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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

JUNE 2, 2005

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, June 2, 2005, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: C. A. Pantle, Chairman
- Gary Noffsinger
- Ruth Ann Mason
- Marty Warren
- Tim Miller
- Sean Dysinger
- Stewart Elliott
- Attorney

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CHAIRMAN: Call the Owensboro Metropolitan Board of Adjustment meeting to order. Want to welcome every one of you this evening. We start out each meeting each night with a pledge and a prayer. We invite you if you so desire to join us. Gary will have the prayer this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Again, I want to thank you for coming to the Owensboro Metropolitan Board of Adjustment. We have a few guidelines we try to work by.

1 If you want to speak on any item, come to
2 one of the podiums and be sworn in by the attorney and
3 then you're welcome to speak because we want to keep a
4 record of everything.

5 Also, if you start arguing or saying the
6 same thing over and over, we'll call you out of order.
7 There's no need to keep listening to the same thing
8 over and over.

9 With that we'll start with the first item
10 on the agenda. Consider the minutes of the May 5th
11 meeting. They're now on record in the office. I
12 think they're correct and everything.

13 MR. NOFFSINGER: Yes, sir.

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

16 MR. MILLER: Motion to approve the
17 minutes.

18 CHAIRMAN: A motion made. Is there a
19 second?

20 MR. DYSINGER: Second.

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

23 MR. WARREN: Second.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries.

3 Next item, please, sir.

4 -----

5 CONDITIONAL USE PERMIT

6 ITEM 2

7 5645 Wayne Bridge Road, in an R-1A, A-R zone
8 Consider request for a Conditional Use Permit to
9 place a 14'x70' class 2-manufactured home on the
10 property.

11 Reference: Zoning Ordinance, Article 8, Section 8.2
12 A10B, 8.4/7

13 Applicant: Louis and Alice Weise, Karen Weise

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

16 It's found to be in order.

17 The applicant is asking for placement of a
18 manufactured home on the property. It's 14 by 70.

19 The application indicates it will be a 1990 model.

20 The applicant is asking for a waiver on the parking so
21 that rather than it being paved or concrete parking

22 that it be graveled because of the nature of the area
23 and other parking areas in that neighborhood are

24 gravel. That is a policy by this board and you do
25 have the ability to waive that requirement.

26 The applicant is also asking for waiver on
27 the concrete block foundation skirting because they
28 plan to construct a home and remove the manufactured

1 home in two years. The concrete or masonry type
2 skirting around the parameter of the manufactured home
3 is a requirement of the zone which this board does not
4 have the authority to waive. Just want to make sure
5 this is in the record and the applicant understood
6 that. That is a basis of approval of this application
7 that the board can consider the gravel parking, but
8 they could not consider the waiving of the skirting as
9 request.

10 CHAIRMAN: Any opposition in the office?

11 MR. NOFFSINGER: No, sir.

12 CHAIRMAN: Is anyone in the audience
13 wishing to speak in opposition to this item?

14 (NO RESPONSE)

15 CHAIRMAN: Hearing none does the applicant
16 have anything you would like to add at this time,
17 please.

18 Come and state your name.

19 MS. WEISE: My name is Karen Weise.

20 (MS. KAREN WEISE SWORN BY ATTORNEY.)

21 MS. WEISE: I just wanted to ask. There
22 is also stating on there that I have to have a 10 by
23 10 porch, whether it be concrete or wood. I wonder if
24 we could just waive that just until we get the need
25 electricity to turned on so we can build it. We need

1 electricity to build it.

2 MR. NOFFSINGER: That is something that
3 the board can consider. You're asking for a waiver on
4 a 10 by 10 porch or a deck in front of the
5 manufactured home?

6 MS. WEISE: Yes. Just until we get the
7 electricity turned on. We need electricity to build
8 it.

9 MR. NOFFSINGER: The home that you're
10 going to build. Not the - -

11 MS. WEISE: I need electricity to build
12 the porch for the home that's going to be on the
13 trailer.

14 MR. NOFFSINGER: I'm with you now. You
15 had it on here you're going to build a home in the
16 next two years. I misunderstood.

17 CHAIRMAN: Any board members have any
18 questions of the applicant?

19 (NO RESPONSE)

20 CHAIRMAN: Staff have any other comments?

21 MR. NOFFSINGER: No, sir.

22 CHAIRMAN: Hearing none entertain a motion
23 to dispose of the item.

24 MR. DYSINGER: I have a question for the
25 staff.

1 If we move to approve the Conditional Use
2 Permit, do we need to read in the Number 7 to get that
3 in the record or is it taken for granted, under A10B?

4 MR. NOFFSINGER: That is a requirement of
5 the zone.

6 MR. DYSINGER: That was my question. It's
7 taken for granted.

8 CHAIRMAN: Is there a motion to dispose of
9 the item, please?

10 MR. DYSINGER: Move to approve the
11 Conditional Use Permit given the findings that it's
12 not incompatible with neighboring property with the
13 additional approval for the waiver on parking being
14 paved. That it's okay for it to be gravel, and a
15 waiver on the front porch requirement until such time
16 as electricity is installed.

17 CHAIRMAN: Is there a second to the
18 motion?

19 MS. MASON: Second.

20 CHAIRMAN: Any other comments or
21 discussion by the board or office?

22 (NO RESPONSE)

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries.

2 Next item please.

3 -----

4 VARIANCES

5 ITEM 3

6 1428 West Second Street, in a B-4 zone
7 Consider request for a Variance to reduce the rear
8 yard building setback from 20 feet to 2 feet for the
9 existing 4,875 square foot building and for the
10 proposed 2,000 square foot building addition.
11 Reference: Zoning Ordinance, Article 8,
12 Section 8.5.16(e)
13 Applicant: Charalambos (Harry) Pavlas

14 MR. NOFFSINGER: Mr. Chairman, Planning
15 Staff has reviewed this application. The application
16 is found to be in order. Staff does have a brief
17 presentation just describing what has taken place and
18 what the Staff's recommendation would be on this
19 proposal.

20 MR. ELLIOTT: State your name, please.

21 MS. STONE: Becky Stone.

22 (MS. BECKY STONE SWORN BY ATTORNEY.)

23 MS. STONE: When the existing building was
24 built at this location, apparently the property line
25 was misidentified as to the property boundary for the
tract. It appears that there is an unimproved, about
an 18 foot unimproved alley behind the existing
building. So the property setback was measured from

1 the south side of the property line. So the applicant
2 believed he was 20 feet away from that property line.
3 In reality, he's about two feet away from the property
4 line which is the right-of-way to this unimproved
5 alley.

6 So in order to get that building into
7 compliance and also to do an addition to the existing
8 building, a Variance is being sought so that he can
9 build in line with that existing building which is
10 about two feet from the property line.

11 Given that the alley is an alley that's
12 unimproved that goes nowhere, the Staff would
13 recommend that the alley closing be affected first
14 before the Variance is acted upon. This way the
15 Variance that's requested will be less than the 18
16 foot Variance that's requested tonight. It will be a
17 reduction in that Variance amount. The board could
18 postpone this item and reduce the amount of the
19 Variance granted once that alley closure has occurred.

20 The Staff's recommendation would be to
21 postpone until the alley is closed.

22 CHAIRMAN: Comments from the Staff?

23 MR. NOFFSINGER: No, sir.

24 CHAIRMAN: Board members?

25 (NO RESPONSE)

1 CHAIRMAN: Does the applicant have any
2 comments you would like to add on to that?

3 MR. ELLIOTT: State your name, please.

4 MR. RINEY: Jim Riney.

5 (MR. JIM RINEY SWORN BY ATTORNEY.)

6 MR. RINEY: The applicant did not realize
7 that the building had been built as close to the rear
8 yard line as Ms. Stone described. Evidently when the
9 inspection was done and checked there was a property
10 that was on the opposite side of the alley that she
11 testified. It was not discovered until we did a
12 survey to submit this for the addition, this building
13 addition for storage on the east end of the building.
14 At that point in time the request from Staff was to go
15 ahead and submit for a Variance, which obviously we're
16 here tonight to carry through with that.

