

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 DECEMBER 6, 2007

3 The Owensboro Metropolitan Planning Commission  
4 met in regular session at 5:30 p.m. on Thursday,  
5 December 6, 2007, at City Hall, Commission Chambers,  
6 Owensboro, Kentucky, and the proceedings were as  
7 follows:

8 MEMBERS PRESENT: Ward Pedley, Vice Chairman  
9 Gary Noffsinger, Director  
10 Marty Warren  
11 Sean Dysinger  
12 Ruth Ann Mason  
13 Judy Dixon  
14 Clay Taylor  
15 Madison Silvert, Attorney

16 \* \* \* \* \*

17 CHAIRMAN: Call the Owensboro Metropolitan  
18 Board of Adjustment December 6th meeting to order.  
19 Would like to welcome everyone. We'll begin our  
20 meeting with the prayer and pledge of allegiance to  
21 the flag. Will you stand please.

22 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

23 CHAIRMAN: Again, I would like to welcome  
24 everyone to our meeting. Anyone wishing to speak on  
25 any item may do so. We ask that you come to one of  
the podiums. State your name and be sworn in. Direct  
your comments and questions to the board and the chair  
and we'll get your answer.

1           First item on the agenda is to consider the  
2 minutes of the October 2007 meeting. They have been  
3 placed on file in the planning office. Are there any  
4 additions or corrections?

5           MR. NOFFSINGER: No, sir.

6           CHAIRMAN: If not Chair is ready for a motion.

7           MS. DIXON: Move to approve.

8           MR. DYSINGER: Second.

9           CHAIRMAN: We have a motion and a second. All  
10 in favor raise your right hand.

11           (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12           CHAIRMAN: Motion carries.

13           Next item on the agenda.

14 -----

15   CONDITIONAL USE PERMITS

16           ITEM 2

17           2401 Grimes Avenue, zoned I-2  
18           Consider request for a Conditional Use Permit to  
19           operate a metals and plastics recycling business  
20           including automobile crushing and storage  
21           Reference: Zoning Ordinance, Article 8,  
22           Section 8.2G4/27  
23           Applicant: Dennis A. Knott Testamentary Trust, et al.

21           MR. SILVERT: State your name please.

22           MR. HOWARD: Brian Howard.

23           (MR. BRIAN HOWARD SWORN BY ATTORNEY.)

24           ZONING HISTORY

25           The subject property was rezoned from I-1

1 Light Industrial to I-2 Heavy Industrial at the  
2 November 8, 2007, Planning Commission meeting. The  
3 proposed crushing and storage of automobiles on the  
4 subject property requires a Conditional Use Permit  
5 within an I-2 Heavy Industrial zone. Conditions were  
6 placed on the rezoning that are applicable to the  
7 Conditional Use Permit application process. The  
8 conditions include bringing access to the site more  
9 into compliance, installing vehicular use area  
10 screening as required by ordinance, installing a  
11 minimum eight foot fence to screen the wrecking yard  
12 with one tree every 40 feet, submission of a  
13 consolidation plat, and that crushed automobiles shall  
14 not be stacked higher than the fence within the  
15 wrecking yard.

#### 16 LAND USES IN SURROUNDING AREA

17 The subject property and all surrounding  
18 property is zoned I-1 Light Industrial. All  
19 surrounding land uses are industrial in nature  
20 including warehouses, machine shops and a rail yard.

#### 21 ZONING ORDINANCE REQUIREMENTS

22 1. Parking is calculated at one space per two  
23 employees on the maximum shift or a minimum of five,  
24 whichever is greater.

25 2. The entire storage area around the

1 wrecking yard must be screened with a 10 foot easement  
2 with an eight foot continuous wall or fence with one  
3 tree every 40 feet.

4 SUGGESTED CONDITIONS

5 1. The existing access on the west side of  
6 the property should remain as is in order to provide  
7 sufficient room for truck maneuvering. The 120 foot  
8 plus opening on the east side of the property should  
9 be narrowed to a 50 foot maximum width as far east  
10 along the property frontage as possible. Curb and  
11 gutter along with a grass strip shall be restored  
12 along the remainder of the frontage.

13 2. Vehicles stacked within the storage yard  
14 shall not exceed the height of the fence.

15 3. A consolidation plat shall be submitted to  
16 the OMPC to consolidate the subject property.

17 4. A pest control plan should be implemented  
18 annually.

19 MR. HOWARD: We would like to enter the Staff  
20 Report into the record.

21 CHAIRMAN: Anyone here representing the  
22 applicant?

23 APPLICANT REP: Yes.

24 CHAIRMAN: Anyone here would like to speak in  
25 opposition on this item?

1 (NO RESPONSE)

2 CHAIRMAN: Does the applicant have anything  
3 they would like to present to the board?

4 APPLICANT REP: No.

5 CHAIRMAN: Any board members have any  
6 questions?

7 (NO RESPONSE)

8 CHAIRMAN: If not chair is ready for a motion.

9 MR. SILVERT: Mr. Chairman, I just wanted to  
10 clarify one item. I believe one of the suggested  
11 conditions as stated, I had a question for Mr. Howard.

12 Is it that a pest control plan must be  
13 implemented annually or should be implemented  
14 annually?

15 MR. HOWARD: Must. I'm sorry, yes, must be  
16 implemented annually.

17 MR. SILVERT: Thank you.

18 CHAIRMAN: Any other questions?

19 (NO RESPONSE)

20 CHAIRMAN: Chair is ready for a motion.

21 MS. MASON: Mr. Chairman, I move for approval.  
22 My Findings of Facts are since there is no opposition,  
23 it's compatible with the area. All the areas around  
24 are industrial in nature, including the warehouses,  
25 machine shops, and a rail yard. The suggested

1 conditions are what Mr. Howard stated earlier.

2 CHAIRMAN: Do we have a second?

3 MS. DIXON: Second.

4 CHAIRMAN: Any question on the motion?

5 (NO RESPONSE)

6 CHAIRMAN: All in favor raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 Next item.

10 ITEM 3

11 533 Triplett Street, zoned B-4, I-1  
12 Consider request for a Conditional Use Permit to  
13 operate a family fun center including laser tag,  
14 skeeball and video games.  
15 Reference: Zoning Ordinance, Article 8,  
16 Section 8.2B11/13  
17 Applicant: Jason Ebelhar and Kenneth & Johanna  
18 Boarman

16 ZONING HISTORY

17 OMPC records indicate that the subject  
18 property has historically been zoned B-4 General  
19 Business and I-1 Light Industrial. No rezonings or  
20 plans of any kind are on file in the office.

21 The applicant proposes to use a portion of an  
22 existing building to operate a laser tag business  
23 which is considered an indoor recreational activity  
24 and requires a Conditional Use Permit. Other uses on  
25 the subject property at this time include a tax office

1 and warehouse space. A final development plan has  
2 been submitted for the subject property for the  
3 December 13, 2007, Owensboro Metropolitan Planning  
4 Commission meeting. The applicant has also indicated  
5 that an arcade could be opened in the future.

6 The site is currently not in compliance with  
7 vehicular use area screening requirements and should  
8 be brought into compliance as part of the Conditional  
9 Use Permit process. A three foot element and one tree  
10 every 40 linear feet shall be installed where the  
11 vehicular use area abuts road right-of-way. There is  
12 an existing drive to Triplett Street that serves as  
13 the principal access to the site. No additional  
14 access to Triplett Street shall be permitted.

#### 15 LAND USES IN SURROUNDING AREA

16 The subject property is surrounded by a  
17 mixture of B-4 General Business, I-1 Light Industrial,  
18 and R-4DT Inner-City Residential zoning. Land uses  
19 include automobile sales, a tire and auto repair  
20 business, residences and vacant tracts.

#### 21 ZONING ORDINANCE REQUIREMENTS

22 1. One parking space per employee on the  
23 maximum shift, one per two participants and one per  
24 three spectators.

25 2. One parking space per 400 square feet for

1 tax office.

2 3. One space per 600 square feet for the  
3 warehouse space.

4 4. One space per 100 square feet for the  
5 future arcade use.

6 5. Vehicle use area screening shall be  
7 installed in compliance with zoning ordinance  
8 requirements.

9 SUGGESTED CONDITIONS

10 1. Access to Triplett Street shall be limited  
11 to the existing access point only. No additional  
12 access to Triplett Street shall be permitted.

13 2. Approval of a final development plan.

14 3. Installation of required vehicular use  
15 area screening.

16 MR. HOWARD: We would like to enter the Staff  
17 Report into the record.

18 CHAIRMAN: Anyone here representing the  
19 applicant?

20 APPLICANT REP: Yes, sir.

21 CHAIRMAN: Is there anyone here like to speak  
22 in opposition of this item?

23 (NO RESPONSE)

24 CHAIRMAN: Does the applicant have anything  
25 they would like to address to the board?



1 APPLICANT REP: No, sir.

2 CHAIRMAN: Any board members have any  
3 questions?

4 (NO RESPONSE)

5 CHAIRMAN: Chair is ready for a motion.

6 MR. WARREN: Motion to approve this  
7 conditional use permit with the findings that there is  
8 no opposition and that the property is surrounded by a  
9 mixture of B-4 general business and light industrial,  
10 and that all zoning requirements are met. That a  
11 final development plan is submitted and approved by  
12 the Planning Commission with the conditions that were  
13 stated by Mr. Howard.

14 MR. DYSINGER: Second.

15 CHAIRMAN: We have a motion and a second. Any  
16 question on the motion?

17 (NO RESPONSE)

18 CHAIRMAN: All in favor raise your right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

21 Next item, please.

22 ITEM 4

23 635, 815 Triplett Street; 715, 719, 721, 801 East  
24 Ninth Street; 800, 804, 805, 810, 814 East Seventh  
25 Street; 616, 618, 620, 708-728 Center Street, zoned  
B-4, R-4DT, P-1  
Consider request for a Conditional Use Permit to

1 operate a facility that provides long-term and  
2 rehabilitation services for people with disabilities,  
3 construct a sensory park, expand parking facilities  
4 and construction of additional residential facilities  
5 for Wendell Foster residents.  
6 Reference: Zoning Ordinance, Article 8, Section 8.2C1  
7 Applicant: Wendell Foster's Campus for Developmental  
8 Disabilities, Inc.

#### 9 ZONING HISTORY

10 Several Conditional Use Permits have been  
11 approved for different sections of the Wendell  
12 Foster's campus in the past. The most recent  
13 Conditional Use Permit approval was in May 2003. This  
14 proposal, in conjunction with a rezoning request that  
15 will be heard at the Owensboro Metropolitan Planning  
16 Commission meeting next week, a consolidation plat,  
17 and final development plan, will unify the campus  
18 under one zoning and one conditional use permit  
19 approval.

#### 20 LAND USES IN SURROUNDING AREA

21 The property to the north and east is zoned  
22 R-4DT with vacant lots, residences, storage, a car  
23 lot, a church and Wendell Foster assisted living  
24 houses. The property to south is zoned P-1 and is  
25 parking for the Owensboro Medical Health System  
26 hospital. The property to the west is zoned B-4 and  
27 R-4DT with car lots, residences and businesses.

#### 28 ZONING ORDINANCE REQUIREMENTS

1           1. Two parking spaces plus one per 10 persons  
2 under care.

3 SUGGESTED CONDITIONS

4           1. Approval of a consolidation plat for the  
5 entire property.

6           2. Approval of a final development plan.

7           MR. HOWARD: We would like to enter the Staff  
8 Report into the record.

9           CHAIRMAN: Anyone here representing the  
10 applicant?

11          MR. KAMUF: Yes.

12          CHAIRMAN: Let's see if we have any  
13 opposition, Mr. Kamuf.

14          MR. KAMUF: I'd like to point out that we have  
15 written letters, Mr. Chairman, to all of the 26  
16 property owners.

17          MR. SILVERT: Excuse me, Mr. Kamuf. Raise  
18 your right hand.

19          (MR. CHARLES KAMUF SWORN BY ATTORNEY.)

20          MR. KAMUF: We have sent letters to all 26  
21 property owners advising them as to what we're doing  
22 and we only got one reply and they want to sell the  
23 property to us. That's pretty well where we are.

24                 We have an engineer and also the CEO of the  
25 Wendell Foster Center here to testify.

1 CHAIRMAN: Let me see if we have any  
2 opposition. Thank you.

3 Anyone here like to speak in opposition on  
4 this item?

5 (NO RESPONSE)

6 CHAIRMAN: Do you have any further comments,  
7 Mr. Kamuf?

8 MR. KAMUF: Not unless the chair has.

9 CHAIRMAN: Any board members have any  
10 questions of Mr. Kamuf?

11 (NO RESPONSE)

12 CHAIRMAN: Chair is ready for a motion.

13 MS. DIXON: Mr. Chairman, I move to grant the  
14 conditional use permit based upon findings of fact  
15 that several conditional use permits have been  
16 approved for several sections of the Wendell Foster  
17 Campus in the past. This serves as a logical  
18 expansion for their facility. It is surrounded by  
19 mixed uses and there is no opposition. Subject to  
20 them meeting the zoning ordinance requirement and  
21 subject to the two conditions read by Mr. Howard.

22 CHAIRMAN: Do we have a second?

23 MR. DYSINGER: Second.

24 CHAIRMAN: We have a motion and a second. Any  
25 question or comments on the motion?

1 (NO RESPONSE)

2 CHAIRMAN: All in favor raise your right hand.

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Motion carries unanimously.

5 Next item, please.

6 ITEM 5

7 2767 Veach Road, zoned B-4

8 Consider request to amend a Conditional Use Permit to  
9 provide daycare for a maximum of 110 children from  
10 6:00 a.m. to midnight.

11 Reference: Zoning Ordinance, Article 8, Section 8.2B3

12 Applicant: Antoinette Brown and Lee Kassinger

10

11 ZONING HISTORY

12 Three Conditional Use Permits have been  
13 approved for the subject property in the past. The  
14 most recent was approved in September 2007, for an  
15 additional 350 square feet to provide care for a  
16 maximum of 11 infants. The plans for the additional  
17 square footage have changed and will not be used  
18 exclusively for infants. Also, the original daycare  
19 has been approved by the state for 99 children which  
20 is an increase of three from the amount previously  
21 approved. This application is for the existing  
22 building which can accommodate 99 children and the  
23 additional 350 square feet that was approved at the  
24 September 2007 meeting for a total of 110 children.

25 LAND USES IN SURROUNDING AREA

1           The property to the north, east and south is  
2 all zoned B-4 General Business. The property to the  
3 west is partially zoned B-4 General Business and  
4 partially zoned R-3MF Multi-Family Residential. Land  
5 uses in the vicinity include a shopping center, retail  
6 stores, pet grooming facility, medical laboratory and  
7 residential.

