

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 AUGUST 7, 2008

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday,
5 August 7, 2008, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

8 MEMBERS PRESENT: Ward Pedley, Chairman
9 Ruth Ann Mason, Secretary
10 Gary Noffsinger, Director
11 Madison Silvert, Attorney
12 Marty Warren
13 Sean Dysinger
14 Clay Taylor
15 C.A. Pantle

16 * * * * *

17 CHAIRMAN: Call the Owensboro Metropolitan
18 Board of Adjustment to order. We will begin our
19 meeting with a prayer and the pledge of allegiance to
20 the flag. Mr. Taylor will lead us.

21 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

22 CHAIRMAN: I would like to welcome everyone
23 tonight. Anyone wishing to speak on any item may do
24 so. We ask you to come to one of the podiums and
25 state your name and be sworn in. We welcome your
comments and questions.

First item on the agenda is to consider the
minutes of the July 3, 2008 meeting. Are there any
additions or corrections?

1 (NO RESPONSE)

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

3 MR. PANTLE: Move to be approved.

4 MS. MASON: Second.

5 CHAIRMAN: We've got a motion and a second.

6 All in favor raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: The motion carries unanimously.

9 The minutes are approved.

10 Next item.

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12 CONDITIONAL USE PERMITS

13 ITEM 2

14 5281 Old Lyddane Bridge Road, zoned A-R
15 Consider a request for a Conditional Use Permit to
16 build, operate and maintain a rural facility for the
17 sale of dairy products, farm products, related
18 merchandise, and related activities, including but not
19 limited to; the preparation, sales, and consumption of
20 dairy, food, and farm products, a deli-type sandwich
shop, drive-through window service, and outdoor events
for groups of people that may include catering.
Reference: Zoning Ordinance, Article 8, Section 8.2E1
and 8.2E3/45
Applicant: Kuegel's Dairy Barn, LLC and John L.
Kuegel, Sr.

21 MR. SILVERT: State your name, please.

22 MR. WILLIAMS: Zack Williams.

23 (ZACK WILLIAMS SWORN BY ATTORNEY.)

24 DESCRIPTION

25 Consider a request for a Conditional Use

1 Permit to build, operate and maintain a rural facility
2 for the sale of dairy products, farm products, related
3 merchandise and related activities, including but not
4 limited to: The preparation, sales and consumption of
5 dairy food, and farm products, a deli-type sandwich
6 shop drive-through window service, and outdoor events
7 for groups of people that may include catering.

8 ZONING HISTORY

9 OMPC records indicate that a conditional use
10 permit was approved at the July 3, 2008 OMBA to build,
11 operate and maintain a dairy products and farm
12 products sales facility with limited retail sales of
13 merchandise. The current request for a conditional
14 use permit comes before the OMBA because the applicant
15 intends to conduct activity that is outside the scope
16 of the previously approved conditional use permit.

17 LAND USES IN SURROUNDING AREA

18 The adjoining property on all boundaries is
19 zoned A-U Agricultural and is used for agriculture.

20 ZONING ORDINANCE REQUIREMENTS

21 1. Parking spaces of 1/300 square feet of
22 retail sales floor space and 1/100 square feet of
23 floor space for a restaurant with a drive-through
24 window.

25 2. The two-way vehicular drive from Old

1 Lyddane Bridge Road must be a minimum of 24 feet wide
2 on the subject property.

3 SUGGESTED CONDITIONS

4 1. ADA accessible parking spaces and
5 offloading must be paved.

6 2. The first 50 feet of driveway from Old
7 Lyddane Bridge Road must be paved.

8 MR. WILLIAMS: We would like to enter the
9 Staff Report into the record as Exhibit A.

10 CHAIRMAN: Any board members have any
11 questions of Mr. Williams?

12 (NO RESPONSE)

13 CHAIRMAN: Anyone here representing the
14 applicant?

15 MR. KAMUF: Yes.

16 CHAIRMAN: Mr. Kamuf, let's see if we have any
17 opposition or questions on the issue.

18 Anyone here like to speak against this item or
19 have any questions or comments on this item?

20 (NO RESPONSE)

21 CHAIRMAN: Mr. Kamuf, your presentation.

22 MR. SILVERT: State your name, please.

23 MR. KAMUF: Charles Kamuf.

24 MR. SILVERT: Mr. Kamuf, I recognize the oath
25 you took as an attorney.

1 MR. KAMUF: Thank you.

2 I represent John Kuegel and Kuegel's Dairy
3 Barn concerning a conditional use permit that you just
4 heard Zack talk about.

5 In 1970 there were 37 dairy farms in Daviess
6 County. Now there are three dairy farms.

7 In order to sustain a dairy operation, the
8 Kuegels need to either quit, enlarge or increase the
9 value of their operation. So they've decided to
10 operate what is called Dairy Barn, and we'll explain
11 that in just a little more in just a second.

12 It will be to increase agri-tourism and
13 agri-entertainment. The whole idea is to get people
14 and individuals on the farm to see the cows, to see
15 the farm operation, to tour the farm and to see the
16 growing crops. That's their whole idea. It's similar
17 to what we have at Reid's Orchard. Every year they
18 have an Apple Festival at Reid's Orchard. Of course,
19 the Apple Festival needs to be at the Reid Farm. It
20 wouldn't do any good to have it at the Sportscenter.

21 In line with what Zack said, we were here last
22 month. We got the conditional use approved, but when
23 John went over to get the permit there was some
24 questions as to exactly what it was going to be used
25 for. Mainly tonight we'll have an issue as to the

1 clarification of the conditional use permit.

2 When we refiled here is what we pretty well
3 stated. That we will build, operate and maintain a
4 rural facility for the sale of dairy products, farm
5 products, merchandise, related activities and other
6 farm activities.

7 The retail sales will include preparation
8 sales and consumption of dairy food and related
9 products.

10 There will be some testimony from the State
11 Department of Agriculture concerning the Kentucky
12 Proud Agricultural Products and what they consist of
13 and will be sold there. It will be ice cream,
14 yogurts, jellies, jams, meats, cheeses, sandwiches,
15 soups, candles, spices and seasoning preparation.
16 There will be the sale of drinks such as Cokes, hot
17 chocolate and things of that nature, but none of them
18 in bulk sales. There will be sales of fruits,
19 vegetables and flowers. The sale of farm promotional
20 items such as T-shirts and related shirts and things
21 of that nature related to the farm operation.

22 This will not be a restaurant in the sense of
23 a McDonald's or convenient store. It will be farm
24 orientated.

25 Some of the activities that they will have

1 there, there will be agricultural events such as hay
2 rides, corn maze, June dairy month promotions, harvest
3 activities, Easter egg hunts, birthday parties and
4 things of that nature.

5 There will be educational events such as field
6 trips, hay rides, agricultural class events, FFA and
7 4-H events.

8 We will not initially build a drive-in, but it
9 is proposed, it is shown on the development plan. If
10 you have any questions about the development plan, Mr.
11 Riney is here.

12 We have a 24 foot easement that goes along the
13 western line. That adjoins Rick Kamuf. Rick Kamuf is
14 the neighbor that adjoins this. He uses the same
15 access point. He has about a \$200,000 home there and
16 he will tell you that he has no objection to this
17 proposal that we have here tonight.

18 This will be similar, some of you all have
19 probably bought fresh produce at Trunnell's Market on
20 431 near Utica. It will be similar to that, but it
21 will be more similar probably to Reid's Orchard and
22 their operation up there. Like where they have the
23 Apple Fest up there. They sell a lot of promotional
24 activities such as pumpkins and all type of sandwiches
25 and things of that nature.

1 I'll introduce this here. We have several of
2 these in the state. I think there are about 83 of
3 them. This is a brochure that I will show you. This
4 is over in Bowling Green. There's a Chaney's Dairy
5 Barn in Bowling Green. It is operated by Mr. Chaney
6 and his three sons. They had a dairy operation over
7 there and they wanted to add to it. Let me pass these
8 out.

9 I'll give you a copy for the record.

10 If you have any questions about that, I'll be
11 glad to answer them. You can see it's a restaurant
12 type facility. They have ice cream. They have a
13 petting zoo. Then on the other side it shows this
14 form that you have on the front is the barn itself.

15 We have from the Bowling Green Chamber of
16 Commerce, and I'll give you a copy of the letter and I
17 won't read it, but there's just a couple of points
18 from them. It says, "Now in their fifth year,
19 Chaney's Dairy Barn has been named the 2008 Small
20 Business of the Year, recognizing it for its impact on
21 the economy. They have quickly become a community
22 partner. Bowling Green is very fortunate to have an
23 entrepreneur like Carl Chaney and his family who have
24 built a profitable business so quickly and so
25 successful."

1 Then another one that we have, Audie, is from
2 the Farm Bureau. They have sent us a letter. The
3 reason for this it states, "According to the Kentucky
4 Department of Agricultural there are over 200
5 agri-tourism destinations in Kentucky and are
6 certified road side market program. Alone we have 83
7 on farm markets selling directly to the consumer."

8 Many of the 83 are similar facilities to what
9 Mr. Kuegel is proposing.

10 In other words, this has gone over very well
11 in Bowling Green and throughout the state.

12 The other one that we have is from, this is
13 from the Bowling Green Convention and Visitor's
14 Bureau. It states this: "During my 17 years as the
15 Visitor Bureau I cannot count the number of people who
16 have come to our visitor information centers asking to
17 visit a farm. See particular crops growing and take a
18 farm tour. There is truly an interest, especially
19 from those who have lived in large cities most of all
20 their life and have not experienced farm life."

21 We have we think an important item for
22 industrial development in Daviess County. It's gone
23 on through the state. Mr. Kuegel when he has his
24 operation finished it will be approximately \$500,000.
25 We think it's a good thing for Daviess County. We

1 think it's a good thing for Owensboro.

2 I might say since the last meeting we have had
3 numerous calls of individuals saying, when are you
4 going to open up? When can I come out and see the
5 farm?

6 We have people from the state here that will
7 answer questions. Mr. Kamuf is here to answer if you
8 have questions of him. He lives next-door to this
9 project. Then John Kuegel will tell you some of his
10 ideas. I think we're here and the idea is to clarify
11 anything that wasn't explained at the last hearing so
12 you can get an idea of exactly what we're going to do
13 so there will be a record of the things that we
14 anticipate to do.

15 CHAIRMAN: Any board members have questions of
16 Mr. Kamuf?

17 MR. DYSINGER: Mr. Chairman, I have a
18 question.

19 The farm, the actual farm equipment and
20 buildings and all of that, where is that in relation
21 to this proposed structure?

