alley on an existing asphalt
7 parking lot. This is allowed for in the Zoning
8 Ordinance under Section 13.42 in changing a use in an
9 existing building in an off site accessory parking.
10 It is required that a development plan be approved by
11 the Planning Commission for this provision. A
12 development plan has been filed in the office and will
13 be heard at the October 10th Planning Commission
14 meeting. With that it's ready for your consideration.

15 CHAIRMAN: Have there been objections
16 filed in the office?

17 MS. STONE: No, sir.

18 CHAIRMAN: Is there anyone in the audience
19 wishing to speak in objection to this item?

20 (NO RESPONSE)

21 CHAIRMAN: Does the applicant have
22 anything that they'd like to add at this time?

23 MR. BRANCATO: Yes.

24 MR. ELLIOTT: State your name, please.

25 MR. BRANCATO: Frank Brancato.

1 (MR. FRANK BRANCATO SWORN BY ATTORNEY.)

2 MR. BRANCATO: Mr. Chairman, I'm here on
3 behalf of the applicant, Roger Stacy and Victory
4 Properties, LLC. I would add only to what Staff
5 mentioned is that part of the reason for the off-site
6 parking requirement is simply that this particular
7 property does not have access to the alley itself and
8 could not create parking at the back of the property
9 as some adjoining property owners have done in
10 converting residential property to transitional
11 housing.

12 CHAIRMAN: Any board member have any
13 questions of the applicant?

14 (NO RESPONSE)

15 CHAIRMAN: Staff have anything you want to
16 add or ask?

17 (NO RESPONSE)

18 CHAIRMAN: Hearing none the Chair will
19 entertain a motion to dispose of the item.

20 MR. WILLIAMS: Make a motion to approve.

21 CHAIRMAN: A motion has been made. Is
22 there a second?

23 MR. WARREN: Second.

24 MR. ELLIOTT: That's subject to the
25 development plan approval.

1 CHAIRMAN: Right. A motion has been made
2 and a second that we grant the Conditional Use Permit
3 with the development plan to be approved by the Zoning
4 Board. Any other discussion or comments?

5 (NO RESPONSE)

6 CHAIRMAN: Hearing none all in favor raise
7 your right hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries.

10 Next item, please.

11 ITEM 3

12 1501, 1647 Creek Haven Loop, in an R-1C zone
13 (POSTPONED)

14 Consider request for a Conditional Use Permit to
15 construct a sign structure in a floodway.

16 Reference: Zoning Ordinance, Article 18, Section
17 18-6(b)(2)(a)

18 Applicant: Creek Haven Development, Inc.

19 MS. STONE: This item has been withdrawn
20 by the applicant. The property has been removed from
21 the floodway by letter of revision so a Conditional
22 Use Permit is not required.

23 CHAIRMAN: Next item.

24 ITEM 4

25 2900 Fairview Drive, in an A-U zone

 Consider request to amend a previously approved

 Conditional Use Permit to allow construction of a

 40.2-foot by 55-foot addition to the existing building

 Reference: Zoning Ordinance, Article 8, Section 8.2H8

 Applicant: James West

1 MS. STONE: This property was rezoned to
2 A-U in 1997. A Conditional Use Permit was approved
3 with conditions in January of '98. In March of 2001,
4 a Conditional Use Permit was approved amending the
5 original site plan and it was subject to the following
6 conditions:

7 1) A private drive shall not be used in
8 conjunction with this business;

9 2) Screening along the south property
10 line with Evergreen trees 5-foot tall and spacing of
11 25-feet apart;

12 3) No outdoor storage;

13 4) Vehicular use area shall be paved from
14 Fairview to front edge of building;

15 5) Three-foot high continuous element and
16 one tree per 40-feet along Fairview.

17 These items have been completed in terms
18 of the screening of the Evergreen, the vehicular use
19 area shall be paved and 3-foot high continuous
20 element.

21 If this Conditional Use Permit is
22 approved, you would probably want to maintain the
23 conditions for no access to the private drive from the
24 business and no outdoor storage.

25 CHAIRMAN: Thank you, ma'am. Has there

1 any objections been filed in the office?

2 MS. STONE: No.

3 CHAIRMAN: Is there anyone in the audience
4 wishing to object to this item?

5 MR. McPHERSON: I'm against it.

6 MR. ELLIOTT: State your name, please.

7 MR. McPHERSON: Virgil McPherson. I live
8 at 2909 Pleasant Heights Lane.

9 (MR. McPHERSON SWORN BY ATTORNEY.)