8           ZONING ORDINANCE REQUIREMENTS

9           1. Two parking spaces plus one per 10  
10 children for the existing and proposed day cares.

11           2. One parking space per 300 square feet for  
12 the remaining commercial space on the property.

13           MR. HOWARD: We would like to enter the Staff  
14 Report into the record.

15           CHAIRMAN: Anyone here representing the  
16 applicant?

17           (NO RESPONSE)

18           CHAIRMAN: Anyone here like to speak in  
19 opposition of this item?

20           (NO RESPONSE)

21           CHAIRMAN: Board members have any questions?

22           (NO RESPONSE)

23           CHAIRMAN: Chair is ready for a motion.

24           MR. TAYLOR: Mr. Chairman, I vote to approve  
25 the conditional use permit based upon a findings of

1 fact that there are no opposition of this. There have  
2 been previous conditional use permits approved by this  
3 board as well as the zoning of this operation be  
4 coherent with the zoning in the area.

5 MS. DIXON: Second.

6 CHAIRMAN: We have a motion and a second. Any  
7 question on the motion?

8 (NO RESPONSE)

9 CHAIRMAN: All in favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 Next item, please.

13 ITEM 6

14 222-232 Walnut Street, zoned B-2  
15 Consider request for a Conditonal Use Permit to  
16 provide Lighthouse Recovery Program sponsored  
17 residential transitional housing in three existing  
18 buildings with a maximum of eight beds per building  
19 for a total of 24 occupants.

Reference: Zoning Ordinance, Article 8,  
Section 8.2A7/6a

18 Applicant: Crandall Properties, LLC and Kenneth L.  
19 Crandall

19

20 ZONING HISTORY

21 OMPC records indicate that the subject  
22 property has historically been zoned B-2 Central  
23 Business. No rezonings or plans of any kind are on  
24 file in the office.

25 There are four existing buildings on the

1 subject property. Over the years they have been  
2 occupied by a variety of uses including both  
3 residential and commercial. With this application,  
4 three of the four buildings are proposed to serve as  
5 residential transitional housing as part of the  
6 Lighthouse Recovery Program. Each of the three  
7 buildings will have a maximum of eight beds for a  
8 maximum of 24 occupants. Based on zoning ordinance  
9 requirements for parking, ten total parking spaces are  
10 required and the vehicle use area shall be paved. The  
11 site plan submitted with the Conditional Use Permit  
12 shows ten parking spaces which are to be paved.

#### 13 LAND USES IN SURROUNDING AREA

14 The property to the north, west and south is  
15 all zoned B-2 Central Business. The property to the  
16 east is partially zoned B-2 Central Business and  
17 partially zoned I-2 Heavy Industrial. Land uses in  
18 the vicinity include automobile sales and repair,  
19 vacant tracts, residential, and retail sales.

#### 20 ZONING ORDINANCE REQUIREMENTS

21 The following criteria apply to a conditional  
22 use permit for residential transitional housing;

- 23 1. Any person residing in the referenced  
24 housing situation shall be subject to all state,  
25 federal or local jurisdiction laws.



1           2. The facility shall be located with 1/2  
2 mile of public transit.

3           3. The facility shall not be located within  
4 an identified historic district recognized by the  
5 legislative body.

6           4. The facility shall employ an on-site  
7 administrator, who is directly responsible for the  
8 supervision of the residents and the implementation of  
9 house rules.

10          5. The applicant shall provide the Board of  
11 Adjustment, the Zoning Administrator, the public and  
12 the residents a phone number and address of the  
13 responsible person or agency managing the facility.

14          6. A fire exit plan shall be submitted with  
15 the conditional use application showing the layout of  
16 the premises, escape routes, location, operation of  
17 each means of egress, location of portable fire  
18 extinguishers, and location of the electric main. The  
19 fire exit plan shall be prominently displayed within a  
20 common area within the facility.

21          7. Hallways, stairs and other means of egress  
22 shall be kept clear of obstructions.

23          8. The facility shall comply with all  
24 applicable building and electrical codes.

25          9. A list of house rules shall be submitted

1 to the Board of Adjustment with the application for a  
2 conditional use permit and shall be prominently  
3 displayed in a common area within the facility. The  
4 rules should be adequate to address the following:  
5 Noise control, disorderly behavior, proper garbage  
6 disposal, and cleanliness of sleeping areas and common  
7 areas.

8 10. The Owensboro Metropolitan Board of  
9 Adjustment may impose additional conditions as may be  
10 necessary for the property integration of the use into  
11 the planning area.

12 The applicant has submitted commitments with  
13 the Conditional Use Permit application pertaining to  
14 the referenced zoning ordinance requirements. The  
15 commitments fully address all of the requirements.

16 MR. HOWARD: We would like to enter the Staff  
17 Report into the record.

18 CHAIRMAN: Anyone here representing the  
19 applicant?

20 APPLICANT REP: Yes.

21 CHAIRMAN: Anyone here like to speak in  
22 opposition of this item?

23 (NO RESPONSE)

24 CHAIRMAN: Does the applicant have anything  
25 they would like to present?

1 APPLICANT REP: No, sir.

2 CHAIRMAN: Any board members have any  
3 questions?

4 (NO RESPONSE)

5 CHAIRMAN: Chair is ready for a motion.

6 MR. TAYLOR: Mr. Chairman, I vote to approve  
7 the conditional use permit based upon the findings of  
8 fact that there is no opposition and that they have  
9 submitted commitments with the application pertaining  
10 to the zoning ordinance requirements and the  
11 commitments fully address all the requirements to make  
12 them be in compliance with this conditional use  
13 permit.

14 CHAIRMAN: Is there a second?

15 MR. DYSINGER: Second.

16 CHAIRMAN: We have a motion and a second. Any  
17 question on the motion?

18 (NO RESPONSE)

19 CHAIRMAN: All in favor raise your right hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries unanimously.

22 Next item, please.

23 ITEM 7

24 9310 KY 1389, zoned A-R  
25 Consider request for a Conditional Use Permit to  
construct a 40' x 60' fellowship hall at an existing

1 church facility.  
Reference: Zoning Ordinance, Article 8, Section 8.2B4  
2 Applicant: Bethlehem Church

3 ZONING HISTORY

4 According to OMPC records, no previous  
5 conditional use permits have been approved for the  
6 subject property and it appears as though it has  
7 always been zoned agricultural. Churches and  
8 accessory uses such as a fellowship hall require a  
9 conditional use permit in an agricultural zone.

10 LAND USES IN SURROUNDING AREA

11 The subject property is located in a rural  
12 area with large agricultural and wooden tracts and  
13 scattered rural large-lot residential uses. All  
14 adjoining property is zoned A-R Rural Agriculture.

15 ZONING ORDINANCE REQUIREMENTS

16 1. One parking space per five seats in the  
17 main auditorium.

18 2. Vehicular use area screening.

19 MR. HOWARD: We would like to enter the Staff  
20 Report into the record.

21 CHAIRMAN: Anyone here representing the  
22 applicant?

23 APPLICANT REP: Yes.

24 CHAIRMAN: Anyone here that would like to  
25 speak in opposition of this item?

1 (NO RESPONSE)

2 CHAIRMAN: Does the applicant have anything  
3 you would like to state?

4 APPLICANT REP: No.

5 CHAIRMAN: Any board member have any  
6 questions?

7 (NO RESPONSE)

8 CHAIRMAN: Chair is ready for a motion.

9 MS. MASON: Mr. Chairman, I move for approval.  
10 Findings of fact is since there's no opposition, it's  
11 zoned agricultural which allows churches and  
12 fellowship halls in that use, and the land use, also  
13 the area is compatible for an addition to an existing  
14 church on this lot. The church has been located on  
15 this lot for a long time.

16 CHAIRMAN: Is there a second?

17 MR. DYSINGER: Second.

18 CHAIRMAN: We have a motion and a second. Any  
19 question on the motion?

20 (NO RESPONSE)

21 CHAIRMAN: All in favor raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item, please.

25

1       ITEM 8

2       512 West Seventh Street, zoned R-4DT  
3       Consider request for a Conditional Use Permit to  
4       operate a birthright service for pregnancy counseling  
5       and to provide housing for up to four women that are  
6       pregnant.

7       Reference: Zoning Ordinance, Article 8,  
8       Section 8.2A7/6a and Section 8.2B10/12  
9       Applicant: Roman Catholic Diocese of Owensboro, KY

10       ZONING HISTORY

11               OMPC records indicate that the subject  
12       property has historically been zoned R-4DT Inner-City  
13       Residential. No rezonings or plans of any kind are on  
14       file in the office.

15               The subject property is an existing  
16       residential structure that the applicant would like to  
17       convert to a birthright service which includes  
18       counseling and housing for a maximum of four pregnant  
19       women. The use of the property as a dormitory for the  
20       pregnant women and the associated philanthropic  
21       services provided through birthright, both require a  
22       Conditional Use Permit within an R-4DT Inner-City  
23       Residential zone. Based on the site plan submitted  
24       with the application, it appears as though there are  
25       no planned alterations to the exterior of the  
26       structure. Parking is proposed to the rear of the  
27       building with the majority of the parking located  
28       across the alley. All parking area are required to be

1 paved. The applicant has also submitted a final  
2 development plan that will be heard by the Owensboro  
3 Metropolitan Planning Commission at the December 13,  
4 2007 meeting if the Conditional Use Permit is  
5 approved.

6 LAND USES IN SURROUNDING AREA

7 All adjoining properties are zoned R-4DT  
8 Inner-City Residential and are either used for church  
9 related activities or as residences.

10 ZONING ORDINANCE REQUIREMENTS

11 The following criteria apply to a conditional  
12 use permit for residential transitional housing;

13 1. Any person residing in the referenced  
14 housing situation shall be subject to all state,  
15 federal or local jurisdiction laws.

16 2. The facility shall be located with 1/2  
17 mile of public transit.

18 3. The facility shall not be located within  
19 an identified historic district recognized by the  
20 legislative body.

21 4. The facility shall employ an on-site  
22 administrator, who is directly responsible for the  
23 supervision of the residents and the implementation of  
24 house rules.

25 5. The applicant shall provide the Board of

1 Adjustment, the Zoning Administrator, the public and  
2 the residents a phone number and address of the  
3 responsible person or agency managing the facility.

4 6. A fire exit plan shall be submitted with  
5 the conditional use application showing the layout of  
6 the premises, escape routes, location, operation of  
7 each means of egress, location of portable fire  
8 extinguishers, and location of the electric main. The  
9 fire exit plan shall be prominently displayed within a  
10 common area within the facility.

11 7. Hallways, stairs and other means of egress  
12 shall be kept clear of obstructions.

13 8. The facility shall comply with all  
14 applicable building and electrical codes.

15 9. A list of house rules shall be submitted  
16 to the Board of Adjustment with the application for a  
17 conditional use permit and shall be prominently  
18 displayed in a common area within the facility. The  
19 rules should be adequate to address the following:  
20 Noise control, disorderly behavior, proper garbage  
21 disposal, and cleanliness of sleeping areas and common  
22 areas.

23 10. The Owensboro Metropolitan Board of  
24 Adjustment may impose additional conditions as may be  
25 necessary for the property integration of the use into



1 the planning area.

2 The applicant has submitted commitments with  
3 the Conditional Use Permit application pertaining to  
4 the referenced zoning ordinance requirements. The  
5 commitments fully address all of the requirements.

6 SUGGESTED CONDITIONS

7 1. Approval of a final development plan by  
8 the OMPC.

9 MR. HOWARD: I would also like to add that two  
10 letters were submitted to the Planning Office. Those  
11 have been entered into the record and are in the file.

12 Would like to enter the Staff Report into the  
13 file.

14 CHAIRMAN: Anyone here representing the  
15 applicant?

16 MR. KAMUF: Yes.

17 MR. SILVERT: Could you state your name again.

18 MR. KAMUF: Charles Kamuf.

19 CHAIRMAN: Do you have anything that you would  
20 like to add?

21 MR. KAMUF: Mr. Chairman, I don't know exactly  
22 how much opposition there is. I talked to the one  
23 gentleman that indicated that he is not in opposition  
24 to Birthright, but he had some questions to ask  
25 because this might take a while if we present our

1 case. It might be a lot easier if he has no  
2 objection, but he wants some explanation, we might be  
3 able to do that.

4 CHAIRMAN: Let me see if we have opposition.

5 Mr. Noffsinger, has there been any  
6 correspondence in the Planning Office in opposition?

7 MR. NOFFSINGER: Yes, there has. There was  
8 one letter I think that was sent in from the Cathedral  
9 Neighborhood is the way it was identified. Each board  
10 member was made a copy of that and is a part of your  
11 application as well as the applicant was given a copy  
12 of that letter.

13 We also have one other letter that was sent in  
14 from one of the fathers, Father Vaughan, which each  
15 board member has been given a copy of that and has  
16 been made a part of the application.

17 Other than that, there's no other  
18 correspondence.

19 CHAIRMAN: Is anyone here that wishes to speak  
20 in opposition of this item?

21 Step forward please to the podium.

22 MR. SILVERT: State your name, please.

23 MRS. ATKINSON: Eva Atkinson.

24 (MRS. EVA ATKINSON SWORN BY ATTORNEY.)

25 MRS. ATKINSON: My name is Eva Atkinson. I

1 work as a counselor at Brescia University and I've  
2 been there for about 12 years.

3 I've been a resident, my husband and I have  
4 owned 516 West Seventh and the empty lot adjoining  
5 that across the alley, 717 Cedar Street for over 20  
6 years. We've been married 29 years. We've owned the  
7 property since 1983.

8 With me tonight is my husband David, our two  
9 daughters, Michelle and Anna, and also a letter from  
10 another resident that couldn't be here, Rodney Berry.

11 I just wanted to go on record that I in no  
12 way oppose Birthright or its intention or Right To  
13 Life or any of those other parties that may be here on  
14 that behalf.

15 I am in opposition of turning a residential  
16 home into a semi-institutional use. We have seen --  
17 so far on our side of the block, the St. Stephen's  
18 Cathedral has bought two properties. One of which has  
19 been torn down and is a meditation garden. The house  
20 next to it is now a youth center home. While the  
21 property is maintained, I'm not sure that there was  
22 any change of permits needed or granted or anything  
23 along those lines. That house is used on Sundays for  
24 youth groups and occasionally for overnight stays for  
25 lock-ins that they might have with their teenage youth

1 group.