22 MR. KAMUF: It's right across the road. Do
23 you have a development plan in front of you?

24 MR. DYSINGER: I do, but I don't have across
25 the road.

1 MR. KAMUF: If you look on there, as you drive
2 up the driveway on the left is Ricky Kamuf's farm. On
3 the right is where they intend to build the building
4 and directly on the opposite side of the road, on the
5 south side is where the dairy operation is. It's
6 close to the smell.

7 MR. DYSINGER: You get the whole feeling then.

8 MR. KAMUF: Right.

9 MR. DYSINGER: Thank you.

10 CHAIRMAN: Any other question from any board
11 member?

12 (NO RESPONSE)

13 MR. SILVERT: State your name, please.

14 MR. KUEGEL: John Kuegel, Jr.

15 (JOHN KUEGEL, JR. SWORN BY ATTORNEY.)

16 MR. KUEGEL: Sorry if there was any confusion
17 that came through about this project when we came
18 before you last time. I take responsibility for not
19 being as maybe descriptive as we needed to in
20 describing the business.

21 I'm going to give you just a little bit of
22 background and try to inform you of how we're coming
23 to the decision to do this and why I feel it's
24 important.

25 As you all know businesses change, industries

1 change. Farming is changing and has changed
2 tremendously as Charlie stated earlier.

3 In 1970 when Tom Curtsinger came here as your
4 county agent, there were 37 dairies in the county.
5 Currently there are three.

6 What's happening in the dairy industry is a
7 number of farms are decreasing, but the number of
8 animals on those farms are increasing. A lot of times
9 they're increasing dramatically.

10 As a farmer here in this county, I know that
11 in order for our farms to survive there are several
12 options that we need to look at. One of those is
13 expansion.

14 Expanding I can tell you probably would be the
15 easiest of the options. Just add more cows and a
16 bigger facility, but that's never been my passion. We
17 have a registered herd. We currently have a 200 cow
18 herd. We're ranked in the top ten in the United
19 States for type for our cows. We try to do a good job
20 with them. I might add we do all of that here in
21 Daviess County without the assistance of veterinary
22 service. So we work hard and try to do a good job
23 with them.

24 I do know that in order for me to stay in
25 business as a dairy farmer I've got to do some

1 changes. Expansion would be one of them. That's not
2 something that with our location that I feel is the
3 best for our family or our community and our
4 neighbors.

5 The second one is just to quit. I don't like
6 that idea of quitting things. Being a dairy man and a
7 cattle breeder that's a life-long occupation. It
8 takes a long time to develop and to breed a herd of
9 cows. So quitting is not an option that I really want
10 to do.

11 The second is to add value. We've been trying
12 to do that for years to the registered cows, but I do
13 know that if we take our cow numbers down we've got to
14 be able to add more value to our product that we're
15 producing.

16 I've spent several years trying to research
17 both by visiting other farms that have changed and on
18 the internet. Agri-tourism and on-farm processing is
19 something that's gone over in a lot of different
20 areas. People being able to buy directly from the
21 farm.

22 My first inclination was to bottle milk. Take
23 our product and put it in a pasteurizing plant and
24 bottle and sell it, but I haven't been able to make
25 myself comfortable with, I guess, the liability issues

1 with the health departments and things like that.

2 As I visited a lot of the farms I went to had
3 ice cream that they sold. When I visited Carl down in
4 Bowling Green, when you walked in his business it was
5 a place that you just felt like you wanted to come
6 back to. Had a wonderful atmosphere. Most people do
7 like ice cream. Personally I enjoy it a lot. I
8 figure if I could work out a way that I could still
9 work with the cows and develop them and have ice cream
10 to make there at the farm, I thought that would be a
11 good thing.

12 Just to give you a little bit of background
13 about the making of the ice cream.

14 Penn State University has a class that you can
15 take. They'll teach you about how to process it, the
16 whole deal. Everybody has heard of Ben & Jerry's.
17 They went through Penn State's program. I'm not
18 saying it will be a Ben & Jerry's, but they will teach
19 you how to do it right.

20 We also have a real passion I think for
21 educating the people. Over the last 30 years our farm
22 has had field trips. Never asked any money for
23 anybody to come to the farm. We've hosted ag days on
24 the farm. We've had up to 900 kids there in one day
25 working with the 4-H Department and things. We like

1 having people out, but there's a need for that
2 education.

3 We set out here beforehand and just in our
4 little group we were able to understand, and many of
5 you might too, remember some of those dairy farms that
6 maybe a grandparent or an aunt and uncle somebody had
7 in the community. The group of kids that are growing
8 up now, they don't have any association with a farm
9 much less a dairy.

10 So I think it's important that we able to
11 bring kids out on the farm. Be able to let them see
12 the animals. Let them be able to know that the milk
13 is produced from a cow. It doesn't just come from the
14 grocery.

15 Unfortunately, give you an example. Since
16 this process started over the last month, we've had
17 visitors from Chicago. Have people bring in family
18 members or just call and say, we'd like to bring our
19 family out to see the farm. For whatever reason
20 without trying people are contacting us wanting to.
21 So I hope that that's a good sign that people will
22 want to come.

23 The important thing that it is on the farm. I
24 can't stress that enough. That's the neat thing about
25 it. When you come to the farm and a joke was made a

1 little bit about the smell. It smells. I hope that
2 by downsizing the number of cows that we have it
3 wouldn't be quite as bad. People need to understand
4 that there are certain things associated with
5 producing our food. If we have cows, that there is a
6 smell associated with that. We just tell them that's
7 the way our money is made. It just a little different
8 smell to it.

9 So I hope the ice cream will be a good thing
10 with that.

11 I will tell you also that I thought about the
12 field trips. Carl Chaney I think this last year had
13 almost 5,000 kids through his farm. Kids and tours
14 all together. Carl has been a super, I can't tell you
15 how valuable of an asset he's been on helping to get
16 information about a business plan, providing
17 information. I've been down to work with him. He's
18 been super. I thought that even my wife, who couldn't
19 be here tonight because the kids are having
20 registration at school. My wife came through our farm
21 on a field trip when she was in the fourth grade. I
22 didn't know it at the time. I don't know if I was
23 helping with the field trip. She even came through.

24 I hope that this business will be a good asset
25 to our community. I'm doing this I hope as a way that

1 we can preserve our farm for another generation,
2 something different. Something scary, but I think
3 it's something that will be good.

4 If you have any questions, I'll be glad to
5 answer them.

6 CHAIRMAN: Board members have questions of Mr.
7 Kuegel?

8 MR. TAYLOR: I've got a question of Mr.
9 Kuegel.

10 I think the biggest concern that anybody would
11 have of this is not the overall business and the
12 magnitude of everything that's going on. It would be
13 that somebody would, you know, just feel like that
14 they can just open a restaurant. I would think to
15 pacify those people, you know, would you be using your
16 own products. Some of your own products in this
17 operation. Is that going to be the case? That some
18 of your own products are going to be used in this
19 operation?

20 MR. KUEGEL: As far as the ice cream that we
21 will do, I guess we could speak a long time on the
22 health requirements to separate pasteurize and do
23 those types of things with the milk. That's one of
24 the big fears that I've had in going through that
25 process. What it takes to do that. My intentions

1 will be is to purchase a mix from Flavor Rich, whose
2 company actually purchases our milk. I can't say that
3 I'll take my milk, pasteurize it, separate. Our milk
4 is going through that. Maybe that's secondhand.

5 The issue that gets in to with, I guess,
6 processing of your milk, there's another decision that
7 goes into that. Every farmer that's selling milk you
8 have a contract with your company. You're not allowed
9 to take milk and sell it to another entity. It has to
10 go through that company. If I do take milk out to use
11 for my own processing, then I'll lose my contract with
12 the company. Therefore I would, you know, nobody
13 would come get your milk.

14 In stating that, with only three dairies down
15 here in this area, we're not exactly a hot spot for
16 people wanting to come and pick up our milk.

17 When we looked at putting up a new barn, the
18 suggestion that we got from the other companies was
19 they wanted us to at least be able to fill a semi load
20 every time they pulled in. That's probably 550 to 600
21 cows.

22 To take milk out I'll jeopardize a contract if
23 I was to use my own milk. So the simple thing is if I
24 can go through a company that we market through and
25 bring that back, that's about as close as I can get.

1 CHAIRMAN: Are there any other questions from
2 a board member?

3 MS. MASON: What percentage of the items that
4 you're going to have at the facility are going to be
5 from the farm? I know you just talked about the ice
6 cream. But are you going to have farm products like
7 vegetables?

8 MR. KUEGEL: Yes. I hope that you don't think
9 I've being evasive, but all of this is new. I'm using
10 Carl's as a model for what he's doing.

11 One thing that we've been working with is a
12 group called KPAP. Larry Snell is here with that
13 group.

14 Kentucky Proud is a new way that the state is
15 marketing new ag ventures. He's got an application to
16 show how you would become that.

17 One thing that you're doing through the ag
18 development fund is you're taking the funds, helping
19 businesses get started. Like if you have an orchard
20 and you're producing products you could become part of
21 the Kentucky Proud network. They encourage the ones
22 that are involved in it to help market other Kentucky
23 Proud products. I might be able to get tomatoes from
24 Rick Kamuf. I might be able to go to Trunnell's and
25 get pumpkins. We'll try to do as much local produce.

1 I don't anticipate myself that I'm going to start
2 growing specific produce to fill the market. If I can
3 have the market and buy from other producers, that's
4 what I would like to do.

5 CHAIRMAN: Anyone else have any questions?

6 (NO RESPONSE)

7 CHAIRMAN: Anyone in the audience have any
8 questions of Mr. Kuegel or Mr. Kamuf?

9 (NO RESPONSE)

10 MR. KAMUF: Mr. Snell is here from the state.
11 He might have a statement concerning your question.

12 MR. SILVERT: State your name, please.

13 MR. SNELL: Larry Snell.

14 (LARRY SNELL SWORN BY ATTORNEY.)

15 MR. SNELL: I'm Larry Snell with the Kentucky
16 Center for Ag in Rural Development. I would like to
17 explain briefly our organization.

18 It's a non-profit that's dedicated to
19 everybody. Technical assistance and business support
20 services to agri businesses across Kentucky.

21 One part of that is it's all about rural
22 economic development. We work with 25 small agri
23 businesses. Generally family-orientated businesses
24 across the state that are really striving to add value
25 to the products they produce on the farm. I'm talking

1 about meats, vegetables, grain, dairy products. A
2 number of things. Associated with that, and maybe I
3 can help in this endeavor is the Kentucky Proud
4 Marketing Program sponsored by the Kentucky Department
5 of Agricultural. There's been hundreds of thousands
6 of dollars devoted to this effort to brand and
7 identify Kentucky grown produced and processed food
8 products. All of you are aware, I'm sure that today
9 we as private citizens all have concerns about where
10 our food is coming from.