10 MR. McPHERSON: First I want to pass them
11 out.

12 That's been in my backyard for the last
13 nine months until the last three weeks or so he's come
14 up there and cleaned it up and moved everything out.
15 This is a small area down there that he's building on.
16 I counted his help cars just a few minutes ago and he
17 had 14, 14 employees down there. I want to see if
18 this building if any more employees is hired where are
19 they going to park or anything else down there. His
20 trucks are - - is he going to move his trucks and
21 vehicles up on my property, up there next to my
22 property which not allowed to be no - - last time we
23 was down here you told him he couldn't use that
24 private lane and he's been using it ever since. Now
25 he's told our neighbors that he's not going to pay no

1 more on the gravel to keep it up.

2 CHAIRMAN: Anything else you want to add?

3 MR. McPHERSON: No. That's about it.

4 CHAIRMAN: Thank you, sir.

5 Anyone else objecting to this item?

6 (NO RESPONSE)

7 CHAIRMAN: Is the applicant here?

8 MR. WEST: Yes.

9 CHAIRMAN: Come forward and state your
10 name for the record.

11 MR. WEST: James West.

12 (MR. JAMES WEST SWORN BY ATTORNEY.)

13 MR. WEST: What Mr. McPherson is talking
14 about, the dump at the top of the hill, we're filling
15 a lower area there. I've had approval from the city.
16 I have a permit to do it. The state has been out
17 there. We've never parked any trucks up there. Only
18 time we ever access that road when we go up there and
19 dump sod or dirt. We have another neighbor here, I
20 think he might come up and say something. I do have a
21 permit. Like I say the city and the state both have
22 been out there. I do have a permit to dump, you know,
23 debris up there.

24 CHAIRMAN: Does the staff have any
25 questions of the applicant or comments?

1 MR. PEDLEY: Mr. West, when you were down
2 here before we had the same complaints about the trash
3 and the hauling and stuff that you had. Best I
4 remember you said you would clean that up. Also you
5 haven't addressed the use of private drive. I think
6 you need to do that. The original conditional use - -

7 MR. WEST: The only time I'm using that
8 drive is when I'm taking debris up there. That's the
9 only thing I'm dumping up there. I have a permit with
10 the city and state to do this. We probably take
11 something up there, you know, more than a couple of
12 times a week.

13 MR. PEDLEY: Are you using private drive?

14 MR. WEST: Yes, I am.

15 MR. PEDLEY: It's in the original
16 Conditional Use Permit the condition was that you
17 wasn't to use the private drive.

18 MR. WEST: Even with something like that?
19 We're not parking trucks up there or nothing like
20 that.

21 CHAIRMAN: You agreed to that when you got
22 the Conditional Use Permit before, that you would not
23 use the private drive. You remember that?

24 MR. WEST: Yes.

25 CHAIRMAN: Any other board members - -

1 MR. WEST: I thought I couldn't use it but
2 just to bring debris up there. What's the difference
3 between me doing it and somebody up there, you know,
4 they bring stuff up and dump. What's the difference?
5 I've gone to the city. I've gone to the state. I've
6 got a permit to do it. I pay taxes. I pay on the
7 road. He say I wouldn't pay on the road. I don't
8 know where that came from. I've paid on every time
9 he's asked me. I use that road very, very little.

10 CHAIRMAN: Any other board members have
11 any questions?

12 (NO RESPONSE)

13 CHAIRMAN: Staff have any comments or
14 questions of the applicant?

15 (NO RESPONSE)

16 CHAIRMAN: There's another gentleman. Are
17 you through, sir?

18 MR. WEST: Yes.

19 MR. ELLIOTT: State your name, please.

20 MR. CLARK: James G. Clark, 2868 Fairview
21 Drive.

22 (MR. CLARK SWORN BY ATTORNEY.)

23 MR. CLARK: I live at 2868 Fairview Drive.
24 My property line joins the right even with Evergreen.
25 He has put his gravel back in the back since he had to

1 blacktop that up there in the front to keep down the
2 dust and stuff like that. I told him I had no
3 complaints with parking the employees vehicles which
4 is right there by my front yard. I said the only
5 thing that I didn't want is maybe anybody coming out
6 there at night, but there's nobody there at night. I
7 have no objections to the building being built. He's
8 taken pretty good care of everything. It looks 100
9 percent better than it did before he bought the
10 property. On my behalf, and I know my wife feels the
11 same way, Nancy, but we have no objections to this.

12 CHAIRMAN: Any board member have any
13 questions

14 (NO RESPONSE)

15 CHAIRMAN: Thank you, sir.

16 Anyone else have any comments for or
17 against?

18 (NO RESPONSE)

19 CHAIRMAN: Hearing none the Chair will
20 entertain a motion to dispose of the item.

21 MR. PEDLEY: Mr. Chairman, I make a motion
22 for approval with the conditions as previously stated
23 in the Conditional Use Permit. There be no use of the
24 private drive and no outside storage.

25 This board has - I would like to make a

1 statement here - has the power to revoke a Conditional
2 Use Permit and you're already in violation of the
3 Conditional Use Permit if you're using that private
4 driveway. So that condition remains.