2 The house next to that has been purchased by  
3 the Diocese of Owensboro. I heard it read that there  
4 are no physical changes, plan for the exterior of the  
5 house. It was a non-functioning room, but a room  
6 nonetheless that's been torn off of the house and the  
7 roof, including the sheeting, has been replaced.

8 One, those are necessary -- and guttering.  
9 That is a necessary repair, but I'm not sure if those  
10 changes needed to be permitted, and if so if they were  
11 done that way.

12 The next thing I wanted to say is that  
13 there is -- the church is the main occupant of our  
14 neighborhood. Yet the side of the street we live on  
15 has been traditionally residential and all of the  
16 surrounding places are either rental or single family  
17 dwellings. My opposition comes in the form of yet  
18 another residential home being turned into an  
19 institution or commercial because I assume that  
20 diocese is going to rent it to the office of our -- I  
21 don't know what kind of arrangement they have with  
22 that. That's none of my business.

23 Other than we have already had trouble with  
24 people parking in the alley. I'm not so -- the other  
25 opposition I have is I don't know if there's been any

1 study or I would want as a landowner to know that if  
2 all of that property behind my house is paved that I  
3 will not have problems with run-off from the paved  
4 parking lot because our property is lower than the  
5 property that they're talking about turning into a  
6 paved parking lot.

7 The other concern I have while it's not a use  
8 like Lighthouse where we have identified people that  
9 are in like recovery for drugs and alcohol and we  
10 might expect that. I would be concerned about knowing  
11 what ages of residents they propose to have in the  
12 house. What type of supervisions these residents  
13 might have and if it's going to be 24 hour supervision  
14 or if these folks are considered to be renters.

15 We did refer our phone numbers to, and I don't  
16 know her name, but she's sitting over there. Early on  
17 in this project, and we have not been contacted by  
18 them. My husband after the tornado did cut their  
19 limbs. We tried to be good neighbors so far. I'm not  
20 opposing it due to their lack of communication, but  
21 they obviously have come out in full force tonight. I  
22 feel already intimidated as a neighbor that this is  
23 what we might expect. Thank you.

24 CHAIRMAN: Anyone else speak in opposition?  
25 Step forward, please.

1 MR. SILVERT: State your name, please.

2 MS. EVANS: Barbara Evans.

3 (MS. BARBARA EVANS SWORN BY ATTORNEY.)

4 MS. EVANS: I live at 719 Cedar Street. I've  
5 been there since '96. I purchased my home.

6 I'm really thrilled about Birthright. It's  
7 great. A wonderful thing that's happening. I'm sorry  
8 that they feel the way they do.

9 I live next to their lot behind their home.  
10 It's a road that nobody could park there if they  
11 wanted to. I don't feel that they have a problem with  
12 that. I really think it's great. I hope this goes  
13 through for Birthright.

14 I have never seen anybody park in the parking  
15 lot, the alley. I've never seen that. I have a  
16 pretty clear shot to it. I hope this goes well for  
17 the church.

18 CHAIRMAN: Any board member have any questions  
19 for Ms. Evans?

20 (NO RESPONSE)

21 CHAIRMAN: Anyone else like to speak in  
22 opposition of the item?

23 Step forward, please.

24 MR. SILVERT: State your name, please.

25 MR. ATKINSON: David Atkinson.

1 (MR. DAVID ATKINSON SWORN BY ATTORNEY.)

2 MR. ATKINSON: I have a statement that was  
3 prepared by Rodney Berry who couldn't be here tonight.  
4 I told him I was going to bring a statement of my own.  
5 He said if I could read his along with mine. With  
6 your permission I'll read it now.

7 "Unfortunately, we are unable to attend this  
8 public hearing, so we offer a few comments on the  
9 proposal to convert the former home of Colonel and  
10 Mrs. Allen Head on Seventh Street to the offices of  
11 the Birthright agency. For 26 years, our family has  
12 lived at 705 Locust Street, across the street and a  
13 few doors away from this historic home.

14 "We salute the people associated with  
15 Birthright who provide valuable counsel and assistance  
16 to young women at a difficult time in their life.  
17 Father John Vaughn and the people associated with St.  
18 Stephens and the diocese are good neighbors. This is  
19 not about them at all.

20 "We are not concerned about property values;  
21 we don't plan to move anywhere. We are not concerned  
22 about living near Birthright clients; they would be  
23 welcomed to our neighborhood. We are simply concerned  
24 about how we casually dismiss our community plan and  
25 ignore the importance of redeveloping our inner city.

1            "We would object to this proposal if it were a  
2            law, real estate or insurance office, or another  
3            social service agency. If we want to redevelop our  
4            inner city neighborhoods, we should not insert  
5            commercial uses in the middle of residential blocks.  
6            It is increasingly difficult to attract families to  
7            our neighborhood when we continue to lose neighbors to  
8            commercial uses.

9            "Our city planners and the citizen boards that  
10           work with them have adopted goals within a  
11           comprehensive plan to redevelop our inner city  
12           neighborhoods. Why would we want to ignore the plan  
13           now that it is adopted." This is from Rodney and  
14           Joanne Berry, 705 Locust Street.

15           This is my statement: "Let there be no  
16           mistake about the way I feel about life and the  
17           protection of the unborn children everywhere. I feel  
18           there needs to be an organization like Birthright to  
19           provide a much needed service like counseling and  
20           shelter to mothers who might otherwise chose a more  
21           disastrous alternative.

22           "Having said that, we now must turn our  
23           attention to the real purpose of this meeting. We as  
24           property owners in the St. Stephens neighborhood have  
25           been notified in writing that Birthright of Owensboro



1 and the Diocese of Owensboro has requested special  
2 permission by this board who I before you today to  
3 make an exception to the guidelines set forth by  
4 Planning and Zoning.

5 "I would like to keep things simple in order  
6 to cover all that is necessary at this meeting. I  
7 feel that much more discussion of this situation needs  
8 to occur before any granting of permits is done.

9 "The people involved with this project have  
10 not come to us as neighbors to discuss plans or  
11 include us in any way to see if there were ways that  
12 we could exist in harmoniously.

13 "I have a family here. We like the way it  
14 feels here and the way it looks. The alley is not  
15 just an alley. It is also our driveway.

16 "My other neighbors are in the same situation.  
17 Bill Carrico who owns the house at the end of the  
18 alley on Locust, he parks in the back of his house.  
19 He has to access to the alley from either side, Locust  
20 Street or Cedar Street. The only reason we should  
21 expect to be blocked from getting to our homes is due  
22 to storm damage or an occasional OMU truck.

23 "The Birthright board members are not going to  
24 live here. They're going to leave it behind daily as  
25 they go to their homes in some other neighborhood. I

1       doubt anybody or agency is applying for special use  
2       permits in their neighborhoods.

3               "Unless we as neighbors get what we want from  
4       this meeting, then we shall remain opposed to the  
5       granting of the special use permit.

6               "No signs. No fences. No paving. No  
7       re-landscaping. Just basic yard maintenance and  
8       paint. No cars blocking the alley. Only restoration  
9       to existing structures. No additional parking created  
10      next to the house. No parking on the north side of  
11      the alley."

12              CHAIRMAN: Sir, would you step back up to the  
13      mike, please.

14              Would you like to submit those into the  
15      record?

16              MR. ATKINSON: If you can read them.

17              MR. NOFFSINGER: I hope we can read them  
18      because you lost me at "no signs," because I was  
19      trying to take down what you were saying.

20              CHAIRMAN: Anyone else like to speak in  
21      opposition of the item?

22              (NO RESPONSE)

23              CHAIRMAN: Mr. Kamuf, would you like to  
24      address their concerns?

25              MR. KAMUF: Yes, Mr. Chairman and other board

1 members.

2 First of all I think, Gary, some of those  
3 issues that he talked about might be answered by some  
4 of the Staff. He mentioned about the parking. He  
5 mentioned about the landscaping. He mentioned about  
6 no cars. Those are things that we didn't necessarily  
7 do our own. Those are necessarily things that were  
8 required by the Staff. I don't know whether you want  
9 to touch on that or not. He raised a couple of those  
10 issues.

11 MR. NOFFSINGER: Yes, I would because they're  
12 not requirements by the Staff. Those are requirements  
13 by the zoning ordinance that has been adopted by the  
14 City of Owensboro. Staff is charged with enforcing  
15 those.

16 MR. KAMUF: Sure. That's what I meant. Some  
17 of the issues that he raised -- the parking that we  
18 have on the south side of the other parking, it's  
19 necessary because of the zoning ordinance. Not  
20 necessarily because we want it.

21 Anyway, I'll start out. We have several  
22 witnesses that would like to testify.

23 As some of you know this is a two-story  
24 building. It is located between Cedar and Locust on  
25 Seventh Street. The reason that this area was chosen

1 is because it was near the St. Stephens Neighborhood.  
2 It is an area of peacefulness and solitude. We  
3 thought this would be an area that would be good for  
4 the ladies that are trying to rework their life.

5 The Birthright will be on the first floor. On  
6 the second floor there will an area for pregnant women  
7 to rebuild their lives. The Catholic Diocese bought  
8 this property along with other donors. The reason  
9 that they bought the property was for these purposes.

10 They paid \$80,000 on it and they will spend at  
11 least \$40,000 more. It's a beautiful old house in one  
12 of the oldest neighborhoods. Next door to the  
13 property, as I'll show you in a few minutes, there is  
14 a house that the St. Stephens Cathedral uses for a  
15 youth group.

16 I might show this plat that was proposed to  
17 show just some of the area that we see.

18 First of all as you see, this is an area -- I  
19 might say that this area is sort of an oasis for the  
20 Catholic Diocese of Western Kentucky. It is also an  
21 oasis for social concerns. Right within the next  
22 block is the Pitino Shelter.

23 So the first area that we have that you see is  
24 the Pitino Shelter which is in this particular area  
25 here. Then you have St. Stephens Cathedral and you

1 have an area along Locust Street which is for the  
2 Latin Americans. You have St. Stephens Cathedral.  
3 You also have the -- along there is the diocese office  
4 and also the pastoral center.

5 The orange area that I might point out, it's  
6 kind of hard to read and I'll show it to some of you  
7 that may not know.

8 The orange area that you see is the subject  
9 property. All of that in blue in this area is the  
10 diocese property. As you see up there, there is Haley  
11 McGinnis Funeral Home. When you get down to the south  
12 is the fire department. Over here is the South  
13 Central Bell telephone area.

14 The area is an older section of town. I might  
15 point this out it is an area that is in transition. I  
16 can assure you within the block of Seventh Street to  
17 Ninth Street to Locust to Cedar there are 28 separate  
18 parcels. Based on the current records of the Daviess  
19 Count PVA office, slightly over one-third of the  
20 properties are owner occupied. Ten out of the 28, 36  
21 percent. The remaining 18 parcels, which are  
22 approximately two-third, are rental properties or  
23 vacant lots.

24 I have some photos to show you. I'll pass  
25 these around if that's okay.

1           This photo that you see is a photo of the  
2           subject property which is the middle. That property  
3           that you see -- this area that you see, in the middle  
4           is the house that's the subject property. To the east  
5           side is the youth home. I'll pass that around in just  
6           a second.

7           This is what you see directly to the north.  
8           This is the St. Stephens parking area. You see the  
9           parking area for the directory. This is a picture of  
10          the vacant lot. As you can see, this one here is the  
11          parking lot. St. Stephens Cathedral, which is  
12          directly across the street. Many people in that  
13          particular area, a lot of them use that parking lot.

14          This is the vacant lot I think that is owned,  
15          which is directly behind the gentleman, Mr. Atkinson,  
16          that is a vacant lot.

17          This is a picture of the rear of the Atkinson  
18          home which will -- this is what we'll be looking at  
19          and they'll be looking at the area that we have.

20          In the middle of the block that you see on  
21          Locust Street, when I said this is an area in  
22          transition, and the reason I point this out, this is a  
23          vacant lot that is on Locust Street and there are  
24          other apartment areas, it's a block that has many  
25          apartment buildings on Locust Street and also on Cedar

1 Street.

2 Along Cedar Street, as I told you, it was a  
3 transition, an area in transition. This is an area, a  
4 rental house that has been boxed up and boarded up.  
5 This is directly across from the intersection of Cedar  
6 and Seventh Street on the west side.

7 As you can see this one here is a beautiful  
8 picture of the subject property. It's a picture of  
9 the home that we purchased and spent the money on  
10 hoping to preserve.

11 Directly across the alley that we're talking  
12 about, the alley runs from along Seventh Street and it  
13 goes from Cedar Street to Locust Street. At the end  
14 of Locust Street this is an alley that goes through  
15 South Central Bell for their -- it's a large antenna  
16 that they have there for South Central Bell. This one  
17 here is just a picture to show you that at the  
18 intersection of Fifth and Walnut is the Pitino  
19 Shelter. Just to give you an idea of what's in the  
20 particular area that we're talking about.

21 I would like to pass these around and mark  
22 them if I could.

23 I would like to point out, Mr. Chairman, the  
24 related feature and the main feature of this is that  
25 this is the St. Stephens Cathedral Neighborhood. The

1 diocese of Owensboro and the Cathedral Parrish have  
2 been extremely long and continuous history providing  
3 both religious and social services in the area.

4 This is another area to provide more social  
5 services for the people in the community. We have --  
6 I can talk later if there's some questions about the  
7 goals and objective of the comprehensive plan.

8 One of the provisions that I thought was  
9 interesting in the goals and objective of the  
10 comprehensive plan, it states that the maintenance and  
11 improvement to the urban neighborhood be accomplished  
12 through improvements of community, facilities and  
13 services.

14 It also says that it acknowledges an  
15 establishment of residential areas be surrounded with  
16 properly buffered non-residential uses such as those  
17 family orientated surfaces provided by the diocese.

18 Now, we have several -- I think some of these  
19 issues can be answered. We have Sister Joseph Angela  
20 from the diocese. She is the chancellor. We have  
21 Terri LaHugh. She also runs the Birthright as it  
22 exist now. She can tell you exactly those areas that  
23 we need. We have Father McCarty. He will tell you  
24 about the old Birthright area at St. Joe and exactly  
25 what takes place up there and that the entire time



1 that he has been up there as pastor of Sts. Joe and  
2 Paul Parrish, there has never been any objection or  
3 any problem with Birthright.

4 Now, we also have a real estate appraiser here  
5 who will testify concerning those items.

6 I'm ready to start presenting some of that  
7 case if I could, Mr. Chairman. The first witness I  
8 would like to call is Sister Joseph Angela. She is  
9 the controller of the diocese. She had that job for  
10 years and she can tell you an idea of what's going to  
11 take place. It might take some of the fears away if  
12 some of the residents or the two residents that  
13 object.