17 The mismeasurement or whatever evidently
18 was not the issue of the applicant. From the
19 information I've got we had a boundary survey
20 identified the corners and so forth. There was a
21 property corner on the opposite side of the alley that
22 was also evidently visible.

23 During the process I think late last week
24 we found out that the Staff was recommending that the
25 alley be closed. So we hustled around, found the

1 adjoining property owners and in fact have filed the
2 alley closing papers with the city engineer's office.
3 Finally got the property owner identified that adjoins
4 the alley to the south and got that taken care of
5 yesterday. Got it filed.

6 The applicant would request that the
7 rezoning be approved conditionally based on the facts
8 that have come to light that we have discovered. That
9 would be that rather than postponing that the approval
10 would be subject to the alley closing. There would
11 not be a building permit issued at this time or until
12 the alley closing was affected. If the alley closing
13 did not go through, then the building permit would not
14 be issued under those conditions. Would have to be
15 revisited here or whatever the appropriate venue would
16 be.

17 The issue of timing, he's got contractors
18 lined up. He can't start with him right now because
19 he doesn't have his building permit. If it were
20 postponed, then the 21 day waiting period, the meeting
21 cycle and so forth can push him back even further. In
22 order to at least acknowledge the applicant's good
23 faith efforts to comply with the request from Staff,
24 that is to go ahead and file the Variance and to file
25 the alley closing, we would ask that the board would

1 consider approving, would make a motion to approve
2 subject to the alley closing. Then whenever the alley
3 closing took affect, those documents were presented to
4 Staff at that time without having to wait to get back
5 on the next agenda. They could go ahead with the
6 building permit with those alley closing items were
7 complied with.

8 So we just ask the board to consider that
9 as an option rather than postpone it tonight. That
10 may end up being late summer or early fall before he
11 could get started on construction and that doesn't
12 always work well in the fall season.

13 CHAIRMAN: Counsel, can we do that?

14 MR. ELLIOTT: I don't know if we can or
15 not because this is a Variance and we don't know how
16 much of a Variance will be given until the alley has
17 actually been closed. It hasn't been closed yet.
18 It's kind of putting the cart before the horse, I
19 think.

20 CHAIRMAN: Staff have any other comments?

21 MR. NOFFSINGER:. No. I agree with legal
22 counsel. This item will remain on the agenda, as long
23 as the board postpones this action. It will be back
24 on for the July meeting. Once that alley goes through
25 the process of closing, then it would be whenever that

1 next meeting would be. We wouldn't take it off the
2 agenda. They would not have to resubmit. They would
3 simply amend the site plan in the application to
4 reduce the amount of Variance that would be necessary.

5 At this point in time without the alley
6 closed, you don't know how much of a Variance you
7 would be granting. It could be that the applicant
8 receives all of the land. In that case, a Variance
9 may not be necessary. If they receive only half of
10 it, then that reduces the Variance in half.

11 I don't think this board can act on a
12 Variance application until they know how much, what
13 the dimensions are. What that would mean right now if
14 you were to act on the Variance it would be the
15 Variance of, what, 18 feet that they're requesting.

16 MR. RINEY: Let me offer this to the
17 board. This would be a similar situation if you had a
18 Variance issued on a lot. Take a subdivision that was
19 granted. Then the property owner that is adjoining
20 and his neighbor decided they wanted to do a little
21 land trade, anyhow there would be a lot division,
22 where the lot that had the Variance, ended up
23 acquiring a little bit more property from his neighbor
24 be a lot consolidation. The Variance would stand, but
25 that wouldn't prohibit the lot consolidation from

1 occurring. You see what I'm saying? There's not that
2 much difference from that and this alley closing. We
3 know that the old alley, it's a paper alley meaning
4 that it never was improved or had been improved in
5 current times in the last 50 years.

6 The city annexation documents that were
7 prepared by the city attorney have information that
8 says that each alley, each adjoining of the alley
9 would get half of the alley. I know from personal
10 experience, some of my family had closing and that's
11 exactly what happens. It makes sense. Each adjoiner
12 on each side would get one half. So we know that the
13 9 feet, we know that the alley is 18 feet and we know
14 that 9 feet would go north and 9 feet go south. Those
15 are the documents that have been signed. Those are
16 documents prepared by the city attorney that have been
17 signed and submitted to the city engineer's office.
18 The neighbors agreed to the alley closing on that
19 basis. That they would have a legal right to acquire
20 the half that was closest to their property. That's a
21 matter of routine with the right-of-way closing.

22 Normally unless somebody either waives
23 their right to get half that right-of-way, which can
24 happen, or if someone can demonstrate that the entire
25 right-of-way, the old road, county road or alley or

1 whatever came off the property initially, then it's a
2 50/50 split rather than some other ratio or entire
3 right-of-way that's being closed.

4 In this case, the documents have been
5 filed, the proper documents have been filed with the
6 city office that have the language in there from the
7 city attorney that says the adjoining property owners
8 from both the north and south would get their half of
9 the alley. So that would be the 9 feet of the 18 foot
10 alley. So I think we do know what we would end up
11 with.

12 As survey we would expect to go back out
13 there with these documents and be able to say, if it
14 were approved by the city commission or when it was
15 approved, that they would have their right to the nine
16 feet.

17 MR. DYSINGER: It seems to me that there's
18 a body that needs to make a decision, that may
19 actually supersede this body. It would be presumptive
20 of us it seems to me to make any decision prior to
21 that.

22 The other side of that is I'm
23 uncomfortable voting on a Variance with question marks
24 in it even though we know, as you stated, we know that
25 basically the boundaries and what the maximums are

1 going to be. I would personally be uncomfortable
2 voting on something with a question mark in it. In my
3 experience of the last couple of years being on this
4 board, the minute we try to make an assumption about
5 what's going to happen is when we start getting in
6 trouble.

7 While you make a good case, I think it
8 would be premature personally to make a decision based
9 on what we know today.

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

12 MS. MASON: Stewart, you're actually
13 saying that we can't vote on this?

14 MR. ELLIOTT: Right. That would be my
15 recommendation.

16 CHAIRMAN: You're advising us that it be
17 postponed.

18 MR. ELLIOTT: Right.

19 CHAIRMAN: Any comments from Staff?

20 MR. WARREN: Or we can act on the - -

21 MR. DYSINGER: But if we deny it, if we
22 deny the Variance the applicant would have to resubmit
23 another \$250 fee and all the problems and so forth.
24 For the record if we were to deny it that would be the
25 situation. I don't see, and I'm certainly not

1 speaking for the board here, but I don't see how
2 justice is served in that way either.

3 MR. RINEY: I think the applicant is here
4 if the board would want to hear a comment from him.

5 CHAIRMAN: He's welcome to have comments.

6 MR. ELLIOTT: State your name, please.

7 MR. PAVLAS: Harry Pavlas.

8 (CHARALAMBOS PAVLAS SWORN BY ATTORNEY.)

9 MR. PAVLAS: It was my understanding that
10 this Variance would have been approved if the
11 paperwork was done to close the alley there. I didn't
12 know all these things. You know, they all came to us
13 late. As a matter of fact, until yesterday Mr. Riney
14 was running around trying to put it together. If I
15 knew it, I wouldn't have been here. It require all of
16 this adjustment and work. I didn't even know there
17 was an alley back there until we applied for that
18 addition to the building. We already built on that
19 property twice. It was exactly the same that I'm
20 asking to do right now and nobody caught it. This is
21 the first time that it came up. I am in a hurry. I
22 need to build that building. I don't know what the
23 fastest way to go. I accommodate the situation or you
24 can accommodate us. I'll leave it up to Mr. Riney and
25 the city get it together. As Mr. Dysinger said, it's

1 better if we don't vote and leave it for next time,
2 but when is the next time? Is there any other way to
3 speed this up?