5 CHAIRMAN: Is there a second to the
6 motion?

7 MS. DIXON: Second.

8 CHAIRMAN: Motion been made and a second.
9 Any other discussion by the board or staff?

10 (NO RESPONSE)

11 CHAIRMAN: Mr. West, you understand the
12 way the motion was made?

13 MR. WEST: Yes.

14 CHAIRMAN: Hearing no other comments, all
15 in favor of the motion raise your right hand.

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries.

18 Next item, please.

19 ITEM 5

20 1202 JR Miller Boulevard, 1117 Daviess Street, 201,
21 205, 211 East 12th Street in an I-1 Zone
22 Consider request for a Conditional Use Permit to
23 construct and operate an indoor shooting range with a
24 maximum of 16 shooting lanes and an accessory sales
25 area and office.

Reference: Zoning Ordinance, Article 8, Section
8.2BC/13

Applicant: Ron Sanders, Smith Machine & Supply
Company, Inc.

1 MS. STONE: There is an issue with a city
2 ordinance amendment. I'll defer to Stewart on this
3 item.

4 MR. ELLIOTT: Yes, Mr. Chairman.

5 There is currently before the city
6 commissioners a proposed amendment to our current
7 ordinance. Be my recommendation to this board that we
8 postpone any action on this particular application
9 until that has been addressed by the city
10 commissioners and at the point this amendment be
11 adopted or rejected. I think that it'd be premature
12 at this time for us to take any action on this until
13 that is currently placed. I would recommend to the
14 board that this item be postponed for 30 days and
15 hopefully the city commissioners can take action on
16 the proposed amendment which would allow this type of
17 operation within the city and in accordance with the
18 ordinance.

19 CHAIRMAN: Thank you, Mr. Elliott.

20 You've heard his recommendation. What's
21 the pleasure of the board?

22 MS. DIXON: Move to postpone.

23 MR. MILLER: Second.

24 CHAIRMAN: Motion been made and a second
25 to postpone this item for 30 days. All in favor raise

1 your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries. This item will
4 be postponed for 30 days to see whether the city
5 commission clarifies the ordinance and where we're at,
6 whether we should take action on it one way or the
7 other.

8 Appreciate you all that came this evening
9 that would be involved in it, but it would be
10 premature for us to listen to it at this time.

11 Yes, sir.

12 MR. SANDERS: I'm the applicant, Ron
13 Sanders.

14 (MR. SANDERS SWORN BY ATTORNEY.)

15 MR. SANDERS: The city attorney, David
16 Fowler, advised me personally and it was in the
17 Owensboro Messenger-Inquirer that the proposed
18 amendment for the ordinance was not required for us to
19 proceed with the construction of an indoor range
20 within the city limits of Owensboro.

21 Now, I agree with him and in our
22 discussion what we wanted to do was to have that
23 ordinance so that we were very clear in that ordinance
24 of what we can do and cannot do in that operation. I
25 think it would be best for the citizens of Owensboro

1 have that amendment placed. It would certainly give
2 us a lot more clarity. I would also let you know that
3 in our option to purchase the property one of the
4 conditions is that ordinance be amended so that we
5 have a clear right with that issue. David Fowler told
6 me personally as was quoted in the newspaper that that
7 ordinance does not have to be amended for us to go
8 ahead with this construction.

9 MR. ELLIOTT: I have a difference of
10 opinion with Mr. Fowler. I haven't talked with him,
11 but it's my responsibility to advise this board and
12 I'm advising them not to take action until that
13 amendment is in place.

14 CHAIRMAN: On advice from our counsel and
15 our vote, we have postponed it for 30 days. We
16 appreciate your - -

17 MR. SANDERS: I hate all of these people
18 come out and had an opportunity for them to have
19 questions answered because they have taken their
20 evening off. I would really like to have their
21 questions proposed, let you hear them and at the end
22 of day if you still want to postpone that hearing. I
23 would really like for their issues to be spoken this
24 evening. I leave that in your hands. I respect your
25 decision.

1 MR. ELLIOTT: It would still be my
2 recommendation to postpone all of this proceeding on
3 this particular matter.

4 CHAIRMAN: I understand, but on advice of
5 counsel that's the way we've acted. Appreciate it.

6 MR. SANDERS: I appreciate the folks that
7 came out tonight. I want you to know that.

8 CHAIRMAN: We appreciate it. Thank you.

9 Next item, please.

10 -----

11 VARIANCE

12 ITEM 6

13 4229 Veach Road, in an R-1A zone
14 Consider request for a Variance to reduce the front
15 building setback from 60-feet from the street
16 centerline to 49-feet from the street centerline in
17 order to construct a 6-foot wide covered porch.
Reference: Zoning Ordinance, Article 8,
Section 8.5.5(c)
Applicant: Phillip D. and Corine H. Hedden

18 MS. STONE: This item has been advertised
19 for public hearing. Adjoining property owners have
20 been notified. The application is in order and it's
21 ready for your consideration.