14 MR. SILVERT: State your name, please.

15 SISTER ANGELA: Sister Joseph Angela Boone.

16 (SISTER JOSEPH ANGELA BOONE SWORN BY  
17 ATTORNEY.)

18 SISTER ANGELA: Birthright had been in  
19 existence up on Fourth Street since probably 1982 when  
20 Bishop McRaith came to Owensboro and started this  
21 mission and ministry of helping pregnant girls.

22 At some point later they had a pregnancy care  
23 center there. At one point when Sts. Joe and Paul  
24 needed the space for their own parish hall they had to  
25 move to a new location.

1           As Mr. Kamuf has said, we have not had any  
2           complaints whatsoever about the location and the  
3           ministry that's been going on in that location.

4           One of the reasons we thought about this house  
5           was because of its location and it's value and its  
6           character. It has such great character to it that we  
7           wanted to preserve that by having it as a homeowners  
8           house for homeless pregnant girls that didn't have a  
9           place to live. We wanted it to be a place where we  
10          could make it a better quality of life for those  
11          people, the girls that would be living there and for  
12          the Birthright people. It's close to the cathedral.  
13          There's good parking over there. They wanted privacy  
14          and we thought we needed privacy because of the  
15          location to help the girls.

16          We did not even dream that there would be a  
17          problem in having homeless girls living there with the  
18          right jurisdiction and the supervision from the people  
19          that will be helping them to get on with their life,  
20          by helping them to get a job so that they will be  
21          something down the road instead of being a homeless  
22          pregnant girl.

23                 Any questions I can answer I'll try to do so.

24                 MR. DYSINGER: Sister, to your knowledge did  
25                 anyone from your group attempt to talk to some of the

1 neighbors about concerns they may have?

2 SISTER ANGELA: We never even dreamed that  
3 they would have concerns. The neighbors, we have been  
4 over there when we cleaned up and they had talked with  
5 them, but not in a way that thought that there would  
6 be any problem with them, with our ministry.

7 MR. DYSINGER: Thank you.

8 CHAIRMAN: Any other board member have any  
9 questions of the Sister?

10 MR. WARREN: I do.

11 I'm thinking this is probably a question you  
12 can probably answer. The rectory for St. Stephens,  
13 it's next-door to this property?

14 SISTER ANGELA: It's across the street. It  
15 faces the rectory there at St. Stephens.

16 MR. WARREN: At any given time how many  
17 priests live in that home?

18 SISTER ANGELA: There's been as many as four.  
19 Right now three's three.

20 MR. WARREN: So currently there's three  
21 priests living in that house across the street?

22 SISTER ANGELA: That's correct.

23 MR. WARREN: And your home is for four  
24 pregnant women at max?

25 SISTER ANGELA: That will be the max. We

1 don't know that we'll have any, but we're hoping to  
2 have preparations for them if they become necessary.

3 MR. WARREN: Thank you.

4 CHAIRMAN: Any other questions for the sister?

5 MS. DIXON: I do.

6 When did you actually learn that there was  
7 opposition or that people had concerns?

8 SISTER ANGELA: About a week ago.

9 MS. DIXON: Since that time has there been any  
10 communication, direct communication with the Atkinsons  
11 or any of the --

12 SISTER ANGELA: I haven't personally, no.

13 MS. DIXON: Has Mr. Kamuf?

14 MR. KAMUF: No. I got a letter from, I guess  
15 from the Planning office and they told me. There was  
16 a Mr. Mountjoy that had a listing on it. Some of the  
17 people I didn't know, but some I knew. I new Rodney  
18 Berry.

19 This is hearsay. They called him and talked  
20 to him and he said, you know, I'd rather have it like  
21 it is, but I will not be at the meeting to object.

22 Then there was another gentleman by the name  
23 of Mountjoy. Had his name on the list. He said he  
24 really didn't object, but he wouldn't be at the  
25 hearing. So we quit calling. We did call some of the

1 people on there.

2 I might say this. There was a group of us.  
3 I'm involved in Birthright. There was a group of us  
4 that went down and cleaned up. We spent two hot days  
5 down there cleaning up. I talked to the gentleman  
6 over there that runs the candy store. He didn't  
7 object to when we were cleaning up. We had a youth  
8 group there. We had I'd say 10 or 12 people. We did  
9 a good job. I didn't hear any objection from him at  
10 that time. He asked some questions. I think his main  
11 concern, Ms. Dixon, at that time was, don't put a  
12 fence up. We don't want to put a fence up to separate  
13 his property from ours. That was the main objection  
14 at that time. I think my position was that we don't  
15 want to put a fence up. If there's required screening  
16 by the Planning and Zoning ordinance, then we'll do  
17 that.

18 MS. DIXON: How do you feel about not having a  
19 fence or about the signage issue? Those were two  
20 things I picked up on what Mr. Atkinson said.

21 MR. KAMUF: I think Terri will have to answer  
22 that.

23 About the fence, we don't want to put up a  
24 fence.

25 Isn't that right, Sister?

1                   SISTER ANGELA: No, we don't.

2                   MR. KAMUF: We don't want to put up a fence.  
3 We will if it's required. Whatever screening is  
4 required, whatever. We don't want to pave the parking  
5 lot, but if it's required we'll do that. Then there  
6 was the issue about the sign.

7                   MS. DIXON: Right.

8                   MR. KAMUF: I didn't take a picture of it.  
9 That's my fault.

10                  The sign, Terri, why don't you come up here.

11                  She can tell you. She runs it. She can tell  
12 you what size sign. They have a sign that used to be  
13 there in front of the old St. Joe rectory there on  
14 Fourth Street. Now it's moved behind Sts. Joseph and  
15 Paul Church. It's a small sign.

16                  MS. DIXON: I was concerned about the signage.  
17 For the benefit of your clients, if you're talking the  
18 issue of privacy, it would appear that a small sign on  
19 the actual house would be better than one in the yard.  
20 That would just be my -- if you are addressing privacy  
21 for your clients.

22                  MR. KAMUF: We have talked about this in great  
23 deal. Terri can probably handle that. We mentioned  
24 this. What kind of sign are we going to have? We  
25 want it in an area where it will look good, but it's a

1 one-way street. We thought a little sign out front,  
2 whatever that would be, so if they were looking for  
3 this area they could find it. We've talked about it.

4 Terri.

5 MR. SILVERT: State your name, please.

6 MS. LaHUGH: Terri LaHugh.

7 (MS. TERRI LaHUGH SWORN BY ATTORNEY.)

8 MS. LaHUGH: As far as a sign, our sign that  
9 we have now is probably 3 foot by 4 foot. We've had  
10 it for years at the home on 508 East Fourth. We were  
11 there 23 years. That sign is not 23 years old, but  
12 it's before me. I moved here eight years ago. I've  
13 been with Birthright almost since I moved.

14 The sign we can work with that. I don't feel  
15 there would be a problem. I would love to have a sign  
16 out front for the girls to find us. Other than that,  
17 you know, I'm easy. We can put it on the house if  
18 that would suit the neighbors more or whatever.  
19 Whatever we can do to make peace.

20 MS. DIXON: Check with Mr. Atkinson on that.  
21 I was thinking that with privacy of your clients, and  
22 it looks more tasteful. Plus I don't know if you've  
23 noticed that area, but you can be really prone to some  
24 graffiti sprayed on signs and so forth.

25 MS. LaHUGH: We are a little bit worried about

1 the neighborhood, the area.

2 MS. DIXON: No, let's not worry about the  
3 neighborhood. It is an oasis. Mr. Kamuf mentioned  
4 it.

5 MR. KAMUF: Please.

6 MS. DIXON: I said you called or someone  
7 referred to it as an oasis. Let's leave it as that,  
8 please.

9 MR. DYSINGER: Could you discuss any other  
10 changes in the appearance of the building. It seems  
11 to me that it not looking like a house and it looking  
12 more like an institution is a concern. If you could  
13 just talk about that,

14 MS. LaHUGH: I agree. I don't know if anybody  
15 here that might remember the home at 508 East Fourth,  
16 but it was a home that was 110 years old when it was  
17 torn down. We have been there for 23 years and loved  
18 every bit of it. We did a lot of work to it along to  
19 keep it. Keep its integrity. Keep it working. There  
20 was always projects that needed done because of the  
21 age of the home. We respected that home. I think  
22 that's probably why we enjoy buying this home at  
23 Seventh Street because it reminded us of our old home  
24 that we had so long. We intended to make a  
25 substantial investment in this property to make it be



1 very presentable. It will be a home. We are a home  
2 life facility. We're not professional. We're a  
3 crisis pregnancy center that is nonprofit. All  
4 volunteers. It's a charitable organization. We just  
5 help women in need.

6 If you have any other questions. I don't want  
7 to go too long.

8 MS. MASON: Will you be adding handicap  
9 accessible?

10 MS. LaHUGH: If needed to. Depending on  
11 Planning and Zoning.

12 CHAIRMAN: Mr. Noffsinger, do you have a  
13 question?

14 MR. NOFFSINGER: I think perhaps at this point  
15 would you like for me to list these things that Mr.  
16 Atkinson has requested and then see what their answers  
17 are to those so at least we've addressed those  
18 specifics. I need to address parking as well.

19 CHAIRMAN: Yes, I'd appreciate it if you  
20 would. You have it in front of you. Several  
21 questions there I'm seeing. If you will do that.

22 MR. NOFFSINGER: First of all no signs. I  
23 think we've touched on that. One idea was to limit  
24 the signage to the building only, the face of the  
25 building. Another suggestion might be typically in

1 residential zones you're allowed, I believe, a sign of  
2 two square feet. That would be out in the yard and a  
3 free-standing sign. The sign you've described I think  
4 is about 12 square feet, but typically in a  
5 residential zone you have the two square foot sign in  
6 the yard. That would be in keeping with the  
7 residential zone. Then there's also this option of a  
8 building sign.

9 Next no fences. The zoning ordinance will not  
10 require any fences to be erected on the property. I  
11 think the applicants have stated here tonight they  
12 don't want to put up a fence.

13 However, the zoning ordinance would require  
14 the parking area that's going to be constructed and is  
15 necessary to meet zoning requirements will need to be  
16 screened with a three foot high continuous element.  
17 Now, that could be a 3 foot high fence or it could be  
18 a 3 foot high shrub row. If they don't want any  
19 fences, it may be that a three foot high shrub row  
20 would be acceptable and then one tree every 40 feet.

21 The zoning ordinance does require the parking  
22 area to be paved. There's not a waiver process for  
23 that.

24 However, drainage must be handled on site. In  
25 review of your development plan, the city engineer

1 will have to approve the drainage plan. So there will  
2 be a drainage plan and you can talk to the city  
3 engineer about that, Mr. Joe Shepherd, but they will  
4 be responsible for drainage as it goes off of their  
5 property.

6 No re-landscaping. You know, that's an issue  
7 that I've addressed some of the required landscaping,  
8 but any other landscaping you might do I certainly can  
9 address that.

10 No cars blocking the alley. I think that's a  
11 common courtesy or a neighborly thing to do. You just  
12 don't block the alley.

13 The biggy here I think is the restoration to  
14 existing structures. It sounds to me like the folks  
15 are saying, we like the home that's there. It's in  
16 character with the neighborhood, and it is a beautiful  
17 home.

18 What are you plans for that structure? I'm  
19 hearing that they want the home to stay. They want to  
20 keep it intact. They want it to look the way it does  
21 today. Maybe some necessary repairs, but restore it  
22 to its original condition. These are all conditions  
23 that this board could consider in granting a  
24 conditional use permit.

25 MS. LaHUGH: We have agreed. We have spoken

1 with the families. Every visit we were there this  
2 summer we chatted. We assured them that we intend to  
3 keep the house. He asked, make sure we didn't want it  
4 tore down. I said, my gosh, we've just invested  
5 everything we can come up with to have the home.  
6 We're thrilled to have it. We're making plans to  
7 improve just enough to get the doors open. We have  
8 put \$23,000 into a brand new roof and gutters on the  
9 home inside where the roof had leaked for years. It  
10 needs a lot of plaster and dry wall work. Some  
11 painting and just some minor plumbing issues maybe.  
12 Just make sure everything is up-to-date. Other than  
13 that, we have no changes. We have tore down leaning  
14 extension that had been on the side of the building.  
15 It was leaning and unsafe. They pointed that out  
16 where it was needing support. I was grateful for  
17 that. We took that off of there to make sure nobody  
18 got hurt and also improve the looks of the home. It  
19 was a mess. The roofers did this for us.

20 MR. NOFFSINGER: The only other thing I would  
21 like to address is the neighbors have also asked no  
22 parking on the north side of the alley. That would be  
23 the lot the home is on.

24 You do have two parking spaces, possibly  
25 three. Maybe handicap space. The parking issue is

1 going to be the same whether this use is approved or  
2 if it's used for residential. They could still put  
3 parking spaces in this location. In fact, across the  
4 alley now where the main parking lot is going to be is  
5 pretty much graveled and there's a shed there. Looks  
6 like a carport type structure, shed. So that's  
7 basically what it's used for is parking now.

8 The other idea, and I just talked with Jim  
9 Mischel who is on my staff, said that he did talk with  
10 Mr. Kamuf about maybe using the parking lot for the  
11 church and seeing if that conserves the parking for  
12 this use as well as the church.

13 The concern that the church might have is  
14 whether or not you have enough parking on the church's  
15 site to meet the current parking requirements for the  
16 church. I don't know if you do or not, but if you did  
17 and this could be counted as parking for Birthright,  
18 then that would eliminate the need to construct the  
19 parking lot south of the alley. That's not the  
20 application that's before us tonight. The application  
21 is for parking to be on the south side of the alley,  
22 but that's just another option that I don't know if  
23 you could explore that.

24 MS. LaHUGH: I agree. We do have permission  
25 from the Bishop of the Diocese of Owensboro to use any

1 of the parking that we would like; volunteers,  
2 clients, residents, the house mother. We didn't  
3 anticipate a lot of traffic in the alley because it is  
4 a quiet alley. I think it would be hard to find for  
5 the girls that come to our place looking for us. I  
6 think it would be hard just to find the alley.

7 MR. NOFFSINGER: And to maneuver.

8 MS. LaHUGH: You're exactly right. It's very  
9 tight. I worry about that. We will fix it up if we  
10 are needed to by Planning and Zoning. We will make it  
11 proper to whatever you require. Other than that, we  
12 feel that we have more than enough parking with the  
13 streets and with the church's generosity of using  
14 their property any time we need it.