4 CHAIRMAN: Be roughly 30 days from this
5 date.

6 MR. PAVLAS: I don't know if - - I'm just
7 asking, you know, bringing this up if there was a bond
8 or a collateral or something to put against anything
9 so you can speed this up. I don't know. I'm just
10 bringing this up. I know I've got the need there for
11 a building. I'm trying to get it as fast as I can.

12 CHAIRMAN: We sympathize with you and
13 understand it, but there's certain things we can do.

14 MR. PAVLAS: I know. If I knew earlier,
15 we wouldn't have been here. I would just close the
16 alley and come to the thing right. I'm sorry to take
17 your time.

18 MR. DYSINGER: That's what we're here for.

19 MR. PAVLAS: That's all I've got to say.

20 CHAIRMAN: Any other questions or
21 comments?

22 MR. NOFFSINGER: Excuse me.

23 Mr. Pavlas, the next meeting will be July
24 7th. That will be the first Thursday.

25 MR. PAVLAS: There's no other way to speed

1 it up. You have to go through this procedure?

2 MR. NOFFSINGER: That's what legal counsel
3 has advised.

4 MR. PAVLAS: And there is no other way?
5 That's the way we go? I hate to ask that.

6 MR. NOFFSINGER: The alley closing is
7 going to take a little time, but we're going to do all
8 we can to help you there because Mr. Riney submitted
9 that I think yesterday or today. As soon as it gets
10 to Planning, we're going to take a look at it and
11 we're going to get the city and recommendation with
12 just a matter of a day or two.

13 MR. PAVLAS: Yes, but it still have to
14 come to the committee on July 7th?

15 MR. NOFFSINGER: Yes. Then the alley
16 closing will go to some other agencies. I can't speak
17 for those agencies such as Regional Water and other
18 utility companies. Planning will do their part in
19 just a matter of a day or two. Get that over and then
20 once the city - - you know, by July 7th the alley may
21 not be closed, but we'll be a lot further along in
22 that process, I hope, to know what the particulars
23 are. We can visit this particular item on July 7th.

24 MR. PAVLAS: Okay. Thank you.

25 CHAIRMAN: Mr. Riney, you have something

1 else to add?

2 MR. RINEY: Let me ask one question for
3 the record then. Like Mr. Noffsinger said it normally
4 takes six weeks or longer for an alley closing to be
5 processed. His name statement was the Planning
6 Commission will review it at public facility hearing.

7 MR. NOFFSINGER: Excuse me, Mr. Riney.
8 The Planning Staff will do that. We're no longer
9 taking those to the Planning Commission.

10 MR. RINEY: I stand corrected.

11 MR. NOFFSINGER: We're doing that at the
12 Staff level to speed these type of applications along.

13 MR. RINEY: I recharge my battery.

14 Planning Staff will review that, but that
15 won't close the alley. The alley action has to be
16 through an action of the city commission, which is
17 probably going to be at least six weeks if not eight
18 weeks away.

19 Now, I don't remember, Mr. Noffsinger, if
20 they have to have one reading or two readings on that,
21 as far as the city commission occurs. My question
22 would be: Once it gets in and has at least one
23 favorable reading, could action be started then for
24 Mr. Pavlas just for the sake of - - I'm speaking in
25 terms of the next scheduled meeting. Because I think

1 realistically the July meeting is out. That's just an
2 artificial target. I suspect that he won't be able to
3 be back until the August meeting just because of the
4 way that the city commission has to collect their
5 information over the different public agencies and
6 public utility companies that Mr. Noffsinger
7 mentioned, and get that feedback back to the city
8 commission to make an informed decision. I think it's
9 going to be August before we can be back before this
10 body. So anything that we could do that might
11 expedite that, I'm just trying to help Mr. Pavlas
12 here, suggesting that since he made that good faith
13 effort. I'm asking for that clarification for
14 whatever might be on the record.

15 MR. NOFFSINGER: I can only speak for
16 Planning, and I'm not going to restate what I've
17 already stated. We're doing our part. We're going to
18 do a review in not a week or three weeks. We're going
19 to do that review in a day or two. You're going to
20 have to put pressure on those other agencies, and I
21 recommend you do that. Because if you have Planning
22 that is pushing it forward and willing to work with
23 you, I would hope those other agencies would as
24 well. I can tell you this: You're going to have to
25 see it through. You're going to have to walk it

1 through. If you sit back and wait for those other
2 agencies to react, I know from experience you're going
3 to be waiting past August. We will be back in July.
4 The alley realistically, unless you put a lot of
5 pressure on them, will not be closed by that
6 meeting. However, I trust that if you're putting
7 pressure on some of those agencies and saying, look,
8 we need to move forward and you have survey documents,
9 we're going to be further along in that process. I
10 think the board will be in a better position to act on
11 it or they'll say, look, we don't have any are
12 information than we had before. Let's hold up

13 MR. RINEY: I understand that. I think
14 you know us well enough that maybe not pressure but
15 persuasion is our usual customary method of trying to
16 take care of our clients. That's already given in
17 that six weeks. It's been our experience that that's
18 just as good as the animal is going to do.

19 CHAIRMAN: We'll do what we can on it
20 legally.

21 Any other question from the board?

22 MR. PAVLAS: I have one more question. If
23 my good neighbors are willing to sell that piece of
24 land, would that make things easier?

25 MR. ELLIOTT: May not need a Variance.

1 CHAIRMAN: If you can buy third part of
2 the alley, we wouldn't have to come back.

3 MR. DYSINGER: If we knew what everybody
4 had, we wouldn't have a problem here either.

5 MR. MILLER: The alley closure would still
6 have to happen before the purchase took place.

7 MR. PAVLAS: Yes, we do that then I won't
8 have to Variance maybe.

9 MR. DYSINGER: The act of postponing this
10 is going to allow things to develop in a way that we
11 can take another look at this in July.

12 CHAIRMAN: We're hoping.

13 MR. DYSINGER: Exactly. We'll have to see
14 how things develop. Things, as you indicated, may
15 develop that would make the Variance unnecessary. I
16 think that would be ideal for everybody. As far as
17 tonight, postponement. We're looking for really a way
18 to make sure that you're covered as well.

19 MR. PAVLAS: Thank you.

20 CHAIRMAN: I think we've pretty well
21 worked over this. Is there a motion now one way or
22 the other?

23 MR. WARREN: Motion to postpone the item
24 until the next meeting.

25 CHAIRMAN: A motion has been made. Is

1 there a second?

2 MR. DYSINGER: Second.

3 CHAIRMAN: A motion made and a second.

4 Any other comments?

5 (NO RESPONSE)

6 CHAIRMAN: All in favor raise your right
7 hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries. This item will
10 be postponed until the next meeting or as soon as
11 possible.

12 Next item, please.

13 ITEM 4

14 1506 East 20th Street, in an R-4DT zone
15 Consider request for a Variance to reduce the side
16 street yard building setback from 25 feet to 4 feet in
17 order to construct a 30'x24' detached garage.
18 Reference: Zoning Ordinance, Article 8,
19 Section 8.5.11(c)
20 Applicant: Gregory Lynn Tong

21 MR. NOFFSINGER: Mr. Chairman, Planning
22 Staff has reviewed this application. The application
23 is found to be in order. The applicant has stated
24 that there are other situations within this area that
25 Variances have been granted on or there are other
26 setback encroachments. At this time I would like to
27 ask Becky Stone to come and state the Staff's
28 recommendation on it.

1 CHAIRMAN: State your name, please.

2 MS. STONE: Becky Stone.

3 The Staff would recommend approval of this
4 Variance request based on a number of variances being
5 approved in the immediate vicinity, a number of
6 encroachments in the vicinity. This would be in
7 character with the existing neighborhood. However, we
8 would ask that a condition be placed on the approval
9 that the garage doors be oriented toward the alley.
10 This would be close to the sidestreet yard and we
11 would want to assure that there were not cars pulling
12 in from that side street that would encroachment over
13 the sidewalk or the right-of-way in that area. So
14 with that condition we would recommend approval.

