

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

OCTOBER 7, 2004

* * * * *

The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, October 7, 2004, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

* * * * *

CHAIRMAN: I want to call the meeting of the Owensboro Metropolitan Board of Adjustment to order.

I want to welcome each one of you being here this evening. We start each meeting with a prayer and the pledge of allegiance. If you so desire, please join us as Tim Miller will have our prayer.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Again, I want to welcome you to

1 the meeting. A couple of guidelines we'll state now
2 to make it simpler later on.

3 If you wish to speak on any item, please
4 come to one of the speakers and state your name for
5 the record to get it officially. Also if you start
6 going over the same item each time, more than two or
7 three, a couple of times, we will cut you off because
8 there's no need to listening to the same agreements or
9 disagreements on the item.

10 With that the first item is consider the
11 minutes of the September 2, 2004 meeting. They're in
12 the office on record. I don't think we've found any
13 problems with them.

14 MR. NOFFSINGER: No, sir.

15 CHAIRMAN: With that I'll entertain a
16 motion to dispose of the item.

17 MS. DIXON: Move to approve.

18 MR. MILLER: Second.

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

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries.

23 First item, please.

24 -----

25 CONDITIONAL USE PERMITS

Ohio Valley Reporting
(270) 683-7383

1 ITEM 2

2 3415 Buckland Square, in an R-3MF zone
3 Consider request to amend a Conditional Use Permit
4 to operate a public community center for the Boys &
5 Girls Club of America.
6 Reference: Zoning Ordinance, Article 8, Section 8.2B7
7 Applicant: Steve Winkler, Cliff Hagan Boys & Girls
8 Club, Inc.

9 MR. NOFFSINGER: Mr. Chairman, the
10 Planning Staff has reviewed this application. The
11 application is found to be in order.

12 The Board of Adjustment has approved a
13 Conditional Use Permit for this location for a similar
14 use at this same location on two other occasions.
15 This revision to the Conditional Use Permit would be
16 to change the footprint of the proposed building as
17 well as the location of the building on the property.
18 With that it's ready for your consideration.

19 CHAIRMAN: Were any objections filed in
20 the office?

21 MR. NOFFSINGER: No, sir.

22 CHAIRMAN: Is there anyone wishing to
23 object for this conditional use?

24 (NO RESPONSE)

25 CHAIRMAN: Does the applicant have
26 anything you'd like to add to it?

27 (NO RESPONSE)

28 CHAIRMAN: Any board member have any

1 questions of the condition?

2 (NO RESPONSE)

3 CHAIRMAN: Any comments from the board?

4 (NO RESPONSE)

5 CHAIRMAN: Entertain a motion.

6 MR. PEDLEY: Mr. Chairman, I make a motion
7 to approve the amendment to the Conditional Use Permit
8 for relocation of some of the items on the plat and
9 the footprint of the building in accordance with the
10 plat presented with the condition that all previous
11 conditions shall be as stated in the original
12 Conditional Use Permit.

13 CHAIRMAN: Is there a second?

14 MS. MASON: Second.

15 CHAIRMAN: A motion has been made and a
16 second. Any other comments or questions from the
17 board?

18 (NO RESPONSE)

19 CHAIRMAN: Hearing none all in favor of
20 the motion raise your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries.

23 Next item, please, sir.

24 ITEM 3

25 1831 McCulloch Avenue, in an R-4DT zone

1 Consider request to amend a Conditional Use Permit
2 to place a 16'x80' Class 2 manufactured home on the
3 property, revising the parking location.
4 Reference: Zoning Ordinance, Article 8,
5 Section 8.2 10B
6 Applicant: Denise Marcum

7 MR. NOFFSINGER: Mr. Chairman, Planning
8 Staff has reviewed this application. It's found to be
9 in order. It does revise the parking on the property
10 where this board previously approved the parking to be
11 off the alley. The applicant because of drainage
12 reasons is proposing that the parking come off of
13 Riley Avenue. With that it's ready for consideration.

14 CHAIRMAN: Any opposition in the office at
15 this time?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: Anyone wishing to oppose to
18 this Condition?

19 (NO RESPONSE)

20 CHAIRMAN: Does the applicant have
21 anything they would like to add at this time?

22 (NO RESPONSE)

23 CHAIRMAN: Any board members have any
24 questions of the applicant?

25 (NO RESPONSE)

26 CHAIRMAN: Hearing none entertain a motion
27 to dispose of the item.

1 MR. MILLER: Mr. Chairman, motion to
2 approve since this is an amendment to a previously
3 approved Conditional Use Permit.

4 CHAIRMAN: Is there a second?

5 MS. DIXON: Second.

6 CHAIRMAN: A motion has been made and a
7 second. Is there any other questions from the Staff
8 or office?

9 (NO RESPONSE)

10 CHAIRMAN: If not all in favor of the
11 motion raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Next item, please, sir.

15 -----

16 VARIANCES

17 ITEM 4

18 506 Breckenridge Street, in an B-4, I-1 zone
19 Consider request for a Variance to reduce the
20 roadway buffer from 40 feet to 30 feet along
21 Breckenridge Street.

22 Reference: Zoning Ordinance, Article 13, Section
23 13.622, 13.6221

24 Applicant: James Gregory Wimsatt

25 MR. NOFFSINGER: Mr. Chairman, the
26 Planning Staff has reviewed this application. The
27 application is found to be in order. The Planning
28 Staff has prepared a Staff Report with a

1 recommendation for approval and has submitted this
2 recommendation to this board for consideration.

3 CHAIRMAN: Is anyone objecting to this
4 variance in the office?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: Anyone in the audience
7 objecting to this variance?

8 (NO RESPONSE)

9 CHAIRMAN: Does the applicant have
10 anything you would like to add to it?

11 (NO RESPONSE)

12 CHAIRMAN: Does the Staff have more
13 comments?

14 MR. NOFFSINGER: Yes, Mr. Chairman. I
15 will state for the record that Planning Staff after
16 reviewing has found that the property that Mr. Wimsatt
17 owns adjoining this, the landscaping is located within
18 the roadway buffer. By allowing this variance it will
19 allow the landscaping that's existing on the adjoining
20 site to be continued along this proposed development
21 site. So it would be in keeping with the character of
22 the area and the location of the existing landscaping.
23 Breckenridge Street is a one-way arterial that is
24 adequate to handle the capacity, roadway capacity now
25 and in the foreseeable future. It's not likely that a

1 roadway widening project would be proposed on this
2 facility for many, many years. So with that Staff has
3 prepared the findings that the Board of Adjustment
4 have available to them that they can read into the
5 record.

6 CHAIRMAN: Does any board members have any
7 other questions on this item or comments?

8 (NO RESPONSE)

9 CHAIRMAN: Does the applicant understand
10 the conditions that the Staff stated?

11 APPLICANT REP: Yes.

12 CHAIRMAN: Does the applicant have
13 anything else to add?

14 APPLICANT REP: No.

15 CHAIRMAN: Entertain a motion to dispose
16 of the item.

17 MS. DIXON: Move to approve the Variance
18 because granting this Variance will not adversely
19 affect the public health, safety or welfare; will not
20 alter the essential character of the general vicinity;
21 will not cause a hazard or a nuisance to the public;
22 and will not allow an unreasonable circumvention of
23 the requirements of the zoning regulations.

