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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

JULY 7, 2005

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, July 7, 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
- Judy Dixon
- Sean Dysinger
- 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 all of you for being here this evening. We start our meeting each time with a prayer and the pledge of allegiance. We invite you all to join us if you so desire.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Again, I want to welcome all of you again. Set a few guidelines for the meeting this evening.

1 If you wish to speak on any item, come to
2 the podium and be sworn in. At that time then you can
3 speak of the item. If you have any questions or
4 disagreements, put them to the chairman and we'll find
5 out the answer for you at that time. There will not
6 be any arguments between one another or talking in the
7 back. You'll go through the chairman.

8 With that we'll start with our program.
9 The first thing is consider the minutes of last
10 month's meeting. They're in the office. Has there
11 been any changes or any problems with them?

12 MR. NOFFSINGER: No, sir.

13 CHAIRMAN: Entertain a motion to dispose
14 of the item.

15 MS. DIXON: Move to approve.

16 MR. DYSINGER: Second.

17 CHAIRMAN: Everybody in favor raise your
18 right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries.

21 Next item, please.

22 -----

23 CONDITIONAL USE PERMITS

24 ITEM 2

25 3201 Alvey Park Drive West, in a B-4 zone

 Ohio Valley Reporting
 (270) 683-7383

1 Consider a request for a Conditional Use Permit to
2 operate a school for the instruction of martial arts,
3 yoga and similar arts.
4 Reference: Zoning Ordinance, Article 8,
5 Section 8.2 B11, 8.4/13
6 Applicant: Daniel Caslin

7 MR. NOFFSINGER: Mr. Chairman, the
8 Planning Staff has reviewed this application. It's
9 found to be in order. It's ready for the board's
10 consideration at this time.

11 CHAIRMAN: Any objections filed in the
12 office?

13 MR. NOFFSINGER: No, sir.

14 CHAIRMAN: Is there anyone in the audience
15 wishing to object to this item?

16 (NO RESPONSE)

17 CHAIRMAN: Does the applicant have
18 anything you want to bring in at this time?

19 (NO RESPONSE)

20 CHAIRMAN: Any boards members have of the
21 applicant?

22 (NO RESPONSE)

23 MR. NOFFSINGER: Mr. Chairman, I will
24 state for the record that the Staff has reviewed this
25 Conditional Use Permit for compliance for bringing it
into this particular neighborhood. We find that there
are other similar uses within this particular area.

1 That this use would be a compatible use and is
2 consistent with the adopted Comprehensive Plan.

3 CHAIRMAN: Any other comments from the
4 office or the board members have any questions?

5 (NO RESPONSE)

6 CHAIRMAN: Hearing none entertain a motion
7 to dispose of the item.

8 MS. DIXON: Move to approve because it's
9 compatible with the existing uses and meets the
10 qualifications of the Comprehensive Plan.

11 CHAIRMAN: Is there a second?

12 MR. DYSINGER: Second.

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

15 (NO RESPONSE)

16 CHAIRMAN: The office have anything else
17 to say about it?

18 MR. NOFFSINGER: No, sir.

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

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries.

23 Next item, please.

24 ITEM 3

25 6371 Karns Grove Road, in an A-R zone

1 Consider a request to amend a Conditional Use
2 Permit for church assembly, sanctuary, fellowship
3 hall, Sunday school classes and related church
4 activities in order to eliminate the required
5 landscaping on the property
6 Reference: Zoning Ordinance, Article 8,
7 Section 8.2 B4
8 Applicant: Karns Grove Baptist Church

9 MR. NOFFSINGER: Mr. Chairman, the
10 Planning Staff has reviewed this application. The
11 application is found to be in order. The application
12 comes before you to waive requirements to landscape
13 along Karns Grove Road. The Board of Adjustment
14 approved a Conditional Use Permit for this facility
15 back some time ago for a 40 by 50 addition to the
16 existing church. At that time the application site
17 plan stated that access would be limited to two access
18 points on Karns Grove Road with landscaping installed
19 along the boundary of the vehicular use area and that
20 the pavement would be removed within the right of way
21 of Karns Grove Road. The applicant was agreeable to
22 that. The applicant made a request for a building
23 permit. Posted landscape surety with the building
24 office to guarantee the work. The building has been
25 constructed. It's finished now they're asking that
the requirement for the landscaping be waived and upon
release they would not have to do the landscaping. So
with that it's ready for your consideration.

1 CHAIRMAN: Again, is there any objections
2 filed in the office?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Anyone in the office objecting
5 to this?

6 MR. STONE: I would like to speak, but not
7 objecting.

8 CHAIRMAN: Wait a minute.

9 Hearing no objections from the audience
10 then let's go ahead and present it at this time.

11 The applicant come forward and state your
12 name.

13 MR. ELLIOTT: State your name, please.

14 MR. STONE: My name is James Stone.

15 (MR. JAMES STONE SWORN BY ATTORNEY.)

16 MR. STONE: Like Gary said, we did apply
17 for the building permit. We understood the situation
18 with the landscaping. I've been a builder for 15
19 years. I know what you try to do to make everything
20 more beautiful. We agreed with that.

21 I think you should have pictures with you
22 in your package showing how the church is landscaped.

23 The issue that we have is the fact that
24 the church is on a crest of a hill and any landscaping
25 you put in that area will be a site thing for the

1 elderly, anyone, because of the hill is such a crest.
2 We feel that this will be more of a danger to anybody
3 trying to pull away, pull out. We would have cause
4 for concern there because of the fact that these
5 shrubs get two foot tall and you're not going to be
6 able to see a car coming up the hill either way.

7 You also have in your package a letter
8 from the Daviess Coutny Board of Education requesting
9 that you do not require this because they used the
10 parking lot for a bus turn around and it would
11 restrict that area also for the safety of the
12 children.

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

15 MR. DYSINGER: Mr. Chairman, I have a
16 question.

17 Sir, based on this schematic plat that we
18 were provided, it seems to indicate that from the
19 property line to Karns Grove Road is approximately 22
20 feet. The shrubbery requirement would only apply to
21 an area roughly three feet behind the property line.
22 Based on what we've seen here, based on the evidence
23 we have on the record, it's difficult for me to
24 understand or it's difficult for me to see the problem
25 seeing the road with all that space between the actual

1 road and the property line and you're only required to
2 do grass from there down. The shrubbery requirement
3 would be unreasonable. I've just got the photos. If
4 you'd like to speak to that, but that's the question
5 that I have. The impediment to sight line that you've
6 described doesn't seem to bear out by the schematic
7 that we have.

8 MR. STONE: The pictures do not do the
9 hill justice. You basically have to see the area.
10 It's a very steep hill coming up. If you pull out and
11 you hesitate, if you're 22 feet back or 30 feet back
12 and you hesitate and somebody is coming up the hill
13 and you don't see them for just that moment. We're
14 just concerned with the fact that it might be unsafe.
15 We have, as far as having vehicles parked in the area,
16 we have an alternative plan there to put stripping on
17 the parking lot. Apply no parking zone in all that
18 area. To back all the parking up. We will paint all
19 the lines on there, all the restrictions. Actually
20 paint the two driveways on that will be used by our
21 congregation. Then that will still allow the school
22 buses to come in and out of the packing lot without
23 tearing up any grass or anything in the area.

24 MR. DYSINGER: So part of the concern is
25 about the school buses having enough room to turn

1 around as well. Is that what I'm understanding?

2 MR. STONE: Yes. Pull in and turn around.

3 MR. DYSINGER: I understand the concern
4 about the hill because even the pictures that you've
5 provided you can kind of see. I'm still a little
6 unclear on how landscaping, the landscaping that
7 you're required to do would not approach the hill. I
8 don't see how not doing landscaping would help that.
9 I understand the hill problem though.

10 MR. STONE: Shrubs get two foot tall and
11 it blocks the view.

12 MR. DYSINGER: That's all the questions I
13 have. Thank you.

14 CHAIRMAN: Any other questions from the
15 board?

16 (NO RESPONSE)

17 CHAIRMAN: Office have anything else?

18 MR. NOFFSINGER: I would just point on the
19 site plan, if you notice the location of the sign.
20 You see the sign in the pictures. Required
21 landscaping would be back behind that sign. If there
22 was obstruction, it would seem to me that the
23 obstruction would be the sign even before the
24 landscaping.

25 Two, in terms of the bus turn around. You

1 will still have two 24-foot wide drives which the bus
2 can enter, turn around in the parking lot, which I
3 assume they do now, and then exit. They also had
4 proposed a gravel drive below the hill, I believe, to
5 bring vehicles in and behind the church and that would
6 connect into the existing paved parking area.

7 The requirement for landscaping is no
8 different than any other approvals that this board has
9 considered. One example would be Macedonia Baptist
10 Church on Millers Miller Road. They've installed a
11 significant amount of landscaping with the building
12 addition. I just want to point out for the record
13 that there are a number of other churches that have
14 been through this procedure who have had similar
15 request. Masonville Baptist Church was one that
16 occurred perhaps about the same time as this
17 development was proposed.

18 MR. STONE: Can I speak again?

19 CHAIRMAN: Yes.

20 MR. STONE: I agree with Gary. I've
21 worked on several churches and several church
22 projects. I understand the landscape requirements on
23 all those churches. Chestnut Grove is out there in
24 the middle of nowhere. They went through the same
25 situation. I agree with that. All those churches

1 though are not on a crest of a hill where the view
2 will be blocked. The only way we could move our sign
3 is actually put it up on the porch because the church
4 is where it's at and that's where it's been for 100
5 years.

6 MR. WORTH: Can I speak, sir?

7 CHAIRMAN: Come forward and state your
8 name for the record.

9 MR. WORTH: Leonard Worth.

10 (MR. LEONARD WORTH SWORN BY ATTORNEY.)

11 MR. WORTH: I'm responding on a notice I
12 got from Mr. Noffsinger about this matter as a
13 landowner. I'm directly across from the church and
14 I've lived there for 34 years.

15 The alternate that Mr. stone appeared to
16 be esthetically to be fine the way the church has
17 done. Really what I wanted to say is from grading of
18 the road, county graders comes over that. Usually I
19 grade that, the road, just like the biggest snow we
20 had last year. That really helps when they throw the
21 snow over that way, and they do it every time. Then
22 we could push it all the way back off the parking lot.
23 That's a tough hill coming up off 54. They slide in
24 there all the time.