15 CHAIRMAN: Is there any opposition in the
16 office?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: Thank you. Anyone in the
19 audience object to the item?

20 You object to it?

21 MS. SIGLER: I have a question.

22 CHAIRMAN: Come forward and state your
23 name, please. We'll try to get you an answer.

24 MS. SIGLER: Susan Sigler.

25 (MS. SUSAN SIGLER SWORN BY ATTORNEY.)

1 MS. SIGLER: I just have a question about
2 how is this going to, the property next to it, how is
3 that going to - - the property that adjoins, how is
4 that going to affect the property boundaries with the
5 setback? Is that going to change the property
6 boundaries on the other side?

7 CHAIRMAN: We'll get an answer from the
8 Staff.

9 Becky, would you come forward.

10 MS. STONE: The property boundaries on the
11 lots in the area will remain the same. This is just a
12 reduction in the setback for his detached garage on
13 the street side.

14 MS. SIGLER: Thank you.

15 CHAIRMAN: Is there anyone else asking a
16 question or opposed to this item?

17 (NO RESPONSE)

18 CHAIRMAN: Does the applicant have
19 anything he wants to come forward and state at this
20 time?

21 APPLICANT REP: No.

22 CHAIRMAN: Do you understand the
23 conditions that the garage doors will be toward the
24 alley?

25 APPLICANT REP: I do.

1 CHAIRMAN: Board members have any
2 questions or comments?

3 (NO RESPONSE)

4 CHAIRMAN: Staff have anything else to add
5 to it?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: Entertain a motion to dispose
8 of the item now.

9 MS. MASON: I make a motion for approval
10 with the condition that the garage doors be facing
11 towards or oriented towards the alley. Under these
12 findings, it will not adversely affect the public
13 health, safety and welfare; it will not alter the
14 essential character of the general vicinity; it will
15 not cause a hazard or nuisance to the public; and it
16 will not allow an unreasonable circumvention of the
17 requirements of the zoning regulations.

18 CHAIRMAN: Is there a second to the
19 motion?

20 MR. DYSINGER: Second.

21 CHAIRMAN: A motion made and a second.
22 Any other questions or comments by the board?

23 (NO RESPONSE)

24 CHAIRMAN: Staff have anything else to add
25 on?

1 MR. NOFFSINGER: No, sir.

2 CHAIRMAN: Applicant understand the motion
3 we've made?

4 APPLICANT REP: Yes, sir.

5 CHAIRMAN: All in favor raise your right
6 hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries.

9 Next item, please.

10 -----

11 ADMINISTRATIVE APPEAL

12 ITEM 5

13 4545, 4565 Frederica Street, in a B-4 zone
14 Consider request for an Administrative Review to
15 appeal the Zoning Administrator's interpretation that
16 off-premise advertising is not permitted in accordance
17 with Article 9, Section 9-5.
18 Reference: Zoning Ordinance, Article 7, Section 7.35
19 Applicant: BR Associates, Inc.

20 MR. NOFFSINGER: Mr. Chairman, Jim Mischel
21 is here tonight to make a presentation or description
22 of what has taken place and then I believe the
23 applicant is also here tonight to state their side of
24 the case.

25 MR. ELLIOTT: State your name, please.

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: My name is Jim Mischel,

1 associate director for OMPC.

2 I'm going to try to give you a brief
3 description of why this item is before you tonight.
4 Like I said I'll try to keep it brief. I've got a few
5 handouts. I'm going to give them out to you. I would
6 also like to put one in the record.

7 I'd just like to kind of briefly go over
8 this. What you have in front of you is the
9 application that was turned in to our office. Let me
10 give you a little background information.

11 Back this past March we sent out a
12 Violation Notice for an off-premise sign. It's a 4545
13 Frederica Street. As some of you all know, that's
14 where the Wendy's and Denny's new restaurants were
15 built at the corner of Frederica and Salem Drive.

16 Back this last March, I noticed that there
17 was an off-premise sign there. Sent out a Notice of
18 Violation in March. Since that time I've talked with
19 the applicant and they have since filed an
20 Administrative Appeal. That's why we're here tonight.
21 So I'm going to try to give you some background
22 information.

23 If you look at these applications, there's
24 three pages of application here. On that you'll
25 notice at the top it says Page 1, 2, and 3. On this

1 application, what we stress is the address and the
2 signs. Each page has a place for three signs. You
3 see Sign 1, it gives a description of what that sign
4 is going to be. It's a Denny's/Wendy's. Sign 2 is a
5 Wendy's wall sign. Sign 3 is a Wendy's wall sign.

6 If you'll notice on each one, they're
7 marked by the applicant which was custom signs with
8 on-premises sign, each one of those three.

9 Now, in the blue below that I highlighted,
10 you'll notice it says off-premises sign. None of
11 those are marked. They were all marked on-premise.

12 If you go further down at the bottom of
13 Page 1, it says "Sign will read," and then Sign 1 it
14 says, "Denny's, Wendy's, 27,000." Sign will read on
15 the second sign "Wendy's." The third sign says sign
16 will read "Wendy's."

17 If you go up to Page 2, I'll try to make
18 this quick. Sign 1 says, Wendy's wall sign. Sign 2,
19 Denny's wall sign. Sign 3, Denny's wall sign. Again,
20 they're all marked as on-premises sign. On the blue
21 where it says "off-premises," none of those signs have
22 been marked as an off-premises sign.

23 You go down again at the bottom the signs
24 will read Wendy's. Sign 2 will ready Denny's. Sign 3
25 says Denny's.

1 If you go to Page 3, again, it says Sign
2 1, Denny's wall sign. Sign 2, Denny's wall sign.
3 Sign 3, Denny's High Rise Existing." Again, they're
4 all marked "on-premises sign." If you look in the
5 blue area, it's not marked off-premises.

6 Down at the bottom the sign will read, the
7 first sign Denny's, the second sign Denny's, and third
8 sign Denny's.

9 If you move on to where the drawings that
10 were submitted, we have one that shows the Wendy's
11 building. There's some signage on it. Then the
12 second sign, the larger one has Denny's sign on it,
13 showing what was in those applications.

14 At the time when the application was
15 turned in, I was not here in that month of March 2004.
16 This sign application went to Becky Stone. She
17 reviewed it. The only comment she had to Shelly, and
18 Shelly is the secretary in my office, was that this
19 sign exceeds 30 feet. It necessitates an engineer
20 stamp on it for the wind blown.

21 Becky told Shelly that as soon as we get
22 that stamp, Kentucky Engineer stamp on there she could
23 process the permit. Everything was in order.

24 I have another handout here concerning
25 that. Again, I'd like to put one in the record.

1 As you notice, at the top it says, "Custom
2 Signs & Engineering, Inc." It says, I've highlighted,
3 "To: Shelly Hayden. From: Scott Elpers." Down
4 below that it says "Sign layout with Stamp." Now,
5 that was faxed to Shelly which is the secretary in our
6 office.

7 If you go to the second page, there is a
8 drawing there that shows the sign. What Shelly was
9 looking for was that stamp. If you see on the right
10 it says, "State of Kentucky." I think it's Ralph
11 Pund, Professional Engineer. Stamping that it met the
12 wind requirements and everything.

13 You will notice on that sign it says
14 Denny's, Wendy's, then down below that says Ohio
15 Valley Medical Center. It was not Shelly's job to
16 interpret the ordinance. She was suppose to get this.
17 Once she did, she processed the sign application.

18 At the time that they faxed this in, if
19 they wanted that to be a part of the signed package,
20 they should have filled out a sign application.
21 Should have went back through the review procedures
22 not only showing the sign but the size of the sign,
23 what it's going to read and the cost of the sign.
24 None of those things were done. Shelly was mainly
25 looking for that stamp just showing that it was okay.

1 I just have a couple of more handouts and
2 I'll be finished. I would like to put this into the
3 record.

4 As you see this here, this is the signed
5 permit that was issued. You see where I highlighted
6 says, "Project Description: Install signage for
7 Denny's/Wendy's restaurants." Again, if we were
8 issuing that permit or have intent or knew about it,
9 it should have been right there. Denny's/Wendy's/Ohio
10 Valley Medical sign. That was not included in the
11 sign package when we permitted it. So we permitted
12 just that.