24 CHAIRMAN: Is there a second to the
25 motion?

1 MR. MILLER: Second.

2 CHAIRMAN: A motion has been made and a
3 second. Any other questions or comments from the
4 staff?

5 (NO RESPONSE)

6 CHAIRMAN: Any board members have any
7 other questions or comments?

8 (NO RESPONSE)

9 CHAIRMAN: Hearing none all in favor raise
10 your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries.

13 Next item, please.

14 ITEM 5

15 9642 KY 951, in an A-U zone
16 Consider request for a Variance to reduce the front
17 yard setback from 30 feet to 7 feet in order to
18 construct a garage.

17 Reference: Zoning Ordinance, Article 8,
Section 8.5.2(c)

18 Applicant: Michael and Karen Young

19 MR. NOFFSINGER: Mr. Chairman, Planning
20 Staff has reviewed the application. The application
21 is found to be in order.

22 The Planning Commission will be
23 recommending tonight approval of a modified variance
24 from what the applicant is requesting. That would be
25 a variance to reduce the building setback for this

1 particular structure from 30 feet to 15 feet as
2 measured from the center line of the right-of-way.
3 That recommendation comes with a condition that a new
4 plat be submitted to reduce the plat at 35 foot
5 setback down to the 15 foot setback.

6 The reason for this recommendation is due
7 to the location of other structures within the area
8 that are encroaching upon a 30 foot required building
9 setback. Topography of the area is such that the
10 particular lot, it's difficult to site any type of
11 structures due to the topography that falls off as you
12 approach the rear of the home. Several feet back it
13 falls off. So it makes it difficult to locate a
14 garage on the property.

15 We have worked with the applicant. It's
16 my understanding that the applicant is agreeable to
17 amend the application to a 15 foot setback as opposed
18 to what was proposed and that would be a 7 foot
19 setback. The Board of Adjustment has received a Staff
20 Report and we made findings for the board to review.

21 CHAIRMAN: Is there any objections in the
22 office?

23 MR. NOFFSINGER: No, sir.

24 CHAIRMAN: Is anyone in the audience
25 wishing to object to this variance?

1 (NO RESPONSE)

2 CHAIRMAN: Does the applicant have
3 anything you'd like to state to the board? Is the
4 applicant even here?

5 (NO RESPONSE)

6 CHAIRMAN: The applicant is not here on
7 this item.

8 (NO RESPONSE)

9 CHAIRMAN: Any board members have any
10 comments or questions?

11 (NO RESPONSE)

12 CHAIRMAN: If not entertain a motion to
13 dispose of the item.

14 MS. MASON: Mr. Chairman, I move for
15 approval with the changes recommended by the Staff of
16 the front yard setback from 30 foot to 15 foot with a
17 condition that a new plat be submitted to reduce the
18 plat at 35 foot setback. With this approval with the
19 new front yard setback it will not adversely affect
20 the public health, safety or welfare; it will not
21 alter the essential character of the general vicinity;
22 it will not cause a hazard or nuisance to the public;
23 will not allow an unreasonable circumvention of the
24 requirements of the zoning regulations, if we use the
25 Planning Staff recommendation.

1 CHAIRMAN: Is there a second to the
2 motion?

3 MS. DIXON: Second.

4 CHAIRMAN: A motion has been made and a
5 second. Any other comments by the Staff?

6 MR. NOFFSINGER: No.

7 CHAIRMAN: Any board member have any
8 questions or comments?

9 (NO RESPONSE)

10 CHAIRMAN: Hearing none all in favor raise
11 your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Next item, please, sir.

15 -----

16 ADMINISTRATIVE APPEALS

17 ITEM 6

18 416 Wing Avenue, in an B-4 zone
19 Consider request for an Administrative Review to
20 appeal the zoning administrator's interpretation that
21 the construction and repairs of pallets is an
22 industrial use and is not permitted in the B-4 zone.
Reference: Zoning Ordinance, Article 8, Section 8.4
23 industrial uses (29)
24 Applicant: Randy Jones

23 MR. NOFFSINGER: Mr. Chairman, Mr. Jim
24 Mischel, Zoning Administrator, is here tonight to
25 present his findings and his decision. I remind the

1 Board that you're here to consider tonight whether or
2 not Mr. Mischel made the appropriate decision or if he
3 erred in the decision in review of the current use
4 on the property.

5 So with that we should hear from Jim
6 Mischel and his presentation of the case.

7 MR. ELLIOTT: State your name for the
8 record, please.

9 MR. MISCHEL: Jim Mischel.

10 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

11 MR. MISCHEL: I'd like right now to give
12 you a little background information on the property
13 that's located at 416 Wing Avenue. I'd like to give
14 you a little handout first.

15 Initially the reason we got involved with
16 this we had some complaints to the office. I've got
17 two letters here I'm going to pass out so you can take
18 a look at it while we're discussing it. I'd like to
19 put one in the record too. I'll give you a couple of
20 minutes to read over that.

21 As you can see, the first pages that I
22 passed out are letters that we've had complaints
23 concerning this business. It's Jones Pallet Company.
24 They make, they refurbish wooden pallets. There was
25 some concerns, I guess, from neighbors here that this

1 is occurring in the wrong zone. It is zoned
2 commercial. This type of business should be in I-1
3 light industrial business. So we did investigate.

4 If you look at the papers, there's a memo
5 I sent to Mr. Randy Jones concerning this. At that
6 time I asked him to contact us concerning this item,
7 which he did. We talked about it. He e-mailed me
8 some concerns that - - basically I guess what we're
9 going off of this is a commercial piece of property.
10 There is a clause in the zoning ordinance that
11 describes grandfathered uses. As long as the business
12 is grandfathered in before the ordinance took affect
13 and maintained that industrial activity throughout the
14 years without an 18 month absence, then it can
15 continue that industrial use.

16 We asked him to show us, give us some
17 evidence to show that it's always been in existence of
18 industrial use. He did e-mail me some information
19 concerning this use. After reading it, and I gave you
20 a copy of that. You'll see that in an e-mail to me.
21 I didn't feel like I could certify this as a
22 grandfather use with the information that was given to
23 me. So after that, and I think that was in August,
24 August 10th, that e-mail, I sent out a notice of
25 violation stating that this should be, this business

1 should be an industrial type setting. Of course, Mr.
2 Jones has appealed. He's done an Administrative
3 Appeal on that decision. I guess he's here tonight to
4 show that maybe this is a grandfather use. I don't
5 know if you have any questions right now of what you
6 have there.

7 CHAIRMAN: Any board members have any
8 questions of Mr. Mischel?

9 (NO RESPONSE)

10 MR. MISCHEL: There was some photos turned
11 in too and I think you've seen those.

12 CHAIRMAN: Is the applicant here? If the
13 applicant have any comments, come forward.

14 MR. ELLIOTT: State your name for the
15 record, please.

16 MR. JONES: Randy Jones.

17 (MR. RANDY JONES SWORN BY ATTORNEY.)