11 The majority of the products that we purchase
12 in the grocery store travel a distance of 1500 miles
13 to get to that grocery store where you're buying this
14 product.

15 Here in Kentucky and a number of other states,
16 the citizens are very concerned with knowing and
17 identifying and identifying the source of their foods.

18 One thing that we need to do here in Kentucky
19 to help Kentucky farmers stay on that farm, we have
20 over 80,000 farms in the State of Kentucky. Granted
21 the majority of them are small midsize farms and so
22 forth. Traditional agriculture has its problems out
23 here, especially from the smaller farmers and so
24 forth.

25 Kentucky Proud is a registration process that

1 you have to go through. You can't just put this
2 Kentucky Proud emblem on your product. It's not for
3 everyone. It's monitored and this type of thing.
4 It's a number of products that are farm sourced from
5 the Kentucky farms. It's cheese factory down in
6 Glasgow. It's Chaney's Ice Cream. It's Salsa Sisters
7 up Northern Kentucky that produce salsa and so forth.
8 It's all Kentucky products. Grown products that are
9 grown here. Products that are processed here.
10 Products that are identified so you can readily go to
11 these things.

12 The thing that agri-tourism, you know, is
13 something that is developed in Kentucky and should
14 develop in Kentucky for recreational and educational
15 benefits that John and some of others have spoken for.

16 You know, I grew up on a farm. A lot of the
17 older people grew up on a farm. We understand
18 agriculture. We know about agriculture. There's a
19 generation skip here with my children, my
20 grandchildren or something that didn't grow up on a
21 farm. They don't know where that milk comes from or
22 how those vegetables are grown or how that meat is
23 actually what part of the hog so-to-speak that they're
24 eating.

25 What I want to encourage you to consider here

1 tonight, and a number of these agri-tourism's ventures
2 across the states, and there are a number of them,
3 they're generally from well respect families. You
4 only have to be in Daviess County ten minutes to
5 realize this family is well respected. I've got to
6 admire John for what he's done over the years and his
7 family.

8 Being even in the dairy industry today, you
9 know, there's a lot of them that have gone by the
10 wayside and so forth. The only way that he can stay I
11 would maintain and several other dairy men in Kentucky
12 is to add value to that product that he has out there
13 or make better use of that farm and facility.

14 One of the things that he's willing to do, and
15 it takes people like this family that you're talking
16 here tonight, you know, they've got to live this.
17 They've got to know what they're talking about.
18 Children, you know, they're sharp to know if you
19 really know when you're telling them about the dairy
20 cow or the farm or something out here. The family has
21 to be dedicated. This is a life changing experience,
22 if they go through this and they're successful in
23 establishing this agri-tourism out there. It has to
24 be something the entire family has to be dedicated to.
25 They have to really want to do this for something

1 other than money too to be honest about it. I know
2 that's what's happening out here. It's an aspect of
3 where we in agricultural and in Kentucky agricultural
4 specifically have an opportunity to take youth to the
5 farm, educate them about where the food products come
6 from. It's all about just being outdoors, green
7 space. They really understand what this is about.

8 There's another thing about it too. There's a
9 lot of older people, and John has somewhat already
10 experienced this. You know, my age in this day that
11 don't have the opportunity to get back. The farm is
12 gone. It's been gone for several years and so forth.
13 So they want to come back. It's about an experience
14 to coming back to the farm and so forth.

15 If you go to Haney's Farm in Pulaski County
16 and talk to Mark Haney and his family, they're the
17 counter part of dairy.

18 You talk to Carl Chaney down in Warren County,
19 the counter part of what they're asking to do here in
20 Daviess County. Well respected families. They're
21 really appreciated in their community. Especially
22 once this business has been in business, you know, in
23 doing this agri-tourism for a couple of five years or
24 something like that.

25 I'd be glad to answer any questions.

1 CHAIRMAN: Board members have any questions?

2 (NO RESPONSE)

3 MR. SNELL: Thank you for your time.

4 CHAIRMAN: The Staff have any comments?

5 Mr. Noffsinger.

6 MR. NOFFSINGER: Thank you, Mr. Chairman.

7 I want to thank the Kuegels for coming back to
8 us and making this presentation here tonight. I can
9 say that the presentation you've given has certainly
10 better educated me and my staff in terms of what you
11 intend to do. Please know that we do support you in
12 this venture and hope you're very successful.

13 Mr. Kamuf, I think you've done a good job of
14 bringing the right folks here tonight to explain
15 what's being proposed.

16 I caution the board in terms of making a
17 motion that you include findings of fact in your
18 motion that would speak to the nature of this business
19 as to why it's important for it to be located in the
20 area that it's being proposed. Take into account
21 Mr. Snell's talk here tonight about the Kentucky Proud
22 Agricultural Products.

23 The reason I ask that we do that is that we
24 don't open up to this community to someone that's
25 wanting to put in a restaurant on a small lot and

1 thinking, well, the Kuegels were able to do it with
2 the dairy barn. Why can't I here? I think it's as
3 much for the protection of the agri-tourism business
4 and that we have in the record as to what we're really
5 considering so that we don't just open up the door all
6 over Daviess County.

7 CHAIRMAN: Thank you, Mr. Noffsinger.

8 I think we have a good overview of what you're
9 proposing. I think it's excellent.

10 If no further comment from a board member, the
11 chair is ready for a motion.

12 MR. TAYLOR: Mr. Chairman, I move to approve
13 the conditional use permit. Basically there is no
14 opposition and that they will be in all zoning
15 ordinance requirements. Also that this operation will
16 be a betterment to our community in the agri-business.
17 Also promoting Kentucky Proud Products and having to
18 have the farm involvement would make this different
19 than its normal zoning. Normally it wouldn't be
20 permitted in an agricultural zoning, I feel that the
21 benefit of needing this property being located in the
22 agricultural zone out weighs what we consider. So I
23 move to approve the ordinance. The only suggested
24 conditions that I have, and it looks like they were
25 addressed in the site plan, is ADA accessible parking

1 spaces and offloading area must be paved, and the
2 first 50 feet of driveway from Old Lyddane Bridge Road
3 must be paved.

4 MR. DYSINGER: Second.

5 CHAIRMAN: We have a motion and a second.

6 MR. PANTLE: I would like to add one more
7 amendment to it. That we recognize that the school
8 tourism will be added to it.

9 CHAIRMAN: Do you accept that in your motion?

10 MR. TAYLOR: Yes. Tourism.

11 MR. NOFFSINGER: Excuse me, if I may. In the
12 findings of fact, we're including the educational
13 portion of the program as one of the findings of fact.

14 MR. TAYLOR: Yes.

15 CHAIRMAN: Any comments or questions on the
16 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.

22 ITEM 3

23 2830 Russell Road, zoned A-R
24 Consider a request for a Conditional Use Permit to
25 dedicate a 30' x 40' area along Russell Road near the
northwest corner of the property as a private cemetery
with a 30' wide access drive to Russell Road.

1 Reference: Zoning Ordinance, Article 8, Section 8.2J1
2 Applicant: Rhonda VanMilligan

3 ZONING HISTORY

4 OMPC records indicate that no conditional use
5 permits or variances have been issued for this
6 address. The property contains a single-family
7 residence, auxiliary building and undeveloped
8 woodlands.

9 LAND USES IN SURROUNDING AREA

10 The adjoining properties on all boundaries are
11 zoned A-R, Agricultural and contain single-family
12 residences and undeveloped woodlands.

13 ZONING ORDINANCE REQUIREMENTS

14 None

15 SUGGESTED CONDITIONS

16 1. A minor subdivision be created to contain
17 the cemetery boundaries.

18 2. The deed of dedication to the property
19 must include the requirements to maintain the
20 appearance of the cemetery.

21 MR. WILLIAMS: I would like to enter the Staff
22 Report into the record as Exhibit B.

23 CHAIRMAN: Any board member have any questions
24 of Mr. Williams?

25 (NO RESPONSE)

1 CHAIRMAN: Does anyone in the audience
2 representing the applicant?

3 MR. POTEAT: Mr. Chairman, Steve Poteat
4 representing Ms. VanMilligan.

5 MR. SILVERT: Mr. Poteat, I recognize the oath
6 you took as an attorney.

7 MR. POTEAT: Thank you.

8 Mr. Chairman, Board Members, thank you for the
9 opportunity to be here.

10 First, I apologize for Ms. VanMilligan not
11 being able to be here tonight.

12 Unfortunately this is not an exciting venture
13 such as Mr. Kamuf just presented to you. I wish it
14 were. As a matter of fact, it's one most people don't
15 want to think about.

16 Ms. VanMilligan owns it's well over ten acres
17 out on Russell Road. I think you have a drawing of
18 where they propose to put this as a private family
19 cemetery.

20 Recognizing that Kentucky has little, if any,
21 statutes governing cemeteries other than taking care
22 of them. The zoning ordinance appears to apply to
23 commercial. So we're not real sure on what should be
24 done there.

25 We have no problem and Ms. VanMilligan has no

1 problem with the Deed of Dedication with requiring
2 that to be maintained.

3 The only objection we have or the only
4 question as to any of their findings is as to
5 providing a minor subdivision and that that be
6 approved and separated as a separate part of the farm.
7 That creates more issues because of the size of it.
8 The Deed of Dedication can take care of the concerns
9 that would be raised by doing a minor subdivision
10 plat. The Deed of Dedication can require as the
11 statute requires that the owner of land upon which a
12 cemetery is located is required to maintain it.

13 In fact, that's one of the only statutes we've
14 got on the books on cemeteries. That's required. So
15 the Deed of Dedication can take care of that.

16 This area is going to be fenced in with a rod
17 iron fence. It will be maintained by this family or
18 by any other family that if a year, five years, ten
19 years down the road they sell it. The Deed of
20 Dedication requires that the person that purchase it
21 will be responsible for maintaining it.

22 Now, that may create a problem with them
23 selling it, and that very well may be the case, but as
24 far as requiring a minor subdivision plat and approval
25 and then seeking a variance because of the size, it

1 doesn't meet the minimum size for subdivision, and
2 those matters, we think we can take care of all the
3 questions they have with the Deed of Dedication. We
4 would ask that it be approved subject only to the
5 preparing the filing of the Deed of Dedication.

6 CHAIRMAN: Any board member have any questions
7 of Mr. Poteat?

8 MR. TAYLOR: My question is mainly towards
9 staff.

10 So these conditions, they're not actually
11 ordinance. They're just suggested conditions that we
12 would want or are they actually in the ordinance that
13 have to take place?