22 CHAIRMAN: Has there been any objections
23 filed in the office on this?

24 MS. STONE: No.

25 CHAIRMAN: Is there anyone wishing to

1 speak in opposition for this this evening?

2 (NO RESPONSE)

3 CHAIRMAN: Is the applicant here?

4 MRS. HEDDEN: Yes.

5 CHAIRMAN: Do you have anything you want
6 to come before to bring to the board's attention on
7 this item?

8 MR. ELLIOTT: State your name, please.

9 MRS. HEDDEN: Corine Hedden.

10 (MRS. CORINE HEDDEN SWORN BY ATTORNEY.)

11 MRS. HEDDEN: First of all, we didn't
12 really know that we had this setback that we had to
13 have. I've lived in this house ever since it was
14 built. My dad built this house in 1952. I didn't
15 realize there was a setback that we needed to check
16 on. I checked with Mr. Mischel, Jim, and he told me
17 that I needed to go before you all and get this
18 ordinance so we could - - we have already built the
19 porch on there. It's already on there. You have
20 pictures and I think you have papers that I sent in
21 about the porch. If you want to just look at those
22 pictures. They're pictures before the house was
23 built. These two porches were already existent. One
24 on the front and one on the side. All we did was made
25 it go all the way around the house. The front and the

1 side is what we did. I have pictures there of the
2 house beforehand and the pictures where it's in
3 construction now. We just want to be able to finish
4 our building if it's possible, our porch. I think we
5 have a neighbor, one of the neighbors is here. I
6 don't know if he has anything to say, if he wants to
7 say anything for us.

8 We had two existing porches already there.
9 One on the side and one on the front and all we did
10 was just connected them.

11 CHAIRMAN: Does Staff have any comments on
12 this?

13 (NO RESPONSE)

14 CHAIRMAN: Any board member have any
15 questions of the applicant while she's at the podium?

16 (NO RESPONSE)

17 MRS. HEDDEN: We weren't trying to do
18 anything wrong. We live right there on the Veach
19 Road. The bypass goes by us and J.R. Miller goes by
20 us. We weren't trying to do anything wrong. Just
21 didn't know it was there.

22 CHAIRMAN: Thank you, ma'am.

23 Does anybody else have anything you want
24 to add to this particular item for or against?

25 (NO RESPONSE)

1 CHAIRMAN: Any board members have any
2 other questions?

3 (NO RESPONSE)

4 CHAIRMAN: Chair entertain a motion to
5 dispose of the item.

6 MR. WILLIAMS: Make a motion we grant this
7 variance.

8 CHAIRMAN: Motion has been made to grant
9 the variance. Is there a second?

10 MR. WARREN: Second.

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

14 MR. PEDLEY: We have a condition
15 recommended by Staff placed on that.

16 CHAIRMAN: Right.

17 MR. PEDLEY: Submittal and approval of a
18 plat of the property to change the 45-foot platted
19 setback.

20 MRS. STONE: Right. Thank you for
21 bringing that up.

22 There is a setback that's of record on a
23 plat that's 45-foot from the property line. So that
24 setback needs to be adjusted to be in accordance with
25 this variance that's granted. It was noted on the

1 plat that the variance was granted by this board to
2 reduce that setback.

3 CHAIRMAN: So noted.

4 MR. PEDLEY: Would you add that to your
5 motion?

6 MR. WILLIAMS: Yes.

7 CHAIRMAN: With that added to the motion,
8 does the second approve that also?

9 MR. WARREN: Second.

10 CHAIRMAN: Any other comments or
11 questions?

12 (NO RESPONSE)

13 CHAIRMAN: Hearing none all in favor raise
14 your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries. The variance
17 is granted.

18 Next item, please.

19 -----

20 ADMINISTRATIVE APPEAL

21 ITEM 7

22 1214 St. Ann Street, in an R-4DT zone
23 Consider an Administrative Appeal to appeal the zoning
24 administrator's interpretation of the definition of
25 maximum lot coverage.

Reference: Zoning Ordinance, Section Article 3,
Section 3-6(c), Article 8, Section 8.5, Article 14,
Sections 14.14, 14.39, 14.63

Appellant: Keith L. Free

Ohio Valley Reporting
(270) 683-7383

1 CHAIRMAN: Staff have their comments and
2 presentation you want to present before Mr. Free
3 objects or disagrees?

4 Excuse me. You should go first, Mr. Free.

5 MR. ELLIOTT: State your name, please.

6 MR. FREE: Keith Free.

7 (MR. KEITH FREE SWORN BY ATTORNEY.)

8 MR. FREE: I thank you all for hearing us
9 this evening. I was here last month before you on a
10 variance request that you gratefully granted last
11 month.