25 The other thing is we've never had an

1 accident there. In 34 years there's never been a
2 fender bender. I'm sure you all have looked into
3 that. Nothing has ever happened there. We've never
4 had a problem, but when you start squeezing people in
5 there could be. I hope not, but still it works good.
6 I think their plan was going to make it look good.
7 I'm just speaking as a landowner. To me as a neighbor
8 I think it would be a fine thing.

9 CHAIRMAN: Any other comments?

10 (NO RESPONSE)

11 CHAIRMAN: Hearing none entertain a motion
12 to dispose of the item.

13 MR. DYSINGER: Mr. Chairman, I move to
14 deny the request given the findings that compliance
15 would not cause an unreasonable safety hazard or
16 prohibit the use by school buses.

17 CHAIRMAN: Is there a second?

18 MS. DIXON: Second.

19 CHAIRMAN: A motion has been made and a
20 second. Any other comments from the board?

21 (NO RESPONSE)

22 CHAIRMAN: Any other statements from the
23 office?

24 MR. NOFFSINGER: No, sir.

25 CHAIRMAN: Hearing none all in favor raise

1 your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries.

4 Next item, please, sir.

5 ITEM 4

6 2946 KY 142, in an R-1A zone
7 Consider a request to amend a Conditional Use Permit
8 to operate a Baptist church, kindergarten and first
9 grade school in order to eliminate the condition
10 regarding closure of an existing access point.
Reference: Zoning Ordinance, Article 8,
Section 8.2 B4
Applicant: Bethabara Baptist Church

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

14 The Board of Adjustment approved a
15 Conditional Use Permit application on this property
16 some time ago for a building addition. Approximately
17 50 by 100 square feet. The building, as I understand
18 it, has been completed. The Conditional Use Permit
19 called for landscaping as well as closure of an access
20 point to the church parking lot on KY 142.

21 The applicant is here tonight to ask you
22 to waive the requirement that the access point on 142
23 be closed. The Staff is not recommending that that be
24 done. We're still maintaining that the access should
25 be closed. The applicant is represented here tonight.

1 With that it's ready for your consideration.

2 CHAIRMAN: Any objections in the office?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Anyone in the audience
5 objecting to this item?

6 (NO RESPONSE)

7 CHAIRMAN: Mr. Kamuf, I think you're up.
8 Come forward.

9 MR. ELLIOTT: State your name for the
10 record, please.

11 MR. KAMUF: Charles Kamuf.

12 (MR. CHARLES KAMUF SWORN BY ATTORNEY.)

13 MR. KAMUF: I represent Bethabara Baptist
14 Church of Habit, Kentucky. Bethabara they've had a
15 church there for 151 years. This entrance that's
16 trying to be closed has been there for 151 years.

17 As indicated by Gary when he read the
18 proposal, we're here tonight because the final
19 inspection was made by the Planning & Zoning Staff and
20 they demanded that the entrance be closed on 142.

21 In April, and I'm pointing to you this
22 plat. In April of 2002, Bethabara asked that - - they
23 have three lots here; one, two, three. They asked
24 that this plat be approved and that all of these lots
25 be consolidated. At that time you see they have

1 signed, the trustee signed this plat. There is Mr.
2 Cook, Mr. Manley, Mrs. Strohmeier, Mr. Robbins, Mrs.
3 Rhinerson, and Mr. Jones.

4 I would like to introduce that as Exhibit
5 Number 1, please.

6 The site plan, and of course that is a
7 recordable document. The site plan, which we have in
8 question, is an unrecordable document. It was not
9 signed. Here is a copy of it. I think you all
10 probably got that in the site plan as part of the
11 file.

12 CHAIRMAN: Yes.

13 MR. KAMUF: If you look at that document,
14 that is the site plan and there is nowhere on there
15 that there is a signature of any of the trustees as
16 you saw in the previous document.

17 On that document you will also see where
18 there is an existing entrance to be closed, existing
19 apron and portion of parking to be removed, and the
20 area to be filled, dressed and seeded.

21 Evidently there was a failure of the
22 communication between the Staff and the trustees of
23 Bethabara Church. We had no indication, and we'll
24 have the trustees to get up and talk in just a second.

25 In other words, there was no indication

1 and they had no idea. They did not authorize anybody
2 to sign or they did not authorize anybody at any
3 meeting to execute a document where it would say that
4 they would close the entrance on 142.

5 As a matter of fact, the trustees will
6 tell you that if they knew that those conditions would
7 be present, they would have not built the addition.

8 I have reviewed the minutes and I have
9 those for your consideration. I'll show you in just a
10 second there is no mention in the meeting in September
11 of '02 of the closing of the entrance.

12 I refer to those minutes. If you'll see
13 where it states on the back page there, "Chairman: Is
14 the applicant here and do they have anything they want
15 to add." We don't know who the applicant was that
16 said "No."

17 In any event, the chairman said, "Staff
18 have any conditions that need to be added on?"

19 "Mr. Noffsinger: No, sir. However I will
20 add for the record that with the expansion I believe
21 there's some property parameter landscaping being
22 included to bring the property into compliance with
23 the zoning ordinance.

24 "Chairman: Has this been discussed with
25 the applicant?"

1 "Mr. Noffsinger: Yes, sir, and it is
2 included on the site plan."

3 This site plan was not signed and clearly
4 it's our position that that motion was concerning the
5 landscaping and it had nothing to do with he closing
6 of the entrance on Highway 142.

7 So what we're asking tonight is for you to
8 delete the wording on the site plan which reads, and
9 here is what it reads, it reads as following,
10 "Existing entrance to be closed. Existing apron and
11 portion of parking to be removed, area to be filled,
12 dressed and seeded."

13 We asked you to amend the site plan filed
14 with the conditional use showing the existing parking
15 and drive conditions in front of Bethabara Baptist
16 Church so that the total parking places will be 51 and
17 not 46, and to eliminate the 68 feet of continuous
18 element of landscaping which is required and the
19 entrance.

20 It is the opinion of Bethabara Baptist
21 Church that there are no applicable standards.

22 Now, you're going to hear in a few
23 minutes, it's a little unusual in most of these cases.
24 Most of the I hear Becky, she'll get up and give her
25 side, but I think what she's going to say in a few

1 minutes, and what she told me, is that the access
2 manual does not apply. I think it's clear that it
3 does not apply.

4 There's a provision of the zoning
5 ordinance they'll probably cite. It's 13.22. Mr.
6 Chairman has a copy of it in front of him.

7 If you have read the last provision of
8 13.22 it reads as follows, or non-residential
9 development no point of access to a street or a shared
10 development driveway shall be allowed within 50 foot
11 of a right-of-way line of an intersecting street,
12 disregarding alleys, unless less existing lot frontage
13 exist. In which case, it shall be located as far from
14 the intersecting street as possible. The entrance on
15 Highway 142, it's our position that this doesn't
16 apply. It's not a new development. This entrance has
17 been there for 151 years. We cannot move the entrance
18 on Highway 142 as you see on this map. We cannot move
19 this entrance that we have any further back that we
20 have because if we move it back 40 feet, it is in the
21 middle of the parking lot. We'll show photographs on
22 that in just a second.

23 We're saying that it does apply. That
24 it's our opinion that we have followed that ordinance.
25 It's our opinion that it's located the best possible

1 way that we can put it. It's been there for 151
2 years.

3 I think the staff will also show you in
4 just a second a letter from Mr. Frank Bacon from the
5 highway department which says that there are some
6 issues relating to this entrance. We got the same
7 issues it seems like these country churches always
8 have. They have a problem on visibility or on
9 turning. They have a letter and they've showed it to
10 me concerning the visibility and the turning
11 requirements.

12 We will present to you a state trooper who
13 is a member of that church who has 17 years of
14 experience. He has made 14, 15 big blow-ups of the
15 visibility. He has made numerous turns as far as
16 affecting the turning problem that you have at 142 and
17 272.

18 Now, the first picture that we have, this
19 is a photo that shows the latest funeral. Of course,
20 they don't have many funerals here. Glen Taylor is
21 here to testify that he does 80 percent of the
22 funerals that are there. I don't know how many that
23 would be. To allow you to require closing this
24 entrance would cause havoc as far as going to and from
25 that church.

1 The first photograph that I have is a
2 picture. This shows the entrance from 762. That is
3 from this side. There's an entrance that we have that
4 comes in through here and it comes out that way as
5 you'll see from the letter from the fire department
6 that we have to present.

7 This is our other exhibit. This is just
8 to familiarize you so you will understand exactly
9 where we are.

10 The next picture shows the intersection
11 itself at 142 and 762. You'll see this is a stop
12 sign. This is the entrance that's in question. This
13 is the entrance that's been there for 151 years.

14 The next photo that we have shows, and
15 this is also an entrance from 762. It shows a funeral
16 that was there two weeks ago and just exactly how
17 congested that area will be if the other entrance is
18 closed. Because to get from this point, to get from
19 this point out to 142 you have to go through the
20 parking lot.

21 The next exhibit that we have also shows a
22 congestion at the last funeral that they had out
23 there. Those are four exhibits.

24 I would like to attach those exhibits, if
25 I can.

1 I might point out to you that these access
2 problems, the Planning & Zoning Board used to be the
3 Planning & Zoning Board and now it's the access
4 manual. The access manual doesn't apply to this
5 situation, but certainly if we'd had anybody here
6 representing these people at that time, you would have
7 negotiated that issue at that time and certainly not
8 at this time.

9 We would not have asked for any type of
10 building permit if we had known that we had to close
11 that entrance.

12 There has not been an accident at this
13 intersection we know in the last five years. State
14 Trooper Manley will state that. We'll introduce these
15 records from the Kentucky Highway deputy. This is
16 from the custodian of the records from the highway
17 department concerning the intersection of 142 and 762.
18 We'll introduce that as the next exhibit.

19 It states in the last five years, and
20 that's the only way, we could just get the records for
21 the last five years.

22 Don Lashbrook has lived out there for 57
23 years right in that immediate area and he will tell
24 you that there's never been an accident at that
25 intersection.

1 Clearly I might say that you have the
2 access manual and Ordinance 13.22. The purpose of
3 those manuals and the purpose of that ordinance is for
4 safety. The best evidence that this is a safe
5 intersection is that there hasn't been an accident out
6 there in the last 57 years. We think that's really
7 important.

8 We also have for you a letter from the
9 Masonville Fire Department that I would like to read
10 in the record, please.