14 MR. WILLIAMS: They're not in the zoning
15 ordinance. That's why we're suggesting that they be
16 placed.

17 MR. DYSINGER: Mr. Chairman, I have a question
18 of Staff as well.

19 Mr. Williams, could you comment on what the
20 Staff hopes to accomplish or guarantee by making a
21 minor subdivision?

22 MR. WILLIAMS: That the boundary of the
23 cemetery will be set clearly. Understanding that the
24 family more than likely will tend to maintain and keep
25 the property for as long as they can. Sometimes

1 things happen that are unexpected. Sell of the
2 property can occur quickly. They may not have time to
3 delineate that or properly subdivide it, etcetera.
4 That's one reason for doing it now as opposed to
5 waiting later and doing it.

6 MR. DYSINGER: The applicant's attorney seems
7 to contend that subdividing it now it creates more
8 problems, no longer connected to the property. Could
9 you speak to that?

10 MR. WILLIAMS: All that's being asked is that
11 a minor subdivision be created. That subdivision will
12 need to go before the Planning Commission because it's
13 an irregular size. It's smaller than one acre, but
14 there's no reason why they wouldn't approve it. I
15 don't see a problem other than perhaps time and
16 expense of surveying. I don't know of any other
17 reasons.

18 MR. DYSINGER: But it would sever the
19 property from the rest of this property?

20 MR. WILLIAMS: They could keep it and sell the
21 rest of the property off. They could sell the
22 cemetery separately if they wanted to.

23 MR. WARREN: He also states that a Deed of
24 Dedication would do the same thing.

25 MR. WILLIAMS: The Deed of Dedication wouldn't

1 separate the properties. It could be written such
2 that it would require the owner of the entire property
3 to maintain it. I think he's arguing that that should
4 be sufficient.

5 MR. TAYLOR: Maybe I'm just not understanding
6 it. So if he does the subdivision, will that make it
7 two separate pieces of property?

8 MR. WILLIAMS: It would. It would separate
9 them. Plus it would also define exactly where the
10 boundaries are. I think I left one thing out. As far
11 as if he used the Deed of Dedication and then relied
12 upon fencing to define the boundaries of the cemetery,
13 time could pass, fences can fall down, etcetera,
14 things can be lost. That's part of the reason for
15 actually surveying it.

16 CHAIRMAN: Anyone in the audience have any
17 questions or comments or opposition on this item or
18 any questions of Mr. Poteat?

19 MR. POTEAT: May I make one brief response,
20 Mr. Chairman?

21 CHAIRMAN: Yes.

22 MR. POTEAT: With regard to a minor
23 subdivision, we can delineate the area with a fence
24 and do it in the Deed of Dedication, but by making
25 this a minor subdivision, we can do that same thing

1 with just a survey showing this is where the cemetery
2 will be and this is the boundaries and use that as
3 part of the Deed of Dedication and not have to go
4 before a minor subdivision which, again, creates more
5 problems because of the fact that it is a
6 nonconforming lot size. We can certainly provide a
7 survey just to say, this is where it is. Put that
8 with the Deed of Dedication. Fence it in. Then you
9 know where it is. We don't have, again, we don't have
10 to go through the minor subdivision process, which I
11 believe creates more problems in the future than it
12 serves right now. Cemetery is going to know where it
13 is. The statute is going to say that whoever owns the
14 land has to pay for it or has to maintain it, and
15 that's what the Deed of Dedication will call for as
16 well.

17 I think that just a survey plat showing the
18 location of it, attaching that, this is where it will
19 be, this is its size. I certainly think that does the
20 same thing that he's asking for. Wanting to know
21 where it is so it's not lost over time. I believe
22 that would do the same thing.

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

25 MR. WARREN: So the cemetery will be surveyed?

1 MR. POTEAT: I'm saying that that can be done
2 rather than having to do a minor subdivision plat. It
3 would certainly be a lot quicker. We could make a
4 survey of that, of that area without doing a full
5 minor subdivision which creates, like I said,
6 additional problem, additional variance request that
7 we believe.

8 MR. DYSINGER: Mr. Chairman, I would like to
9 know if Staff would be emendable to that, to a survey
10 being included in the Deed of Dedication?

11 MR. NOFFSINGER: I'm not sure that will work
12 in terms of satisfying. I've just been talking with
13 our attorney.

14 What we feel we need to do is determine as a
15 matter of record in the courthouse the boundaries of
16 this cemetery so that it's very clear in the future
17 when we're tracing the chain of title and we're
18 looking at documents that there's a cemetery there and
19 then we have those pins out in the field, which 100
20 years from now might be very important. How we get
21 there -- Staff would support an exception. We call it
22 a minor subdivision plat. It is a minor subdivision
23 plat in nature in that we're not looking at it as a
24 development lot and would not count that toward the
25 development lots or the property's potential to create

1 development lots. We're just trying to make sure we
2 have a good clean record where that cemetery is in the
3 future.

4 Now, how we can legally go about that, I'm not
5 an attorney nor am I surveyor.

6 MR. DYSINGER: Mr. Chairman, I guess my
7 question, and maybe I'm missing something.

8 My biggest concern, and I think your client's
9 intentions, I would think if I were in her shoes to
10 keep all her property together with her family plot.
11 She wants to keep that in one piece and it's an
12 understandable reason. My only concern when even
13 talking about something like cemetery is not what's
14 going to happen for the next five years. It's what's
15 going to happen 50 years from now.

16 I guess my thinking is, is that keeping the
17 property all attached, seems to me if it's subdivided
18 in any way, somebody who owns this property who may
19 not have the sentimental attachment that Mr. Poteat's
20 client has could simply sell off eight and a half
21 acres and those eight and a half acres have no
22 obligation whatsoever to the upkeep of this cemetery.
23 I guess that's why it seems to me, who I'm not a
24 surveyor, an attorney or a planner, seems like keeping
25 this all together -- I mean I'm a stay at home dad. I

1 have to deal with juice boxes and crayons all day
2 long. It seems to me that keeping all the property
3 together is the way to guarantee the upkeep of this
4 property. The way to do that seems to me is to
5 include as much as possible into a Deed of Dedication.

6 CHAIRMAN: One thing that concerns me if that
7 isn't surveyed and enter a record plat, someone buys
8 that piece of land at a future date and they decide to
9 do a massive excavating gray work not knowing, have no
10 way of knowing that that is a cemetery without it
11 being surveyed and recorded plat, and the first thing
12 you know they're out there digging up graves. That to
13 me it must be surveyed and a recorded plat.

14 MR. POTEAT: I understand that. I certainly
15 do. I must say that I think Mr. Dysinger hit it on
16 the head when he said if it's ever sold, the remainder
17 of the farm, if would create a minor subdivision,
18 create this lot, that means they could sell the rest
19 of it. Then when the VanMilligan family is gone and
20 there's no family members left, there's no relatives,
21 there's no one that's obligated to take care of it at
22 that point. I think the Deed of Dedication, first of
23 all, a Deed of Dedication will be recorded. It will
24 be recorded under their name. If you do a title exam
25 on the property, you're going to find that Deed of

1 Dedication showing that there is a cemetery and
2 showing the approximate where the location of it is.
3 It will set that out.

4 Now, if you have somebody that doesn't do a
5 complete title, you know, I can't do anything about
6 that. They may not even find the plat, depending on
7 who is doing the title work. If you do a title on the
8 property when the VanMilligans go to sell it, they're
9 going to find that Deed of Dedication recorded in the
10 clerk's office hopefully. I think counsel would agree
11 with that. He hopes they're going to find it there.
12 I hope they're going to look for it.

13 CHAIRMAN: Counsel.

14 MR. SILVERT: Again, I won't state this as a
15 legal determination, but I will state it as a legal
16 concern as to the Deed of Dedication being the only
17 way of delineating this area as a cemetery. My issue,
18 my concern is the ease in which a Deed of Dedication,
19 particularly when there's only one property owner to
20 whom that Deed of Dedication applies, the ease of that
21 Deed of Dedication being lifted. It would only
22 require that property owner, say they're selling it,
23 the person that wants to buy it from them does not
24 want to have that restriction on the property. It's a
25 very simple matter of being able to record a document

1 in the record that would lift those restrictions
2 caused by that Deed of Dedication.

3 I guess the question shouldn't be, which way
4 is correct? Deed of Dedication or survey? The
5 question in my mind would be why not both?

6 CHAIRMAN: If you do not make a recorded plat
7 of a division, if you do not make a land division and
8 a recorded plat and a deed, there's really no way if
9 someone buys that piece of property to go back and
10 check the deed and check the plat to find out the fact
11 that it is a separate piece of property. If it has a
12 separate deed, there is a division made, a recorded
13 plat, then no one can buy that piece of property
14 without knowing where it is and what it is.

15 MR. SILVERT: Technically in the chain of
16 title the Deed of Dedication would come up, even if it
17 was lifted. So they would know that at least a
18 cemetery was proposed on that property. You wouldn't
19 know for certain if someone was actually buried there.
20 Neither would you by survey. I see the benefits of
21 having both. I guess that's why I question whether or
22 not having both survey and a Deed of Dedication that
23 would require a certainly level of maintenance
24 consistent with the statute wouldn't doubly ensure
25 that that property was recognized as a cemetery, was

1 maintained as a cemetery, and that those who were
2 looking at the chain of title would know very clearly
3 that it's being used as a cemetery.

4 MR. DYSINGER: Mr. Chairman, but once a
5 subdivision is achieved, aren't there then two deeds?

6 CHAIRMAN: That's correct.

7 MR. DYSINGER: Then the Deed of Dedication
8 would have nothing to do with the other property.
9 That property could be sold off with no concern taken
10 whatsoever for the cemetery. Is that not --

11 MR. SILVERT: That's very true, but it doesn't
12 change the fact that that Deed of Dedication on the
13 remaining tract couldn't also be lifted by one.

14 MR. DYSINGER: I guess it's a question of
15 leverage. The rest of that land is the leverage to
16 whoever owns it, you get this too and if you want this
17 you're going to have to take care of this.

18 MR. SILVERT: Arguably if you want to go that
19 far. It would be beyond legal opinion to determine
20 what the value of the property would be. As Mr.
21 Poteat alluded to earlier, if it did not have that
22 restriction on it, being the parent tract, the
23 non-cemetery tract, it may be more valuable because
24 someone doesn't have to take care of it to the level
25 that a cemetery does. So from that perspective, yes,

1 just subdivide it and you don't have to worry about
2 that.

3 Legally there are a couple of considerations
4 here. One of them is the ease with which I would
5 argue the Deed of Dedication could be removed.

6 Two, is also the question of the clerk's
7 ability to file and to record an unapproved plat. If
8 you're looking at still doing a survey as part of this
9 deed that would be recorded in the record room and it
10 would look like a plat, but would not be approved as
11 one. I know that they, at least from a practical
12 sense, have been very gun-shy as to approving those,
13 and for good reason.