12 As part of that was an interpretation
13 concerning maximum floor area as calculated to
14 determine how big of a house or how much of a
15 structure that you can put on a lot.

16 One of the things that I was discussing
17 last time but found out this is the proper place in
18 time if I had a question with the interpretation is
19 through an appeal like this. One thing I might want
20 to say I have great respect for Becky and Jim and have
21 no problem and respect their side of how they're
22 interpreting that. I want to lay that out there
23 first.

24 In looking at it, and I think everybody
25 has been given kind of a breakdown of kind of my

1 thoughts on how this floor area thing is worked out.
2 Basically, and just real quickly going over where you
3 see I've kind of got that pyramid. Basically when
4 you're looking at the definition of floor area as it
5 relates to the definition of my home, what it is is -
6 - I think you all have a copy of this right here. You
7 have the floor plans. You can see the floor plan that
8 we wanted with the variance and the one actually the
9 variance granted because of this definition of the
10 maximum floor coverage. The particular floor plan
11 that we're wanting is the initial proposal floor plan
12 which has preferred underneath of it. With this floor
13 plan there's no more square footage, but includes a
14 mud room and a nice size side porch.

15 In looking at the differences in kind of
16 the opinion of interpretation of maximum floor area,
17 kind of looking how the whole thing is built up is at
18 the bottom here, Article 3, 3-6(c) of the zoning
19 regulations. Basically it says that no structure
20 shall exceed lot coverage. Then as the thing goes up
21 and it gets more specific to a specific situation and
22 eventually ends up with Article 14.39 which it will
23 look kind of like this, where you go through the thing
24 - - this is actually, this particular paragraph or
25 this particular Article 14.39 is actually how to

1 define what in the heck is maximum floor area when
2 you're trying to calculate square footage. Really
3 what I'm questioning on this is that unenclosed
4 porches like my front porch that I've got across the
5 front of my home is that actually that shouldn't count
6 toward maximum lot coverage. Actually in looking at
7 the definition of floor area it clearly states at the
8 first that floor area is calculated from the exterior
9 face of exterior walls. Using my front porch as an
10 example, the exterior face of the exterior wall would
11 be where my mailbox is and where my siding is. Not
12 extended out to where my porch is.

13 In the definition of floor area, actually
14 in those first couple of sentences it says what floor
15 area is. Then later it says what it doesn't include.
16 Actually if you're just looking at what floor area is,
17 those first couple of sentences tells you exactly what
18 it is. You can actually just use those first couple
19 of sentences even and it would tell you what floor
20 area is. Then it's calculated within what is floor
21 area. If this whole room was calculated in those
22 first couple of sentences and we said this was all
23 floor area and the areas that are talking about what
24 areas aren't included would include what's in here,
25 not what's out in the hall or the elevator or

1 anything. It would be what's within this portion of
2 this room say if this was a home.

3 I've kind of clearly laid out how the
4 definition is working. What I understand how the
5 staff was explaining to me was the way that it's
6 written isn't the way that - - the interpretation that
7 the staff has I can't see how they're getting that
8 interpretation out of this definition and out of the
9 Zoning Ordinance.

10 I'm open to any questions specifically to
11 what I kind of laid out. Everybody has probably had a
12 chance to read it and deal with what I'm saying.

13 CHAIRMAN: Any board members have any
14 questions of Keith?

15 MR. PEDLEY: I have a comment or two,
16 Keith. As far as I'm concerned, the purpose of the
17 maximum lot coverage is to provide green space for
18 trees and grass and such. That's the purpose of it.
19 When you cover it with a porch or whatever you cover
20 it with, you've eliminated that. So if you want to
21 just go to actually living floor space, I don't agree
22 with that. I agree, in my opinion, any time you cover
23 you're defeating a purpose of open green space.
24 That's the purpose of maximum, in my opinion. I'm
25 going to ask the staff about that. The reason, I'm

1 going to the reason for it. Any magazine, any
2 national thing, anywhere you look they're encouraging
3 more open space, more green space and more trees.
4 When we allow you or anyone else to go beyond the 35
5 percent, and I would like to see you do what you want
6 to do but I'm going to go to the ordinance. The way I
7 interpret the ordinance and the purpose of it, that's
8 the way I see it. We need to start looking at these
9 older communities about open space. All the big
10 cities, anything you read anywhere over the nation
11 they're pushing hard for open space. Atlanta, they're
12 even paying people to tear down buildings so they can
13 put out trees and grass. It's a health thing. That's
14 my opinion of it. If you put a porch, I know a garage
15 is not included, but still you have covered, you have
16 covered grass area. You have eliminated a place to
17 put a tree. Basically that's the way I see it.
18 That's the way I interpret it.