11 The head note of this is Masonville Fires
12 Department. "To: OMPC. Date: July 7, 2005. Re:
13 Bethabara Baptist Church Parking Area.

14 "The Masonville Fire Department has
15 reviewed the commission's paperwork on the closure of
16 the entrance of Highway 142 into the existing parking
17 lot at Bethabara Baptist Church. We would like for
18 you to consider our thoughts should this closure occur
19 and the problems it would create for the fire
20 department.

21 "An initial alarm to Bethabara Church
22 would be answered with eight to twelve fire trucks on
23 the first alarm response. At present vehicles are
24 able to move from the road right of way, for safety
25 reasons, at the KY 142 intersection.

1 "Closing the KY 152 entrance would cause
2 the fire department to have to lay 200 additional feet
3 of 5" diameter hose to reach the church's new addition
4 at the rear of the church.

5 "The width of the KY 762 entrance at 23
6 feet does not allow for adequate response for all of
7 the trucks coming in and out during a tanker shuttle
8 operation, which may occur with the size and age of
9 this building. The entrance being considered for
10 closure, at a width of 35 feet, allows for complete
11 fireground operations. A structure of this age,
12 height and style would also require a response of our
13 county ladder truck. The KY 762 entrance is
14 inadequate for this truck's entry."

15 So what they're saying this entrance that
16 we have over here on 762, which I have showed you
17 photographs, would be inadequate.

18 Conclusion, "The entrance on KY 142
19 remaining open would also give us greater safety from
20 local traffic during any fire requiring the use of
21 this hydrant at any structure within the 1000 feet for
22 an insurance rating.

23 The Masonville Fire Department officer's
24 and Executive Board, believes that closing the KY 142
25 entrance would impose a timely reduction in fireground

1 operations of this building, causing a greater loss to
2 the facility. We request that this entrance remain
3 open as a part of our local pre-plan on this
4 structure."

5 In addition, we have a letter from the
6 Daviess County Public Schools.

7 "July 6, 2005. To Whom It May Concern:
8 This letter is regarding the parking lot at Bethabara
9 Baptist Church. I would like for you to consider not
10 removing an entrance to the parking lot.

11 "Daviess County Public Schools buses use
12 their parking lot as a bus turn around. Removing an
13 entrance could make it all but impossible for us to
14 use it for a turn around. I am concerned for the
15 safety of our students. Any time we can use a parking
16 lot for a turn around instead of roads or driveways,
17 it is much safe for both our students and other
18 vehicles.

19 "Thank you for your consideration in this
20 matter. Kenneth Onstott."

21 I will present to you the trustees of the
22 church. Dr. Hershel Morgan. He is pastor of the
23 church. Mr. Wade and Ramona Strohmeyer. They will
24 tell you the lack of communication or the failure of
25 communication as to why or what they understood as far

1 as any of the conditions that were met which include
2 the closing of that entrance. Thank you.

3 MR. ELLIOTT: State your name, please.

4 BROTHER MORGAN: Hershel Morgan.

5 (MR. HERSHEL MORGAN SWORN BY ATTORNEY.)

6 BROTHER MORGAN: Thank you, Ladies and
7 Gentlemen, for allowing us to come and bring this
8 issue to your attention. We need your help in
9 resolving this. I'll tell you why.

10 I've been the pastor of this church for 22
11 years total. Eighteen years consecutively. I've been
12 very familiar with these folks. All this section and
13 this section are good people as you are. I think we
14 can come to an agreement, but we do need your help in
15 doing that.

16 As Mr. Kamuf stated, the church has been
17 in that particular location for 151 years. It was
18 constituted in 1825 there in that community. So it's
19 been there a long time. In fact, Highway 142 was
20 called the Bethabara Road at one time. That's what it
21 listed in the atlas at Daviess County.

22 The congregation after several years of
23 deliberation decided to expand our ministry. By doing
24 so we needed a larger building, multi-purpose
25 building. A building committee was formed, plans

1 drawn up, and building permit was applied for. To
2 encompass that goal as inexpensively as possible we
3 did not hire an architect nor a lawyer to walk us
4 through the steps, at which, you know, hindsight is
5 20/20. Maybe we should have done that.

6 We did know that landscaping must be done.
7 Our understanding that the condition for the permit
8 was for the landscaping and that was what the bond was
9 for. We never at any time in discussions, we had a
10 couple. I know of one meeting that we had with Mr.
11 Mischel. When I say "we" I mean Mr. Manley, who will
12 testify in just a few minutes. He and I met with Mr.
13 Mischel at the very beginning to get some ideas of
14 what do we do because like I say we're lay people.
15 We're walking through this. We didn't have anybody to
16 direct our steps. We did not understand at any time
17 that this was a condition. We did know that, and this
18 was information from Billy Kelly who is an employee of
19 HRG, Hale, Riney & Gilmore, he said in there
20 somewhere, I can't nail this down, he said, you know,
21 they're probably going to want you to close that
22 entrance. That was it. I said to him then in so many
23 words, we'll cross the bridge when we get to it.

24 I reviewed the minutes of that meeting
25 that was referred to a few moments ago of September 5,

1 2002. The words, as Mr. Kamuf read, of Mr.
2 Noffsinger, "add for the record that with the
3 expansion that there's some property parameter
4 landscaping being included to bring the property into
5 compliance with the zoning ordinance." Has it been
6 discussed? Yes, it has.

7 That's where we're coming from because
8 there is no time in any business meeting, any
9 discussion with the church body about an issue of
10 closing that entrance.

11 It's been stated that the Bethabara
12 Baptist Church has agreed to closing the entrance and
13 has now changed its mind or our mine, however you
14 should say that. That's not the case. We did not
15 agree to it. We did not sign anything to that affect.
16 We did not knowing at any time agree to close that
17 entrance. In fact, we never would have agreed to do
18 so.

19 What kind of stewards would we be of God's
20 money and the church's money if we had decided, okay,
21 let's just let it slide and slip it through and then
22 we'll come back and hire a lawyer later. I mean to me
23 that's not good sense. But we have hired a lawyer
24 because where do we go from here?

25 Please understand this. That it's not for

1 our convenience that we have two entrances. What
2 we're talking about, if this one entrance is closed
3 we'll have only one entrance. That is not a good
4 thing. Mr. Manley will speak to that in just a little
5 bit.

6 Today driving through town knowing this
7 meeting was tonight I looked at all the businesses on
8 the corners of Owensboro. This street there's an
9 entrance. This street there's an entrance right at
10 the intersection. I wondered, okay, if a new business
11 comes in wants to get on the corner here and be open
12 24 hours, traffic going up and down the streets all
13 the time, in and out of the parking lot all the time,
14 would the Planning & Zoning Board approve that? I
15 don't have the answer, but I wondered about that.
16 Then I thought about how that there's probably in many
17 cases more traffic going up and down that street in
18 front of that business with the intersection, right at
19 the intersection entrance here, entrance here. More
20 traffic going in and out and up and down the street in
21 a days time than there would be at the intersection of
22 142 and 762 in perhaps a weeks time.

23 So is there one rule for the city and one
24 rule for county? Is it a double standard? I'd like
25 an answer to that question.

1 Safety seems to be the issue here. My
2 role as the pastor of this congregation for nearly a
3 quarter of a century I've looked out for their safety,
4 their best interest individually and as a body.

5 So I wonder if we had one entrance, this
6 entrance right here only, and practically I talked to
7 Mr. Mischel about this, I said, Mr. Mischel, would you
8 give us some ideas of where we could do something
9 different? He said, I'll get back with you. This was
10 last week. He called me and he said, the only thing I
11 can see - - this is the parsonage. This is where I've
12 lived for 22 years total. It's within 100 yards, 100
13 yards from here to here. He said, the only thing I
14 can see is you come down here to this entrance and cut
15 across the front of the church yard.

16 This morning I took a picture this right
17 here. This is the entrance to my driveway right
18 there. Here's the church. Here's the intersection of
19 762 and 142. If we came, if this is our second
20 entrance, you come up here, you cut down trees over
21 100 years old, cutting through the middle of the yard
22 of the church. It doesn't make sense to me. That was
23 the only solution he could come up with. That's why I
24 bring that up. There's just no other practical way.

25 Here's my fear. This building that we

1 worship in and has been in continuous use since 1854,
2 it's an old building, who is to say that on a Sunday
3 morning while we're having worship that the building
4 catches on fire. We have 50 cars in the parking lot,
5 50 cars trying to get out of the parking lot, one
6 entrance, ladder trucks, emergency vehicles trying to
7 get in. One mishap and we're out of business. Where
8 do we go? What do we do? That's where I'm coming
9 from. As I've stated sworn to state the truth, that
10 is the truth. There is no other practical place to
11 put another entrance. Again, I thank you for your
12 time and your patients.

13 CHAIRMAN: Any other people, Mr. Kamuf?

14 MR. KAMUF: Yes.

15 MR. ELLIOTT: state your name, please.

16 MS. STROHMEYER: Ramona Strohmeier.

17 (MRS. RAMONA STROHMEYER SWORN BY
18 ATTORNEY.)

19 MS. STROHMEYER: I'm Ramona Strohmeier and
20 I've been at Bethabara Baptist Church for 15 years and
21 out of those 15 years I have always used the 142
22 entrance. Any time I go to church that's the entrance
23 I use. When I drive the church van, I go out 762, I
24 come in 142. It just makes it easier to see when I
25 have children in the van I can go out 172 and in 142.

1 I say that to say this: I was a trustee
2 at the time that this was signed. I would never have
3 signed this plat if it had been mentioned to me that
4 we were suppose to close the 142 entrance. We use
5 that entrance constantly. We desperately need those
6 five parking spaces. I mean it's not only the
7 entrance. It's the parking spaces we need. When we
8 signed this as trustees, we thought we were getting
9 the deeds together so that everything would be under
10 one deed. We had no idea that we were signing away
11 our 142 entrance. It was never brought before the
12 church. It was never mentioned at any trustee
13 meetings. I was trustee for three years. It was
14 never brought up at any trustee meeting. The plat was
15 brought in. We were told that we needed to sign it so
16 that we could consolidate our deeds, but nothing was
17 every said to the church as a whole at any of our
18 meetings that the 142 entrance needed to be closed,
19 had to be closed. It was never mentioned at any of
20 those meetings and it was never mentioned at any
21 trustee meeting. We had no idea. It was never
22 mentioned to us.