14 MR. DYSINGER: Mr. Chairman, is it safe to say
15 that no matter what we do, a crack attorney will one
16 day be able to get around it and undo it?

17 MR. POTEAT: That's the point I wanted to make
18 on the Deed of Dedication. Those can be drafted to
19 where they cannot be revoked. It can be drafted such
20 that it is a permanent covenant and restriction that
21 goes with the land bound by me, my son, his daughter,
22 his neighbor that he sells it to, and everyone else
23 down the line. A Deed of Dedication can be drafted
24 such that it is a binding covenant and restriction on
25 the land forever and can't be changed unless a court

1 does it.

2 CHAIRMAN: The point is if you do not survey
3 and have a recorded plat and you sell that farm, then
4 how do you find that particular location with the
5 graves on it?

6 MR. POTEAT: Mr. Chairman, I guess the
7 difference I have, I don't have a problem with, as I
8 mentioned earlier. What I've got a problem with is
9 doing it as a minor subdivision, separating it from
10 the main farm. I don't have a problem asking for
11 approval of a survey plat showing, this is where the
12 survey, this is where it will be, and seeking approval
13 of that much like we do submitting a plat on Thursday
14 and getting it approved next Thursday.

15 Once you separate this from the main tract
16 with a minor subdivision, there's no guarantee that
17 anybody is going to take care of it. The Deed of
18 Dedication is only going to apply to that one small
19 area. It's not going to apply to the rest of the
20 farm. It's going to apply only to what we divide off
21 as the cemetery.

22 That's our objection to doing a minor
23 subdivision plat and dividing this tract off of it. I
24 think a survey can be done. I know a survey can be
25 done with a request that they approve it as a private

1 cemetery as part of this farm. This is where it's
2 going to be and it's going to be on this location.

3 MR. DYSINGER: Mr. Chairman, if this cemetery
4 is separated from the rest of this property, there is
5 no doubt in my mind right now that it will eventually
6 get lost in the shuffle and not be cared for. There's
7 just no doubt in my mind about that. I mean it may
8 stay in the hands of some long forgotten cousin, but
9 there's just no way that this will be cared for if
10 it's a separate piece of property.

11 CHAIRMAN: Mr. Noffsinger, can that be
12 surveyed and platted without making a division?

13 MR. NOFFSINGER: I think you're headed right
14 down the same path we're headed down.

15 Mr. Poteat, could we do a survey plat of the
16 parent tract and survey out or survey the boundaries
17 of the cemetery showing that as cemetery boundaries
18 and setting those pins and whatnot, but not separating
19 it from the boundary. Turn that in to the Planning
20 Staff as a surveyed plat, we initial off on it and
21 record it in the courthouse?

22 MR. POTEAT: I would prefer to do that. If we
23 have to do that, I would prefer that because if we do
24 a minor subdivision, there's no guarantees of what's
25 going to happen.

1 CHAIRMAN: If there's no other comments or
2 questions from the board, I would ask for a motion.

3 MR. DYSINGER: Do we need to wait for that to
4 act on this?

5 MR. WARREN: Can't we just make that as part
6 of the condition?

7 MR. NOFFSINGER: Yes. I think you make it
8 part of the requirements and recognizing that the
9 applicant represented by counsel is saying that's what
10 he would prefer to do as opposed to surveying out a
11 separate tract. Make that a condition to the approval
12 so we don't have to come back here next month. It's
13 not a division. It's a survey of an existing lot of
14 record showing the property boundary.

15 MR. DYSINGER: Indicating the location.

16 MR. POTEAT: Much like we would do sometimes
17 when you have a commercial piece of property and they
18 discover there's a cemetery on it. They put in where
19 the cemetery is located.

20 MR. SILVERT: That's right.

21 CHAIRMAN: Chair is ready for a motion.

22 MR. TAYLOR: Mr. Chairman, I move to approve
23 the conditional use permit based on the findings that
24 it is within all regulations and there is no
25 opposition to it. I do have a few minor suggestions.

1 Deed of Dedication of the property must
2 include requirement to maintain the appearance of the
3 cemetery. Also, there will be a survey conducted by
4 the applicant which will include the boundaries of the
5 cemetery and be recorded.

6 CHAIRMAN: Is there a second?

7 MS. MASON: Second.

8 CHAIRMAN: We have a motion and a second. Any
9 questions on it?

10 MR. DYSINGER: Is that enough to make it
11 subject to the approval of the Deed of Dedication?

12 MR. TAYLOR: Survey would have to be approved.
13 The Deed of Dedication has to accompany the survey.

14 MR. NOFFSINGER: The applicant understands
15 that we're not approving the survey. We're merely
16 reviewing the survey. We'll initial off, record it,
17 and make it a part of the application, if that's legal
18 with surveying standards.

19 MR. POTEAT: Yes.

20 MR. DYSINGER: That answers my question, Mr.
21 Chairman.

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

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: Motion carries unanimously.

1 Next item.

2 ITEM 4

3 1817 US Highway 60 East, zoned I-2
4 Consider a request for a Conditional Use Permit to
5 grade, construct a berm, headwall, place DGA and
6 riprap, and provide erosion control within a floodway
7 in order to align and stabilize the bank of the Ohio
8 River adjacent to the subject property.
9 Reference: Zoning Ordinance, Article 18,
10 Section 18-4(B)(3) and 18-5(B)(4)
11 Applicant: VBH Properties, LLC

12 ZONING HISTORY

13 OMPC records contain no history of the
14 property. The land is currently vacant of any
15 buildings.

16 LAND USES IN SURROUNDING AREA

17 The north boundary of the property is the Ohio
18 River.

19 The adjoining property to the west is zoned
20 I-2 Heavy Industrial and is operated by OMU for water
21 treatment.

22 The adjoining property to the east is zoned
23 I-2 Heavy Industrial and is operated by Barton Brands,
24 LTD for the production of bourbon.

25 The properties to the south, across US 60 east
26 are zoned as follows:

27 * I-1, Light Industrial and contains Foamy
28 Brush car wash;

29 * B-4, General Business and contains several

1 general business activities.

2 ZONING ORDINANCE REQUIREMENTS

3 The applicant has submitted documentation that
4 meets the following Zoning Ordinance Requirements:

5 1. Certification from a registered
6 professional engineer that encroachments into the
7 Floodway shall not result in any increase in flood
8 levels during occurrence of the base flood discharge.

9 2. A Stream Construction Permit from the
10 Kentucky Division of Water.

11 3. A Construction Permit from the Army Corps
12 of Engineers.

13 There are no suggested conditions.

14 MR. WILLIAMS: I would like to enter the Staff
15 Report into the record as Exhibit C.

16 CHAIRMAN: Board member have any questions of
17 Mr. Williams?

18 (NO RESPONSE)

19 CHAIRMAN: Anyone here representing the
20 applicant?

21 (NO RESPONSE)

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

24 (NO RESPONSE)

25 CHAIRMAN: Any board member have any

1 questions?

2 (NO RESPONSE)

3 CHAIRMAN: Chair is ready for a motion?

4 MR. DYSINGER: Mr. Chairman, given the
5 findings that the application is in order, there's no
6 objections and a stable river bank is definitely in
7 the public interest and we approve this conditional
8 use permit.

9 MR. WARREN: I'll second that.

10 CHAIRMAN: We have a motion and a second. Any
11 comments or questions on the motion?

12 (NO RESPONSE)

13 CHAIRMAN: All in favor raise your right hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries unanimously.

16 Next item.

17 MR. NOFFSINGER: Mr. Chairman, Item 5, there's
18 been a request for postponement by the City of
19 Owensboro. They have not secured the necessary permit
20 from the Corp of Engineers. Will need to take a vote
21 from this board to postpone until the September
22 meeting of this board, which will be the first
23 Thursday in September at the same time.

24 CHAIRMAN: Do we have a motion for
25 postponement.

1 was approved to consolidate two properties together.
2 2106 and 2100 Old Henderson Road. That property is
3 consolidated and is shown there in your Staff Report.

4 It was for the purpose of an additional
5 building to the property which they use for the
6 storage of equipment. At the time they were not using
7 these large trailers. We did not intend for them to
8 use this part of the property for vehicular access,
9 even though there was a small access point to Old
10 Henderson Road. It's 14 feet wide.

11 They were required to pave it because they
12 used or they plan to use a second access point on the
13 property that's further from the intersection of
14 Washington and Old Henderson. That was required to be
15 paved and parking spaces placed in the rear of the
16 property.

17 Since that time the applicants have used the
18 property. They've grown their business. They now
19 have large trailers that they pull into the property.
20 They've been trying to access through that small 14
21 foot entrance. They want to widen that to 35 foot to
22 the point where they're 35 feet from the right-of-way
23 line of that intersection of Washington Avenue. The
24 Zoning Ordinance requires 50 foot. So that's why
25 they're asking for this variance.

1 Staff argues that the justification that they
2 will bring is insufficient to warrant your approval of
3 this variance because their justification is that
4 they're backing onto the property and they need a
5 wider entrance that exceeds the limitations of the
6 zoning ordinance. It encroaches towards the
7 intersection. So they can more quickly back into the
8 property.

9 The Staff does not agree that they should be
10 backing out of the public right-of-way on the property
11 or vice versa, off the property into the public
12 right-of-way.

13 Staff argues that strict application of the
14 zoning regulations would not deprive them of the use
15 of their property as originally developed. They have
16 two access points on the property. They could utilize
17 some alternatives that have been proposed to them over
18 the phone and other discussions. They heard the
19 suggestions and they still would like to proceed with
20 this variance. So that's why we're still here today.

21 I've provided for you in your Staff Report
22 some diagrams, which I will also provide to the
23 applicant.

24 I would like you to consider the turn radiuses
25 that are shown there. We didn't have an exact turn

1 radius representation for a vehicle with a trailer.
2 So we used the combined length for a fixed axle
3 vehicle of 30 feet, assuming that they have say a 15
4 foot vehicle and a 15 foot trailer. The trailer can
5 turn with a sharper radius and have done so on the
6 property and slowly than a 30 foot fixed axle vehicle.

7 You can see these turn radius is there. My
8 argument would be that they should utilize the access
9 point further from Washington Avenue. Perhaps widen
10 it to the maximum 50 feet. The curb is already cut
11 and graded in excess of that. They just don't have
12 pavement there.

13 Perhaps they should use that access point and
14 pull onto the property and try to maneuver their
15 trailers in that way. Either opening the door to make
16 it larger. Maybe would require a little bit of a
17 redesign of their building, but that must be something
18 that they would consider when they increase the size
19 of their building and type of equipment that they use.