13 If you look further down it says "Sign:
14 ON-Premises." There was no mention of off-premises
15 advertising in this application.

16 Down at the bottom it also has
17 construction cost 60,000. If you go back and add up
18 all three pages of applications, all the signs that
19 were included, the cost of each one, it totaled 60,000
20 for all the signs they mentioned. It does not include
21 no cost for that Ohio Valley Medical. We just didn't
22 know about it. It wasn't mentioned in the application
23 and therefore we did not permit that. It's not stated
24 on here anywhere. Plus when they signed this permit
25 they also signed an agreed to abide by the ordinance

1 in affect. Which, the last thing I'll give you, shows
2 that the Article 9 of the Sign Ordinance where
3 off-premises advertise is not allowed within the city
4 limits. I would like to put one into the record here.

5 I'll just read the Article 9 Sign
6 Regulations. "Note: New off-premises commercial
7 billboards are prohibited within the corporate limits
8 of the City of Owensboro by Ordinance No. 53-89,
9 adopted 21st of November, '89"

10 So essentially since 1989 within the c
11 city limits, off-premises advertising has been band.
12 We have not issued any permits for off-premises
13 advertising.

14 I have one more thing I'd just like to
15 read into the record. This would be from Shelly
16 Hayden which is the secretary that accepted the stamp
17 on the drawing.

18 "The office received three pages of signed
19 permit applications for the Denny's and Wendy's sign
20 being constructed at 4545 Frederica Street. The
21 application was dated March 15, 2004. Jim Mischel was
22 not available during the March 2004 so all signed
23 applications were given to Becky Stone for review and
24 approval. Becky informed me that the permit could be
25 be issued when the contract was submitted with an

1 Kentucky Engineering stamp concerning the height of
2 the sign. On March 31, 2004, Scott Eplers faxed a
3 drawing with the Kentucky Engineer stamp on it. I
4 processed the sign permit after seeing the stamp on
5 the drawing. I did not review the drawing for
6 compliance with the sign ordinance. I do not
7 interpret the sign ordinance or building electrical
8 codes for compliance. Jim Mischel told me that in
9 conversation with Scott Eplers, Scott indicated that I
10 had talked to him about the sign regulations. This is
11 not true. I routinely look for Kentucky Engineer
12 stamps on signs, trusses and elevation certificates as
13 instructed, but I do not interpret any of the above
14 ordinances. Shelly Hayden. June 2, 2005."

15 I don't know if you have any questions
16 right now pertaining to this.

17 CHAIRMAN: Any board members have any
18 questions of him before he sits down?

19 MR. MILLER: Jim, is it usual practice or
20 is it unusual that you would receive a separate
21 drawing or picture of the sign for the engineer's
22 stamp? It just seems that the one that was submitted
23 with the application would be the one that would be
24 submitted for the stamp and not something different.
25 See what I'm saying?

1 MR. MISCHEL: The engineer would probably
2 submit a drawing. He's putting his stamp on it.
3 Typically not only a sign, but if it's a truss or
4 anything, when they put their stamp on it they want
5 what's included in there so somebody doesn't maybe put
6 in - - this was 45 feet. It shows 45 instead of 60 or
7 80 feet or whatever.

8 MR. MILLER: I guess what I'm asking is
9 why wouldn't that be submitted originally with the
10 original application to follow the whole process
11 through?

12 MR. MISCHEL: Some of them are submitted
13 the first time and they might not have known that over
14 30 feet they needed an engineer stamp. Typically we
15 do have turned in later with the stamp, and we have
16 that done with building permits too.

17 CHAIRMAN: Thank you, Jim.

18 Staff have any other comments?

19 MR. NOFFSINGER: Two things. One is point
20 of clarification for the record.

21 Mr. Mischel, I believe you stated that the
22 Notice of Violation was sent out in March of this
23 year. I believe that it is dated April 20th of 2005.
24 So it would have been April of this year. Did I
25 misunderstand? Just need to make sure it's clear in

1 the record that the violation notice is dated April
2 20, 2005. Were you referring to a letter other than
3 the violation notice?

4 MR. MISCHEL: That might be correct.

5 MR. NOFFSINGER: Well, the Violation
6 Notice is dated April 20, 2005, but I believe you had
7 correspondence with the appellant in March of this
8 year. That was via a non-violation letter.

9 MR. MISCHEL: We've had some
10 correspondence. It looks like we've issued a Notice
11 of Violation March 16 with a compliance deadline of
12 April 16.

13 MR. DYSINGER: There were two Notice of
14 Violation?

15 MR. NOFFSINGER: In the application, the
16 Notice of Violation is April 20, 2005.

17 MR. MICHEL: We have two. There is one
18 April 20, 2005.

19 CHAIRMAN: That's the correct date?

20 MR. MISCHEL: Yes, that would be the
21 correct date, the April 20th letter. I believe the
22 March 16th letter was not sent certified. The April
23 20th they were sent certified and I have a
24 certification by here where it was signed. It looks
25 like it was signed April 22nd, which would be April

1 20th.

2 MR. NOFFSINGER: The applicant filed the
3 appeal on April 29th of 2005. The point in that is I
4 want to make sure we have the correct Notice of
5 Violation date and that the appellant filed in a
6 timely manner, which appears they would have.

7 MR. MISCHEL: Yes. When that was sent
8 out, the person did not send it certified so we sent
9 it back out to make sure that we met that requirement.

10 MR. NOFFSINGER: Jim, clarification in
11 terms of the language in the application process.
12 What you're saying is the language on the sign is
13 stated on the application as to how it's to read.
14 There were drawings submitted originally with the
15 application showing what that language would be and
16 the types of sign.

17 This faxed drawing was for structural
18 purposes only. Much of the language on this sign is
19 not legible. That structural drawing is purely, that
20 it has been designed, looked at by a structural
21 engineer and does meet the safety standards.

22 MR. MISCHEL: Yes. That drawing submitted
23 was just strictly for the structural stamp. That's
24 all we were looking for on that. That's all Shelly
25 was requesting and looked for.

1 Even now if people turn in a drawing of a
2 sign to our office, we would not process that. They
3 have to fill out an application. I mean that's part
4 of it. We've got to know the cost of the sign, what
5 it's going to say, the size of it. You have to turn
6 an application in for us to process it. We did have
7 three pages of the application and in those three
8 pages turned in by the applicant, there isn't on any
9 of those applications stated Ohio Valley Medical.
10 None of it stated it'd be off-premises, which is what
11 that sign is. Didn't even have the cost on there. I
12 mean if you add up all the cost it totals everything
13 but that. We still don't know what the cost of that
14 sign was. That's why you have applications. We have
15 that on building permits, electrical permits. You
16 have to know the information before you can issue a
17 permit.

18 CHAIRMAN: Thank you, Jim.

19 Does any board member have any comments
20 before the applicant?

21 MR. DYSINGER: I have a question for Mr.
22 Mischel.

23 For the purpose of the application, the
24 sheet that Shelly saw and issued the permit upon
25 receiving, it could have been blank for all that

1 matters; is that correct? I mean it's irrelevant what
2 that thing said. She's just looking for the stamp.
3 Am I understanding that correctly?

4 MR. MISCHEL: She is looking for Kentucky
5 Engineer stamp. She knows it's got to be Kentucky and
6 it's got to be an engineer stamp.

7 CHAIRMAN: Any other questions from the
8 board at this time?

9 (NO RESPONSE)

10 MR. MISCHEL: Basically when Custom Signs
11 and that fax, received that fax that says to Shelly.
12 "Hey, Shelly, here's the stamp you're looking for."
13 It's not p.s. we're adding another sign to this. Get
14 back with me if you need information on the cost or
15 anything, or here's the cost, here's the size of it.
16 Nothing like that. Here is the stamp that you need to
17 process it.