23 If it had been mentioned to the church,
24 I'm sure all of us would have said no. We need that
25 entrance too much to have let it be closed. We would

1 have dealt with it at that time instead of now at this
2 time.

3 It just does not make any sense to close
4 that entrance. We use it constantly. We need those
5 parking spaces. The trustees also, we do not have the
6 power to take away that entrance. We would not have
7 signed that unless it had been voted on. Now, we did
8 vote on consolidating the deeds as a whole church, but
9 we did not vote on closing the 142 entrance. That's
10 why the trustees signed that plat is because that's
11 what we thought we were signing. We had no idea that
12 we were signing away our 142 entrance. We never would
13 have done that. I know we wouldn't. I know I would
14 not have voted that way as a church member because I
15 use that entrance constantly along with a lot of
16 others. I don't know anything else to say other than
17 I did not know, I would not have signed, I would not
18 have voted to sign it away, to close it, and now we're
19 here praying and begging that it will be your will
20 that you don't close it. Thank you.

21 CHAIRMAN: Thank you.

22 Mr. Kamuf, do you have any new evidence to
23 bring at this time or just the same thing over?

24 MR. KAMUF: I do.

25 MR. ELLIOTT: State your name, please.

1 MR. TAYLOR: Glen Taylor.

2 (MR. GLEN TAYLOR SWORN BY ATTORNEY.)

3 MR. TAYLOR: Mr. Chairman, Members of the
4 Board of Adjustment, I'm here to speak as a friend of
5 Bethabara Baptist. My family has had the good fortune
6 to enjoy a relationship with the congregation of
7 Bethabara Baptist for four generations. It's my
8 understanding that in my role as the funeral director
9 that we serve a significant portion of the families
10 within that church.

11 I want to speak to this issue from the
12 standpoint as it addresses access and as it addresses
13 safety. We've all seen the plat. I think we're all
14 familiar with them.

15 Like Mrs. Strohmeier, I've never used the
16 entrance that's been closed because I always had to
17 use it as an exit. I come in off the side road when I
18 bring a funeral procession to that church and come in
19 and we come out at the 142 exit. To do that in
20 reverse would create, in my opinion, a significant
21 inconvenience and a significant degree of unsafety.
22 Visualize, if you will, trying to displace a chain by
23 pushing it. That's a little bit like trying to back
24 up a funeral procession. You just almost can't
25 accomplish it that way.

1 As I told you we've had a relationship
2 over the years. To my knowledge there's never been an
3 issue coming in and out of that church through that
4 entrance. I would encourage you to take into
5 consideration not only my testimony but the testimony
6 that you've heard from everyone here this evening.
7 Make an adjustment that will allow that entrance to
8 continue open. Thank you

9 MR. KAMUF: Next witness is State Troop
10 Manley. He's been a state trooper for 15 years
11 enforcing traffic laws. He's a member of that church
12 and he has several pictures. He will tell you about
13 the turning problem. He made all type of measurements
14 as far as visibility and he'll be the next witness.

15 MR. ELLIOTT: State your name, please.

16 MR. MANLEY: Steve Manley.

17 (MR. STEVE MANLEY SWORN BY ATTORNEY.)

18 MR. MANLEY: Mr. Chairman, Ladies and
19 Gentlemen of the Board, I appreciate this time and
20 opportunity to come and speak to you tonight
21 representing the Church of Bethabara.

22 We had several concerns about the closing
23 of this entrance. What I'm going to speak to you
24 about is my safety concern. So far we've discussed
25 convenience. Misunderstanding about whether or not we

1 were going to be required to close this.

2 First I'd like to tell you a little bit
3 about myself. I was born and raised here in Daviess
4 County. I've been a member of Bethabara Baptist
5 Church for over 40 years. I currently serve on the
6 Board of Deacons as assistant chairman. I also serve
7 on the trustee committee now as the chairman. I was
8 chairman of the building committee during the time of
9 the design of the new construction took place, the
10 addition that we added on to the church that required
11 the Conditional Use Permit that's led us to be here
12 tonight.

13 I'm currently employed by the Kentucky
14 State Police and have been so for 16 years. I'm
15 currently assigned to the Henderson post as a
16 detective. I was a uniform trooper for 15 years.

17 To the point of safety concerns. I've
18 been asked to speak to you tonight about several
19 safety issues that are a concern to the church in
20 relation to closing the entrance to KY 142. We
21 appreciate your interest in our safety and the safety
22 of the motoring public.

23 However, I'm sure you will agree that my
24 interest in safety are the members of this church far
25 outweighs any interest you and the members of Planning

1 & Zoning can possibly have.

2 Attending this church in using the parking
3 lot on a regular basis are my wife and two small
4 children, my mother and father, an uncle and uncle,
5 and my 75 other people who I consider a part of my
6 extended family.

7 I ask you rhetorically who cares more
8 about safety issues at this location, Planning &
9 Zoning Staff or me?

10 A brief history of this intersection, as
11 has been previously stated, has been there for 151
12 years. We only have records at the state police
13 station that would indicate that there's been no
14 traffic accident at that location in the last five
15 years.

16 I've got several points of interest on the
17 safety issues I'd like to discuss. The first is the
18 closing of the entrance. It would complicate and
19 require any emergency response from the fire
20 departments and ambulance service. Closing the
21 entrance would also prohibit safe turn around of three
22 school buses from the Daviess County School System.
23 Closing the entrance would complicate the exiting of
24 the parking lot at peak times. Closing the entrance
25 would require more dangerous turning movements to

1 access KY 142 south. Closing the entrance would
2 require alternate to use the 762 entrance which is a
3 more dangerous of the two entrance.

4 I will touch on each one of those points
5 briefly.

6 CHAIRMAN: Sir, let me ask you: Are you
7 going to bring the list we've heard all these people
8 coming in and out of the safety. Have you got some
9 new expert information to add?

10 MR. MANLEY: Yes, sir, I do.

11 CHAIRMAN: I'm sorry to interrupt you.

12 MR. NOFFSINGER: Mr. Chairman, if I might.
13 I just have one question.

14 Mr. Manley, are you here tonight to serve
15 as an expert witness in this case?

16 MR. MANLEY: I'm not sure what you mean by
17 an expert witness.

18 MR. NOFFSINGER: You're getting ready as a
19 state trooper with your experience to talk about the
20 safety issues. Are you here serving as an expert
21 witness or are you here as a church member stating
22 your personal beliefs in terms of - - that's what I'm
23 trying to get at for the record because we have to
24 build a record one way or the other in terms of
25 safety. We're listening to testimony by a state

1 trooper. That's why I'm asking: Are you serving here
2 tonight as an expert witness?

3 MR. KAMUF: He's here for the purpose of
4 an expert witness and he's also a member of that
5 parish. I tried to qualify him so there wouldn't be
6 any question. He's a member of the church and he's
7 also here to give his opinion as an expert witness.

8 CHAIRMAN: Thank you.

9 MR. MANLEY: The first point I missed
10 earlier, closing of the entrance would complicate any
11 access involving emergency equipment, fire
12 departments, ambulance service. All emergency
13 preplanning is done from the worse case scenario.
14 When this is done, the closing of KY 142 entrance,
15 several response problems are quickly noted.

16 The traffic accident at the KY 762
17 entrance would block any traffic from entering or
18 exiting the parking lot including emergency response
19 such as ambulance, police and fire department. This
20 would require all responding vehicles to remain on
21 roadway complicating the scene and further placing
22 responding personnel at risk.

23 With the age and population of our church,
24 an ambulance response during a typical Sunday morning
25 service is a strong possibility. With the parking lot

1 full of cars and only having one entrance available,
2 the response of an ambulance service would be
3 seriously complicated.

4 Response by the fire department during a
5 fire event at the church, as well as surrounding
6 residents, would receive damage of the result of the
7 closing of KY 142 entrance.

8 I'll refer you to the letter from Mr.
9 Luckett at the Masonville Fire Department.

10 I would also like to note that in that
11 letter he mentioned, and it wasn't touched on very
12 closely, but this also affects any surrounding
13 residents within 1,000 feet of this location. In my
14 mind I believe we count at least 12 residents that
15 would be affected by the time the fire departments
16 would be able to access this parking and the fire plug
17 is right next to this entrance at 142 entrance.

18 Secondly, safe school bus turn around.
19 Three Daviess County School buses uses the church
20 parking lot. Two of the buses have children on board
21 during this action. The transportation supervisor and
22 the Daviess County Public School has been made aware
23 of the possible closing at the entrance and is
24 requesting that it remain open - - would require the
25 buses to use road or driveways to turn around, put in

1 students in other vehicles is a greater risk.

2 I also spoke with one of the bus drivers
3 that uses that turn around. She told me that if that
4 entrance is closed and they have to pull in that
5 parking lot and then back around, that is possible;
6 however, difficult with no cars in the parking lot.
7 However, there are intermittently throughout the week
8 at various times cars parked in that parking lot. She
9 told me that it would make it very difficult to turn
10 the school buses around in that parking lot and
11 backing maneuver is required to use that parking lot.

12 Closing of the entrance would complicate
13 exiting the parking lot at peek times. What I mean by
14 peek times is unlike a business that has a study flow
15 of traffic throughout the day and throughout week, the
16 church has most of its members arriving and leaving at
17 the same time. Only having one exit from the lot
18 would cause traffic to back up. While this would only
19 create a minimal risk during the exit time because of
20 traffic would be in the parking lot, however could
21 cause a substantial safety hazard during entrance
22 times because of traffic backed up would be on the
23 travel portion of the roadway.

24 Next stop is a little closer to home for
25 me. The access to KY 142 south highway from the

1 Kentucky 762 exit point. Many families, including
2 mine, live on KY 142 south of the church. When I
3 leave the lot on KY 142, I'm required to cross the
4 center line only once as it now stands. If I leave
5 the lot onto KY 762, the entrance that you're asking
6 us to leave open, I'm required to cross the center
7 time three times in order to access KY 142. I'm sure
8 you would agree with me that it's certainly much safer
9 to cross the center line once than it is three times
10 clearing oncoming traffic each time you cross the
11 center line.

12 To be sure you understand what I'm talking
13 about here. This is the exit we're looking at here.
14 This is 142 south. As it stands now, to enter KY 142
15 here crossing the center line one time. If I'm
16 required to use this exit and cross the center line
17 once to approximately 200 feet, cross the center line
18 the second time, and cross the center line the third
19 time to enter 142 south going to my residence.