20 If you look at diagram 3 and 4 that I've given
21 you, shows this turn radius granted of a fixed axle
22 vehicle. I suggest that that turn radius is even
23 larger than what they could do with their trailers.
24 They could maneuver from their property into the
25 building. They just need to access their property.

1 Like I said, further from that intersection
2 they could use that access point. Pave the area in
3 front of their business and create a way in which they
4 would not have to back off the public right-of-way.

5 The Staff does not recognize a hardship in
6 this case.

7 The circumstances that brought this about were
8 due to their own actions, but they don't seem to be
9 intentional. They didn't intentionally or willfully
10 violate the zoning ordinance.

11 The Staff finds that approving this variance
12 will adversely affect the public health, safety or
13 welfare. That was included in their argument at the
14 last meeting. If we don't grant it, there will cause
15 a safety concern. We're arguing that if we grant it
16 and they continue to back out of the street, no matter
17 how quickly they do it they're still creating a
18 hazard.

19 That will not alter the essential character of
20 the general vicinity. They will cause a hazard, as a
21 I argued. They will allow an unreasonable
22 circumvention of the requirements of the zoning
23 regulations.

24 Therefore, the Staff recommends denial.

25 I would like to enter the Staff Report into

1 the record as Exhibit E-1 and this diagram as Exhibit
2 E-2.

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

5 (NO RESPONSE)

6 CHAIRMAN: Anyone here representing the
7 applicant?

8 MR. DUTY: Yes, Board Member Pedley. I'm
9 Russell Duty representing Leonard Steamway which is
10 owned by David and Ann Leonard. I also have with me
11 here tonight Ron Leonard who is also one of the owners
12 of that organization.

13 CHAIRMAN: Is anyone here in opposition of
14 this item like to speak?

15 (NO RESPONSE)

16 CHAIRMAN: You may continue.

17 MR. DUTY: Thank you, Mr. Chairman and all the
18 other board members. I appreciate you all being here
19 tonight. I think the only person that wasn't here the
20 last time was maybe Board Member Taylor.

21 Just a little bit of information about the
22 building and the operation of this organization.

23 They're basically a carpet steam company along
24 with a restoration company. They go in and remodel
25 fire damage, smoke damage, water damage. Do things of

1 that nature.

2 When they first purchased this property, they
3 were actually the three owners, they were the only
4 people that had anything to do with this as far as
5 working it. Now they have an additional ten
6 employees. So, in fact, they have grown
7 substantially.

8 We did talk with Planning & Zoning. We want
9 the board to know that we did listen to what their
10 concerns were, what their suggestions were, and we'll
11 address those and let the board know why we don't
12 think that that can be done one by one.

13 What we have done is we have prepared
14 basically a slide show of pictures that will show you
15 the property. It will show you trucks and trailers
16 being backed in to the existing property to give you a
17 better idea of that property and how it looks.

18 You will see from those pictures that what
19 Planning and Zoning relationship to the diagram I
20 think that's been marked as Exhibit E-2 is just simply
21 not possible. It's not feasible because there is not
22 enough space between the building and the road to be
23 able to pull onto the property and then back into it
24 without somewhat getting onto the road with the size
25 of trailers that they have.

1 If I could at this time, I would like to turn
2 the monitors on and show you the pictures, if that
3 would be okay.

4 If I could ask Mr. Leonard to come to the
5 podium and explain what you're seeing at this time.

6 MR. SILVERT: State your name, please.

7 MR. LEONARD: Ron Leonard.

8 (RON LEONARD SWORN BY ATTORNEY.)

9 MR. DUTY: Ron, if you could tell them what
10 we're seeing.

11 MR. LEONARD: That there truck you are seeing
12 is one of the two shortest on the fleet. That truck
13 there is approximately 22 foot long. That is from
14 bumper to hitch.

15 The Exhibit A's that was represented by the
16 city or Planning & Zoning is showing a 30 foot truck.
17 My trailer there is a 12 foot trailer. So you know
18 I've gone over the max there where he's at.

19 There we are coming -- I sort of did these
20 pictures backing in and coming out from one direction.

21 This is coming out going east. Do you see the
22 stake that's there? There is where we propose the
23 entrance. Keep in mind I have turned to the west.
24 Before we did come out to the east to try to miss that
25 curb. Maybe it will show in the next slide.

1 You probably do not have but about a foot
2 there between the stake and the side of the truck.

3 Same sort of slide there. Just different
4 angle. We did have the state trooper that lives on
5 Benton come over and sort of help control traffic
6 while we did this.

7 There's the trailer, one small trailer that
8 goes in the smaller door.

9 This is one of the larger trailers on the
10 fleet. It is a 20 foot enclosed, 24 foot with tongue.
11 The bumper of the truck, it's -- half in the building
12 it's probably 6 to 8 foot in the building before the
13 truck is ever off the street.

14 Coming out to the east there you have a wider
15 distance there between the stake, the proposed stake
16 or the curb there and the side of the truck from that
17 angle.

18 That's the hardest one to get into the
19 building.

20 The angle there, I know that Zack has said on
21 several occasions -- you can see it in this photo
22 slide here. To the west there's a telephone pole. In
23 one of the exhibits, and I don't remember which
24 exhibit it was there, we've had OMU move that pole
25 once. They've asked us not to ask again. They was

1 really nice about it.

2 Matter of fact, a few years ago we asked them
3 to move it, if they could move it down because it was
4 a lot further, little bit right up next to the curb
5 there. They did move it down to make it a little
6 easier for us.

7 That's just one of things, I can't help that
8 the business has grown over the years.

9 Then here we are going back out to the east
10 with that same truck.

11 There you see how close that vehicle.

12 MR. DUTY: Ron, if you would, one of the
13 suggestions by Planning & Zoning was that you make one
14 large door. Have you looked into doing that?

15 MR. LEONARD: Yes. I did look into that after
16 Zack called yesterday or two days ago. Whenever it
17 was we talked.

18 I have eight inches of clearance from the top
19 of the door to the bottom of the eve of the rafters.
20 They do not make a door that is wider that will still
21 fit in the same with. I would have to have one custom
22 made or literally take the top off the building --
23 well, basically tear down the building and build a new
24 one there and then build wider doors. Wider door is
25 not impossible. It's just a great costly expense.

1 MR. DUTY: Also too one of the suggestions is
2 that you would pull onto the property and then back
3 up.

4 CHAIRMAN: Sir, would you speak from the
5 podium so we can get it recorded.

6 MR. DUTY: I'm sorry, yes.

7 Also one of the recommendations is for you to
8 pull onto the property coming off Old Henderson Road
9 and then backing into those doors without getting onto
10 the road at all. Is that a possibility?

11 MR. LEONARD: Actually I've tried that. I
12 should have brought these pictures up here. Anybody
13 that would like to go outside and see the bed of my
14 truck and when we jack-knifed it and I tore the bumper
15 up and the side of the bed of the truck trying to get
16 the small trailer in with one of the shorter trucks.
17 It's just sitting right out front. Feel free. You
18 can walk outside and look.

19 I mean I have really had no luck in backing
20 that in there.

21 I've also had a gentleman -- I wish I could
22 remember what his last name is. Kenny that works at
23 the docks that has drove a semi for years has come
24 down there and he says it is impossible, no way of
25 backing a truck and trailer in that same combo of what

1 kind of equipment we have now from on the property
2 without getting on the street. He says it's an
3 impossibility.

4 MR. DUTY: One of the other alternatives they
5 gave you, was that to enter from the back of the
6 building or I guess behind the building where you're
7 at now?

8 MR. LEONARD: I've heard the option thrown out
9 there, but I know the people from the rear. I'm blank
10 as can be. Zack has got their names of them there. I
11 know there's two pieces of property behind. In the
12 past we have tried to buy those. They get past from
13 family member to family member and they just do not
14 seem to want to sell. I really like the idea of
15 personally if we could ever purchase those to be able
16 to put in a door on the back. To just have a
17 drive-thru. It would make it a whole lot easier for
18 me and everybody else. But as of right now that's
19 impossible.

20 The building on the other side is basically
21 houses, our cleaning side of the business.

22 In that photo there, which is the one that's
23 got the very faintly sign with a small, small trailer
24 that's up there. That's the cleaning side. This side
25 over here hires the restoration with the construction

1 side. That is something in the last five to six
2 years, by no choice of our own, we have had to do.
3 It's basically with the insurance work that we do, if
4 you don't do it, you know, we're all going to have to
5 find a new profession and something else to do. I
6 mean I've been doing it for nearly 25 years now. I
7 don't really want to plan on looking for another job
8 tomorrow.

9 MR. DUTY: Ron, one of the other things too
10 that I'm sure that the board wants to know is about
11 the charter of the businesses that surround you. Can
12 you tell us a little bit about those businesses?

13 MR. LEONARD: Yes, I can. I know across the
14 street there is a business that has, the entrance curb
15 go right up, and I'm going to guess within seeing the
16 property pins, probably within five feet of the curb.

17 You go to the end of the street, one business
18 that I can think of is Old Mill Flea Market. Their
19 entrances goes clear around the corner. It doesn't
20 even have a curb.

21 DNJ Auto Parts, which is the old West Side
22 building, same way.

23 The gas station that's across the street, I
24 didn't get the tape measure out and measure. I would
25 say they're probably 40 feet or less. There's just

1 several down through there.

2 We're not really changing the characteristics
3 of the neighborhood. I'm not going to South Frederica
4 and going to change that. We're staying within what
5 the neighborhood is. Actually I'm going a little
6 further than what most of them are. I know that
7 there's a business at the other end of the street that
8 his road frontage is 100 percent curb. I mean
9 driveway access. It's across the front of his
10 property.

11 I don't think I'm asking for anything that's
12 out of the unordinary considering the characteristics
13 of the neighborhood.

14 MR. DUTY: If you could, could you also
15 address the issue of how that would allow you to enter
16 and exit the property in a more safe manner?

17 MR. LEONARD: I can. I know it's been
18 suggested to me and Zack go back and forth on this one
19 way or the other.

20 Backing in is not the best option because of
21 the flow of traffic. We try not to hit it at peak
22 times of the day. Backing out in there is not the
23 best thing in the world, but there is several
24 businesses up and down the street all day long that
25 does it.

1 Matter of fact I had to stop this morning
2 because Scott Baird's truck was backing out of their
3 lot out onto the street. It's one of things you can't
4 help. It's the nature of the businesses that are
5 there.

6 Grant you when we go, you go in and out you
7 want to do it speedily. Hurry up and get it out.
8 Usually there's somebody that's in that truck that has
9 crawled out, you know, and stand out there and say,
10 hey, hold it. There's somebody coming. Stop. Don't
11 do that or vice versa if we go to back in.