18 MR. JONES: We've been in business there
19 for about two or three years now. Like Mr. Mischel
20 said, I've got a list of the companies that have been
21 there.

22 I'm sure most of us here tonight are
23 familiar with May Brothers Concrete. They built the
24 building back in '57. They owned it up until 1993.
25 At that point Owensboro Grain made the purchase.

1 Since that time they have rented the building out all
2 way up to the present time. Each person that has been
3 in there, all except for one, has been industrial. It
4 has not been setting for 18 months. I've got all the
5 months and times here.

6 The first person they rented to was
7 Indutrisl Technology. Wayne Hughes had it from March
8 of '93 to September of '94. He's got a representative
9 here tonight to let you know if you need that. It was
10 industrial use.

11 Millay Building & Remodeling was
12 industrial. They were there from '94 to December '95.

13 Viewmaster Windows did industrial work,
14 John Noffsinger. He had it from December '95 to June
15 of '96.

16 I've got a guy here tonight that also had
17 a pallet business. Was in there anywhere from two to
18 four years. He did the exact same thing I did.

19 CHAIRMAN: What was his dates?

20 MR. JONES: December of '95 to January of
21 2000. The company that was in there was Matt Hayden
22 Empire Turf and a portable aluminum window storm
23 repair. Bob Pinkston, his son, rented from both of
24 them. They had it for that duration doing the exact
25 same work I do.

1 It was asserted in the very beginning that
2 I do pallet assembly. This is incorrect. I do not
3 build one pallet. I get the pallets in. If they
4 don't need anything, they're sold. If they do need
5 something, I put a board or two or whatever it needs
6 on it and it's sent out. I do not assemble pallets.
7 According to the information I read, that is what
8 makes it industrial use is the assembly. They've got
9 it in your all's notation on what is industrial use is
10 box and crates. I do not build boxes. I not build
11 crates. It says assembly of those things. I do not
12 do that.

13 I am no different than a used car lot that
14 gets a car in. If it's okay, he sells it. If it
15 needs some work, he puts it in his little shop and he
16 fixes it and then he sells it. I do the same thing.

17 So I don't really see myself as industrial
18 because all I do is sell the product that I repair, if
19 it even needs repair. That's the way I go from that.

20 Like I say there has been a pallet shop
21 that's been in there longer than I've even been there.
22 They never had any problem with that.

23 There was a guy by the name of Garland
24 Gray that had Permatrue Industrial Coatings. He was
25 there from March of 2001 to June of 2002.

1 Robert McBride was there doing furniture.
2 He was the only one that was commercial. He was there
3 from June 2nd to October 2nd, which was, what, about
4 three or four months.

5 Then from that point until to right now
6 I've had it doing a pallet shop which is the same
7 thing Bob Pinkston's son, Rob Pinkston, was doing the
8 same thing. He's here to attest to that fact tonight.

9 As far as all the complaints are going, I
10 haven't really seen what you've got there. I know one
11 of the things was I block the sidewalk. I've got
12 pictures to show the sidewalk is not blocked.

13 I've got reports back from the health
14 department, reports back from the city that have both
15 come and seen exactly what they were complaining
16 about. They said, these are unfounded statements and
17 they found no problem with it.

18 The health department was called because
19 they said there was rats out there. We all knew that
20 wasn't true, but that's what she reported so he had to
21 come out and check it. This was due to on a block
22 over, from what I understand. The city had come and
23 flushed out the sewer system and some rats had come
24 out. These were not mice. These were rats. They had
25 come out and the lady on that street had seen them and

1 she got word back to use that that's what it was. Had
2 nothing to do with me whatsoever. When the health
3 department came out, he walked around. He said, there
4 should be holes in the ground. I had just mowed the
5 ground so he should easily be able to see any holes.
6 He said, there's nothing here. It's totally
7 unfounded. The pallets he said were stacked neatly
8 and in order. He saw no complaint.

9 The fire department has said the same
10 thing.

11 Everybody she has contacted has come back
12 with a neutral remark. There's no problems.

13 I've also got other neighbors that live in
14 the neighborhood because the complaint I was getting
15 back was this is a neighborhood thing. Really it's a
16 one or two family thing. The rest of the neighborhood
17 are here tonight to say that they want me there. If
18 you have a question about that, they're more than
19 happy to tell you that they want my business there.

20 I've also been told that my business has
21 been a detriment to the area. I'm a renter. Not an
22 owner, but after I had been there about a year to a
23 year and a half I spent 3 or \$4,000 putting a roof on
24 somebody else's building so I could be in there and it
25 would look better not only for the neighborhood, but

1 it would be better for me. So I spent 3 or \$4,000 to
2 Lyle's Roofing to come in and tear that roof off. It
3 was in bad shape. It had grass growing out of the
4 roof. So if that gives you any idea. There were
5 holes and different things in that roof. It was
6 molded and stuff. We had all of that stripped out and
7 redone.

8 You know, it looks like I'm putting forth
9 an effort for somebody that says I'm a detriment to
10 the neighborhood.

11 Also the same people that are saying that
12 have also come up to me and made the remarks how much
13 they appreciate me being there now because the grass
14 is mowed and kept neat. They said that sometimes they
15 even mowed the yard, but they were glad that I was
16 mowing it now. You know, I'm beginning to wonder why
17 they're complaining if they're also coming up and
18 telling me they appreciate me mowing the yard.

19 If you'd like to see them, I've got
20 pictures showing the pallets stacked neatly. I've got
21 pictures that show that the sidewalk is wide open.
22 You also had a picture there, I believe, that's got a
23 brown van in it. She's got a notation in one of the
24 reports that I was told that this person had to honk
25 the horn, swerve to miss me, but little did she know

1 that that person was the wife to a guy that works in
2 Temporary Professionals which is right across the
3 street from my business. We knew each other for
4 years. She was coming across that parking lot to get
5 back on the street. When she went behind my forklift
6 she was honking and waving because we were friends.
7 They will call you. They will write you. You can
8 call them and they will attest to the fact that they
9 did that.

10 I don't mean this the wrong way, but I've
11 got to tell you like it is. I know a lot of people
12 and I've got a lot of people that come up and down
13 that street honking the horn, sometimes stopping,
14 sometimes waving. They get the idea when they hear
15 the honking going on when people are waving and being
16 cool about that this is complaining about me being out
17 there. It's simply because I know all these people.
18 Even my brother-in-law that's here tonight, he drives
19 by every now and then. When he does he'll honk two or
20 three times and wave. This goes on a lot.

21 I've got people that work for UPS that
22 deliver my nails to me. When they come by they'll
23 honk three or four times and wave.

24 I've got a guy that works for Fed Ex. He
25 goes to church with me. When he comes back, he'll

1 honk, he'll wave. Sometimes he'll pull over. He did
2 last night. We talked for awhile.