20 Next point of topic I want to discuss is
21 the fact that 762 entrance is without a doubt the most
22 dangerous of the two exits from the parking lot.
23 While the sight distance for all practical purposes is
24 equal in all directions from either exit at Kentucky
25 762 exit, the traffic at that exit is considerably

1 faster.

2 As a uniform trooper for 15 years, I've
3 had an opportunity to operate a radar at this location
4 on several occasions. While the speed limit within
5 any sight distance of either entrance is 35 miles per
6 hour, I have recorded speeds on the radar of traffic
7 on 762 in excess of 60 miles an hour at this location.
8 An average traffic speed on KY 762 at this location is
9 between 40 and 50 mile per hour range. At the
10 entrance of KY 142 north bound traffic is required to
11 stop at the intersection. So we have traffic slowing
12 when I'm entering there as opposed to the faster
13 traffic.

14 While the south bound traffic is required
15 to make a sharp 90 degree turn, which would be here,
16 I'm here, I have good visibility and is going about 15
17 mile an hour as they make that turn. If you go any
18 faster, you'll be sliding sideways. This is much
19 safer because of slower traffic as opposed to this one
20 which has the much faster traffic.

21 The proposed closing of the 142 entrance
22 would require all traffic to exit on to 762 into
23 faster traffic increasing the chance of an accident at
24 the entrance creating an emergency response
25 complications that I referred to earlier.

1 There has been some discussion I believe
2 about possible sight distance problems at this 142
3 entrance. I've got some measurements that I've taken
4 myself at that location as well as at the other.
5 South on KY 142 from here to this direction you have a
6 sight visibility of 385 feet. If however you took I
7 believe it was Mr. Mischel's advice and put a driveway
8 through the middle of our road into the preacher's
9 driveway, this was 350 feet to here and you have 85
10 feet of visibility to pull out into the roadway there
11 instead of 385 feet.

12 The next measurement I took was the north
13 on 142, again, from the 142 entrance. That would be
14 in this direction. Have a visibility of 585 feet.
15 From this direction clearing traffic could be making a
16 left turn on to 142 back in this direction which would
17 be east on KY 762. There's a visibility of 995 feet.

18 At the other location, the 762 entrance,
19 looking east from that location there's a visibility
20 of 775 feet. While looking west in this direction
21 there's a visibility of 360 feet. If you'll note the
22 360 feet is the shortest sight distance available at
23 either entrance and is also the location and has the
24 fastest traffic. I'm about to close here so just bear
25 with me.

1 Special events create a special problem at
2 our church parking lot. Eliminating five more parking
3 places could also complicate that. Special events
4 such as weddings and funerals create a safety problem
5 not seen on a typical Sunday morning. Parking spaces
6 are full. When parking spaces are full, vehicles are
7 parking in the right-of-way of the roadway. More
8 specifically in the grass area west of the KY 762
9 entrance. That would be this area here which is a 30
10 foot right-of-way area of the roadway. This means 762
11 entrance to park here routinely when there's no
12 parking spaces available, which happens quite often.

13 While those are not non-parking spaces and
14 while we do not encourage parking there, it still
15 happens. You'll see in the photographs I believe that
16 you saw earlier. I may refer to those again. During
17 that funeral, that was the situation. There were
18 other parking places. People parked in the grass.

19 When vehicles are parked in that location,
20 and this is probably the most dangerous part about the
21 entire presentation. When people park in this
22 location, they come right out to the edge of the road.
23 If you're trying to access KY 762 from this parking
24 lot right here, your sight distance is now at the
25 bumper of that vehicle that's closest to you. It may

1 be 20, 30 feet. It may be 10 feet. That's as far as
2 you're going to see until you nose your car out in the
3 roadway to see if what's coming, if anybody is coming.
4 I've clocked traffic in that area up to 60 miles an
5 hour.

6 So that's the situation here. With this
7 entrance being closed, that would be a routine
8 situation. It's very hazardous.

9 In conclusion after reviewing the
10 implications of the proposed closing of the parking
11 lot entrance, from a safety standpoint I'm sure you
12 would agree that the safety of the public would be
13 better served with this entrance remaining open.

14 CHAIRMAN: Any board member have any
15 questions at this time?

16 (NO RESPONSE)

17 MR. NOFFSINGER: I have a few statements
18 I'd like to make.

19 I would like to make a statement in terms
20 of how the entrance proposed to be closed came about.

21 To be honest I don't know how it came
22 about because it appears to me looking at the original
23 file that that was not a request of the Planning Staff
24 after the application was submitted. That tells me
25 that the entrance was shown on the site plan submitted

1 with the original application shows proposed to be
2 closed at the time it was submitted.

3 Now, there's no signature on this site
4 plan. There is rarely a signature on the site plan.
5 It's not a requirement. There is a signature on the
6 application page of the submittal. That is by Hershel
7 Morgan. That's the only signature we have on file.

8 We have a drawing that's dated April 2002
9 prepared by Hale, Riney & Gilmore submitted with the
10 application in about August or September that shows
11 the entrance to be closed. Now, that's speculation on
12 my part because I can't find any notes from the
13 Planning Staff that we requested that entrance to be
14 closed. We might have requested it in a communication
15 with the Hale, Riney & Gilmore staff or with a church
16 member. I don't know. I did not participate in those
17 conversations. I've asked Becky Stone. She does not
18 recall any conversation. She's our associate director
19 of planning. So I'm not sure how it came about. I'm
20 not pointing the blame at anyone. What I'm saying is
21 the application was approved by this board as
22 submitted. The only notes we have on the file was a
23 note from Becky Stone dated 8/16/02. "Contacted Jim
24 Riney to add 3 foot high continuous element between
25 vehicular use area and Nancy Cook, adjoiner, Zoned

1 R-1A." It was revised and submitted 8/26/02. How it
2 came about, I don't know. Anyhow it was approved with
3 the access point being closed. There was no debate.
4 No discussion.

5 Based upon the testimony of the expert
6 witness here, Planning Staff, we don't have any expert
7 witness. We don't have any information that we would
8 try to discredit Mr. Manley's presentation.

9 He did indicate - - I have two things that
10 I think are of a concern. That would be, one, the
11 parking of vehicles in that grass plot on 762 in front
12 of the required landscaping that they've agreed to, I
13 believe, and the road right-of-way. That should not
14 be occurring. As the gentleman stated, that's a
15 dangerous situation. It causes sight visibility
16 problems. You should not be parking there. Any
17 approval should be based upon vehicles not parking in
18 that grass plot.

19 Secondly, the closure of the access point
20 on 142 would seem to affect parking. I'm thinking
21 generally with closing of an entrance you gain
22 parking, but in this case you lose parking because
23 there are a few parking spaces on the right-of-way.
24 If this board should approve this Conditional Use
25 Permit with that entrance remaining open, it should be

1 done in such a manner where that entrance is reduced
2 in size so as these vehicles are not parking on a
3 public right-of-way. You can still use the access
4 point. Maybe it's choked down to a 24 foot access to
5 give you two-way movement, but you wouldn't have
6 vehicles that would be parking out in the
7 right-of-way.

8 So based upon the expert testimony, what
9 I've given you here would be the staff's presentation
10 on it. I'm not going to ask Doug Lane to talk because
11 I don't think any more really needs to be said.

12 Was there a communication problem here? I
13 think so. I'm not sure where the break down was.
14 Don't want to point the blame at anyone. How it came
15 about, I don't know. We're here today because the
16 only way to get beyond this is to get this application
17 back before this board and for them to rehear it.
18 We've been asked on the staff level, you know, why we
19 have to go back before the Board of Adjustment? Can't
20 you approve it? No, we can't do it because once the
21 board acts on a Conditional Use Permit, that's it.
22 It's a matter of record in the courthouse. I see
23 several attorneys out here tonight. They go to do
24 title search on a piece of property and if the
25 property is not in compliance with the Conditional Use

1 Permit, it can create a title problem. Then try to
2 address that 15, 20, 30 years down the road. So the
3 appropriate arena is right here tonight. I really
4 think, based upon the expert testimony, I think you
5 presented an argument for retaining that access
6 point. I think it's more of a matter of convenience,
7 but the expert witness has given testimony as to
8 safety factors.

9 If the board is looking for the church to
10 be able to retain this access point, I think you
11 should do it in such a manner as to where, number one,
12 remove the parking on 762 in that grass plot and then
13 you reduce the size of that entrance on KY 142.

14 MR. DYSINGER: I've got a couple of
15 questions. Gary might have kind of answered the first
16 one.

17 To me the primary issue is does the
18 original application indicate closure of the entrance?
19 If I understand what you just said, that's kind of a
20 wash. The picture did, but no verbiage did.

21 MR. NOFFSINGER: Well, the verbiage on the
22 plan, but it's a site plan only. Shows the closure.
23 There is a note on there that certainly the Planning
24 Staff didn't put on there. We don't alter drawings.
25 I don't think anyone is questioning that. The

1 verbiage is on the site plan, but it's not on the
2 application page that the applicant signed. It
3 doesn't show up in the minutes because there's very
4 little said. What we were trying to do is move on.
5 The applicant, "Do you have anything to say? No."
6 You don't want to speak. We're moving forward. It's
7 going to be approved, and I certainly respect that.
8 What I was trying to do is have a little something to
9 say there. Thought, well, their landscaping and
10 everything is flowing along. There was no intent I
11 don't think on anyone's part to hide the closure of
12 that access point. It's a bad situation to be in here
13 tonight. You folks don't want to be here. We
14 certainly understand that. You have a life and you
15 have better things to do and this issue is certainly
16 important to you.

17 MR. DYSINGER: The only other questions I
18 had, the question on safety which is clearly the
19 primary importance to you and us as well. I think
20 Trooper Manley addressed that adequately.

21 The next question I had is probably for
22 Stewart. Does 13-22 apply in this case regarding the
23 50 foot from an intersection? Counsel seems to
24 contend that it doesn't apply in this case.

25 MR. ELLIOTT: Are you referring to the

1 access manual?

2 MR. DYSINGER: Well, the zoning ordinance
3 that I have, Section 13-22, it says, "For
4 non-residential development no point of access to
5 street or to a shared development driveway shall be
6 allowed within 50 feet of the right-of-way line and
7 the intersecting street unless less existing lot
8 frontage exist." Does that apply in this situation
9 and are we even able to, if we were so incline, to
10 change?