19 MR. FREE: In looking, what you're looking
20 at, Ward, to get it what your opinion of that is the
21 Zoning Ordinance would need to be changed to reflect
22 that. Currently it's not written to encompass, you
23 know, how you're stating that because it's defining
24 what is that floor area. That floor area encompasses
25 the exterior face of the exterior walls. By

1 definition by the ordinance is what it has. My
2 specific situation in looking at how much I've covered
3 and how much is open space and that type of thing, I'm
4 not looking at any difference in overall square
5 footage with my proposal, proposed plan that I'd like
6 to do versus the one that I'm kind of forced to do to
7 fit into that interpretation.

8 Actually by what I'm proposing to do is
9 actually there would be more of an open feeling in the
10 sense that there would be a larger rear porch.
11 Actually the porch that I had to change on the
12 required revised floor plan, it's only about a 9'6" by
13 10-foot porch, but that's only because that's as big
14 under that definition or that interpretation that the
15 Staff had. That's as big as it could be. But under
16 what I'm wanting to do is I'm wanting to build, I'm
17 wanting that to be an open porch. I'm looking at
18 roughly, you know, roughly a 13-foot by 10-foot open
19 porch which is substantially larger than the one that
20 if I built it now that I won't have.

21 I think under this interpretation there's
22 going to be these different things happen. I
23 understand. I feel that I'm correct in my
24 interpretation, but I do understand, Ward. I am
25 pushing the envelope of how much structure you can fit

1 on the building and that's why this whole thing about
2 floor area has come up. It's typically, it's not an
3 every day issue that's being looked at, but it's
4 because I'm pushing that envelope and I want to get as
5 much, you know, on the property as possible and that's
6 just not a typical, it's not a typical situation in
7 the single-family residence. I understand that.
8 That's why this has kind of come to the forefront,
9 but, you know, in looking with the definition or just
10 reading it it's clearly defined by the regulation how
11 to interpret that regardless of what you feel or want
12 it to say, it says what it says. If there is a flaw
13 in the ordinance - - in looking at it, originally I
14 thought, well, there's something wrong with it.
15 What's going on? Maybe there's something I'm not
16 seeing, but then in really looking at it there's
17 nothing really wrong with the ordinance, but if there
18 is a flaw in the ordinance it's where it's not
19 differentiating on that end where it's saying what
20 kind of things are excluded. Where it has stuff like
21 elevators and all that stuff. It doesn't really say
22 that's referring. I think you can assume that maybe
23 that's referring to multi-family, but it's not saying
24 it in there. If there is a flaw in this ordinance,
25 it is relating to that where it's not specifically

1 saying relating to multi-family. Actually it just
2 kind of says what it says. I definitely understand
3 it. I feel that way too as far as open space. I
4 understand that we're using up a lot of our open space
5 in regards to this. The specific matter before you
6 tonight is really just what in the heck does it say?
7 Really when you're reading it, what is it actually
8 saying?

9 MR. PEDLEY: I understand what you're
10 saying. Still at the same time my point we're
11 defeating the purpose of maximum lot coverage. The
12 point is when you - - I don't care what you put on
13 that lot, if it's concrete, or if it's a garage, or
14 drive or what, you're defeating the purpose when you
15 cover it with anything other than grass, or trees, or
16 open space. I think you're doing that quite a bit
17 here. You've probably got 50 to 60 percent of lot
18 coverage there.

19 MR. FREE: I could still cover, we could
20 still cover more of our lot with a detached three-bay
21 garage. We would have less open space than through
22 this. See, what I'm saying is I'm already good to go
23 on this change plan. What I'm talking about and the
24 way I'm talking about this thing being interpreted,
25 I'm not really stretching it or anything, but I'm not

1 talking about putting more roof over any more of the
2 property than - - I'm not going to put any more roof
3 on the property whether I do it the way that the
4 staff's interpretation would require me to do or the
5 way that I'm saying that it's interpreted. There
6 wouldn't be really any difference in the open space
7 other than I'm going to have maybe a bigger rear
8 porch, you know, would be the only real difference as
9 far as in relationship to open space.

10 MR. PEDLEY: But it doesn't end with you.
11 If we agree with your interpretation, then that's
12 basically where we're going to be going with it. It
13 doesn't end here, Keith. It goes on, and on, and on.

14 MR. FREE: But if the intent is to do what
15 you're saying, the ordinance needs to be revisited and
16 it needs to be written in such a manner that it
17 clearly does that. It's not written in a manner that
18 it does it the way that you've explained it. It's not
19 written that way.

20 MR. PEDLEY: You're saying it's been
21 misinterpreted all back in the past?

22 MR. FREE: No. No. Actually when we
23 originally started this it was interpreted exactly
24 the way I am explaining it to you. It has been
25 revisited and this is the interpretation that the

1 staff has. This isn't always the way that it has been
2 interpreted. I understand what you're saying, Ward.