3 So the honking and so forth like this,
4 that's unfounded because it's mostly people that I
5 know honking at me.

6 The complaints about me blocking the
7 street. After I realized what was going on, the
8 complaint there, which to me is unfounded because I
9 went back through my books and I looked at these
10 people that came that caused me to block one part of
11 one lane, that's all it was, one part of one lane. It
12 happened four times in this whole year. Because I had
13 to pay them or they have to pay me. I get written
14 receipts for that. So I went back and looked. That
15 only happened four times.

16 When they say that I block the street, my
17 truck is parked on my side. No yellow line. I have a
18 right to park there. There's three stacks of pallets
19 on the street side. That's all I have to get out
20 there for is those three stacks. The other three
21 stacks are loaded from my side of the street. So
22 that's no problem whatsoever.

23 Even here recently I have a big vacant lot
24 on the other side that is in-between their daughter
25 and son-in-law and me. I even started using that

1 lately to load. So that even lowers, you know, what I
2 do there.

3 I've done everything I can. One of the
4 families that's here tonight, her husband was out
5 there one day and I was talking to him. I said, if
6 you ever have any complaints about my pallet business
7 over there, you tell me instead of calling in. The
8 same thing was told to her. One time we were sitting
9 out there in front of the business at night talking
10 over my truck. We talked for about 30 or 45 minutes.
11 I said, listen, instead of you calling somebody, the
12 next time just come tell me what it is and we'll work
13 on it. There's no need to call the city because all
14 the tax payers dollars for somebody to run out there
15 for nothing. That's what has happened about four or
16 five times now. We're paying for people to come out
17 for unfounded reason. It's all been proven in the
18 report.

19 From that time, she has yet to come and
20 talk to me one time about any issue whatsoever.
21 That's all I asked her.

22 The McBrides told me that there was an
23 area they wanted to see improved. I said, hey, no
24 problem. Give me 30 days and it will be took care of.
25 It was took care of in one week. So if they'll work

1 with me, I'll work with them. When they don't come to
2 me and they call the health department, which is
3 unfounded. They call the fire department saying my
4 business is going to cause the houses in the area to
5 catch on fire, you know, it's absurd, but that's what
6 they said, there's nothing founded there. The fire
7 department has been there. The health department
8 came. That was unfounded. Everything they have said
9 has been unfounded.

10 I've got a letter right here that you're
11 more than welcome to see from a new renter that just
12 moved in. If you'd like for me to, I can read it to
13 you what it says or you can read it in private. They
14 came up there, even their own daughter and son-in-law,
15 it's written in here word for word, to warn them that
16 their mother may tell them about how to keep their
17 yard, how to keep it mowed, or how to keep the bushes
18 trimmed, or keep the dumpster up off the street, or
19 whatever. It's all right here. Even the person that
20 he's renting from, even before he moved in, that Ms.
21 Embry would probably cause some problems. He was
22 warned before he moved in. He had to work tonight so
23 he wasn't able to be here so he wrote a letter and put
24 that in there.

25 She's consistently causing problems in the

1 neighborhood for different ones. Like I said I told
2 her face to face that if she would just come see me
3 when she's got a problem and we would take care of it.
4 She has yet to come to me. But the ones that did,
5 we've got everything worked out.

6 I do whatever I can to reach out and touch
7 people in the neighborhood that have a problem. The
8 people across the street are elderly people. When
9 he's got furniture in his truck and he's coming home,
10 I go over there and help him unload it. Sometimes
11 help them unload their groceries. Their son had a
12 tree down during the storm. I helped them cut down
13 the tree and stuff. You know, I do whatever I can
14 around the neighborhood. This family here is the only
15 one that seems to have a problem. I don't have any
16 problem with her. About a week or two ago she had a
17 truck in the garage that would not start. The battery
18 was dead. I was over there working on my lot. Even
19 in the midst of all this complaining and stuff, she
20 still asked for me to come help her get her truck
21 started. I went right over there. Hooked the battery
22 charger up for her. Got her truck going for her and
23 she still complains. I can't do anything to please
24 her.

25 Like I say I've got everything that shows

1 that I should be grandfathered in date-wise. They're
2 all industrial businesses. There was a previous
3 pallet company that was there. We didn't really start
4 having a big problem until we refused to sign a
5 petition that she had going around. Once we didn't
6 sign that petition, it started getting heated up from
7 then on.

8 I don't know what else to tell you, but I
9 like I said I've got the witnesses here that will
10 validate and tell you they approve of me being there.
11 I've got a letter from the people in the neighborhood
12 that's not here tonight signed that they approve of me
13 being here. You'll find it's only the one family and
14 maybe one other that have any issue. I just don't see
15 a problem with it.

16 CHAIRMAN: Any board member have any
17 questions of Mr. Jones at this time or the Staff?

18 MR. NOFFSINGER: I do.

19 Mr. Jones, I have a question of you. I
20 have an e-mail I believe it's from you dated
21 8/10/2004, RJBUSINESSES31.

22 MR. JONES: Yes.

23 MR. NOFFSINGER: That's your e-mail
24 address, correct, where you listed the dates and uses
25 that occurred in that - - you would confirm that that

1 is from you?

2 MR. JONES: Yes.

3 MR. NOFFSINGER: One question here.

4 From March of 2001 to June of 2002,
5 McBride Furniture was in operation here. Would you
6 explain the nature of that business?

7 MR. JONES: No. That was Permatrue
8 Industrial Coating from March 1st to June - -

9 MR. NOFFSINGER: I'm sorry. Then McBride
10 Furniture was the only non-industrial company. June
11 '02 to October '02. Would you describe the nature of
12 that business?

13 MR. JONES: He bought used furniture. It
14 was used, but sometimes it looked more towards the
15 antiquish type stuff. Then he would resell that.

16 MR. NOFFSINGER: Thank you.

17 I have a question of Mr. Mischel.

18 Mr. Mischel, the use that was just
19 described by Mr. Jones, what use category does that
20 fit into in the zoning ordinance?

21 MR. MISCHEL: The McBride Furniture?

22 MR. NOFFSINGER: As he described it.

23 MR. MISCHEL: Typically that would be a
24 commercial activity. From what I understand, it's
25 sell and resell of antique furniture, used furniture.

1 MR. NOFFSINGER: B-4 general business
2 zone?

3 MR. MISCHEL: B-4 general business zone.

4 MR. NOFFSINGER: Would you describe the
5 statutory requirements and the requirements of the
6 zoning ordinance regarding a grandfather use and the
7 continuous of a non-conforming use.

8 MR. MISCHEL: Typically if, in this case,
9 if you have a piece of property that's zoned
10 commercial and when the ordinance came in when it was
11 inactive, if that use was industrial, even though it
12 was zoned commercial, then that was grandfathered in.
13 It can continue, as long as there's no major changes
14 or change in use. If an industrial activity ceases,
15 they have 18 months to bring in another industrial
16 activity. If you change that use of the property, go
17 back to what it was, then you lose your grandfather
18 status on that.

19 MR. NOFFSINGER: So therefore you're
20 telling us that the use of the furniture store that
21 sold antiques and retail sales of furniture was a use
22 that would be allowed in the B-4 zone and that was the
23 zoning of the subject property at that time.
24 Therefore the property at that point in time lost its
25 grandfathered status or non-conforming status?