11 MR. ELLIOTT: I think, yes, we are able to
12 do that.

13 MR. NOFFSINGER: Let me just say for the
14 record it's an existing access point. I think that's
15 why you're able to do that. If this were a new access
16 point, I don't think we'd be having this conversation.

17 MR. DYSINGER: Got you.

18 Gary, you mentioned something about
19 reducing the size of the entrance exit to come closer
20 to compliance. Is that what you were - -

21 MR. NOFFSINGER: I think primarily they're
22 to reduce the opening width. You have vehicles that
23 are parked actually out in the public right-of-way.
24 Hanging out into it. By reducing the size of that
25 access point, you're reducing it down to maybe a 60

1 foot access down to 24 foot point. So that's going to
2 prohibit the vehicles from parking in a particular
3 area. They'd have to do some landscaping there, but
4 allows them to keep that entrance, but it throttles it
5 down.

6 MR. DYSINGER: Given that I have one final
7 question. Is it reasonable at all to postpone final
8 action on this matter to allow the church members and
9 possibly your office to take a look at it, put
10 together a comprehensive idea of how to fix this to
11 prevent what you're describing, which is clearly not
12 safe as Trooper Manley describes, but at the same time
13 I don't want to make a motion here that ends up
14 getting us in more trouble, or doing something that's
15 not going to work, or violating what we need to get
16 done too? Is that a reasonable idea or no?

17 MR. NOFFSINGER: I think we can achieve
18 the end results regardless of what you do. Certainly
19 reasonable on our part. Another 30 days is not going
20 to affect us. I don't think it's going to affect the
21 church. They're going to continue to have the access
22 for another 30 days. We could take a look at the
23 situation in reducing the access point and submitting
24 another site plan. That's up to the board how they
25 want to handle it.

1 MR. DYSINGER: I don't have any further
2 questions.

3 CHAIRMAN: Mr. Kamuf, going back to the
4 transcript. Who represented, and I don't have any
5 names here?

6 MR. KAMUF: I want to tell you what. I've
7 check that out. I've gone to the engineer's office.
8 I asked them if they had anybody over here that day.
9 Nobody knows who that - - I understand what your
10 question is, but I can't find out who said that.

11 MR. NOFFSINGER: Or won't admit it.

12 CHAIRMAN: We've setting together on this
13 thing for a number of years and have had a lot of
14 questions. I can never think of somebody presenting
15 an applicant or a drawing with questions on it that
16 wasn't agreed beforehand sitting in here in the
17 meeting that if there was questions or wasn't an
18 agreement, there wasn't some argument that night.
19 Have you ever?

20 MR. KAMUF: I have to think.

21 CHAIRMAN: We've been on it for 30 some
22 years.

23 MR. KAMUF: Not that I recall. Yes, it's
24 unusual.

25 CHAIRMAN: When there's an application

1 that comes in and there's no comments or
2 disagreements, usually the office and the applicants
3 have agreed to ahead of time before we listen.

4 MR. KAMUF: Right. The only person that I
5 know that signed any of the documents was Brother
6 Hershel Morgan and he says he wasn't there that night.

7 CHAIRMAN: Trying to remember back as long
8 as I've been on this board, when there's an applicant,
9 if there is a disagreement, something like this,
10 somebody jumps up and we argue or something and the
11 office ask something, some notes or something in the
12 application. There's nothing there. So somebody had
13 to agree ahead of time before we had that meeting to
14 go through that quickly and so easily with no
15 arguments. That's just between me and you.

16 MR. KAMUF: I understand. It looks like
17 to me that the minutes, in other words, they talk
18 about the landscaping in the minutes, but nobody said
19 anything about an entrance.

20 CHAIRMAN: So somebody had to agree about
21 it beforehand.

22 MR. KAMUF: Or didn't agree. In other
23 words, like Brother Morgan he said, I don't know
24 anything about it. I've never heard that. I think he
25 did tell you truthfully that Mischel said at one time,

1 hey, you could, but he never heard any more about
2 closing that entrance until they started making the
3 final inspection. That's the best he told me. I
4 wasn't there that night.

5 CHAIRMAN: Well, I can't remember, but the
6 minutes here I know there wasn't any disagreements
7 between us or them. So something had to be agreed
8 beforehand or we'd been arguing that night about it
9 and it'd be in the transcript. I talk too much.
10 That's enough.

11 MR. DYSINGER: Mr. Kamuf, at what point
12 did your client become aware that they had to close
13 the entrance?

14 MR. KAMUF: They made a field inspection.
15 I think there's a bond of \$9,000 and evidently to get
16 the \$9,000. Evidently to get the \$9,000 back they
17 made an inspection and part of the inspection was they
18 were going to close this entrance. This is when the
19 fire started flying.

20 MR. DYSINGER: I can only imagine.

21 BROTHER MORGAN: May I speak?

22 CHAIRMAN: Come back to the podium please,
23 sir.

24 BROTHER MORGAN: Mr. Chairman, it was not
25 an issue to us. I mean it was not spoken to because

1 we didn't know it was an issue. You don't speak to
2 something or discuss it if it's not an issue. So we
3 never discussed it as a body because we didn't realize
4 it was an issue. As I said, Billy Kelly said they
5 were probably going to want you to close the entrance.
6 Well, probably, maybe, perhaps, but to me that's
7 different than saying from Mr. Noffsinger, or whoever,
8 Mr. Mischel, you have to close the entrance. This is
9 part of the condition.

10 CHAIRMAN: I understand and I respect what
11 you're saying. I'm trying to think as many times as
12 we've argued on applicants they usually have worked
13 out between the office and the applicant beforehand
14 and then they bring it to the adjustment board and
15 there's no problem, we'll pass it, which is what we
16 did her.

17 BROTHER MORGAN: This is where our
18 hindsight tells us we should have had someone like an
19 architect or a lawyer to walk us through it. We did
20 not.

21 CHAIRMAN: Appreciate it.

22 Does anybody have anything else new to add
23 at this time, new information?

24 (NO RESPONSE)

25 CHAIRMAN: Any questions from the board.

1 MR. PEDLEY: Mr. Chairman, I think we've
2 heard enough comments. If Staff has any comments, I'd
3 like to hear those.

4 MR. WARREN: I just have a question of Mr.
5 Noffsinger.

6 Gary, we approved this with a condition
7 that there is no parking in this grassy area out front
8 and they continue to park there out front. What are
9 the consequences?

10 MR. NOFFSINGER: Then they would be in
11 violation of their Conditional Use Permit.

12 MR. WARREN: And?

13 MR. NOFFSINGER: And will be back with
14 this group.

15 MR. WARREN: Okay. This is a funeral.
16 I've never been to this church, but maybe I have a
17 relative who died there and I come there and there's
18 not a parking space and I park there. I don't know
19 what their conditions are. I don't know anything
20 about it. Should they be subject to this again
21 because I'm an idiot?

22 MR. NOFFSINGER: I think you have to take
23 reasonable steps to control it. Perhaps you put a
24 sign out that says "No Parking" in the grass.

25 MR. WARREN: And I'll guarantee you I will

1 ignore it when I'm at a funeral. I understand where
2 they're coming from. I'm from a country church too.
3 That's why I'm asking the question.

4 MR. NOFFSINGER: I think you have a
5 situation there that needs to be addressed. I think
6 the board has addressed it. If it's approved with
7 that condition as best they can, then it's up to the
8 church to take reasonable measures. Now, occasionally
9 there's probably going to be someone park there.

10 MR. WARREN: If you'll notice in this
11 picture, I don't know if you've noticed it, there is a
12 "No Parking" sign right there in front of this.

13 MR. NOFFSINGER: No, I didn't see it.

14 MR. DYSINGER: Is it illegal to park
15 there?

16 MR. WARREN: Sure it is. Mr. Manley can
17 come along and write everyone there a ticket.

18 MR. MANLEY: If I'm not mistaken you're
19 allowed to leave a vehicle on the right-of-way of a
20 state roadway for up to 15 days.

21 CHAIRMAN: Have any other comments?

22 (NO RESPONSE)

23 CHAIRMAN: Any other board member have any
24 other comments?

25 MR. PEDLEY: The only comment I have is we

1 have a lot of other applicants here who would like to
2 be heard. If staff has any comments, I'd like to hear
3 those and I'm ready to make a motion.

4 MR. NOFFSINGER: We're through, sir.

5 CHAIRMAN: Entertain a motion at this
6 time, please.

7 MR. PEDLEY: I make a motion to amend the
8 previously approved Conditional Use Permit to allow
9 the Highway 142 access to remain open based on
10 statements here tonight that it has been used as is
11 for the last 150 years and it has not been a safety
12 problem. If closed it may create a safety problem
13 based on statements by church members and expert
14 Trooper Manley. It is in a rural area where there's
15 very low traffic count. Put a condition on it that
16 the entrance be closed to 24 feet wide in the center
17 of the parking lot, center line of the parking lot,
18 and landscaping be installed and no parking in the
19 grass area on Highway 762.

20 CHAIRMAN: You've heard the motion. Is
21 there a second?

22 MS. MASON: Second

23 CHAIRMAN: Any other questions or comments
24 from the board?

25 (NO RESPONSE)

1 CHAIRMAN: The office have anything else
2 to add?

3 MR. NOFFSINGER: No, sir.

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

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion approved.

8 - - - - (OFF THE RECORD) - - - -

9 ITEM 5

10 4078 KY 142, in an R-1A zone
11 Consider a request for a Conditional Use Permit to
12 place a 16'x80' class 2-manufactured home on the
13 property.

14 Reference: Zoning Ordinance, Article 8,
15 Section 8.2 A10B, 8.4/7

16 Applicant: Lisa Flener, Betty Flener

17 MR. NOFFSINGER: Mr. Chairman, this
18 application has been reviewed by the Planning Staff.
19 It's found to be in order. It is for placement of a
20 60 by 80 manufactured home on the property. They
21 agreed to meet all site conditions including removal
22 of the tires, tongue, wheel and axles, concrete
23 masonry skirting around the perimeter of the property,
24 patio. The exception or the waiver they're asking for
25 in this approval would be a gravel drive as opposed to
a paved drive. That is typical according to the
applicant of other driveways in the area. They are
graveled.

1 CHAIRMAN: Is there any opposition in the
2 office?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Anyone in the audience wishing
5 to speak in opposition on this?