12 I'm saying now when we do it with the curb, we
13 have a tendency, it takes a little longer because you
14 think you've hit the spot to get off the street quite
15 quickly. When you hit that curb, sometimes it shoves
16 that trailer in the opposite direction or bounces or
17 does something funny. Then you've got to pull up and
18 re-aim again. I've had a few fingers shaken at me.

19 Any questions at this time? I'd be more than
20 happy to answer them.

21 CHAIRMAN: Any board members have a question
22 of Mr. Leonard?

23 MS. MASON: So you're saying in your opinion
24 there's no other way to be able to get your trucks and
25 trailers in and out of this building without coming in

1 and out on the street?

2 MR. LEONARD: I don't know of a way. I have
3 asked on several occasions if somebody -- that's the
4 reason I went to talk to, I know a gentleman, he came
5 down there. He's drove trucks his whole life. I
6 would think if somebody would have a good idea, he
7 would know. I'm not going to necessarily argue with
8 the diagrams that's there. I can't do it. I've been
9 driving trucks and trailers since I was 13. You know,
10 farm implements and things like that. And I don't
11 know how to get it in there.

12 MR. WILLIAMS: I'll just say with regards to
13 the drawing that I've provided you, I was calculating
14 based upon a 17 foot trailer. I wasn't expecting an
15 extended cab truck. Just in our discussion on the
16 phone, you were talking about a three-quarter ton,
17 half-ton truck pulling a 17 foot trailer. That's why
18 I gave you a 30 foot. Thought that might closely
19 model what that size vehicle with a trailer of that
20 size would be.

21 The Staff would have to argue the same, that
22 approving a variance to widen the access point to I
23 think it's 35 feet encroaching upon the setback from
24 the intersection would be to accept their
25 justification, which is we want to back off of the

1 street into the building more quickly than we can
2 right now. I'm arguing that we shouldn't approve that
3 because we would be in essence approving their backing
4 on the street, which we don't approve of.

5 MR. DUTY: In response to that, I would like
6 to say this: I understand his position in regards to
7 we don't want to advocate people backing out on the
8 street. I certainly understand that. Although, you
9 go down Industrial Drive, Ragu Drive, it happens every
10 day. It's a part of transportation in the process.
11 There's a difference.

12 What my client is trying to say here and is
13 trying to get done is he's saying as it is now, it
14 takes him more time. He's on the street more. He's
15 having to hold up traffic. He's creating a traffic
16 hazard by the way it is now. By widening the driveway
17 he is reducing that. So in essence by allowing the
18 driveway to be widen, you are limiting and helping him
19 make the highway in front of his business a safer
20 business.

21 Again, this isn't anything as they've pointed
22 out that he's willfully created. This is something
23 which has really been a good thing for him. His
24 business has expanded. He's had to buy larger
25 trailers. He's added ten employees. This will help

1 him utilize his property in a more safe manner.

2 If we look at the findings that this board has
3 to find, one of the things that we're saying is that
4 it will not adversely affect the public, health and
5 welfare. Widening the driveway will not do that.

6 It certainly will not do anything to damage
7 the central character of that neighborhood. I think
8 Acme Heating & Plumbing is on across the street. It
9 has two accesses right on the corner. Baird's
10 Plumbing is down the street. There are businesses all
11 along that street who probably back in and out all day
12 long. So for us to say, well, this doesn't happen. I
13 understand not wanting to promote it, but it does
14 happen and we're trying to make it safer to get these
15 big trailers off the street. Get them where they
16 belong quicker in a more reasonable fashion.

17 Certainly, again, this eliminates a nuisance
18 to the public. Certainly makes him get off the street
19 quicker. Allows him to do that and helps him, assist
20 him in doing that. That, again, would go right with
21 the findings to grant this variance.

22 We looked at alternatives and there are other
23 alternatives. The problem becomes is they're cost
24 prohibited.

25 We would ask that they grant the variance and

1 certainly would entertain any questions from the board
2 or the public at this time.

3 MR. TAYLOR: My only question is to Madison or
4 Mr. Duty.

5 Is it an actual traffic violation if the curb
6 stays to back the trailer in there? Is that
7 considered a traffic violation?

8 MR. DUTY: I looked at the motor vehicle
9 regulations and there is no specific regulation saying
10 that you cannot back in or off property. It does say
11 that you must operate your vehicle in a careful
12 manner. So that may at times require Mr. Leonard to
13 have another person get out and spot, watch to move
14 that in. If somebody else knows of one, I don't.
15 That's what I could find.

16 CHAIRMAN: Mr. Noffsinger, do you have any
17 comments?

18 MR. NOFFSINGER: Mr. Chairman, the building
19 that Mr. Leonard has constructed here obviously has
20 been constructed, he constructed it on his own free
21 will. It's constructed fairly close to the roadway.
22 Probably right on the setback line. Staff appreciates
23 Mr. Leonard's business growth and we certainly want
24 businesses to grow. It's grown to a point to where
25 vehicles, these trailers are having to back on to or

1 from the public right-of-way which is a use that is
2 not allowed by the zoning ordinance. It specifically
3 states that maneuvering of these vehicles is to be
4 done on the property where the use is and not in the
5 public right-of-way. This board does not have the
6 authority to grant or allow a use that is not already
7 allowed by the zoning ordinance. What you in my mind
8 would be doing if you grant this variance is
9 encouraging the backing of vehicles onto or from the
10 public right-of-way. That is something Staff would
11 not recommend that you do. It's certainly an unsafe
12 situation as is being done today. It's still going to
13 be an unsafe situation in terms of backing vehicles
14 onto and from a public right-of-way, but at this point
15 this board has no involvement in terms of encouraging
16 it, unless you approve the variance.

17 Now, the businesses that were mentioned here
18 tonight, you know, several of them have existed for
19 many, many years and they've operated with backing
20 onto public right-of-way.

21 The zoning ordinance can't deal with those,
22 but what we try to do is deal with it with new
23 construction. Clearly we have new construction on
24 this facility or on this site that probably is in
25 excess of the existing building that was on the site.

1 The new building quite frankly has created a
2 maneuvering problem.

3 Staff would not recommend that you approve
4 this variance and encourage the illegal activity of
5 backing to and from the public right-of-way.

6 CHAIRMAN: Any board members have any further
7 questions of Mr. Leonard or his counsel?

8 (NO RESPONSE)

9 CHAIRMAN: Chair is ready for a motion.

10 MR. DYSINGER: Mr. Chairman, I move that we
11 find that granting the variance will adversely affect
12 the public safety or welfare; it will cause a hazard
13 or nuisance to the public; and it clearly will allow
14 an unreasonable circumvention of the requirements of
15 the zoning regulation. Move for denial.

16 CHAIRMAN: We have a motion. Do I hear a
17 second?

18 (NO RESPONSE)

19 CHAIRMAN: Do I hear a second?

20 (NO RESPONSE)

21 CHAIRMAN: For lack of a second, chair is
22 ready for another motion.

23 MR. TAYLOR: Mr. Chairman, I move to approve
24 the variance. I do not feel that it will adversely
25 affect the public safety or welfare as the condition

1 exist now; it will not alter the essential character
2 of the general vicinity; it will not cause a hazard or
3 nuisance to the public.

4 CHAIRMAN: We have a motion. Do I hear a
5 second?

6 (NO RESPONSE)

7 CHAIRMAN: Waiting for a second.

8 (NO RESPONSE)

9 CHAIRMAN: Motion dies for lack of a second.
10 Where are we?

11 MR. SILVERT: I might add that on this motion
12 perhaps what the board members are waiting for is the
13 question of why you believe it won't adversely affect
14 the public safety. Why you believe it won't cause a
15 hazard or nuisance to the public. I would just
16 caution board members to make sure you back up your
17 findings with facts that we've heard tonight or
18 previously.

19 MR. TAYLOR: I will move to approve the
20 variance based on the findings of fact that it will
21 not adversely affect the public health, safety or
22 welfare, since it is the vicinity of the area I'm
23 familiar with and the operations that happen along
24 that street and how they exist right now. I believe
25 that the current conditions would make it more of a

1 hazard than if it was approved making it less of a
2 hazard to the public welfare and safety.

3 I do not feel it will alter the essential
4 character of the general vicinity. All the businesses
5 up and down that street, as I said, I'm very familiar
6 with and are like that.

7 I do not think that it will cause a hazard or
8 nuisance to the public. In that vicinity the public
9 is used to that traffic and that traffic is, I mean
10 that type of driving is very consistent up and down
11 that street.

12 CHAIRMAN: We have a motion. Do I hear a
13 second on it?

14 MR. PANTLE: Second.

15 CHAIRMAN: We have a motion and a second. Any
16 comments or questions on the motion?

17 MR. DYSINGER: I would just say that if you're
18 going to do something unsafe, doing it quicker is not
19 necessarily the way to go. Say slow it down a little
20 bit. That's a comment from me, Mr. Chairman.

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

23 (BOARD MEMBERS MARTY WARREN, CLAY TAYLOR, RUTH
24 ANN MASON AND C.A. PANTLE RESPONDED AYE.)

25 CHAIRMAN: All opposed.

1 (BOARD MEMBER SEAN DYSINGER RESPONDED NAY.)

2 CHAIRMAN: Motion carries four to one.

3 ITEM 7

4 38 Stone Creek Park, zoned R-1A
5 Consider a Variance to reduce the required building
6 setback from the centerline of Old Hartford Road from
7 75' to 47' for the purpose of building a 26' x 28'
8 pool house, and to increase the height of a fence in a
9 rear-street yard along Old Hartford Road from 3' to
6'.

Reference: Zoning Ordinance, Article 8,
Section 8.5.5(c) and Article 3, Section 3-7(g)(2)
Applicant: Patrick and Suzanne Padgett

10 MR. WILLIAMS: Staff finds that there are no
11 special circumstances with regard to the location of a
12 pool house. They do consider some special
13 circumstances with regards to the fence. I'll address
14 the pool house first.

15 The applicant's property is located in Stone
16 Creek and has a rear yard along Old Hartford Road.
17 Old Hartford Road is classified as a minor arterial
18 road at this location with prescribed building
19 setbacks along Old Hartford Road of 75' from the
20 centerline and a required roadway buffer of 40' from
21 the centerline. Granting this variance would place
22 the proposed building approximately 7' outside the
23 roadway buffer. The long range transportation plan
24 includes a reconstruction project on this portion of
25 Old Hartford Road. The proposed future reconstruction

1 project would widen the roadway to two 12-foot lanes
2 with turning lanes where needed within the existing
3 right-of-way.