15 Are there any other questions about the  
16 parking?

17 MR. NOFFSINGER: I've gone over each item that  
18 was in this list, I believe.

19 That's all I have, Mr. Chairman.

20 CHAIRMAN: Mr. Kamuf, do you have anyone else?

21 MR. KAMUF: I have one. Father McCarty is  
22 here. He's the pastor of Sts. Joe and Paul Parrish.  
23 He can give you an idea of what Birthright has meant  
24 and whether there's been any complaints.

25 MR. SILVERT: State your name, please.

1 FATHER McCARTY: Father Carl McCarty.

2 (FATHER McCARTY SWORN BY ATTORNEY.)

3 FATHER McCARTY: I can speak to the parking  
4 situation.

5 We've never had a problem with parking at Sts.  
6 Joseph and Paul. There's not a lot of cars that are  
7 generated by Birthright. There's two, three, four  
8 cars perhaps at a time, if even that.

9 As far as the structure of our facilities that  
10 Birthright has used, which was the house on Fourth  
11 Street and now they're using what was our old office  
12 house, they've only added to those facilities and  
13 those structures. They have maintained those  
14 structures for us. We helped to maintain the outside.  
15 They helped maintain the inside.

16 The girls that have come there are always  
17 polite, courteous. Many of them that I see are  
18 sometimes even dropped off there and then picked up  
19 again. So cars are not remaining there. There is  
20 some foot traffic that does come in in relationship to  
21 the bus traffic and the bus system. So the parking on  
22 the outside of the buildings we have not had any  
23 trouble with whatsoever. They have a direct mission.  
24 That mission is only added to our mission and to the  
25 neighborhood mission, the old Germantown area.

1           For myself I've worked to keep Birthright  
2           there as long as we could, but conditions have  
3           continued to grow and change and we all need to do  
4           that. Change is probably the hardest thing here.  
5           Make a little fear in relationship to what's going to  
6           take place.

7           So if I can help to alleviate any of that  
8           fear, they have certainly added to our neighborhood.

9           We do not mean to intimidate whatsoever. We  
10          certainly are here to communicate. If we can help to  
11          communicate any other thing that may need to be  
12          answered, we want to do that.

13          CHAIRMAN: Any board member have any questions  
14          of Father McCarty?

15          (NO RESPONSE)

16          CHAIRMAN: Mr. Kamuf, do you have anything  
17          else?

18          MR. KAMUF: I might say this. We probably  
19          looked at 60 or 70 houses in Owensboro. This met all  
20          the requirements. We felt like it was a peaceful  
21          place for the girls. It had to meet so many  
22          requirements. It has to be so close to a bus stop. I  
23          mean there were just a lot of requirements that were  
24          required for us to qualify under Planning and Zoning  
25          requirements. We felt like that this was the best



1 choice that we could make. Not only for us but for  
2 the citizens. I'm talking about the people that come  
3 to the Birthright center. I might point out one other  
4 thing. As far as development plan, as far as the  
5 drainage, Jim Riney has prepared -- we have to file a  
6 development plan and it will show all the drainage and  
7 all the requirements as far as the drainage.

8 CHAIRMAN: Thank you.

9 Going back to the opposing side for a few  
10 comments and then we're going to wrap it up and give  
11 you a decision.

12 Anyone over here have any additional thoughts  
13 or comments?

14 MR. ATKINSON: What was said about the parking  
15 on the north side of the alley, is there plans for  
16 parking on that side?

17 MR. NOFFSINGER: Mr. Chairman, if I may. They  
18 are showing two parking spaces on the north side of  
19 the alley. That would be right to the rear of the  
20 home off the alley. One is a handicap parking space  
21 and the other is a regular parking space.

22 MR. ATKINSON: If they could figure another  
23 way to do that, that would be good.

24 MR. DYSINGER: The parking is not actually in  
25 the alley though, sir.

1                   MR. ATKINSON: I understand that part.  
2                   There's not much yard back there and it would ruin the  
3                   looks.

4                   MRS. ATKINSON: I was a lifelong member of  
5                   Sts. Joe and Paul Church. My parents and sister and  
6                   her family still attend there. I'm very familiar with  
7                   that neighborhood because it is the home neighborhood  
8                   of my grandchildren and my sister lives there.

9                   I do want to point out that the Birthright  
10                  house on Fourth Street and where it is now behind St.  
11                  Paul's Church, it was not in a residential  
12                  neighborhood. They were freestanding houses with no  
13                  neighbors with commercial parking lots adjacent to  
14                  these homes already.

15                  The other thing is we haven't had trouble with  
16                  parking until the board people show up and then they  
17                  park all over the yard and all over the alley and seem  
18                  to disrespect that it is a residential neighborhood.  
19                  It's like they all come down and have a -- nobody  
20                  parked in the front. Nobody parked in the gravel lot  
21                  that St. Stephens has on the corner of Seventh and  
22                  Cedar. Nobody parked in the paved parking lot at St.  
23                  Stephens. They all parked in the back, which they own  
24                  the property or at least the diocese does, but they  
25                  were very inconsiderate in how they parked when they

1 had their shower parties and things, whatever,  
2 bringing things to the house.

3 The other thing. Obviously we support life.  
4 Both of our daughters are adopted. Our last daughter,  
5 and I had to laugh at Ms. Barbara opposed us during  
6 the opposition.

7 Our last daughter is a medical special needs  
8 daughter. For the last three years I've been very  
9 involved in going to hospitals. She's had numerous  
10 surgeries. Yes, our yard is a mess, but I resent that  
11 was an issue that was pointed out to them when it was,  
12 most of it is a result of either her or my health  
13 issues not allowing us time to tend to the property.

14 The other thing is we have invested our lives  
15 in downtown Owensboro. We have a small business that  
16 struggles to make it. I do also want to say that I  
17 resent that Mr. Kamuf said or threatened that he would  
18 not do business with us anymore, which is his  
19 prerogative, if we opposed Birthright moving into that  
20 house. There was a Right To Life person or a Mr.  
21 Howard called Mr. Berry and was scathing to him that  
22 he would oppose it. We are not opposed to Right To  
23 Life. We are not opposed to Birthright. I have had  
24 students that have used those services that I referred  
25 there. I had very good relationship with them. I

1       just oppose the intimidation. I oppose that this is  
2       an quasi institutional use in a residential  
3       neighborhood. I just feel very disrespected. I'm  
4       glad that they respect their clients more than they  
5       respect their neighbors.

6               CHAIRMAN: Anyone else like to speak? I'm  
7       going to wrap it up on this side and brief comment  
8       over here and ask for a vote.

9               Come to one of the podiums.

10              MR. SILVERT: State your name again for the  
11       record.

12              MS. EVANS: Barbara Evans.

13              I would just like to say I don't understand  
14       about why they wouldn't want a fence up. I'm curious  
15       about that one. Seems like if they're so upset and  
16       worried about who was going to be next-door to them,  
17       why wouldn't they want them to put a fence up. I  
18       don't understand that.

19              As far as the parking, they're hardly ever at  
20       home like she said because the yards prove it. I'm  
21       the one usually having to take care of the yard on  
22       Cedar Street in front of their house. I quit though.  
23       After so many years you get tired of doing somebody  
24       else's work and clean up.

25              I have been to the old Birthright where it

1 was. It was very nice. Very nice sign. I've  
2 never -- all the ladies were so sweet and kind. I try  
3 to do charity work and help as many people as I can.  
4 They're very good people and they're very clean. It  
5 would be an asset to the community over there to have  
6 them here. Everyone should be jumping for joy over  
7 this. I'm just thrilled when I heard that they were  
8 coming here because it's going to run off a lot of the  
9 riffraff.

10 I don't understand what the issue is about the  
11 parking. There's plenty of parking for them. As far  
12 as the neighbors next-door to Cedar Street, they park  
13 over on Cedar Street because they put a fence around  
14 their back yard. They don't even have parking in the  
15 back yard. I mean there's a little gravel spot, but  
16 they don't park there. They might pull up there for a  
17 few minutes, but that's it.

18 I'm sorry they feel the way they do about  
19 this, but I'm very excited and I hope this goes  
20 through. Thank you.

21 CHAIRMAN: Mr. Noffsinger.

22 MR. NOFFSINGER: This board is charged with  
23 making a determination as to whether or not this use  
24 can be properly integrated in the neighborhood.  
25 That's why it's called a conditional use permit. This

1 is a particular use that involves not only a  
2 residential use, but also somewhat of an institutional  
3 use in that there would be offices for counseling in  
4 this location.

5           Given the nature of that, the zoning ordinance  
6 recognizes that there may need to be a more stringent  
7 review of the proposed use and the way it's going to  
8 be operated or the character of that use before it can  
9 be integrated into a residential zone. I think  
10 everyone here tonight, and I really believe this,  
11 thinks Birthright is a good thing. They do wonderful  
12 work, but that's not the issue and that's not why  
13 we're here tonight. If that were the issue, then it  
14 wouldn't be for this board to decide.

15           The real issue comes is whether or not this  
16 use and what they're proposing to do with the premises  
17 can be properly integrated into the neighborhood. I  
18 think most of us would have some of the same concerns  
19 that these adjoining property owners have if  
20 Birthright or any other type of use of a  
21 nonresidential nature would come into our  
22 neighborhood.

23           Now, this board has a very difficult job of  
24 determining whether or not the use can be properly  
25 integrated in. That's their decision. They get very

1        little staff guidance.  What we do as the Planning  
2        Staff is that we prepare them the facts.  We get them  
3        copies of the application.  They look at that  
4        information and then they listen to the testimony  
5        that's here tonight presented to them.  Then they have  
6        to make a decision and they have to make their  
7        decision that's supported by facts that's submitted  
8        here tonight.

9                Again, please the use or the group,  
10        Birthright, I don't believe is at issue here tonight.  
11        The use is whether or not this residential home in  
12        this residential oasis type neighborhood can be  
13        properly integrated in.  If it can, then the board has  
14        the right to set special conditions upon that  
15        approval.  If they feel it can't be properly  
16        integrated, then this group may deny the conditional  
17        use permit.

18                With that said, from a planning perspective I  
19        wanted everyone to understand why we're here and that  
20        both sides present good points and are deserving to be  
21        heard.

22                CHAIRMAN:  Mr. Mischel, you have some  
23        comments?

24                MR. MISCHEL:  Short comment.

25                (MR. JIM MISCHEL SWORN BY ATTORNEY.)

1           MR. MISCHEL: I just have one comment on the  
2 condition that there be no parking on the north side.

3           Under the Kentucky Building Code ADA, which is  
4 American Disabilities Act, I feel like you would have  
5 to have at least one on that north side to comply with  
6 those.

7           MR. DYSINGER: Of a handicap nature?

8           MR. MISCHEL: Yes.

9           MR. NOFFSINGER: And that's what they are  
10 proposing.

11          MR. MISCHEL: Have it marked no nobody else  
12 can park there unless they have a disability. I do  
13 believe they need one to meet the code. That's the  
14 only comment I have.

15          CHAIRMAN: Anyone else would like to speak?  
16 Did we miss anyone?

17          Step back up, please.

18          MR. ATKINSON: In response to what Jim has  
19 said. I was wondering if we could request that the  
20 handicap parking space be parallel with the alley?  
21 You know how you parallel park.

22          MR. NOFFSINGER: According to the site  
23 statistics 13 parking spaces are required for this  
24 use. Eleven of these spaces are south of the alley.  
25 Two of those spaces are north of the alley. You could



1 probably get two parking spaces parallel north of the  
2 alley, but what you may find is that you have to  
3 remove -- it's going to take up additional -- it's  
4 going to take up the same amount of land and you may  
5 lose a tree. You may lose some bushes. I don't know.  
6 That certainly could be done, but you're still going  
7 to have to pick up two parking spaces.

8 In terms of being handicap accessible, Mr.  
9 Mischel, parallel space off that alley, do you see any  
10 concerns there?

11 MR. MISCHEL: Well, the parking space and the  
12 ADA that goes along with that, they have to be able to  
13 get out of the car and get in that ADA and be able to  
14 access the property without going in that alley. You  
15 don't want somebody with a disability have to get into  
16 the alley. That can be looked at, but right now I  
17 would have some reservations until we see it.

18 MR. NOFFSINGER: And that would be from the  
19 driver's side as well as passenger side?

20 MR. MISCHEL: That's right.

21 MR. NOFFSINGER: It would take as much  
22 probably paving to do it parallel as it would to do it  
23 the way it's shown.

24 CHAIRMAN: Does that answer your question?  
25 I'm going to wrap it up on this side. Any more

1 questions? Very briefly, please.

2 MR. ATKINSON: One more comment I might make  
3 is the property line does not come up to the alley.  
4 The alley over the years has meandered over. So  
5 there's about three foot of yard between the alley and  
6 the actual property line. I'm done.

7 CHAIRMAN: Mr. Kamuf, any final comments?

8 MR. KAMUF: No comments unless there's some  
9 questions from any of the board members. I'll try to  
10 answer anything. I think we have people here that can  
11 answer some of the guess there are.

12 CHAIRMAN: Any board member have any questions  
13 for Mr. Kamuf?

14 MS. DIXON: I don't have any questions. I do  
15 have a comment because I've been sitting on this board  
16 a long time and we always have these emotionally  
17 charged issues that reflect on neighbors and  
18 properties and everything. I just wish at some point  
19 attorneys and applicants and all would learn to  
20 communicate early in the game rather than letting  
21 tempers escalate and feelings get hurt and it hurts  
22 the whole project. What we have here is a failure to  
23 communicate. There's a way for people to get along,  
24 if we approach each other early in the game. Please  
25 take that for what it's worth. That's my story and

1 I'm sticking to it.

2 MR. KAMUF: I understand.

3 CHAIRMAN: Any other board member have any  
4 questions?

5 (NO RESPONSE)

6 CHAIRMAN: Mr. Noffsinger?

7 MR. NOFFSINGER: No, sir.

8 CHAIRMAN: Chair is ready for a motion.

9 MR. TAYLOR: Mr. Chairman, I move to approve  
10 the conditional use permit. Be based on some findings  
11 of facts and special conditions as well.

12 My findings of facts are that the applicant  
13 has submitted commitments with the conditional use  
14 permit application pertaining to the reference zoning  
15 ordinance requirements. The commitments fully address  
16 all of those requirements. This will be touched upon  
17 further, the conditions, but there will be no  
18 alteration of the exterior of the building.

19 It seems the alterations of the neighborhood  
20 will be minimal because there is mixed use of these  
21 similar events in the overall neighborhood. Maybe not  
22 perhaps on that street, but in a larger neighborhood.