3 MR. PEDLEY: I don't want to be
4 argumentative. I'd like to hear the Staff's side of
5 it.

6 MS. STONE: I think Jim will take you
7 through how the interpretation is.

8 I want to make one point. You were
9 including the first couple of sentences the definition
10 of floor area and then saying things that were
11 excluded from that within that floor area, but the
12 exclusions obviously include things that are outside
13 of that floor area such as outside steps that are
14 uncovered. So I don't think we can use that as the
15 interpretation of floor area for that reason, but Jim
16 has something.

17 MR. FREE: Outside steps that are
18 uncovered refer back to structural stairs. Be like
19 mezzanine or something that is up in a building that
20 could have, you could have the exterior walls
21 surrounding to that. That's not referring to the
22 front steps of the building and then it defers as to
23 whether - - what is the height of that walkway or that
24 step? Is it three feet, more than three feet or is it
25 less than three feet? When you look back at Article

1 3-7(e). If you look in the Zoning Ordinance referring
2 to 3-7(e) it talks about stairs. That is not to
3 include, cannot be assumed to include porches.
4 Porches aren't even mentioned in that. They're not
5 within that exterior face of the interior wall.

6 MS. STONE: My point is that outside steps
7 aren't necessarily within that exterior face of the
8 walls either and they're excluded as are water tanks
9 and cooling towers which are outside the exterior face
10 of the wall.

11 MR. FREE: More than likely a cooling
12 tower or something like that would probably be on top
13 or could be if it's within the exterior face of
14 exterior walls.

15 MS. STONE: Could be. Could not be.

16 MR. FREE: Could be on the top of it, but
17 if it's outside of that, it would be included because
18 it's defining exterior face of exterior walls. It's
19 defining what floor area is. If it's outside of the
20 exterior face of exterior walls, it's not included and
21 should not be calculated in floor area by the
22 ordinance.

23 CHAIRMAN: Any board members have any
24 other questions of Keith at this time?

25 (NO RESPONSE)

1 CHAIRMAN: Staff have their proposal.

2 MR. ELLIOTT: State your name, please.

3 MR. MISCHEL: Jim Mischel.

4 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

5 MR. MISCHEL: I have a handout I would
6 like everybody to have. I'm going to make this short.

7 I'm not going to read all of this, but
8 I've got some highlights here. I think what's
9 important is to go over a couple of definitions here.

10 The first one is building definition.

11 "Building is defined as any structure for the shelter
12 or enclosure of persons, animals or property."

13 You go down to structure and it says,
14 "Structure is defined as anything constructed, the use
15 of which requires permanent location on the ground, or
16 attached to something having permanent location on the
17 ground."

18 Then down to shelter. Says, "Shelter
19 means 'something beneath...which a person, animal, or
20 thing is protected' or means to 'place under cover.'"

21 I think these are important to show that a
22 porch is included as far as that building coverage.

23 If you go back to Number 1 where it says
24 Lot Coverage, it says, "Lot Coverage is defined in the
25 Zoning Ordinance as the computed ground area occupied

1 by all building within a lot."

2 I think it's important to say in that
3 definition because that states what is included. What
4 is a building, structure, shelter and under that lot
5 coverage it is included in that when we calculate that
6 35 percent lot coverage.

7 If you go over to Number 3 you see where I
8 have Limit on Lot Coverage. It says, "Accessory
9 building, structures and features, together with
10 principal buildings, shall not exceed maximum lot
11 coverage for the zones in which they are located."

12 At the bottom you'll see where the
13 property that we're talking about is zoned R-4DT where
14 it's not multi-family. It says, 35 percent of total
15 lot coverage.

16 You go to that next page under 5, and like
17 I said I won't read this whole thing, but it does give
18 things that are excluded. I think the ordinance does
19 give some leeway as far as garage. They do let you
20 count areas that are exclusively used for parking
21 vehicles to be discounted. We've done that
22 historically for 20 years under the ordinance. I
23 think like Becky was talking about, it also says that
24 outside steps that are uncovered. It says, "Uncovered
25 means there's no structural roof that would cause the

1 area of the steps to be counted as part of a
2 building."

3 I think that's important right there. If
4 you go over to where I've got it highlighted under
5 porch, roofs, you'll find where it says "porch, roofs,
6 breezeways and other enclosed building area count
7 toward lot coverage unless the roof shelters
8 excludable floor space. In the case of a single-
9 family residential, the only unenclosed floor space
10 that is excludable is a carport, which is used as
11 parking space for motor vehicles."

12 That's the only thing really we've
13 excluded in the past as garage. If you park a car
14 there, it's not counted.

15 Lastly you go down says, "If porch roofs
16 and other unenclosed building area were not counted
17 toward lot coverage, a substantial amount of the area
18 of a lot could be covered by roofs. In residential
19 zones, this would significantly reduce the open space
20 available on a lot. The provision of open space on
21 residential lots is the main objective behind
22 specifying a limitation on maximum lot coverage in
23 residential zones."