18 CHAIRMAN: Thank you, Jim.

19 The applicant have anything you want to
20 add at this time?

21 MR. ARGENZIANO: Yes, I would.

22 CHAIRMAN: State your name for the record.

23 MR. ARGENZIANO: Carmen Argenziano.

24 (CARMEN ARGENZIANO SWORN BY ATTORNEY.)

25 MR. ARGENZIANO: First, I would like to

1 introduce myself and thank the board for taking my
2 time. I'm vice president of operations for BR
3 Associates. We own and operate about 157 restaurants
4 and other units. In Owensboro, we own and operate all
5 the Long John Silver's, Grandy's, Wendy's, and the
6 Denny's.

7 Back last year we tore down the old
8 Denny's and put a two and a half million dollar
9 project on that site.

10 To put everything in a nutshell, Mr.
11 Mischel made a fine effort to try to demonstrate why
12 the city made an error in his office when he was on
13 apparent retirement. The bottom line is this is the
14 picture that was submitted with the signed permit.
15 The colored rendering was submitted with the signed
16 permit. He neglected to tell you that. The reason he
17 neglected to tell you I believe is because he wasn't
18 there and there was confusion in the office. It
19 wasn't our intention to try to sneak in the Ohio
20 Valley sign. Those people had asked us.

21 Furthermore, on Page 1 of his first
22 argument he highlights in blue "off-premises sign."
23 Well, our sign company wouldn't have checked
24 Billboard, Bus Shelter or Church or Civic Club, would
25 we? I believe what this is asking is if you are

1 constructing an off-premises sign this is what you
2 would check.

3 I tried to reason with Mr. Mischel. I
4 made several attempts when he first - - the sign was
5 constructed I believe in June. I didn't get first
6 notice until February so it sat there almost eight
7 months. Then he tells me that the only reason that
8 he's now objecting is because somebody complained
9 about an off-premises sign. I believe the ordinance
10 refers to an off-premises billboard. I don't I
11 believe that sign qualifies as a billboard.

12 Furthermore, that sign rendering, the very
13 first page if you look under Sign 1 it says, "Denny's,
14 Wendy's," and the rest of it is missing. Now, I'm not
15 making any accusations, but I don't believe that Mr.
16 Mischel is being totally honest about what took place.

17 We are not in the business of trying to
18 beat any ordinance out of a 3 by 8 or whatever size
19 sign that is.

20 We entered into a lease with Ohio Valley
21 Medical Center. They paid and constructed a sign
22 there. We had no idea until February that this was
23 even an issue. I think it's unconscionable that the
24 city department that's responsible for issuing those
25 permits refuse to accept any responsibility that a

1 mistake may have been made. All I'm asking for is the
2 board to consider that that's probably and most
3 likelihood what occurred and to not punish me for what
4 happened. I can't see how - - he wasn't even there.
5 You can understand the confusion when apparently this
6 Shelly was running the whole show in his absence. For
7 him to have knowledge of what took place when he
8 wasn't even there I think is dishonest intellect.

9 I ask the board to allow the sign to
10 remain on the basis that it wasn't trying to be
11 hidden. That a permit was issued based on a stamped
12 engineered rendering and a drawing of that sign and
13 that it be allowed to stand.

14 CHAIRMAN: One question. Did you sign the
15 three signed permit applications?

16 MR. ARGENZIANO: Mr. Eplers on behalf of
17 Custom Signs signed that I believed.

18 CHAIRMAN: Signed two of the three.

19 MR. ARGENZIANO: I guess the one didn't
20 get signed.

21 CHAIRMAN: State your name.

22 MR. EPLERS: Scott Eplers, Custom Sign &
23 Engineering.

24 (MR. SCOTT EPLERS SWORN BY ATTORNEY.)

25 MR. EPLERS: I want to clarify something

1 that Jim also stated. I had a great deal of the
2 conversation with Shelly over the code. I want to
3 clarify that.

4 This project started several months in
5 advance before us actually filing for the permit.
6 Carmen had asked me to contact the city office to find
7 out what the regulations were. Actually Jim Mischel
8 was the gentleman who I spoke to in great detail about
9 that. He explained to me that total height was like
10 80 feet. You could have two pole signs that had to be
11 a certain distance apart, which we do have. Certain
12 amount of square footage on the pole signs. I just
13 wanted to clarify that I did not talk in great deal
14 length with Shelly. I did deal with Jim Mischel in
15 the very beginning, but when the actual permit was
16 filed, I filed for it in person at the office, but he
17 was in retirement at that time.

18 I just want to add too it's really not a
19 billboard. It is - - it looks almost like a tenant
20 sign that you would see at a shopping center with
21 multiple tenants on it. I know that's what the
22 ordinance is for, is to limit these ungodly billboards
23 that are everywhere. I can appreciate that. That's
24 not what this sign is. Nor was it our intention to
25 try to sneak this through.

1 If you look under that where it says the
2 pole sign for Denny's/Wendy's. If you add up the
3 square footage, the square footage is actually
4 included with all those signs. It's actually more
5 than that. If you look, there's a leaflet that has
6 larger Denny's signs. The reason why we did that is
7 because Carmen, who he answers to is not exactly sure
8 of the sign at that time. So we added the additional
9 square footage when we filed the grid, but we give the
10 smaller sign because we were thinking that that's what
11 they were going to go with. If you actually add up
12 the square footage that's down there, it includes all
13 of those signs, 500 and some odd square feet that we
14 only actually have on that one structure 491 square
15 feet.

16 CHAIRMAN: One question I want to ask.
17 What was the date that you decided that you would add
18 the addition, Ohio Valley Medical Center? When did
19 you sign a date with them to add to it?

20 MR. ARGENZIANO: That was from the
21 inception.

22 CHAIRMAN: Well, it would have been added
23 to the signed permit.

24 MR. ARGENZIANO: They had been asking us
25 for two years. That was always in the signed permit.

1 CHAIRMAN: It never was put on any - -

2 MR. ARGENZIANO: That's because if you
3 look at what that asks, that ask for an off-premises
4 sign. Nobody in their right mind when reading that
5 application - - off-premises means - -

6 CHAIRMAN: Let's forget about the
7 off-premises for a minute. Where's the third name on
8 the signed? You've got Denny's/Wendy's only. You do
9 not have Ohio Valley Medical Center.

10 MR. ARGENZIANO: I don't know. He doesn't
11 have a copy of that report in his possession, but the
12 colored rendering of that sign was submitted with
13 that.

14 MS. MASON: Was that signed? Has that
15 been signed like these other permits were? Was it
16 issued with the permit that was signed?

17 MR. ARGENZIANO: The permit didn't come
18 with all of this. The permit was just a piece of
19 paper.

20 MR. EPLERS: As far as the actual
21 rendering, was it signed?

22 MS. MASON: What I'm asking is we've got
23 copies of a signed permit application with
24 Wendy's/Denny's listed on it, but we don't have a copy
25 of what he's got there that it was signed like these.

1 MR. EPLERS: You should have a copy which
2 you don't have. Like Jim Mischel indicated that if a
3 sign is over 35 feet it has to have an engineer's
4 stamp and that's what he gives you.

5 MS. MASON: Yes, but it had to also have a
6 signed permit application too.

7 MR. EPLERS: That's what you have in your
8 hand.

9 MS. MASON: That's what I have in my hand,
10 but it doesn't mention Ohio Valley Medical.

11 MR. EPLERS: The square footage and
12 everything is included into the pole sign.

13 MS. MASON: But why isn't Ohio Valley
14 Medical listed in this permit?

15 MR. EPLERS: If you look it says,
16 Denny's/Wendy's and then there's a space there. I'm
17 almost positive we put on there - -

18 MS. MASON: It says "PE."

19 MR. ARGENZIANO: If you look at the very
20 bottom right above "Sign will read," right above "Sign
21 Cost 27,000," it says Denny's, Wendy's, and plenty of
22 room. I make no argument except somebody may have
23 altered the document.