23 My conditions are that the sign that will go  
24 along with the property will be effaced to the  
25 building as opposed to in the yard.

1           Also I wanted to make some concessions I've  
2 noticed. You know, to meet as many of the concerns  
3 they can, but no matter what you do not all concerns  
4 will be met. I do think by putting that sign on the  
5 building and saying that there will be no major  
6 structural alteration to the exterior of the building,  
7 other than to keep the upkeep of the building.

8           MR. DYSINGER: I'll second that motion.

9           MS. DIXON: Would you entertain a friendly  
10 amendment?

11          MR. TAYLOR: Absolutely.

12          MS. DIXON: No fences.

13          MR. TAYLOR: I'll also throw into those  
14 conditions no fences which was agreed upon by both.

15          MR. NOFFSINGER: Shrubs, but no fences.

16          MR. TAYLOR: Absolutely shrubs. The screening  
17 will be required.

18          CHAIRMAN: We have a motion and a second. Are  
19 there any further comments on the motion?

20          (NO RESPONSE)

21          CHAIRMAN: All in favor of the motion raise  
22 your right hand.

23          (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24          CHAIRMAN: Motion carries unanimously.

25          Let's take a short break.



1 property along with the other two that were rezoned  
2 all encroached or currently do encroach into the  
3 established building setback. That should be  
4 remedied.

5 It is our opinion that when the sites do  
6 redevelop that it's reasonable to expect that the new  
7 building would meet the applicable building setback  
8 requirements. There have been additional buildings in  
9 the same block front that have redeveloped at the  
10 opposite end in the past year or so. As they  
11 redeveloped, they have met the applicable building  
12 setback requirements.

13 There have been no other building setback  
14 variances along this block front on West Parrish  
15 Avenue. The zoning ordinance has flexibility built in  
16 which enables a property to or a development to  
17 average their building setback. At present the  
18 prescribed setback is 75 feet from the street center  
19 line, which I believe in this instance would be 45  
20 feet from the property line. The way the average  
21 works is that you take what your setback is on your  
22 lot, prescribed setback, and you can average it with  
23 the actual setback of the building on the adjoining  
24 lot. Which in this instance is 25 feet. With that  
25 average of the setback you could by ordinance reduce

1 the required setback from 45 feet from the property  
2 line to 35 feet from the property line.

3 With that flexibility build in Staff would  
4 feel that that is a relief from the requirement of a  
5 greater setback and that that should be the amount of  
6 variance that's allowed on the lot. Not grant the  
7 additional ten feet which will get the building  
8 closer, the new commercial building closer to the,  
9 property line closer to the road. For those reasons  
10 Staff would recommend the variance request be denied.  
11 I'll be happy to answer any questions that you may  
12 have.

13 MR. NOFFSINGER: I have a question. Just  
14 point of clarification.

15 Mr. Howard, you're saying the setback is 75  
16 feet from the center line of the street right-of-way?

17 MR. HOWARD: Correct.

18 MR. NOFFSINGER: The applicant is asking that  
19 to be reduced to 55 feet, but the zoning ordinance  
20 allows you to average the setback based upon the  
21 location of existing buildings. That would be a 65  
22 foot setback?

23 MR. HOWARD: Right.

24 MR. NOFFSINGER: So if this variance is not  
25 approved tonight, there will still be some relief to

1 the applicant in that that setback will be reduced  
2 from 75 feet to 65 feet.

3 MR. HOWARD: That is correct. I kind of  
4 switched gears, as far as the dimensions because the  
5 site plan that was submitted all the measurements are  
6 based upon the property line. I got away from 75 and  
7 just talked about the 45 and 25. The 45 plus the 30  
8 foot right-of-way from the street center line is the  
9 total of 75.

10 Basically, right, as Mr. Noffsinger said.  
11 They could go from a 75 foot prescribed setback to a  
12 65 foot setback based upon an average of flexibility  
13 that's built into the zoning ordinance. They're  
14 requesting a drop down to 55.

15 MR. NOFFSINGER: What is the classification of  
16 Parrish Avenue, roadway functional classification  
17 here?

18 MR. HOWARD: I believe that Parrish Avenue is  
19 classified as a principle arterial.

20 MR. NOFFSINGER: How wide is that facility  
21 now? Is that a two lane facility at this location?

22 MR. HOWARD: At present I believe it's a three  
23 lane facility with one lane of travel in each  
24 direction and the continuous center turn lane or  
25 chicken lane as they're sometime referred to, but it's



1 a three lane cross section.

2 Mr. Noffsinger brings up a good point. At the  
3 time that the rezoning was done, the applicant did  
4 mention that Parrish Avenue had been widen from Bosley  
5 Road out to the bypass to a cross section. If this  
6 variance is granted, as I mentioned, the building  
7 would be closer to the road and a widening of that  
8 section of Parrish Avenue wouldn't really benefit from  
9 a building any closer to the roadway than the building  
10 setback would dictate.

11 CHAIRMAN: Anyone here wishing to speak in  
12 opposition of this item before we hear Mr. Kamuf?  
13 Anyone here opposing this item?

14 (NO RESPONSE)

15 CHAIRMAN: Mr. Kamuf, you want to proceed.

16 MR. KAMUF: Mr. Chairman, Charles Kamuf again.

17 I have talked to the neighbors. The neighbors  
18 have no opposition to this whatsoever. The gentleman  
19 next-door is a fellow by the name of David Haycraft.  
20 He recommended when I talked to him on -- I did talk  
21 to some of the neighbors this time. I did talk to  
22 him. He has no objection.

23 Let me tell you what makes this issue unique  
24 and very unique to any of them in Owensboro. It's a  
25 lot that has three roads on each side, I mean

1 together. You have Parrish Avenue on the main side.  
2 You have Independence Avenue on the east side. On the  
3 other side you have James David Court. What makes  
4 this unusual, if the property next to me had not been  
5 zoned commercial, I would have a 25 foot setback line  
6 from that line and all you could put on it would be  
7 maybe a dumpster. It makes it unusual in that you  
8 have a three sided lot.

9 Furthermore, what makes it unusual is that you  
10 have -- this is the Stop-N-Shop Shopping Center. This  
11 is the property that we're talking about here. That  
12 Stop-N-Shop blocks the whole area that you see. So  
13 the hardship that I have in this property is that I  
14 have a three sided lot. I have a setback from Parrish  
15 Avenue, a setback from Independence, and a setback  
16 from James David Court.

17 To meet the requirements of parking, I'll show  
18 you the plat that I have prepared.

19 What I have here, this is a picture of the old  
20 house that was torn down. The importance of that old  
21 house is that old house was built in the '20s. This  
22 gentleman was the county judge of Daviess County. A  
23 gentleman by the name of McFarland. He developed this  
24 property and it was known as the McFarland  
25 Subdivision. He set his house up, but then set

1 setback for all the rest along Parrish Avenue for 25  
2 foot.

3 What I've just showed you is the McFarland  
4 addition plat. If you see along Parrish Avenue,  
5 there's a 25 foot setback line.

6 Here is what it looks like on this photograph  
7 here. This is the house that you see along Parrish  
8 Avenue. What we're asking for is no more and no less  
9 that we be able to match whatever the setback line is  
10 on these particular houses. In line with what Gary  
11 said, as far as if there is an improvement to Parrish  
12 Avenue, and I hope there is, there will be sufficient  
13 -- this is another reason to do it our way instead of  
14 putting parking out front. If there is a condemnation  
15 case, they've got plenty of room out front to widen  
16 Parrish Avenue. In other words, without taking any  
17 parking.

18 The other problem that I -- remember I pointed  
19 out that we have a three sided lot. We have the  
20 Stop-N-Shop Shopping Center. For us to get an  
21 adequate building on the lot and adequate parking, as  
22 Gary said in the other case that we had a while ago.  
23 Parking is not a variance. I can't get a variance for  
24 parking, but I have sufficient parking on that lot and  
25 it meets all the requirements if I set the building

1 back. Hale, Riney & Gilmore set it back according to  
2 that plat that you see that I think I filed it and you  
3 also see it.

4 Here are a couple of photographs that show.  
5 This shows the other side of the shopping center.  
6 This is a picture of the older house what was torn  
7 down recently. I think when it was mentioned about  
8 being able to average and reduce the setback line, the  
9 purpose of that it recognizes that there will be  
10 unusual circumstances and there would be averaging.

11 In this case the reason it doesn't work is I  
12 can't get the parking on the lot to make the adequate  
13 parking with the setback lines.

14 May I point these out. These are the  
15 photographs.

16 I might point out again I have talked to the  
17 neighbors. The neighbors have no objection to this.  
18 They didn't have any objection to the rezoning. I  
19 would not be asking for that if I could properly  
20 locate the building on the lot with the adequate  
21 parking. I think what makes this an unusual hardship  
22 are those three things that I point out to you. I  
23 doubt if there are many lots in Owensboro that have  
24 streets on three sides where there would be setback  
25 lines from the rear, the side and also from the main

1 area.

2 I'm here to answer any questions.

3 CHAIRMAN: Any board members have any  
4 questions of Mr. Kamuf.

5 MR. WARREN: You've got a picture of the  
6 Stop-N-Shop Plaza. You're saying that that plaza  
7 being so close to Parrish Avenue would block  
8 visibility for your business?

9 MR. KAMUF: Right. I think that was built  
10 sometime about 1950. I lived in that area. There  
11 were no setback lines then. The Stop-N-Shop Shopping  
12 Center is built right on the sidewalk. If you don't  
13 pull it out a little bit, even if there's a sign out  
14 front, it will be setback in line with the rest of the  
15 houses along Parrish Avenue. If you set the sign back  
16 so far, then you still can't see it from the  
17 Stop-N-Shop Shopping Center.

18 When I bought the property, I knew there would  
19 be a setback line, but I did not have any dream that  
20 it would be any further back than what those existing  
21 houses were.

22 CHAIRMAN: Any other questions of Mr. Kamuf?

23 Mr. Noffsinger.

24 MR. NOFFSINGER: Just some observations on the  
25 plat that Mr. Kamuf submitted.

1           This lot, the subject property is certainly  
2           laid out as, really in terms of width, the largest lot  
3           in that block. It was recognized. I'm sure that it  
4           was a corner lot. Had frontage on three sides. It  
5           was laid out larger to meet the setback. Too, keep in  
6           mind that this was laid out and be developed as  
7           residential property. It was zoned residential up  
8           until just a month or two ago when Mr. Kamuf came in  
9           the office and showed us two or three lots I think it  
10          was that he was rezoning. We thought we were going to  
11          see a plan for two or three lots to develop.

12                 Well, now we're only seeing a development on  
13          the corner lot which makes it difficult to develop  
14          because instead of taking take two or three lots  
15          that's typically in line with what's happening in that  
16          area, we're just trying to develop the one lot.

17                 There's also a note on this plat that, a  
18          little concern, says, "No building other than a  
19          residence to be erected less than 30 feet."

20                 Charlie, I know you've --

21                 MR. KAMUF: Which one is that now?

22                 MR. NOFFSINGER: It's the plat of the  
23          subdivision. I know you've researched the deed of  
24          dedication. You stated there's no deed restrictions  
25          on the property, but it says, "No building other than

1 a residence to be erected less than 30 feet from the  
2 property line."

3 MR. KAMUF: I looked those up. The  
4 restrictions that they apply, the restrictions are not  
5 on that particular lot. I certified that. My son ran  
6 the title. He certified on those three lots. Some of  
7 them further down, if you notice down where there's a  
8 development by Mike Martin further down, there are  
9 restrictions on those lots and they had to be  
10 alleviated.

11 MR. NOFFSINGER: It's just that it was laid  
12 out as a residential development. As staff, when  
13 we're recommending approval on a zoning change and  
14 we're looking at site conditions and changing the  
15 character of these residential areas, I think we have  
16 to anticipate that the development requirements are  
17 going to be met.

18 Here is a case where we've taken really a  
19 substandard lot and rezoned it to commercial and we're  
20 trying to squeeze development onto it and compromise  
21 the setbacks that have been established in the zoning  
22 ordinance. We're even compromising off the prescribed  
23 setback and reducing that down to 65 feet.

24 MR. KAMUF: Gary, the whole idea of the zoning  
25 ordinance is the variance and I outlined it

1 completely. I spent a lot of time laying out the  
2 reasons for the variance. This lot will be hidden  
3 back there as a result of several things. The main  
4 thing is that Stop-N-Shop Shopping Center. Very few  
5 lots in town have that issue along with being a three  
6 corner lot.

7 CHAIRMAN: Any other questions for Mr. Kamuf  
8 from the board members?

9 (NO RESPONSE)

10 CHAIRMAN: Staff?

11 MR. NOFFSINGER: No, sir.

12 MS. DIXON: Are you ready for a motion?

13 CHAIRMAN: Yes, chair is ready for a motion.

14 MS. DIXON: Mr. Chairman, my motion is that we  
15 deny the variance request because of the information  
16 supplied and the Staff review that relief is available  
17 with the averaging of setbacks. That there have been  
18 no other building setback variances in the vicinity of  
19 the subject property on West Parrish, and if approved  
20 this would be out of character with other lots, and  
21 that it may adversely affect the health, safety and  
22 welfare and will alter the essential character of the  
23 general vicinity.

24 MR. DYSINGER: Second.

25 CHAIRMAN: We have a motion and a second. Any



1        comments or question on the motion?

2                    (NO RESPONSE)

3                    CHAIRMAN: All in favor raise your right hand.

4                    MR. TAYLOR: I would like to address the issue  
5        on my behalf just -- I really don't know the proper  
6        steps.

7                    I'm kind of familiar with the property just  
8        because it's kind of on my route home. It's kind of  
9        something I do. The special circumstances that he  
10       mentioned I realize that it is a three corner lot and  
11       things like that. I don't know what happened in the  
12       zoning meeting with assumptions of two or three, but  
13       when I examined it as opening another existing  
14       business in a B-4 zoning I went and I kind of looked  
15       as I drove back because I was kind of familiar with  
16       it. When I was approaching it from the east, I did  
17       notice that Stop-N-Shop is, you know, five or ten feet  
18       off. When I approached it from the west, I noticed  
19       that all the houses weren't aligned. When I looked at  
20       the plat, it looked like it was in line. When I came,  
21       you know, I was under the assumption that it was kind  
22       of something that was going to be approved. I didn't  
23       know that it was going to be denied. I don't know  
24       other than vote against it I guess to show my  
25       disapproval of the motion.



1 podium, please, and bring us up to date on this issue.