1 MR. MISCHEL: Yes, once they change that.

2 MR. NOFFSINGER: I have a question of Mr.
3 Elliott.

4 Mr. Elliott, did Mr. Mischel describe the
5 statutory requirements as well as the zoning ordinance
6 requirement regarding grandfather uses and their
7 ability to continue?

8 MR. ELLIOTT: Yes, he has.

9 MR. NOFFSINGER: Thank you. I have no
10 other questions.

11 CHAIRMAN: The gentleman that had the
12 furniture for sale, is he here this evening?

13 MR. JONES: His wife is.

14 CHAIRMAN: Would she come forward at this
15 time, please?

16 MR. ELLIOTT: State your name for the
17 record, please.

18 MRS. McBRIDE: Regina McBride, 406 Geary
19 Court.

20 (MRS. McBRIDE SWORN BY ATTORNEY.)

21 CHAIRMAN: He stated that you were in the
22 furniture or antique business repair. What's the
23 date?

24 MRS. McBRIDE: We was over there from - -
25 I have to go back here now. He had his last heart

1 surgery in '02. We was there probably from 2001 until
2 then, but we had a lease. After he had his
3 open-heart surgery, he let us out of it because we
4 couldn't run the business no more. Then after that -
5 - well, we may have stayed a year, maybe a year and a
6 half over there. Then he had his open-heart surgery.
7 We had an auction and left. Then after that he stayed
8 home probably six months, seven months. He decided
9 that he didn't want to be home any more. So we went
10 to Consumer's Mall. He let us out of the lease. We
11 took care of the building.

12 CHAIRMAN: Would you state for us or tell
13 us what kind of business you operated at this location
14 when you were there, please?

15 MRS. JONES: We had an antique shop.

16 CHAIRMAN: That answers my question.

17 Thank you, ma'am.

18 Does the Staff have any questions or other
19 board members?

20 MS. MASON: You did not build furniture.

21 You just sold furniture.

22 MRS. McBRIDE: No, we did not build
23 furniture.

24 CHAIRMAN: Thank you.

25 Mr. Jones, do you have any other people

1 that want to support you or reasoning at this time?

2 MR. JONES: The only thing I wanted to try
3 to get cleared up is how they're actually trying to
4 zone me. They're trying to say I'm industrial, but if
5 all I do in the sell like he did in furniture, I don't
6 do anything different. Just mine is pallet. I wanted
7 to see if that's considered commercial or if that's
8 considered industrial because that's what me and Jim
9 Mischel has been trying to figure out. There's
10 nothing in the zoning thing that actually list what I
11 am. He said that the closest thing he could find was
12 the assembly of box and crates, which sounds like the
13 same deal, but it's not what I do. That was part of
14 what we were saying. Let's go here tonight and see if
15 they can tell us what that interpretation is. Also
16 through the reading that I found through your alls
17 information on zoning, you have a B-5 that's
18 commercial that is a new ordinance that allows
19 commercial and light industrial in that commercial
20 business. That's what I figured myself as just
21 general business and sales. If it doesn't go to B-4,
22 I can see it easily going into B-5 without being
23 "industrial."

24 CHAIRMAN: Anyone else wanting to speak to
25 support his appeal?

1 (NO RESPONSE)

2 CHAIRMAN: Do the ones that are objecting
3 to the location wishing to come forward. State your
4 all's reasons, please.

5 MR. ELLIOTT: State your name, please.

6 MS. EMBRY: Donna Embry.

7 (MS. DONNA EMBRY SWORN BY ATTORNEY.)

8 MS. EMBRY: First I would like to submit
9 some pictures.

10 We and other neighbors of the property
11 located at 416 Wing Avenue are opposed to the business
12 known as Jones Pallet operated by Mr. Randy Jones who
13 is conducting an industrial business in a general
14 business B-4 zone.

15 Mr. Jones' business is in violation of the
16 general business zoning ordinance as per citation
17 given to Mr. Jones by Mr. Jim Mischel on September 2,
18 2004, thus making this business non-conducive with our
19 neighborhood.

20 According to the courthouse records, May
21 Brothers Concrete Company built and occupied the 416
22 Wing Avenue property from 1957 until sold to Owensboro
23 Grain Company June 24, 1993. On August 1, 2001, the
24 property was transferred to Owensboro Grain Company,
25 LLC.

1 During May Brothers 36 year occupancy,
2 this property was used exclusively for office space,
3 equipment storage and parking lot.

4 Over the last 11 years, after May
5 Brothers, there have been many businesses renting or
6 occupying space at 416 Wing Avenue. Some stayed a few
7 months. Others longer and from time to time the
8 building set empty. A small lawn mower shop, custom
9 builders, window replacement, home improvement sales,
10 Welborn's Florist and Bob's Antiques were some, but
11 never has there been a business of such magnitude,
12 volume or negative impact on our neighborhood until
13 Jones Pallets, nor were there any problems with any of
14 the other businesses at this address.

15 Mr. Randy Jones, operator of Jones Pallets
16 and the current tenant of 416 Wing Avenue, has been
17 renting from Owensboro Grain Company, LLC or Mr. Ron
18 Prater for approximately the last two years. Mr.
19 Jones constructs and rebuilds industrial wood pallets.
20 He uses very little new wood for reconstruction of
21 these pallets. Therefore it is necessary for his
22 business to acquire used pallets in order to use the
23 salvageable wood to construct a serviceable pallet for
24 resell to his customers.

25 During the construction or reconstruction

1 of these pallets, sawdust particles are emitted into
2 our neighborhood.

3 Because of the amount of used pallets that
4 requires to construct one good pallet, Mr. Jones does
5 not have the area needed at this location to store,
6 reconstruct or otherwise forward his business intent
7 without causing problems to the neighbors around him.
8 These used pallets remain in the lot next to his
9 business until he sees fit to use them. This not only
10 causes a cosmetic concern to the neighborhood, this
11 situation also raises an environmental issue.

12 Due to the space that is needed in loading
13 or unloading pallets onto or off of large trucks and
14 trucks with attached flatbed trailers by the use of
15 his forklifts, Mr. Jones would block traffic on a
16 major thoroughfare in front of 416 Wing Avenue almost
17 on a daily basis thus causing a traffic hazard not
18 only to himself but to others. He has no other choice
19 for this endeavor as he has little or no space to load
20 or unload on this property.

21 We in this neighborhood maintain our
22 properties to good and full community expectations.
23 Our position is if Mr. Jones as a tenant is allowed to
24 continue with his current industrial business
25 practices as stated, we as homeowners will suffer the

1 degradation of Mr. Jones' business practices.

2 We appeal to you that this property
3 located at 416 Wing Avenue remain general business.
4 Thank you.

5 CHAIRMAN: Any board member have any
6 questions of the lady?

7 (NO RESPONSE)

8 CHAIRMAN: Staff have any questions?

9 MR. NOFFSINGER: No, sir.

10 CHAIRMAN: Anyone else objecting come
11 forward, please.

12 MR. DARLING: My name is Bob Darling.

13 (MR. BOB DARLING SWORN BY ATTORNEY.)