24 I've got a little drawing there. As you
25 can see on the left, if you go by 35 percent lot

1 coverage that's essentially what you could have on
2 there which would give you, if you had that garage or
3 carport in the back, for a total of 53 percent of lot
4 covered.

5 Under this new interpretation, you could
6 exceed that and in theory go 72 percent of lot and
7 have roof coverage. In my opinion that's a big step
8 that we would be taking.

9 In the 20 years we've been here, we've
10 interpreted as 35 percent and porches and everything
11 count as part of that calculation. Where we're
12 talking about is not necessarily just this one item
13 tonight. This would be a big impact on the whole
14 community as far as - - it's not just one item.
15 That's for the whole county, this interpretation. I
16 think that's a big step.

17 It's not only the zoning office that has
18 enforced this, but this board and the past boards in
19 the past have essentially upheld this interpretation
20 of this definition. I strongly think this ought to be
21 upheld to include this. I don't know if there's any
22 questions right now.

23 CHAIRMAN: Any board member have any
24 questions of Jim?

25 (NO RESPONSE)

1 CHAIRMAN: Board members have any
2 comments?

3 (NO RESPONSE)

4 CHAIRMAN: Staff have anything else?

5 BECKY: No.

6 CHAIRMAN: Keith, you have anything you
7 want to add to it for rebuttal?

8 MR. FREE: This is the first time I've had
9 a chance to see this. I haven't seen this before.
10 This is the Staff's interpretation. Really it's just
11 a matter of reading it and how you're interpreting it.
12 As Jim said, this is how the Staff is interpreting
13 through these things. This shows the stuff and then
14 how they're interpreting it. This stuff in quotes and
15 everything is how the interpretation is.

16 I just ask that, you know, you've all have
17 had a chance before this meeting to read over what
18 I've submitted. That's one reason that I'm here
19 tonight. This is the proper place to look at this.
20 It's something that I work with Jim and Becky on a
21 daily basis on things. This is the proper thing. If
22 we don't agree on exactly on something, this is a
23 personal matter for me regarding my house, if we don't
24 agree on an interpretation of something, you know, the
25 proper place if we don't agree on that, I'm seeing it

1 one way and they're seeing another, it's here. We get
2 some people to look at it and just read it and see how
3 you guys see it. That's all that I'm looking to do
4 and you guys just look at it and see what you think.
5 I sure appreciate you all hearing me tonight. Thank
6 you.

7 CHAIRMAN: Appreciate your feelings in
8 that statement.

9 Any board members have any other questions
10 or comments?

11 MR. PEDLEY: Mr. Chairman, I make a motion
12 to uphold the zoning administrator's interpretation.

13 CHAIRMAN: You've heard the motion. Is
14 there a second?

15 MS. DIXON: Second.

16 CHAIRMAN: Any other discussion?

17 (NO RESPONSE)

18 CHAIRMAN: Hearing none all in favor that
19 the board uphold the administrator's interpretation to
20 deny the appeal raise your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries. The
23 interpretation stands.

24 One thing we might bring up an extra item.
25 Ward brought up that he thought that green space or

1 open space ought to be addressed. We can't do
2 anything about it, but we can recommend to the Staff
3 that they present this to the zoning board for
4 consideration for some of their future studies.

5 MS. STONE: You mean increasing the green
6 space requirements?

7 CHAIRMAN: The interpretation, what green
8 space is.

9 MR. WARREN: Stating what green space is.

10 MR. MILLER: Clarifying.

11 MR. PEDLEY: That's definitely the purpose
12 of maximum lot coverage it's for certain - - I don't
13 care what you put out there. If you cover it up, you
14 don't have grass, you don't have trees. We need to
15 look at this interpretation very closely. Is the
16 planning office the place to do it, Planning Staff?

17 CHAIRMAN: Planning Staff.

18 MS. STONE: Are you asking that we look at
19 making an amendment to increase the grass space.

20 MR. PEDLEY: Not necessarily increase it,
21 but clarify it, look at the amount of space that - -
22 like garage, you know, it's not included in that.

23 MS. STONE: Right. Which if you wanted to
24 include it, you would be looking at making an
25 amendment to the test. That's what I'm saying. Is

1 that the kind of thing you want us to review?

2 CHAIRMAN: Is that the board's feelings?

3 BOARD MEMBERS: Yes.

4 CHAIRMAN: Good. Becky, you can bring
5 that up to the zoning board.

6 Anything else to come before the meeting
7 at this time?

8 (NO RESPONSE)

9 CHAIRMAN: Hearing none we need a motion
10 to adjourn.

11 MR. MILLER: Motion to adjourn.

12 MS. DIXON: Second.

13 CHAIRMAN: All in favor raise your right
14 hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 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 11th day of October, 2002.

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

24 COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

25