24 MR. DYSINGER: Scott, do you guys fax this
25 in from your office?

1 MR. EPLERS: No. Actually I filed for the
2 signed permit in person myself down in the office.

3 MR. DYSINGER: And you left the original.
4 You didn't take - -

5 MR. EPLERS: That's exactly right
6 unfortunately.

7 MR. NOFFSINGER: I have a question of Mr.
8 Eplers.

9 Mr. Eplers, when did you first become
10 aware that there would be a sign on this pole reading
11 Ohio Valley Medical?

12 MR. EPLERS: From the very beginning when
13 they started talking. Like Carmen stated, while the
14 old Denny's was there, I think it was Ohio Valley
15 Medical had approached them about putting a sign on
16 there. I think the reason why they never did that was
17 because the ungodly sight that that sign was prior to.
18 They knew that the new construction was going to be
19 coming so they prolonged as far as until the new
20 concept that they have there now.

21 MR. NOFFSINGER: Mr. Eplers, if you knew
22 that from the beginning, why did you not put it on the
23 application?

24 MR. EPLERS: As far as the Ohio Valley
25 Medical?

1 MR. NOFFSINGER: Why did you not submit a
2 drawing of - -

3 MR. EPLERS: We - -

4 MR. NOFFSINGER: No. Wait. Let me
5 finish, please.

6 Why did you not submit a drawing of that
7 sign when you submitted the application with the rest
8 of the drawings?

9 MR. EPLERS: This is what I submitted.

10 MR. NOFFSINGER: When you submitted the
11 application, did you submit these other drawings at
12 the time you submitted the application?

13 MR. EPLERS: Yes, I sure did. I've got
14 all of this.

15 MR. ARGENZIANO: That's what I was trying
16 to point out. That this very rendering was submitted
17 at the time of the application.

18 MR. NOFFSINGER: But that's not the
19 stamped rendering?

20 MR. ARGENZIANO: No. No, it's not. It
21 was a drawing of what the signage we were proposing
22 would look like.

23 MR. EPLERS: If you take a look at, and I
24 remember this because we did several drawings.

25 If you notice down here in the bottom,

1 when we submitted this originally you notice down
2 there in the concrete foundation area, the wording
3 inside that drawing was not legible as to the engineer
4 that was going to put their stamp on there they felt
5 when the copy was going to come across. So they made
6 us make several changes in to where the location of
7 the wording of the footer. The spacing of rebar, they
8 wanted us to downsize that. So if you look at the
9 original drawing that we submitted with the permit and
10 the drawing that has the stamp on it, there's a few
11 changes. It's the exact same drawing. Just the
12 letter style is a little different. So that shows you
13 that there was an original drawing and then there was
14 a drawing that we had to change in order to alter it
15 to make the engineer stamp. What I'm trying to say is
16 it was not a drawing that was sent to them. They
17 engineered it. There were several changes made to the
18 sign. The signs all stayed the same, but we had to
19 change print on it to accommodate the engineer
20 drawing.

21 MR. DYSINGER: Can I ask one more
22 question?

23 CHAIRMAN: Yes.

24 MR. DYSINGER: Scott, I may put you in a
25 difficult position here. Are you willing to testify

1 under oath that the Ohio Valley Medical name was on
2 this application when you dropped it off, under oath?

3 MR. EPLERS: That I cannot do honestly.
4 The reason why I cannot is because I'm almost positive
5 it was on there, but I cannot honestly and consciously
6 say that it was on there.

7 MR. DYSINGER: So you can't say that it
8 was?

9 MR. EPLERS: No.

10 MR. DYSINGER: Also, again I know I'm
11 putting you in a difficult position. You do not have
12 a copy of it?

13 MR. EPLERS: No, I do not.

14 MR. DYSINGER: Your client does not have a
15 copy of the original application?

16 MR. EPLERS: No. And the reason why is
17 because, as I said, we submitted it in person. I
18 don't think it's a standard that they make a copy of
19 it.

20 MR. DYSINGER: That's the only question.

21 CHAIRMAN: Any other comments from the
22 board or staff?

23 MR. MISCHER: I have a couple of things to
24 say here.

25 One, that rendering there, that's not in

1 this application. If that was submitted, it would be
2 in here. I mean nobody in the office is going to do
3 anything. That plus this Page 1 where it says,
4 Denny's, Wendy's, and the reference that maybe that
5 was doctored. That would not happen. I mean nobody
6 on Staff would do something like that. If that was
7 doctored, up there right above it where it says "Sign
8 1: Denny's/Wendy's P&E," there's no room there.
9 Where would it have gone? I can tell you nobody would
10 have doctored that. Did not see the sign.

11 I would like to read into he record the
12 definition of billboard. Billboard sign, and this is
13 on Page 9-2 of the Zoning Ordinance. Means, "Any
14 off-premises signs other than a bus shelter sign or
15 church or civic club off-premises sign." So that
16 billboard, where it says off-premises billboard, that
17 should have been checked right there. That's an
18 off-premises sign.

19 MR. DYSINGER: I have a question, Mr.
20 Chairman.

21 CHAIRMAN: Yes.

22 MR. DYSINGER: Do you have the original,
23 Jim? Where is the original application? Where would
24 that be? If he dropped off the original, do we have
25 it?

1 MR. MISCHEL: It's just what we see right
2 here, what you see in front of you.

3 MR. DYSINGER: Not a photocopy of the
4 original.

5 MS. MASON: The original application.

6 MR. MISCHEL: I'll have to look through
7 there and see. Give me just a second.

8 MR. DYSINGER: Thank you.

9 MR. ARGENZIANO: I would like to make
10 another statement.

11 Even if Ohio Valley Medical wasn't on the
12 permit, clearly somebody looked at the colored
13 rendering and could have easily said, I noticed you
14 have a sign on here. If we were trying to be
15 dishonest over a sign on two and a half million dollar
16 project, why would we have put it on the colored
17 rendering when it was submitted with the permit. Why
18 would we do that?

19 MR. NOFFSINGER: Sir, we don't have a
20 color rendering of the sign. The only time we saw
21 that drawing was when Mr. Eplers faxed it to Shelly
22 Hayden. That was the only time we saw that drawing.

23 MR. ARGENZIANO: That's not the only time
24 his office saw that drawing though. That drawing was
25 submitted with the application is my point in it's

1 colored rendering version prior to being stamped by an
2 engineer. My comments is: When they got it with the
3 permit, it could have easily said something or should
4 have said something if they felt like it wasn't
5 appropriate.

6 MR. NOFFSINGER: Sir, were you ever in the
7 office dealing with this application? When was your
8 first involvement in terms of making application,
9 signing any permit applications? Were you ever
10 involved in that process?

11 MR. ARGENZIANO: No, but I know - -

12 MR. NOFFSINGER: How do you know what was
13 submitted at the time? Mr. Eplers, I think, has
14 stated that he can't say for certain as to that
15 drawing.

16 MR. ARGENZIANO: I guess the question is
17 what are you guys going to do? Do you want to jack us
18 and have us be in breach of a lease and all of that
19 over this? Is that the game plan? It's a reasonable
20 request. It's not an unreasonable request.

21 CHAIRMAN: Sir, let me interrupt you. We
22 have certain things we have got to do by law. Whether
23 they're right or wrong, whether we agree or disagree.
24 Now, don't argue with us over what we can do and can't
25 do.

1 MR. ARGENZIANO: I'm saying you have the
2 power to make what was wrong right.

3 CHAIRMAN: We can only do what the law
4 tells us. You know that.

5 MR. ARGENZIANO: I believe you have the
6 authority to override that Variance, do you not?

7 CHAIRMAN: No, sir. Not on this we do
8 not.

9 MR. ELLIOTT: No.

10 CHAIRMAN: That is a city ordinance that
11 we can't overrule.

12 MR. ARGENZIANO: Then what was the appeal
13 process designed for, if you cannot correct it?
14 Please explain to me what I paid the money for and I
15 came here for.