2 MR. MISCHEL: I'll try to give you a brief  
3 description of what brought this item back before you.

4 Seems like on September 6, 2007, Mr. Tapp  
5 representing Atlantis Swim and Sport Complex asked for  
6 a conditional use permit to install netting on the  
7 tennis courts to allow paintball activity. At that  
8 meeting it was approved. There was some minutes of  
9 the meeting had some items that he stipulated he would  
10 do at that meeting.

11 At the time he started the paintball  
12 activities I received a complaint. I have the letter  
13 here, a memo I had written to Mr. Tapp. It was  
14 October 3, 2007 concerning this. I might try to read  
15 that into the record.

16 This is addressed to Mr. Tapp. "Our office  
17 has received complaints concerning the paintball  
18 activities located at 3905 Carter Road. At the  
19 meeting, you stated that the fencing would be 12 foot  
20 tall with netting on top of that to prevent the  
21 paintballs from going out and over into the  
22 neighborhood behind the complex. The complaint states  
23 that the paintballs are landing in the neighborhood.  
24 Upon inspection on October 3, 2007, it was found that  
25 the fence is not 12 feet in height and does not have

1 the netting above it. The paintball activities should  
2 not continue until all conditions have been met.  
3 Thank you for your cooperation in this matter.

4 "If you have any questions, please call."

5 At that time I went out to inspect the  
6 property. Mr. Tapp and his family was there and his  
7 father was there. We discussed it. I think the fence  
8 at that time was about 11 feet tall. There was a  
9 little bit of netting up on the top, but not much.  
10 They were having difficulty they stated to me trying  
11 to get the netting to stay anywhere on top of it. The  
12 netting that they got was not 12 feet. They had some  
13 on order.

14 I just made a recommendation that they do not  
15 operate until they fix this. He said that they were  
16 going to work on that. His dad I think had some ideas  
17 on how to do that.

18 At that time I didn't hear anything else  
19 either from him or the neighbors that were  
20 complaining.

21 In the recent past though, I've received more  
22 complaints from a couple of neighbors concerning this.  
23 I might give you these pictures. These pictures were  
24 turned in to us.

25 While you're looking at the pictures, I might

1 give a brief description. At the meeting that night  
2 on September 6th, I'm going to give some brief.

3 I think Ms. Mason had asked a few questions.  
4 She said, "I have a question for you. The fencing  
5 that you're going to put around, how tall is that  
6 going to be?"

7 "MR. TAPP: It's going to be 12 foot tall and  
8 we're also going to put a netting on top to prevent it  
9 from going out and over into the neighborhood behind  
10 us."

11 "MS. MASON: And the 12 foot tall fencing,  
12 what is that going to be exactly? Inflatable?"

13 "MR. TAPP: No. The netting is a specially  
14 engineered netting specifically for this purpose. It  
15 won't allow anything bigger than three millimeters to  
16 go through."

17 "MS. MASON: That's around the perimeter?"

18 "MR. TAPP: The entire perimeter and on the  
19 top as well."

20 Now, three millimeters, just an educated  
21 guess, is about a quarter inch. Last time I saw it  
22 the netting was not all the way across the top. I had  
23 a telephone conversation with Mr. Tapp and he  
24 indicated that it wasn't. It was hard to do.

25 Seeing all that, the remedy that I found in

1 the KRS statute for conditional use permits, are  
2 100.237(4) it states, "If the landowner is not  
3 complying with all of the conditions listed on the  
4 conditional use permit, the administrative official  
5 shall report the fact in writing to the chairman of  
6 the board of adjustment."

7 It also goes on to say that, "The board shall  
8 hold a hearing on the report within a reasonable time,  
9 and notice of the time and place of the hearing shall  
10 be furnished to the landowner," which we did. We gave  
11 a letter to the board members and to the owner. I  
12 think we copied the adjoining property owners. I have  
13 a copy of that letter. I think everybody got a copy  
14 unless you need to put it in the record.

15 I would like to put that, the minutes of the  
16 meeting, and the inspection report and pictures into  
17 the record.

18 I don't know if you have any questions right  
19 now.

20 MR. DYSINGER: Jim, the netting that was up,  
21 did it seem to be the netting that was described in  
22 the minutes, the three millimeter?

23 MR. MISCHEL: I'm not sure it was a quarter  
24 inch. Mr. Tapp could probably tell us better. I'm  
25 not sure about the quarter inch. I would have to go

1 back out and take a look at that.

2 CHAIRMAN: Anyone else have a question of Mr.  
3 Mischel?

4 (NO RESPONSE)

5 CHAIRMAN: I guess that will be all, Jim.

6 I would like to ask: Is anyone here that  
7 would like to speak with their displeasure and  
8 concerns of this permit?

9 MR. SILVERT: State your name, please.

10 MS. CARTER: Ginger Carter.

11 (MS. GINGER CARTER SWORN BY ATTORNEY.)

12 MS. CARTER: I live at 3844 McIntyre Crossing,  
13 which is for your reference seven houses from Tamarack  
14 Road. I'm right behind Atlantis.

15 I'm not here in opposition of the paintball  
16 facility. I have no animosity towards the Tapps.  
17 However I am opposed to paintballs. These are, I  
18 guess I collected these in the last week.

19 I have conversed with Mr. Tapp several times  
20 about these. He has hollered over my back fence to  
21 see if I've had any more. I've had paintballs on my  
22 car twice. He did offer the first time to have some  
23 boys come and wash it. I said, well, it's gone to be  
24 washed and waxed, but thank you for your offer.

25 I am opposed to the paintballs in my yard.

1 Like I said, this is a small sampling. I am opposed  
2 to paintballs on my front sidewalk. Have had  
3 paintballs on my car twice. You have to realize they  
4 are on the other side of my stockade fence. I'm also  
5 opposed, I have not lodged this last complaint with  
6 Mr. Tapp. I think I talked to him last Tuesday, I  
7 believe, or maybe Wednesday. The last one was after  
8 my dog had \$900 worth of surgery last week and I found  
9 one of these little paintballs in his mouth. I do  
10 realize they're not suppose to be harmful to humans,  
11 but I don't think one of those in his little belly is  
12 going to set real well.

13 My point is that if we can remedy the  
14 situation. I don't mind the activity back there. I  
15 honestly don't. I welcome it actually because it's  
16 pretty isolated back there without anything going on.  
17 That doesn't bother me whatsoever. But I am opposed  
18 to the paintballs in my property. I can't speak for  
19 the other neighbors. I don't want them to close the  
20 paintball facility down. That's not my intent  
21 whatsoever. Thank you.

22 CHAIRMAN: Thank you.

23 MR. DYSINGER: I have a question, Mr.  
24 Chairman.

25 Ma'am, can you tell or do you suspect, are the



1 paintballs getting over just accidentally because of  
2 the netting issue, not having enough netting issue?

3 MS. CARTER: I would assume. I don't know  
4 that for certain.

5 MR. DYSINGER: But you don't have any reason  
6 to believe that they're getting over there purposely  
7 by people being irresponsible?

8 MS. CARTER: The only thing I can say about  
9 that is that when I discovered a lot of these  
10 paintballs last week, they were all in one area, one  
11 corner of my yard. How that happened I don't know. I  
12 don't know if that was intentional or not. I can't  
13 answer that.

14 MR. DYSINGER: Thank you.

15 MS. CARTER: Most of the time they're just in  
16 general all over the yard. Like I said even on the  
17 front sidewalk.

18 CHAIRMAN: Thank you.

19 Anyone else.

20 MR. SILVERT: State your name.

21 MR. HAMILTON: Dallas Hamilton.

22 (MR. DALLAS HAMILTON SWORN BY ATTORNEY.)

23 MR. HAMILTON: I live next-door to her. Eight  
24 houses down from Tamarack. We're having the same  
25 problems with paintballs in the yard, on the house, on

1 the fence. We have a dog that runs around and eats  
2 them. He eats more. This is what I picked up over  
3 two weekends, last weekend and the weekend before.  
4 That's what I picked up other than what the dog has  
5 eaten.

6 Like she said, I have no problem with Darrin.  
7 He's been over at our house four or five times. He's  
8 offered to clean it up and everything. Like she said,  
9 having the business back there and the lights on at  
10 night will keep people from -- because all it is is  
11 basically a ditch in-between Atlantis and our  
12 backyard. I have no problem against him or anything  
13 he's doing. I don't want to have to go out and  
14 inspect my property two or three times a week to make  
15 sure it's not tore up. That's all.

16 CHAIRMAN: Anyone have any questions?

17 MR. DYSINGER: I'm just going to ask you the  
18 same question. Do you have any reason to believe that  
19 the proper netting would not solve the problem?

20 MR. HAMILTON: I believe if it's totally  
21 enclosed, the top on and down, yes. I don't believe  
22 there would be any more problems out there. Somebody  
23 shoots them over there on purpose would be the only  
24 thing.

25 MR. DYSINGER: Thank you.

1                   CHAIRMAN: Mr. Tapp, would you step up and  
2 address these concerns.

3                   MR. SILVERT: State your name, please.

4                   MR. TAPP: Darrin Tapp.

5                   (MR. DARRIN TAPP SWORN BY ATTORNEY.)

6                   MR. TAPP: I've got some pictures I would like  
7 to pass around.

8                   As my neighbors have said, we have had  
9 problems. Initially what I tried to do was put the  
10 netting all the way around as we discussed.

11                   Actually if you could use this one, sir. I've  
12 got them numbered so I'll know which one I'm  
13 referencing.

14                   Initially we bought like five big rolls, 300  
15 foot long netting. They were suppose to be 12 foot  
16 tall. This netting, if you could think of it like a  
17 shawl type blanket. When it's pulled this way on a  
18 roll, it makes it less tall because it's a weave. It  
19 ended up being like ten foot six inches, which I  
20 believe Mr. Mischel measured when he came out to visit  
21 me. That was the first round of complaints that we  
22 had.

23                   Also, if you look at picture Number 4 and 5,  
24 I've put a top on the back and on the sides. I had  
25 spoke with the fence company prior to coming to this

1 meeting. I did not intend to give the impression that  
2 I was going to build an entire roof system for this  
3 because that was never my intention. The fence won't  
4 hold it. You're talking about 10,000 square foot of  
5 netting. It's extremely heavy stuff, especially with  
6 that many square feet.

7           What I did, I had envisioned a backstop at a  
8 baseball field where the fence goes up and you lean it  
9 up over. I figure that would catch anything  
10 ricocheting or randomly being shot out. My  
11 calculations were wrong and I apologize for that.

12           What is happening is the middle bunkers in the  
13 middle of the field, especially in the middle of the  
14 day when it gets hot they over-inflate and the balls  
15 are hitting it and some of them are bouncing out.

16           For instance, like this weekend we had our  
17 championship series tournament. We shot over 250,000  
18 balls this weekend. I've about got a handle on it. I  
19 don't want half a dozen balls in a week getting in  
20 your all's yard. I want to cure it. I've almost got  
21 this thing licked. I've made several adjustments.

22           If you look at four, that's actually an older  
23 picture. That was the way we first had it done. You  
24 notice it's kind of low, the top is. If you look at  
25 1, 2 and 3, that was the last series of adjustments I

1 did to it. It seemed to help a lot, but if you notice  
2 in 3 on the backside when it meets at the corner, it  
3 had a low spot and that's what's actually right down  
4 where they live. That's the main problem I'm having  
5 is right there in that corner where those two  
6 neighbors, actually three of them. There's a guy on  
7 the other side who's having some go into his yard too.  
8 So I've bought more netting and I'm adding more.

9 What I'm doing is the white poles that you see  
10 in these pictures are 20 feet tall. Okay. They're  
11 actually bent in a little bit. I've probably got 18  
12 feet in true height on this right now.

13 If you look in picture 3, you can see where  
14 the netting is overlapping from the top, overlapping  
15 on the bottom about two and a half feet. I went to  
16 Bluegrass Fencing and bought 22 foot poles. On the  
17 corner telephone poles all the way along the back of  
18 my property I put big anchor bolts in.

19 So what I'm telling you in short is I'm taking  
20 it up to 20 feet tall all the way across the back.  
21 It's going to be anchored into these telephone poles  
22 on the corners of my property. I think that's where  
23 the remainder of the problem is is right in that  
24 corner where they live. Because the netting on the  
25 top, actually the way it was originally designed to

1       make that back drop style that I initially did was  
2       wrapped around the top of the end pole. So it came  
3       down from 18 foot to 12 foot in that corner. As you  
4       can see, I put a little skirt up, but that didn't  
5       catch it all. So what I envision doing to try to  
6       remedy this is to take it 20 foot minimum to 22 feet  
7       all the way on both sides and all the way along the  
8       back. I think that should remedy our problem.

9               The other thing like I said that I found is  
10       more closely monitoring the inflated bunkers. It  
11       seems to not be an issue as long as we keep them soft  
12       to where the balls won't bounce off of them and bounce  
13       over the fence.

14               I've also got copies, these are the letters  
15       that I've sent out to all my neighbors. I've tried to  
16       stay in close contact with them, call them and stop by  
17       and see them and see if they've been having any more  
18       problems for a couple of reasons. If I can see where  
19       the balls are landing or if it's hitting something, I  
20       can tell what the trajectory is and where the problem  
21       may be coming from and adjust from there.

22               I wish that my fencing could hold an entire  
23       roofing system on it. That would be an easy solution  
24       and it probably would have cost me less than all this  
25       adjusting that I've done to date, but at present it

1 won't, you know.

2 I'm committed to this. I'm committed to  
3 making my neighbors happy and making whatever  
4 adjustments I need to make. If they ever do have a  
5 problem, like these letters that I've sent out, I will  
6 pay to have their homes or care or whatever cleaned in  
7 an event that some do randomly get over there.

8 I've also, as far as pets and concerns with  
9 pets go, I've got a letter from the manufacturer of  
10 the paintballs that addresses those concerns. It's  
11 right here as well. It actually tells you what  
12 they're made out of and the whole nine yards on that.

13 We've got over 300 kids. Each kid  
14 individually has to get a waiver signed that have come  
15 so far in a little over two months to play. I just  
16 hope you guys -- I really appreciate your all's  
17 patients and tolerance with me. I hope we can find a  
18 solution that works for everybody because I do want to  
19 be a good neighbor to these people and continue to  
20 provide fun, safe activities for these kids.