6 (NO RESPONSE)

7 CHAIRMAN: Hearing none the applicant have
8 any comment at this time?

9 (NO RESPONSE)

10 CHAIRMAN: Has the applicant heard the
11 statement that the office made and is agreeable to it?
12 Is the applicant here?

13 (NO RESPONSE)

14 CHAIRMAN: Hearing none does the board
15 have any comments?

16 (NO RESPONSE)

17 CHAIRMAN: If not I'll entertain a motion.

18 MR. NOFFSINGER: Before the motion is
19 made, I will state that what I read into the record
20 about the tire removal, the tire, tongue, wheel and
21 axles, that is a requirement of the zoning ordinance.
22 It's not a requirement that would place it on this
23 particular unit. That's a requirement in the zoning
24 ordinance for manufactured homes in a residential
25 zone.

1 CHAIRMAN: Entertain a motion to dispose
2 of the item.

3 MR. DYSINGER: Move to approve given the
4 finding that it's compatible, the request is
5 compatible with the neighboring home.

6 CHAIRMAN: Is there a second?

7 MR. WARREN: Second.

8 CHAIRMAN: Any other comments or
9 questions?

10 MS. MASON: Do we need to add in about not
11 paving the parking area?

12 MR. NOFFSINGER: It's stated in the
13 application. I would say that's sufficient enough
14 without it.

15 MS. MASON: And the tire, tongue and axle.

16 MR. NOFFSINGER: That's in the ordinance.
17 I stated that to remind the remind the applicant that
18 those are the requirements.

19 CHAIRMAN: Any other comment by the board
20 or the office?

21 (NO RESPONSE)

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

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: Motion carries.

1 Next item, please, sir.

2 ITEM 6

3 200 Stewart Court, in an R-1A zone
4 Consider a request for a Conditional Use Permit in
5 order to fill the river bank with riprap and construct
6 a boat dock that will extend into the Ohio River.
7 Reference: Zoning Ordinance, Article 18,
8 Section 18-6(b)(2)(f)
9 Applicant: Jeff Danhauer

10 MR. NOFFSINGER: Mr. Chairman, this
11 application has been reviewed by the Planning Staff.
12 It's found to be in order. The applicant has a letter
13 of approval from the Corp of Engineers, the Division
14 of Water, as well as the no impact statement from Mr.
15 Joe Schepers, PE, SE, that the ramp and dock will not,
16 the net affect will result in cross section and is
17 less restrictive to flow than what currently exist and
18 that there will be no impact on the conveyance of the
19 Ohio River. With that it's ready for consideration.

20 CHAIRMAN: Any opposition in the office?

21 MR. NOFFSINGER: No, sir.

22 CHAIRMAN: Anyone in the audience
23 objecting to this?

24 (NO RESPONSE)

25 CHAIRMAN: Is the applicant here want to
26 add anything else?

27 (NO RESPONSE)

28 CHAIRMAN: Board members have any

1 questions of the applicant?

2 (NO RESPONSE)

3 CHAIRMAN: Hearing none entertain a motion
4 to dispose of the item?

5 MR. PEDLEY: Make a motion for approval
6 based on it's in compliance with the zoning ordinance
7 and it will not have the adverse affect on the area.

8 CHAIRMAN: Is there a second?

9 MS. DIXON: Second.

10 CHAIRMAN: Motion been made and a second.
11 Any other comments from the board or the office?

12 MR. NOFFSINGER: No, sir.

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

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries.

17 Next item, please, sir.

18 ITEM 7

19 5535 US 60 E, in an I-2, A-U zone
20 Consider a request for a Conditonal Use Permit in
21 order to fill approximately 180 feet of riprap along
22 Yellow Creek

21 Reerence: Zoning Ordinanace, Article 18,
22 Section 18-6(b)(2)(g)

22 Applicant: Paul G. Bucens, W.R. Grace & Co.-Conn.

23 MR. NOFFSINGER: Mr. Chairman, this
24 application has been reviewed by the Planning Staff.
25 It's found to be in order. We do have the approval

1 from the US Corp of Engineer as well as the Division
2 of Water and we have a no impact statement signed by
3 Michael S. May, PE that states the proposed mediation
4 to place riprap cover over less than 200 feet of
5 embankment will not adversely change the channel
6 configuration. I have the no impact and no increase
7 in flow rates or peak flood elevation are anticipated.
8 With that it's ready for approval.

9 CHAIRMAN: Does the applicant have any
10 questions or comments at this time?

11 (NO RESPONSE)

12 CHAIRMAN: Any questions by the board of
13 the applicant?

14 (NO RESPONSE)

15 CHAIRMAN: Hearing none entertain a motion
16 to dispose of the item, please.

17 MR. DYSINGER: Move to approve given the
18 findings that there are no objections. It's
19 compatible with the comprehensive Plan and the
20 appropriate approval from state and federal agencies
21 are present.

22 MR. WARREN: Second.

23 CHAIRMAN: A motion has been made and a
24 second. Any other questions or comments from the
25 board?

1 (NO RESPONSE)

2 CHAIRMAN: Office have anything else?

3 MR. NOFFSINGER: No, sir.

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

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries.

8 Next item, please, sir.

9 ITEM 8

10 3332 Villa Point Drive, Suite 106, in a B-4 zone
11 Consider a request for a Conditional Use Permit in
12 order to operate a health and fitness facility.
13 Reference: Zoning Ordinance, Article 8,
14 Section 8.2 B11, 8.4/13
15 Reference: Applicant: Anytime Fitness, Woodlands
16 Investments, LLC

17 MR. NOFFSINGER: Mr. Chairman, Planning
18 Staff has reviewed this application. It's found to be
19 in order. It is for a fitness facility that will be
20 in a multi-business structure. I do have one question
21 of the Staff in terms of the location of this
22 property.

23 Is this property located in the floodway?

24 Is it subject to FEMA approval?

25 MR. ELLIOTT: State your name, please.

MS. STONE: Becky Stone.

(MS. BECKY STONE SWORN BY ATTORNEY.)

MS. STONE: A portion of that building is

1 located in what is currently the floodway that is
2 under a conditional letter of revision. It has not
3 been finalized yet. There is a condition on the
4 development plan for that whole strip center that that
5 revision be made before a Certificate of Occupancy be
6 issued.

7 MR. NOFFSINGER: Before this Conditional
8 Use Permit is issued, it should be issued with a
9 condition that occupancy not take place until that
10 conditional letter of approval from FEMA I guess is
11 finalized.

12 MS. STONE: Yes.

13 CHAIRMAN: In other words, we approve it
14 subject to approval.

15 MR. NOFFSINGER: Final action by FEMA
16 before any occupancy.

17 CHAIRMAN: Any opposition in the office on
18 this?

19 MR. NOFFSINGER: No, sir.

20 CHAIRMAN: Anyone in the audience wishing
21 to speak in opposition on this?

22 (NO RESPONSE)

23 CHAIRMAN: Does the applicant have any
24 comments they want to add?

25 Come forward. They want to get your name

1 in the record.

2 MR. ELLIOTT: State your name, please.

3 MR. RUTMAN: Ryan Rutman.

4 (MR. RYAN RUTMAN SWORN BY ATTORNEY.)

5 CHAIRMAN: Anyone have any questions of
6 the applicant?

7 MR. NOFFSINGER: Mr. Rutman, you
8 understand the condition to the approval in terms of
9 no occupancy until the final certification is given by
10 FEMA?

11 MR. RUTMAN: Yes, I do. That's out of my
12 hands, correct? I'm just a tenant.

13 MR. NOFFSINGER: Right.

14 CHAIRMAN: It's out of ours too.

15 Entertain a motion to dispose of the item
16 with the condition.

17 MR. DYSINGER: Move to approve given the
18 findings that there are no objections; it's compatible
19 with the comprehensive plan; and with the condition
20 that occupancy does not take place until the approval
21 and final action of FEMA.

22 MS. DIXON: Second.

23 CHAIRMAN: A motion has been made and a
24 second. Any other comments or questions from the
25 board?

1 (NO RESPONSE)

2 CHAIRMAN: Office?

3 MR. NOFFSINGER: No, sir.

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

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries.

8 Next item, please, sir.

9 -----

10 VARIANCES

11 ITEM 9

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

20 MR. NOFFSINGER: Mr. Chairman, the
21 application is now in order and ready for approval if
22 you so desire based upon the variance Staff review by
23 the Planning Staff.

24 CHAIRMAN: No opposition in the office?

25 MR. NOFFSINGER: No, sir.

CHAIRMAN: Is the applicant here?

Do you have anything you would like to add
at this time, please, sir.

1 MR. ELLIOTT: State your name please, sir.

2 MR. POTEAT: My name is Steve Poteat.

3 (MR. STEVE POTEAT SWORN BY ATTORNEY.)

4 MR. POTEAT: Mr. Chairman, I am here on
5 behalf of Mr. Pavlas. We have nothing else to offer
6 at this time unless there is any questions either by
7 the Staff or by the Board.

8 I would point out one thing. One matter
9 that came up last time was closing of an alley. That
10 has been filed and the first reading has taken place
11 on it.

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

14 (NO RESPONSE)

15 CHAIRMAN: Office have anything else?

16 MR. NOFFSINGER: No, sir.

17 Since the last meeting we'll state that
18 the city commission has had the first reading on the
19 alley closing. There was a change in the alley. It
20 did not extend as far as what was originally shown on
21 the drawings so we did have to have an amended
22 drawing, but the Variance request stays the same as
23 originally applied for, but we do have the paperwork
24 in order.

25 CHAIRMAN: No opposition from anyone in

1 the audience?

2 (NO RESPONSE)

3 CHAIRMAN: Entertain a motion to dispose
4 of the item at this time.

5 MS. MASON: I move for granting the
6 Variance given the paperwork is in the process for the
7 closing of the alley and it will not adversely affect
8 the public health, safety or welfare; it will not
9 alter the essential character of the general vicinity;
10 will not cause a hazard or nuisance to the public; and
11 it will not allow an unreasonable circumvention of the
12 requirements of the zoning regulations.

13 MR. DYSINGER: Second.

14 CHAIRMAN: Any other questions or comments
15 from the board?

16 (NO RESPONSE)

17 CHAIRMAN: Office have any other comment?

18 MR. NOFFSINGER: No, sir.

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

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries.