16 CHAIRMAN: To be sure that we were correct
17 by law what we could do and could not do. To inform
18 you, sir.

19 MR. ARGENZIANO: What you could and could
20 not do to inform me.

21 CHAIRMAN: Which is the law that we have
22 to let you know. You appealed it, questioned whether
23 the Administrative made a statement to you saying it
24 was illegal. You asked for an application to appeal
25 this whether he is right or wrong. We've got to

1 determine whether he was right, whether it's legal or
2 illegal. That's what we're going to do here tonight.

3 Bear with me. With my problem I have I'm
4 not talking correctly, as good as I should this
5 evening. I apologize.

6 We've got to make a decision based on what
7 the ordinance tells us that we can do and that's what
8 we'll do and hopefully you understand. Do you have
9 any other comments?

10 MR. ARGENZIANO: No.

11 CHAIRMAN: Do you have another comment,
12 sir?

13 MR. EPLERS: Yes, please.

14 I just want to make for the record that it
15 is standard practice, and I think Jim has worked with
16 our company several times in the past on permitting.
17 We do quite a bit work down here. It is standard
18 practice for us to send a conceptual drawing. If it
19 is not a part of the permitting process, I think it
20 ought to be. The reason why is because a conceptual
21 drawing is the only way that they can honestly issue a
22 permit for line of sight issues and a number of other
23 issues that can arise. If it is not, I think that Mr.
24 Mischel and his office ought to adopt that because a
25 number of other cities that we deal with on a regular

1 basis require that. I think, you know, had - - I can
2 honestly tell that that conceptual drawing was
3 submitted with the actual permit. What happened from
4 there, I don't know. That's just for the record.

5 CHAIRMAN: I appreciate it.

6 Any other comments and then we're going to
7 take a vote?

8 MR. MISCHEL: I do have the original
9 applications here. I would be glad for everybody to
10 take a look at them. I think it's easy to see it
11 hadn't doctored or anything. I'll pass it around.

12 I think what they were questioning was
13 Page 1 where it says "Denny's/Wendy's," but there's
14 all three pages for everybody to look at and they're
15 welcome to look at it too.

16 MR. DYSINGER: There were only three pages
17 to the application?

18 MR. MISCHEL: That's it.

19 CHAIRMAN: No drawing of the sign with it
20 at that time?

21 MR. MISCHEL: No.

22 MS. STONE: I'm Becky Stone.

23 I reviewed the signed application while
24 Jim was out of the office. I am a certified building
25 inspector so I was qualified to do that review.

1 As I recall, the only deficiency in the
2 application was that there was not a structural
3 engineer stamp for the structural design of the sign
4 because it was over 30 feet in height. As Shelly said
5 in her Affidavit, I did tell her that the permit was
6 in order, that the signed permit could be issued once
7 that stamp drawing was received by the office. I did
8 not review the stamp drawing when it came in.

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

11 MR. NOFFSINGER: Did you see, was this
12 colored rendering made a part of the application?

13 MS. STONE: I don't remember that colored
14 rendering.

15 MR. DYSINGER: I have a question for Ms.
16 Stone.

17 Becky, how did you know the sign was over
18 30 feet tall?

19 MS. STONE: By reading the application.

20 CHAIRMAN: Sir, do you have anything else
21 at this time?

22 MR. EPLERS: I know they stated that there
23 was no drawings. It was just that permit application.
24 After reviewing the application, you know, we had to
25 fax in, they do have the covered sheet that I faxed

1 in. If you notice there, those drawings, if you
2 notice those are copies. If you notice the size of
3 those copies of the Denny's signs, you can't fax a
4 drawing that sizes. There were drawings submitted
5 with that application.

6 MR. MISCHEL: Becky can attest to taht
7 better than I can. She was there. The Wendy's and
8 the Denny's was brought in. That colored drawing is
9 not in the file.

10 MS. STONE: There were drawings with that.
11 I do not recall a colored rendering of the sign.

12 CHAIRMAN: Do either one of you have
13 anything else to state at this time?

14 MR. EPLERS: No.

15 CHAIRMAN: Does the board have any other
16 questions or comments at that time?

17 (NO RESPONSE)

18 MR. ELLIOTT: Are these the originals?
19 Why don't you introduce these, Jim, as part of the
20 minutes.

21 MR. MISCHEL: I will introduce the
22 original application into the record. There's three
23 pages there.

24 CHAIRMAN: Any other advice at this time,
25 sir?

1 MR. ELLIOTT: No.

2 CHAIRMAN: Any other comments?

3 MR. MILLER: I have a comment.

4 Maybe Staff consider in the future on all
5 applications is maybe numbering and dating everything
6 that comes in with an application just to maybe avoid
7 this in the future. I don't know if that's possible.
8 You probably looked at it and may do it in some cases.
9 Just to comment on something you may look into.

10 CHAIRMAN: This board can recommend that
11 to the staff. Put a motion on after we handle this
12 item.

13 Hearing no other comments, entertain a
14 motion to dispose of the Administrative Appeal whether
15 it's correct or wrong.

16 MR. DYSINGER: Move to uphold the decision
17 of the Zoning Administrator given the findings that
18 there's absolutely no evidence to support the
19 appellant's claim that there was a colored rendering
20 or that the Ohio Valley Medical sign appeared on the
21 original application.

22 CHAIRMAN: Is there a second to the
23 motion?

24 MR. WARREN: I will second it.

25 CHAIRMAN: Any other comments or questions

1 from the board?

2 (NO RESPONSE)

3 CHAIRMAN: Hearing none all in favor raise
4 your right hand.

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Administrative appeal is
7 upheld.

8 Next item I'll entertain a motion that we
9 recommend to the Staff that the signs and stuff be
10 added to application from now on just as a suggestion.

11 MR. MILLER: Is that a reasonable - -

12 MR. NOFFSINGER: We routinely try to date
13 items. Like if we get a fax there's a date on it. We
14 do. I'll let Jim address that.

15 MR. MISCHEL: If you notice the
16 application when he signed it he did put a date on
17 there. They're dated. When they did fax in that with
18 the stamp it has a date on there with the fax and
19 everything. We do get the dates. We do what the
20 signs are going to say.

21 If that drawing had been submitted, Becky
22 would have gone over and told them, hey, we just can't
23 do it. Nobody in the office is going to change
24 anything.

25 MR. DYSINGER: I think that's out o the

1 question.

2 One thing I would maybe suggest is that I
3 don't see anywhere on there where there's a Page 1 of
4 however, 1 of 5 or 1 of 4. Do you follow my meaning
5 there? If there's five total pages and they number
6 the pages. That was the only thing. As I looked at
7 the evidence, it would have been great to see that
8 it's five pages and they're all here. That would have
9 ended the question outright.

10 What I would just ask is that over the
11 next month maybe you guys talk about that and maybe we
12 can talk about it before the next meeting. You guys
13 are great at what you do and I don't think there was
14 anything improper done here whatsoever. I would hate
15 for any of these questions to be interpreted that way.
16 I think everything was above board. Frankly I think
17 you displayed a great deal more patience than I would
18 have, Mr. Mischel, after hearing some of the things I
19 heard here tonight said about you. That's the only
20 thing that I would suggest. There may already be done
21 in some way that I'm just not seeing.

22 MR. MISCHEL: The application, when people
23 come in we don't know if they're applying for one
24 permit or 20. Some of the big ones they have a lot
25 different, small signs. I guess we could number that

1 Page 1, Page 2, Page 3 up to page 10 or whatever.

2 MR. DYSINGER: As long as it indicated how
3 many pages were turned in total. For instance, if we
4 had Page 1 of 5 through 5 of 5, it would have ended
5 the whole, we would have known that that picture
6 wasn't there. I think we know that anyway. It
7 wouldn't have allowed an opening for somebody to
8 possibly try to work the system. That would be the
9 only thing that I would suggest.

10 CHAIRMAN: One last motion.

11 MR. MILLER: Move to adjourn.

12 MS. MASON: Second.

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

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: We are 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 62 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this
17 the 30th day of June, 2005.

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, 2006

23

24 COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

25