14 MR. DARLING: I'm a resident at 414 Geary
15 Court which backs up to approximately 500 Wing Avenue.

16 Our neighborhood has generally been a
17 neighborhood where people try to get along. It has
18 over 90 percent occupancy of homeowners. We have at
19 least 50 percent occupancy of homeowners that have
20 been there over 20 years. My property has been
21 occupied by the same family for 60 years.

22 Some of the things that were said tonight
23 I don't believe were correct. I personally have had
24 problems with the sidewalks being blocked and the
25 streets beings blocked. I'm sure Mr. Mischel, it

1 happens all the time, that he gets a complaint and
2 when he goes to the complaint the property is in good
3 shape. The homeowner or the property owner has
4 cleaned the property up and has taken pictures to
5 prove that it's been this way all the time. Well, it
6 hasn't been this way all the time. It's been in
7 different states at different times. It's cleaned up
8 right now.

9 Several other business owners that were
10 there, the lawn mower service, I believe aluminum
11 siding service, several of the others were commercial
12 businesses that sold to individuals. I do not believe
13 a pallet service has much individual sell. Not too
14 many of us need pallets. That's generally sold from
15 industry to industry. I believe that qualifies as
16 that.

17 I believe if you look there has been even
18 an 18 month period when the property was vacant before
19 and after possibly of somebody like the furniture shop
20 was there because the property has been vacant a lot
21 of the time. So I would support Mr. Mischel in his
22 findings.

23 It was mentioned tonight about some of the
24 future zoning problems that we may have in the
25 neighborhood. Our neighborhood realizes that it's

1 going to be a difficult year for it. So it is trying
2 to work itself through some of these issues. I
3 support Mr. Mischel in his findings. I believe this
4 is an industrial use. I believe there are lots of
5 places in town where this industry can take place.
6 It's not an industry that if it's not there would have
7 to go out of business. I would request that you all
8 turn down this request. Thank you.

9 CHAIRMAN: Anyone else, come forward
10 please, ma'am.

11 MR. ELLIOTT: State your name, please.

12 MS. BOARMAN: Melissa Boarman.

13 (MS. BOARMAN SWORN BY ATTORNEY.)

14 MS. BOARMAN: I live at 428 Wing Avenue
15 which is located next-door to Jones Pallets.

16 I'd like to clear up something that was
17 said by Mr. Randy Jones just a minute ago. Mr. Jones
18 admitted to me several months ago when the whole rat
19 situation came about that there were rats on the
20 property. I went next-door to discuss the situation
21 with him. He said, yes, there were rats on the
22 property. That he did set traps out. He was afraid
23 to spread poison because of fairly young children in
24 the neighborhood, but he had set traps. Because I
25 have a four year old daughter and I didn't want her to

1 be playing outside and us come across any rats or mice
2 or anything, and he said he gets the pallets from
3 several grocery stores and things like that and there
4 are meat on the pallets, and he can't help it. He
5 said that they ate off the pallets.

6 There are many things that Mr. Jones does
7 while conducting his business that arises concern. I
8 have lived in the neighborhood for nine years. My
9 husband and I bought the property at 428 located
10 next-door to 416 six years ago in August of '98.

11 While on his forklift Mr. Jones uses our
12 driveway incline to take loads of pallets to a lot
13 next to us. He drives his forklift in the street,
14 comes up our incline instead of bumping up the curb.
15 As they're doing this pallets have fallen off in our
16 driveway.

17 Mr. Jones parks his large truck partly on
18 the yellow line, as you can see in the pictures, to
19 load his forklift. When doing this my husband and I
20 cannot see to pull or back out of our driveway safely.
21 Traffic is constantly coming across Fourth Street onto
22 Wing Avenue, down Wing Avenue from East Parrish and
23 also turning onto Wing Avenue from Fourth Street. The
24 vehicles consist of semis, various cars, trucks, city
25 and county school buses and public transportation

1 buses. From 7 a.m. to 5 p.m. Wing Avenue is crowded
2 with constant traffic.

3 Mr. Jones' industrial customers do not
4 have anywhere to park while they're being loaded.
5 They have large trucks with flatbed trailers so they
6 pull up in front of our house partly in our grass.
7 While he is loading them with his forklift in the
8 street blocking traffic, when he is done they proceed
9 to go on and pull through our yard leaving ruts which
10 we have had to fix. He also drives his forklift on
11 the sidewalk which makes it a hazard for people to
12 walk up and down the street. I have had many times if
13 I'm going to go walk somewhere down the street, to go
14 to the Pantry or to George's Barbecue, I've had to
15 walk out in Wing Avenue, around his big truck, which I
16 understand he does park on the street, but he blocks
17 with the gate sometimes. You have to walk around his
18 truck in the street.

19 My husband and I do work hard to maintain
20 our home and our property. We have lived at 428 for
21 six years. There has never been an industrial
22 business next-door to us. This past spring when we
23 had the straight line winds that were 125 miles per
24 hour, the pallets that were stacked up in the lot
25 next-door to us we were very concerned that they would

1 become airborne and crash through our windows. So I
2 am opposed to rezoning it as industrial. Thank you.

3 CHAIRMAN: Anyone else make any other
4 comments?

5 (NO RESPONSE)

6 CHAIRMAN: Mr. Jones, we'll give you a
7 minute to add anything you wish what they commented
8 on. Come forward. You have anything else to say?

9 You have pictures you want to introduce?

10 MR. JONES: Yes.

11 The one picture there shows from the back
12 where the sidewalk is open, the gate is wide open
13 there. The pallets in the side yard there you can see
14 are neat. There's no problem there. That's the same
15 thing that the health department has said. As far as
16 her and her husband coming home and stuff like that,
17 he's gone before I get to work and he comes home after
18 I'm done working. So I don't see where the issue is
19 there. That's what she said. Where he works he's
20 gone before I get to work. When I'm pretty well done
21 for the day, he's getting home.

22 As far as the rat problem, like I said the
23 health department has already said they're not there.
24 She says that I said they were there. How could they
25 be there if he checked for holes and there's nothing

1 there? I've got a paper I'll show you for that.

2 CHAIRMAN: If you want to introduce it,
3 bring it forward.

4 MS. MASON: You say you worked on the
5 pallets. I heard you say that. It wasn't on the
6 record. It was up front here. What do you do when
7 you work on these pallets?

8 MR. JONES: I pry boards off of them if
9 they are broke and then I replace them with another
10 pallet.

11 The statement that was made that there was
12 sawdust everywhere is totally invalid because I've got
13 a machine that's totally in a different room that's
14 enclosed. All it does is pinch the nails and break
15 the boards off that way. It does not cut the board
16 whatsoever. There is no dust. That's an invalid
17 complaint there.

18 MS. MASON: We're not here as much to look
19 at the health issue. We're here to look as to whether
20 you're operating an industrial business or a
21 commercial retail business. So as far as the health
22 hazard, that's something that I guess, I don't know,
23 the health department or whatever does.