23 Next item, please, sir.

24 ITEM 10

25 2400, 2402 Frederica Street, in a B-4 zone

1 Consider request for a Variance to reduce the
2 roadway buffer from 60 feet to 45 feet in order to
place parking and landscaping for the proposed coffee
shop.

3 Reference: Zoning Ordinance, Article 13,
Section 13.622

4 Applicant: N3 Development LTD, Wholesale
Petroleum, Inc.

5

6 MR. NOFFSINGER: Mr. Chairman, this
7 Variance request is in order. It is to reduce the
8 roadway buffer by approximately 15 feet. The request
9 is consistent with other Variances that have been
10 approved in the area. One of which was the
11 Independence Bank which is located across the street
12 from this property. We have presented findings for
13 the Variance and is recommending approval.

14 CHAIRMAN: Any opposition noted in the
15 office?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: Anyone objecting on the item
18 here this evening?

19 (NO RESPONSE)

20 CHAIRMAN: The applicant have anything you
21 want to add at this time?

22 (NO RESPONSE)

23 MR. NOFFSINGER: Mr. Chairman, before you
24 go any further I would like to add in terms of the
25 consideration for approval of this Variance that

1 access to the property be limited to Frederica Street
2 and Booth Avenue as shown on the site plan submitted
3 with the rezoning.

4 CHAIRMAN: As noted by the applicant.

5 MR. ELLIOTT: State your name, please.

6 MR. BRYANT: Don Bryant.

7 (MR. DON BRYANT SWORN BY ATTORNEY.)

8 MR. BRYANT: Any questions of anyone of
9 the applicant representative?

10 (NO RESPONSE)

11 MR. BRYANT: We're agreeing with the
12 condition of the site plan.

13 MS. MASON: You're agreeing with the exits
14 being on Frederica and Booth Avenue?

15 MR. BRYANT: Yes. We've already
16 submitted a site plan. I think the site plan has been
17 approved. With this Variance we're ready to proceed.

18 CHAIRMAN: Entertain a motion to dispose
19 of the item at this time.

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

1 requirements of the zoning ordinance, and subject to
2 access points on Frederica and Booth as indicated on
3 the site plan.

4 CHAIRMAN: Seconds to the motion?

5 MR. WARREN: Second.

6 CHAIRMAN: Motion and a second. Any other
7 comments or questions from the board?

8 (NO RESPONSE)

9 CHAIRMAN: Office have anything to add to
10 it?

11 MR. NOFFSINGER: No, sir.

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

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries.

16 Next item, please, sir.

17 ITEM 11

18 1919 Keenland Parkway, in an MHP zone
19 Consider request for a Variance to reduce the rear
20 yard building setback from 15 feet to 9 feet in order
21 to place a 70'x14' class 2-manufactured home on the
22 property.

Reference: Zoning Ordinance, Article 11,
Section 11.35

Applicant: Paul J. Pape

23 MR. NOFFSINGER: Mr. Chairman, this
24 application has been reviewed by the Planning Staff.
25 It's found to be in order. We have noted in the

1 application other Variances within this development
2 where we have wavered from the building setback
3 line. It seems that the manufactured housing has
4 gotten longer since this development was originally
5 planned and laid out. We are recommending approval
6 and you do have the findings, the justification for
7 that. It is with the condition approval of all
8 utility agencies to place the manufactured home in an
9 utility easement in accordance with Owensboro
10 Metropolitan Zoning Ordinance, Section 3-5(c) which
11 requires the applicant to get sign-offs from all
12 utility companies as well as OMPC Harmless from the
13 issuance of building permit.

14 CHAIRMAN: Is there any objections in the
15 office?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: Anyone objecting here this
18 evening?

19 (NO RESPONSE)

20 CHAIRMAN: Is the applicant here?

21 State your name, please, sir.

22 MR. PORTER: Claud Porter.

23 (MR. CLAUD PORTER SWORN BY ATTORNEY.)

24 CHAIRMAN: Do you understand all the
25 conditions stated?

1 MR. PORTER: Yes. We've already sent
2 request and then waivers to each of the utility
3 companies, cable, water, electricity and phone.

4 CHAIRMAN: Good deal.

5 Any board member have any questions of the
6 applicant?

7 (NO RESPONSE)

8 CHAIRMAN: Office have any other thing to
9 add?

10 MR. NOFFSINGER: No, sir.

11 CHAIRMAN: Entertain a motion to dispose
12 of the item.

13 MR. DYSINGER: Move to grant the Variance
14 request with the condition of approval of utility
15 agencies to place manufactured home in utility
16 easement in accordance with Owensboro Metropolitan
17 Zoning Ordinance, Section 3-5(c). Given the findings
18 that it will not adversely affect the public health,
19 safety or welfare; will not alter the essential
20 character of the general vicinity; will not cause a
21 hazard or a nuisance to the public; and it will not
22 allow an unreasonable circumvention of the
23 requirements of the zoning regulations.

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

1 MS. DIXON: Second.

2 CHAIRMAN: Any more comments or questions
3 from the board?

4 (NO RESPONSE)

5 CHAIRMAN: Does the office have anything
6 else?

7 MR. NOFFSINGER: No, sir.

8 CHAIRMAN: All in favor raise your right
9 hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries.

12 Next item, please.

13 ITEM 12

14 1929 Triplett Street, in a B-4 zone
15 Consider request for a Variance to reduce the front
16 yard building setback from 60 feet from the street
17 centerline to 46 feet from the street centerline in
18 order to construct a 14'x36' room addition.
Reference: Zoning Ordinance, Article 8,
Section 8.5.16(c)
Applicant: Ravels, Ltd., J Louise Cain & Glendle Cain

19 MR. NOFFSINGER: Mr. Chairman, Planning
20 staff has reviewed this application. The application
21 is found to be in order. Staff has no noted that
22 there are other buildings in the area which do
23 encroach upon the building setback line. For those
24 reasons that you have received in the staff report and
25 the findings that we present, we feel you could make a

1 motion for approval with the condition to remove the
2 paved parking area in front of the building or install
3 the required landscaping in front of the paved parking
4 area in accordance with the Zoning Ordinance.

5 We do have a site plan on file that was
6 prepared by the applicant that shows that parking
7 would be removed and they will install the new
8 landscaping within that area. So they have indicated
9 a willingness to comply with those conditions. With
10 that it's ready for consideration.

11 CHAIRMAN: Any objections in the office?

12 MR. NOFFSINGER: No, sir.

13 CHAIRMAN: Anyone in the audience
14 objecting to it?

15 (NO RESPONSE)

16 CHAIRMAN: Is the applicant here?

17 MR. CAIN: Yes.

18 CHAIRMAN: You understand the conditions
19 and everything? Come up and state your name. That
20 you accept it and we'll go from there.

21 MR. CAIN: Glendle Wayne Cain.

22 (MR. GLENDLE CAIN SWORN BY ATTORNEY.)

23 CHAIRMAN: Do you understand the
24 conditions and agree to them all?

25 MR. CAIN: Yes, we do.

1 CHAIRMAN: Any board members have any
2 comments of the applicant?

3 (NO RESPONSE)

4 CHAIRMAN: Office, anything else?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: Entertain a motion to dispose
7 of the item, please.

8 MS. DIXON: Move to approve because
9 granting this Variance will not adversely affect the
10 public health, safety or welfare; it will not alter
11 the essential character of the general vicinity; it
12 will not cause a hazard or a nuisance to the public;
13 and will not allow an unreasonable circumvention of
14 the requirements of the zoning regulations. Subject
15 to the condition to remove the paved parking area in
16 front of the building or install the required
17 landscaping in front of the paved parking area in
18 accordance with the Zoning Ordinance.

19 CHAIRMAN: Is there a second?

20 MS. MASON: Second.

21 CHAIRMAN: You understand the motion?

22 MR. CAIN: Yes, sir.

23 CHAIRMAN: Any questions from the board
24 members?

25 (NO RESPONSE)

1 CHAIRMAN: Anything else from the office?

2 MR. NOFFSINGER: No, sir.

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

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries.

7 Next item, please, sir.

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9 ADMINISTRATIVE APPEAL

10 ITEM 13

11 8624 KY 81, in an R-1A, A-R zone
12 Consider request for an Administrative Review to
13 change from a non-conforming use as a grocery store to
14 another non-conforming store to be used for massage
15 therapy, holistic workshops and retail sales of
16 produce and arts and crafts
17 Reference: Zoning Ordinance, Article 4, Section 4.53
18 Applicant: Barbara J. Ervin

19 MR. NOFFSINGER: Mr. Chairman, this comes
20 to you as a change in one use to another. It has been
21 evidenced in the file that the property has is zoned
22 residential and agricultural. It has been used for
23 non-residential activities predating adoption of the
24 zoning ordinance in April of 1977. That
25 non-residential use has not been abandoned for a
period of 18 months. I think one statement in the
record or made a part of the application states that,
"We Durwood and Mary Rafferty say on this date that we

1 sold produce from 1970 to 1999, up to the sell of the
2 property known as Rafferty grocery store." That was
3 signed by Mary and Durwood Rafferty.

4 There is other evidence in the file that
5 talks about this property being used for
6 non-residential activities.

7 So with that the Staff would recommend
8 that you grant the change in use. After tonight we
9 might all be able to use a good massage, some healing.
10 I would recommend you allow them to move forward with
11 their plans on the property.

12 CHAIRMAN: No opposition in the office?

13 MR. NOFFSINGER: No, sir.

14 CHAIRMAN: Any opposition here this
15 evening?

16 (NO RESPONSE)

17 CHAIRMAN: The applicant understand what
18 we're going to try to do and does the board have any
19 questions of applicant?

20 (NO RESPONSE)

21 CHAIRMAN: Does the Staff have any other
22 comments?

23 MR. NOFFSINGER: No, sir.

24 CHAIRMAN: Entertain a motion to dispose
25 of the item at this time.

1 MS. DIXON: Move to grant the change and
2 use based upon the information supplied by Mr.
3 Noffsinger and in the application.

4 CHAIRMAN: Is there a second?

5 MR. DYSINGER: Second.

6 CHAIRMAN: Any other questions or comments
7 from the board or the office?

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 Entertain one final motion.

14 MR. WARREN: Motion to adjourn.

15 MS. MASON: Second.

16 CHAIRMAN: All in favor raise your right
17 hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 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 11 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this
17 the 31st day of July, 2005.

18

19

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

20

21

22 COMMISSION EXPIRES:
DECEMBER 19, 2006

23

24 COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

25