21 MR. DYSINGER: Mr. Chairman, if it's all  
22 right.

23 CHAIRMAN: Yes.

24 MR. DYSINGER: The changes you just spoke  
25 about, when were those put in to place?

1           MR. TAPP: Like Mr. Mischel said, we went for  
2 several weeks with no complaints. I thought I had it  
3 remedied and I thought I had it solved. I kept  
4 hollering over the back fence and asking my neighbors  
5 if they were having problems. We went several weeks  
6 with no problems. Just last week did I find out --  
7 well, you called me last week and I think you had some  
8 a couple of weeks ago or something. Did it rear it's  
9 head again I guess you would say. So I purchased more  
10 supplies. Mother nature did me a big favor Monday  
11 night. That 50 mile hour winds took down pretty much  
12 everything I had done. So it had to be redone anyway.

13           We've got the first field that's down from  
14 your house, I got it done today. The field that's by  
15 your all's house will be done tomorrow before we open  
16 back up this weekend.

17           Please, if you're still having a problem, I'm  
18 going to have all this new stuff up this weekend, let  
19 me know the first of the week and I'll see what else I  
20 can do.

21           CHAIRMAN: Mr. Tapp, would you like to enter  
22 these into the record or are they strictly for the  
23 neighbors?

24           MR. TAPP: Sure. Whatever.

25           CHAIRMAN: Do we need this into the record,



1 Mr. Noffsinger?

2 MR. NOFFSINGER: Yes, sir, I would say put  
3 them into the record.

4 MS. MASON: I have a question. You originally  
5 told me that you were going to put netting on top of  
6 it. Now you're saying that you were not able to do  
7 that. See, where we stand as a board is we approve  
8 this under the assumption that you were going to put  
9 the 12 foot tall fence and the netting above it. Of  
10 course, I realize you say you're making all these  
11 changes, but we approved it on the basis of what you  
12 told us originally.

13 MR. TAPP: I did put netting on top. It come  
14 over 8 foot. It went up 12 feet and I had an 8 foot  
15 top on it. On the back and on the sides, but this is  
16 the way it was explained to me by the guy that designs  
17 the fences for the ball diamonds and stuff.

18 A backdrop is fine, but when they move home  
19 base away from that fence and the guy hits the ball,  
20 it's the height that's going to stop that ball from  
21 going over. Not something leaning out. If home base  
22 was out further than that backstop is, then that's  
23 where the ricochet is going to go over. So the only  
24 way you're going to stop it is to raise it up higher.

25 I think Jim had the same impression. He

1 thought we were going to build an entire roofing  
2 system for it. I did not mean to give that impression  
3 because it is really unfeasible. It just won't work.  
4 It's structurally not with the fencing that we have.  
5 It just won't work.

6 CHAIRMAN: Anyone have any other questions of  
7 Mr. Tapp? I'd like to bring Mr. Mischel back up.

8 MR. DYSINGER: Do you believe now that you've  
9 got the problem solved between the bunkers not being  
10 as inflated and the extra netting? Is it your belief  
11 that --

12 MR. TAPP: Yes, I do believe we have the  
13 problem solved. I can't guarantee you 100 percent  
14 that we're not going to get a stray ball over there.  
15 I can guarantee you that if there is one and you call  
16 me, I'll come over and clean it up or I'll have  
17 somebody come over and clean it up. I think we've got  
18 it solved.

19 MR. DYSINGER: If that one stray ball does get  
20 over -- my concern, and you heard what I asked your  
21 neighbors. Between it accidentally happening and  
22 people who are being irresponsible doing it. When we  
23 approved this the first time, and I'm like Ruth Ann.  
24 I assumed that when you talked about having it on top,  
25 it meant the whole top. I can't speak for the whole

1 board now looking back, but that was the assumption I  
2 had as well. That even if somebody was going to be  
3 irresponsible, that would prevent them from doing it.  
4 The concern that I have now, and I do think you've  
5 done a great job in keep -- if tonight has taught us  
6 anything, it's talk to your neighbors.

7 I think you've done a good job at that so I'm  
8 encouraged. My concern is that since there won't ever  
9 be a solid roof, will this always be a problem for  
10 your neighbors? That's a concern that I have.

11 MR. TAPP: Part of your concern, and Dallas  
12 can also confirm this. We haven't had an incident to  
13 my knowledge where anybody has intentionally shot  
14 paintballs over there, but we do have some kids that  
15 go up and down that ditch line and intentionally pull  
16 paintballs out from under our fence and throw them at  
17 the houses. We have caught them doing that.

18 See, if you took a paintball gun from that  
19 field and tried to shoot it up over that fence, it's  
20 not going to hit the houses. Because if you're  
21 looking from the middle of the field up that netting,  
22 the netting is actually higher than the telephone  
23 poles. Trajectory-wise it's not going to land in  
24 their backyard. It's going to completely clear their  
25 houses and be across the street in front of them.

1           MR. DYSINGER: You're saying that you couldn't  
2 purposely shoot at these folks houses?

3           MR. TAPP: No, not from inside the fields.

4           MR. DYSINGER: That's why you believe that the  
5 paintballs that they have found have been accidental,  
6 bouncing off the bunker?

7           MR. TAPP: Yes. I'm sure of that.

8           CHAIRMAN: Thank you.

9           Mr. Mischel, would you step back up and maybe  
10 give the board what their options are. Do we give Mr.  
11 Tapp a certain amount of time to correct the problem,  
12 certain amount of days or do we revoke the conditional  
13 use permit until he comes into compliance and then he  
14 has to reinstate? The board needs some options on  
15 what we can actually do.

16           MR. MISCHEL: As I see it and interpret it,  
17 it's strictly by what the law says, KRS statute. It  
18 would say that this board has approved this  
19 conditional use permit back in September for the 12  
20 foot tall fence with the top on it. If you interpret  
21 what the law says, that's what you go by.

22           It's hard for you to go back and make new  
23 conditions upon that. It's already been voted on and  
24 been passed.

25           To do that I would think that the applicant

1 would have to go back through the process, reapply  
2 showing that maybe this fence is going to be 20, 22  
3 feet tall or whatever. Right now what has been passed  
4 and voted on has been a 12 foot tall fence with a top  
5 on it. I think it's kind of hard to go back on that.

6 MR. SILVERT: Mr. Chairman, I want to echo  
7 that. I think it's a question for the board tonight  
8 as to whether or not this conditional use permit will  
9 be revoked. If it is revoked, then if he wanted to  
10 continue his paintball facility there he would have to  
11 reapply for a new conditional use permit. So the  
12 question tonight is whether you want to revoke the  
13 conditional use permit as it already exist. A new one  
14 isn't before you tonight. You couldn't add new  
15 conditions. So it's simply a question of, do you  
16 believe that the conditional use permit as requested  
17 has been complied with substantially. If so, can you  
18 leave it alone. If you don't, then you may want to  
19 revoke it. That's your decision.

20 MR. MISCHEL: It's either he stays with the  
21 conditional use permit he has now and says, I'm going  
22 to make it 12 feet tall with a top on it, I would  
23 think he could not operate until he does that. That  
24 would be one option.

25 The second option would be to reapply in front

1 of this board for a different option, if he thinks it  
2 should go 20, 22 feet or whatever and propose that.

3 MR. SILVERT: I would say, Mr. Mischel, if you  
4 wanted to institute the process again of attempting to  
5 revoke for lack of compliance, you could do so.

6 MR. NOFFSINGER: I agree with that.

7 MR. DYSINGER: My question is, I don't see how  
8 we cannot revoke that last permit. It's clearly not  
9 in compliance, and I don't think through any sense of  
10 malice. I just think through misunderstanding if  
11 nothing else. It's clearly in noncompliance.

12 At the same time, he does seem to have made a  
13 good faith effort to correct the problem. I guess  
14 what I'm looking for as a parliament to allow him to  
15 continue to operate for the month that he has to  
16 reapply, unless there's strong opposition from the  
17 neighbors, which I haven't heard that.

18 Don't let me put words in your mouth.

19 I just don't want to see him suffer. I  
20 imagine he's made a great outlay and expense in this.  
21 To me has seemed to attempt to comply in good faith.  
22 I think that should be recognized.

23 Does the Staff have or the attorney --

24 MR. NOFFSINGER: Might I suggest that if you  
25 don't have enough information on this item to act

1       tonight, we postpone for 30 days in taking action.  If  
2       you do that, I think the applicant needs to realize,  
3       Mr. Tapp needs to realize that when you come back next  
4       month you better have a roof over it or you better  
5       have applied for a conditional use application to  
6       construct this facility as you plan to construct it.  
7       That way it's very clear.  Then we have a public  
8       hearing as to how we're going to dispose of it.  
9       Either approve, deny, and the neighbors have an  
10      opportunity to weigh in.

11                I think we all want the same thing.  We want  
12      you to be able to operate the facility.  These folks  
13      shouldn't have to put up with a single paintball in  
14      their yard.  I know that may be difficult, but they  
15      have issues that aren't being addressed now and there  
16      was some commitments made, at least as part of the  
17      record.

18                The Neighbors, do you object to the board  
19      taking 30 days to examine this?

20                Let the record show they're shaking their  
21      heads no.  Is that acceptable to everyone?

22                MR. HAMILTON:  Yes.

23                MS. CARTER:  Yes.

24                CHAIRMAN:  I guess we need a motion to  
25      postpone for lack of information.

1           MR. DYSINGER: Mr. Chairman, I move that we  
2 postpone this action until our next regularly  
3 scheduled meeting.

4           MS. DIXON: Second.

5           CHAIRMAN: We have a motion and a second. Any  
6 question on the motion?

7           (NO RESPONSE)

8           CHAIRMAN: All in favor raise your right hand.

9           (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10          CHAIRMAN: It's unanimous.

11          MR. NOFFSINGER: Just want to make sure that  
12 the applicant understands that when we come back at  
13 the next meeting, which will be the first Thursday in  
14 January, that you need to have a roof installed and  
15 operating or you need to be in the office tomorrow  
16 morning to make an application for a conditional use  
17 permit to construct the facility as you plan to do it.  
18 I'm not sure when the dead line is to file for that  
19 application.

20          MR. TAPP: I just want to be clear on this.  
21 It needs to be completely, the top needs to be  
22 completely covered? Because I think in the minutes  
23 what I said was I would cover the complete exterior 12  
24 foot high and put a top on it, but we never did define  
25 what a top was.



1           MR. WARREN: That's kind of my question. I've  
2 read through these minutes time and time again. Our  
3 interpretation of what he said was the entire  
4 perimeter and on the top as well. He didn't say I'll  
5 put a roof on it. He didn't say, I'll put a top on  
6 the entire. It just says, a top as well. From his  
7 testimony he's saying that he meant a top on the  
8 fence. Us, this group, interpreted it as a top over  
9 the entire tennis court. It's almost our error in  
10 interpretation. We did not make it clear that we  
11 expect you to put a roof on this. Not necessarily a  
12 roof, but over the entire top.

13           MS. DIXON: A canopy.

14           MR. WARREN: I'm not sure that he hasn't done  
15 what he said he would do and now is going above and  
16 beyond what we allow.

17           MR. NOFFSINGER: It sounds like he's going to  
18 be filing a new conditional use permit application  
19 that will be basically what he has said he would do or  
20 is going to do, what he feels will correct it. Then  
21 we'll consider that. I don't know if it will be  
22 approved or not. We've got an issue of paintballs and  
23 these people have issues and there are legal issues  
24 surrounding it.

25           I can tell you, you're doing a wonderful job

1 from what it seems trying to address the neighbors  
2 concerns because you understand they had real  
3 concerns.

4 MR. TAPP: Sure.

5 MR. NOFFSINGER: I think everyone is working  
6 together. Hopefully next month we'll --

7 MS. DIXON: This way you don't lose a month's  
8 business.

9 MR. DYSINGER: Exactly.

10 MR. TAPP: I appreciate that. I guess I'm  
11 trying to clarify for my mind how I need to approach  
12 this new one.

13 MR. DYSINGER: There's two things you can do.  
14 You can either cover the whole thing with a net,  
15 because Marty says that we misunderstood. I know what  
16 I thought.

17 MR. WARREN: I know what I thought too.

18 MR. DYSINGER: So that is the way that you're  
19 operating under up until now. You've stated you  
20 cannot do that. Your other option is to refile for  
21 another application, which merely outlines what you  
22 are going to do.

23 Gary, maybe you should have done that instead  
24 of me.

25 MR. NOFFSINGER: You did a fine job there.

1 Design in such a way where the board is going to be  
2 looking, and I think the neighbors are going to be  
3 looking at no paintballs escaping that area. Whatever  
4 it takes.

5 MR. DYSINGER: I would also like to hear from  
6 you guys as well if you have any further problem.

7 MS. CARTER: I won't be here at the next  
8 meeting, but I am excited. I saw Darrin's new higher  
9 fence up closer to Tamarack this afternoon. I  
10 thought, that looks like that might work. I really  
11 think -- I was under the same assumption that you all  
12 were. I honestly thought he was going to cover the  
13 whole thing with a roof, but evidently I misunderstood  
14 too. What he has done has not worked with his partial  
15 roof, but I'm thinking like Darrin is. The extra 22  
16 feet looks to me like it's going to work. I'll send  
17 my proxy next month because I won't be here to let you  
18 know.

19 MR. WARREN: I have another comment or  
20 question or whatever. You've caught some kids  
21 grabbing up under your fence you're saying?

22 MR. TAPP: Yes.

23 MR. WARREN: Is there any way to stop that?

24 MS. MASON: Can you put a little sturdier  
25 area, the border around the edge to keep the

1 paintballs from going up under the netting?

2 MR. WARREN: I really can see some young boys,  
3 I was one, one time.

4 MR. TAPP: One of them got yanked by his ear  
5 and drug in the house because I was fixing netting and  
6 I said, ma'am, you see those balls all over your house  
7 right there? She said, yes. I said, your son just  
8 did that. He's one of the two that was doing it. She  
9 asked him and he owned up to it.

10 Actually I don't think it's been near the  
11 problem ever since we caught him that time. I think  
12 his mom handled things. That doesn't mean that it's  
13 not going to happen.

14 As far as your question goes, this is flexible  
15 netting. I really don't know how you could possibly  
16 do that to where they couldn't -- you're talking about  
17 a chain-link fence that's flexible as well. I've got  
18 it tied to a chain-link fence all along the bottom. I  
19 really don't know. Again, I don't think that's been a  
20 problem for the last few weeks, ever since we caught  
21 him.

22 CHAIRMAN: We need one more motion.

23 MR. DYSINGER: Move to adjourn.

24 MR. WARREN: Second.

25 CHAIRMAN: All in favor raise your right hand.

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: We are adjourned.

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

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and  
4 for the State of Kentucky at Large, do hereby certify  
5 that 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 110 typewritten pages; and that no signature  
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the  
17 26th day of December, 2007.

18

19

\_\_\_\_\_  
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COMMISSION EXPIRES: DECEMBER 19, 2010

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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