24 MR. JONES: That's what's right there.
25 They say there's no problem whatsoever.

1 MR. NOFFSINGER: That's what these letters
2 state.

3 MR. JONES: You can see from those
4 pictures that my lot over there where the pallets are,
5 the pallets are stacked neat. As far as what she said
6 about the 125 mile an hour wind, if you think about
7 that, she just did not tell you just now that pallets
8 flew off. The fire department does not allow you to
9 have them over I think it's 12 feet. I don't even
10 have them 12 feet. What we go by in the pallet
11 business, and Mr. Pinkston can validate that, is to
12 those in the pallet business usually a stack is 15
13 pallets. Fifteen pallets is about one overhead tall.
14 I do have some stacks over there that are a little bit
15 taller than that, but they are nowhere near the 12
16 foot level because I myself realize the obligation I
17 would have or responsibility, if they were to fall
18 over. If you look at the pictures there, those
19 pallets even told to me by the city cannot be within
20 10 foot of the property line. They're at least 20 or
21 more feet away. So there is no issue there.

22 The statement as far as trying to kill the
23 rats, there was no rats to kill so I never said
24 anything about putting out poison.

25 CHAIRMAN: Any other member have any other

1 questions of Mr. Jones?

2 (NO RESPONSE)

3 CHAIRMAN: Do you all have anything else
4 you'd all like to present at this time?

5 Come forward and state your name again,
6 please.

7 MS. EMBRY: Donna Embry.

8 I don't want to go tit for tat with Mr.
9 Jones. Yes, Mr. Jones has admitted to my daughter and
10 I that, yes, there is sawdust all over the floor. He
11 had some stray kitties there one day. He said he
12 didn't want the cats around there because they would
13 use his floor with all the sawdust as a litter box.
14 He didn't want the litter box, the sawdust. Yes, my
15 son-in-law could not get in his driveway one night
16 because the pallets had fallen off of his forklift
17 into my son-in-law and daughter's driveway. My
18 son-in-law had to get out of his truck and help Mr.
19 Jones pick those pallets up before he could get in his
20 driveway.

21 I mean it's not an issue with Mr. Jones.
22 It's an issue with the business he's running. My
23 pictures, you know, show that he has stacked them up
24 next to their driveway. He stacks them wherever he
25 can. We just don't want an industrial business.

1 We've never had any problems with any business there
2 before. We've been there nine and a half years and he
3 says there was another industrial business there or
4 pallet business. If there was, we never saw a pallet
5 in the lot. We never saw a pallet in front of the
6 building. We never saw a forklift. We never saw a
7 pallet truck. So if there was, they kept it to
8 themselves. There was never an issue with anyone, any
9 other business at all.

10 CHAIRMAN: Any board member have any
11 questions of the lady?

12 (NO RESPONSE)

13 CHAIRMAN: Mr. Mischel, you have anything
14 else to bring up?

15 MR. MISCHEL: Just to say that, yes, I did
16 send a Notice of Violation under 8.4 which under
17 industrial uses there is - - industrial uses is box
18 and crate assembly which I believe, in my view, that
19 they are - - he said he's taken some of them and take
20 the bad boards out and put new ones in. To me that's
21 kind of assembly. That's classified industrial use.
22 As far as maintaining, I think he was saying
23 commercial use no more than selling used vehicles or
24 whatever. He really is not set up for retail sales.
25 I don't think people come in off the street and buy

1 two or three pallets or whatever. I think mainly this
2 is industrial use. He reassembles these or however
3 you want to phrase it and then sells them back to
4 industrial type use for storage.

5 MR. PEDLEY: Mr. Mischel, I have a
6 question for you. The furniture store says it was
7 from March '01 to June '02.

8 MR. NOFFSINGER: Excuse me, Mr. Pedley. I
9 gave you that wrong date and then I corrected it. It
10 should be June '02 to October '02, according to his
11 e-mail.

12 MR. PEDLEY: June '02 to October '02.
13 That was the period that the furniture store was
14 operating; is that correct?

15 MR. MISCHEL: In here it says three
16 months. I think this lady said maybe a year and a
17 half. I don't know.

18 MR. PEDLEY: My question is: The
19 industrial, grandfathered in industrial zone lose its
20 status when it became the B-4 zone regardless of
21 whether it was operated 18 months or not?

22 MR. MISCHEL: Yes. Once you discontinue
23 that industrial use and commercial use comes into it,
24 it should fall under those present guidelines for B-4.

25 MR. PEDLEY: It doesn't have to be for a

1 period of 18 months?

2 MR. MISCHEL: No. Once it changes hands
3 and goes back to commercial use, then it falls under
4 those guidelines of commercial use.

5 CHAIRMAN: And then loses the grandfather
6 clause at that time.

7 MR. MISCHEL: Yes. It was set up for
8 that. Could continue until something like this
9 happens, changes in use. In this case it would be
10 change of use.

11 MR. WARREN: Mr. Mischel, could you give
12 us sort of a definition of what industrial use is?

13 MR. MISCHEL: Well, that can cover a lot
14 of territory. Typically I'd say in this that we have
15 here, industrial would be more - - really you don't
16 have - - it's more of a use that's for other type of
17 business such as, I guess, you can associate a lot of
18 things with it. You can associate it more of just I
19 guess a lot of it here is no public coming in. No
20 retail sales. Not really an office use. The work is
21 done on site, you know, factory type.

22 MR. WARREN: So any type of building,
23 assembly material would be industrial use is what
24 you're saying?

25 MR. MISCHEL: Yes. Just about any type of

1 assembly. I think it says compounding, things of that
2 nature. More industrial.

3 The commercial use is more related to
4 retail sales, office use, things of that nature. Not
5 really assembling things or manufacturing items or
6 anything like that.

7 MS. MASON: When it was in operation as a
8 furniture place, would any repair on the furniture be
9 classed as industrial?

10 MR. MISCHEL: That would be more
11 accessory. They had the furniture. If it was
12 antiques they might have to repair a section of it or
13 something like that. That would be more accessory.
14 It would just be like industrial.

15 MS. MASON: Would that be like a car lot
16 if they had to work on a car or something?

17 MR. MISCHEL: Yes, or like if he was
18 assembling pallets he might have an office there to do
19 his paperwork, but that's more accessory to that
20 industrial use.

21 CHAIRMAN: Any other board members have
22 any questions of the staff?

23 (NO RESPONSE)

24 CHAIRMAN: Any questions of Mr. Jones?

25 (NO RESPONSE)

1 CHAIRMAN: Do you have anything new to
2 bring up at this time?

3 MR. JONES: Yes.

4 CHAIRMAN: Come forward.

5 MR. JONES: If it makes any difference on
6 the industrial side, I'm only a one man operation.
7 I'm not there so early in the morning that I wake
8 somebody up and I'm not there late at night or
9 anything like that. Everything is conducive to the
10 neighborhood. I'm just a one man shop. That's why I
11 was asking so much about why am I industrial when I'm
12 a one man shop. I have no employees. I've got a
13 couple of people ever so often that will show up to
14 help me just on like to finish a load or something.
15 That's only for maybe a couple of hours. There's no
16 paid staff whatsoever. Just totally me. That's why I
17 was so interested in seeing how one man was an
18 industrial type of thing. That's all I have to say.

19 MR. WARREN: Mr. Mischel, is there any
20 requirements or stated criteria that the industrial
21 business has to be more than one individual or have to
22 have a number of employees?

23 MR. MISCHEL: No. We don't go by the
24 number of individuals or anything. Basically under
25 that assumption, I guess, somebody at their house, if

1 they work for themselves to do this in a residential
2 area, you know, under that assumption, that they just
3 work for themselves. We go by the type of use. Not
4 the number of people or employees.

5 CHAIRMAN: Does any other board member
6 have any other comments or questions?

7 (NO RESPONSE)

8 CHAIRMAN: Staff have anything else to add
9 at this time?

10 MR. NOFFSINGER: No. They just addressed
11 my comment.

12 CHAIRMAN: Chair will entertain a motion.

13 MR. PEDLEY: Mr. Chairman, I make a motion
14 to uphold the zoning administrator's decision as being
15 correct.

16 CHAIRMAN: Is there a second?

17 MS. DIXON: Second.

18 CHAIRMAN: Is there any other comments or
19 questions by the board?

20 MR. ELLIOTT: We need to get a finding.

21 MR. PEDLEY: Based on the information that
22 was submitted here tonight from both sides and Mr.
23 Mischel, the break with the furniture store.

24 CHAIRMAN: Lost the grandfather clause.

25 MR. PEDLEY: Lost the grandfather because

1 the first store was a B-4 business.

2 CHAIRMAN: Still have a second?

3 MS. DIXON: Yes.

4 CHAIRMAN: Any other questions by the
5 board members?

6 (NO RESPONSE)

7 CHAIRMAN: Hearing none all supporting the
8 motion just made raise your right hand.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries. The
11 administrator's review is supported.

12 Next item, please.

13 MR. NOFFSINGER: Item 7, before I read it
14 in the record I think the applicant has a statement
15 they would like to make.

16 MR. ELLIOTT: State your name, please.

17 MR. BAYLOUS: Edward A. Baylous.

18 (MR. EDWARD A. BAYLOUS SWORN BY ATTORNEY.)

19 MR. BAYLOUS: My name is Edward A.

20 Baylous. I'm representing Steve Young, Cowboys of
21 Kentucky. Since the time of filing this appeal, some
22 of the plans that Mr. Young has for the property have
23 changed. We think it's more appropriately handled
24 through a modification of the conditional use permit
25 that he currently has. For that reason we are

1 withdrawing our appeal at this time.

2 MR. NOFFSINGER: It's withdrawn.

3 MR. BAYLOUS: Thank you.

4 ITEM 8

5 301 East Seventh Street, in an R-4DT zone
6 Consider request for an Administrative Review to
7 move a non-conforming structure to another part of the
8 same lot.

9 Reference: Zoning Ordinance, Article 4, Section 4.43,
10 Article 7, Section 7.34

11 Applicant: Michael L. Volk, Green River Housing Corp.

12 MR. NOFFSINGER: Mr. Chairman, Mr. Mischel
13 is here tonight to address this application.

14 CHAIRMAN: Mr. Mischel, come forward.

15 You're still under oath.

16 MR. MISCHEL: There's an existing
17 structure at Seventh and J.R. Miller. It's been used
18 I'd say for a number of years as a laundromat. It's
19 been vacant for awhile. I think under Community
20 Development Program they proposed to demolish that
21 structure and construct a new single-family house. In
22 doing so, it will not meet the setbacks, but in the
23 ordinance they can apply to change, to move one
24 non-conforming use on that lot to another place on
25 that lot, which they're proposing to do. They're
going to actually make the setbacks a little bit
better off of J.R. Miller, the setback as far as they
can. So in our view this is a good use for the

1 property.

2 CHAIRMAN: Does the applicant have
3 comments they would like to make at this time?

4 MR. ELLIOTT: State your name, please.

5 MR. VOLK: Michael Volk.

6 (MR. MICHAEL VOLK SWORN BY ATTORNEY.)

7 MR. VOLK: I represent the City of
8 Owensboro in the development. Also have with me Barry
9 Johnson from the Green River Housing Corporation.

10 As Jim said, the house or the building
11 that's there right now has been used for various
12 things over the years. Right now the building sets
13 right on the property line on the J.R. Miller side.
14 What we propose to do is demolish that structure,
15 build a new single-family residential house and move
16 the setbacks on J.R. Miller to where they will be 5
17 feet off the existing property line. The new
18 structure will be approximately 22 feet wide with
19 off-street parking. It will adhere to the 20 foot
20 rear setback also.

21 MR. NOFFSINGER: Mr. Chairman I have a
22 question.

23 Mr. Volk, I have a site plan here in the
24 application. I see where you're proposing the parking
25 and driveway to be off of East Seventh Street; that is

1 correct?

2 MR. VOLK: Yes.

3 MR. NOFFSINGER: If the board chooses to
4 approve the moving of the non-conforming structure
5 from one location on this property to another, Staff
6 would recommend that you do so with a condition that
7 there be no direct access to J.R. Miller Boulevard.

8 MR. VOLK: That's not a problem.

9 MR. NOFFSINGER: Now or in the future or
10 any time.

11 CHAIRMAN: Any board member have any
12 questions of the owner?

13 (NO RESPONSE)

14 CHAIRMAN: Does the Staff have anything
15 else to comment at this time?

16 MR. NOFFSINGER: Given that the proposal
17 would be keeping in character with the neighborhood
18 and the Germantown Redevelopment Plan, Planning Staff
19 would recommend that the board consider this favorably
20 of moving the structure with the condition no direct
21 access to J.R. Miller Boulevard.

22 CHAIRMAN: Any comments from the board
23 members?

24 (NO RESPONSE)

25 CHAIRMAN: Entertain a motion.

1 MR. MILLER: Mr. Chairman, motion to
2 approve the appeal based upon the information as given
3 by Mr. Noffsinger and also that the non-conformity of
4 the structure would not be increased in scope or area
5 of its operation; and it would not have an adverse
6 affect on existing or future development of the
7 subject property or the surrounding area; and also
8 with the condition that there be no direct access to
9 J.R. Miller Boulevard now or in the future.

10 CHAIRMAN: Is there a second?

11 MS. DIXON: Second.

12 CHAIRMAN: Any other comments or questions
13 from the board or staff?

14 (NO RESPONSE)

15 CHAIRMAN: Hearing none all in favor raise
16 your right hand.

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: Motion carries.

19 Is there any other business?

20 (NO RESPONSE)

21 CHAIRMAN: We need one final motion.

22 MS. DIXON: Move to adjourn.

23 MR. MILLER: Second.

24 CHAIRMAN: All in favor raise your right
25 hand.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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 55 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this
17 the 25th day of October, 2004.

18

19

LYNNETTE KOLLER, NOTARY PUBLIC
OHIO VALLEY REPORTING SERVICE
202 WEST THIRD STREET, SUITE 12
21 OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES:
23 DECEMBER 19, 2006

24 COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

25