4 There is no evidence in the general vicinity
5 of encroachments into the prescribed building setback
6 along Old Hartford Road. The intentional design of
7 the neighborhood includes large-open lots. There is
8 sufficient room on the property to locate a pool house
9 without encroaching into the building setback along
10 Old Hartford Road. Granting of this variance will
11 allow a setback encroachment that is inconsistent with
12 the property in the general vicinity. Therefore, it
13 may alter the essential character of the neighborhood.

14 I will note that I've been out to the property
15 and where I thought there were trees before, used to
16 be at the rear of the property, many of those have
17 been cleared out in preparation for this building.
18 From the overhead picture I knew it would be close,
19 but driving by this site, actually that building is
20 going to be a lot closer to the road than I would have
21 first thought. Visually it's going to -- you will see
22 it clearly from the road.

23 Now, with regards to the fence in the rear of
24 the property along Old Hartford Road.

25 The applicants are requesting a variance for a

1 6' fence in a rear-street yard. The street yard puts
2 a requirement or a limitation on the height of that
3 fence as a front yard of 3 feet.

4 So they're asking to do so in order to include
5 a swimming pool because the Kentucky Building Code
6 requires a 4 foot fence around swimming pools. They
7 would like it to be a 6 foot fence for esthetics and
8 whatever reasons that they desire.

9 The fence itself is already constructed of
10 cast iron bars with masonry columns. The zoning
11 ordinance limits the height of the fence to 3 feet.
12 They're asking for this increase. The OMBA has
13 approved several fence variances up to six feet in
14 rear street-yards in the past. Many have come before
15 you. That is available for you to consider. Staff
16 recognizes a special circumstance there.

17 With regards to a hardship the Staff does not
18 find there would be a hardship with regards to a pool
19 house, but would find there to be a hardship if you
20 don't grant some variance to the fence.

21 With regards to the pool house there's
22 sufficient room on the property to locate the pool
23 house without encroaching in the building setback.

24 Granting this variance is unnecessary and thus
25 would be an unreasonable circumvention of the zoning

1 ordinance. With the widening project proposed it
2 would place traffic even closer to the building than
3 you would find now when driving along Old Hartford.

4 With regards to increasing the height of the
5 fence, in order for them to place a pool they must
6 have at least a four foot fence. So denying the
7 variance entirely would not allow them to place the
8 swimming pool. So a minimum of a four foot variance
9 is required for a swimming pool. The applicants have
10 asked for six.

11 The applicants are asking for a relief for the
12 fence that they've already built. Yes, they've
13 already done that. The proposed pool house has not
14 been built. Their actions with regard to the fence
15 are assumed to not be willful in violation.

16 Findings: Granting of the pool house variance
17 or the fence will not adversely affect the public
18 health, safety or welfare. Granting of the pool house
19 variance may alter the essential character of the
20 general vicinity because the visibility and the
21 closeness of the building to the road. With regards
22 to the fence Staff does not find that it would alter
23 the character excessively. Neither will cause a
24 hazard or a nuisance to the public. Granting the pool
25 house will require an unreasonable circumvention of

1 the zoning ordinance. Granting the fence variance
2 will not be an unreasonable circumvention in light of
3 other variances that have been granted.

4 Therefore the Staff recommends the denying of
5 the granting of the pool house variance, the setback
6 reduction from Old Hartford Road, and to approve an
7 increase in the height of the fence in the rear yard
8 from three to six feet for this property.

9 I would like to enter the Staff Report into
10 the record as Exhibit F.

11 CHAIRMAN: Board members have any questions of
12 Mr. Williams?

13 MR. TAYLOR: The future widening of Old
14 Hartford Road, would that be moved into the building?

15 MR. WILLIAMS: No. It is within the existing
16 roadway right-of-way. The pool house will be seven
17 feet from that right-of-way. So the closer they widen
18 it could at some point be seven feet from the road.

19 MS. MASON: How far will the fence be from
20 that then?

21 MR. WILLIAMS: It would be right on their
22 property line which will be the right-of-way. I do
23 not know exactly where the boundary of that road will
24 be.

25 MS. MASON: But the fence will not --

1 MR. WILLIAMS: The fence will not be in the
2 roadway, no. It's on the property. Presume to be on
3 the property I should say.

4 CHAIRMAN: Thank you, Mr. Williams.

5 Anyone here would like to speak in opposition
6 or have any questions or concerns about this item?

7 MR. CARROLL: Tom Carroll.

8 CHAIRMAN: You represent the applicant?

9 MR. CARROLL: I'm Tom Carroll for Mr. and Mrs.
10 Padgett. I didn't know that was going to happen what
11 he just said.

12 As you see the plat that we presented, the
13 proposed building would be 22 feet from the property
14 line. There is no outlet on the back, in or out on
15 Old Hartford Road. He's already I think recommended
16 the fence. The reason we need that we didn't realize
17 that that was facing on the road. They have two
18 streets that this lot is facing on.

19 This highway that he's talking about, as far
20 as future right-of-way, I had no idea about that. The
21 building itself will not in any way encroach upon any
22 future expansion of Old Hartford Road, and I think
23 Zack said that.

24 The proposed building line that we're talking
25 about would be 22 feet from the property line as is

1 shown on the plat. I guess I'm just amazed that there
2 would be a statement that this would be an improper
3 use of the property because of the 50 foot building
4 setback line that was initiated from the original deed
5 of dedication. That's an awful big setback line for a
6 rear lot. This is the rear lot, but it does face on
7 Old Hartford Road. It just so happens that the
8 original developers of this back in 1957 chose to put
9 50 foot setback line there rather than a normal 25
10 setback line. All I can do is ask you to approve it.
11 I see no reason to deny it. I really don't see what
12 the statement meant that he just said. That it would
13 be an improper use of this property. It's very simple
14 to think about it and look at it. I would ask that
15 you please approve it. There's no opposition to it.
16 There's no one here opposing it. No one has called me
17 and there's no adjoining property owners in this. I
18 don't understand why that it would be denied with this
19 small amount of variance that we're asking for.

20 CHAIRMAN: Board members have any questions of
21 Mr. Carroll?

22 (NO RESPONSE)

23 CHAIRMAN: Mr. Noffsinger.

24 MR. NOFFSINGER: Mr. Chairman, I do need to
25 state for the record that the prescribed setback along

1 Old Hartford Road is 75 feet from the center line
2 prescribed by ordinance. That is the setback line
3 that's applied to all properties along that
4 classification of Old Hartford Road. So it wasn't a
5 setback that was put on by the developer.

6 MR. CARROLL: You're right.

7 MR. NOFFSINGER: It's prescribed by the zoning
8 ordinance.

9 MR. CARROLL: You're right. I'm sorry about
10 that. It is 75 feet. It's 75 and 50 feet from the
11 property line. It's actually 50 feet from the
12 property line, which you can see from the usage of the
13 property that there's a great restriction of the use
14 of this property to start with. That they needed to
15 build the pool house on that location other than down
16 at the end of the pool which would be an improper
17 location of the pool house for the use of the
18 property.

19 The fence I think is going to be okay from
20 what I'm hearing here, but that's something that was
21 contractual problem that the owner didn't know about
22 because of facing on Old Hartford Road.

23 CHAIRMAN: Mr. Williams, you have any comments
24 on that?

25 MR. WILLIAMS: I would just like to add or

1 remind the board that when viewing the area there were
2 found to be no other buildings encroached upon that
3 building setback of 75 feet from the center line.

4 CHAIRMAN: Board member have any questions of
5 Mr. William or Mr. Carroll?

6 MR. WARREN: I do.

7 Zack, it's hard to tell from this drawing
8 where exactly the pool is going and where the pool
9 house -- it's hard for me to tell exactly. Did you
10 discuss with the -- there you go. Thank you.

11 So you've discussed with the applicants
12 different areas and different places they could put
13 the pool house or is this just the only place that it
14 could absolutely go?

15 MR. WILLIAMS: I have not had extended
16 discussion with the applicants. I'm just stating that
17 they have a lot of property and width. They could
18 relocate that pool house to one side of the pool as
19 opposed to behind it. It's not diagramed on there
20 where the pool intends to be. I'm just arguing they
21 could use the rear of their property in such a way
22 that they can conform to the building setback.

23 MR. CARROLL: The pool would be between the
24 proposed pool house and the concrete that you show
25 which is right there at the rear of the house. So you

1 have concrete leaving out from the rear of the house
2 and the garage out into the patio area. The pool
3 would be from where you see "conc.," which is concrete
4 area. From there the pool would be between there and
5 the property line, the building line. Then you would
6 have to put -- there would be no other place to put
7 the pool house except down at the end of the property,
8 quite a distance down at the end of the pool, which is
9 down where it says "existing fence." There's really
10 not enough room down there to put a pool house without
11 moving the fence, having to move the fence. You're
12 talking about putting the pool further down away from
13 the house because you can't do it with the existing
14 structures that are there and that have been there for
15 many years because of the existing setback line, 50
16 foot existing setback line. This is really a much
17 more proper use of the property and more esthetic and
18 best for the use of the property and for the people
19 who own the property than to have to put it to the
20 left toward that existing fence and move the fence.
21 The pool is right in the area where you see 43.9
22 written on there and where it says "proposed one story
23 brick pool house," where that's typed, that's where
24 the pool is. That's the only place for the pool.

25 MR. PANTLE: Mr. Chairman, a question of Mr.

1 Noffsinger.

2 MR. NOFFSINGER: Yes, sir.

3 MR. PANTLE: When this Stone Creek planning
4 plat was filed it showed all these setbacks in there?

5 MR. NOFFSINGER: Yes, sir.

6 MR. PANTLE: And every deed showed all these
7 plat setbacks on it, correct?

8 MR. NOFFSINGER: Well, I hope that it did. I
9 can't speak to that.

10 MR. PANTLE: But it is in a plat in the
11 office?

12 MR. NOFFSINGER: Yes.

13 MR. CARROLL: Yes, it is.

14 MR. PANTLE: In other words, the gentleman
15 that bought it, when he bought this property knew that
16 this setback were there?

17 MR. CARROLL: Yes, sir.

18 MR. PANTLE: Now he's wanting to over-build
19 the planning?

20 MR. CARROLL: I don't know what you mean by
21 "over-build."

22 MR. PANTLE: He's going into the setback so
23 he's over planning in the plan.

24 MR. CARROLL: This is not anything that's
25 detrimental to the adjoining property owner, to a

1 front street ingress and egress or anything damaging
2 or detrimental to anyone other than a variance use to
3 build a small building for his pool. If you deny it,
4 he doesn't get to use his property. If it's granted,
5 then it's a better use of his property.

6 MR. PANTLE: But he knew about it before?

7 MR. CARROLL: Yes, sir.

8 MR. WARREN: But he could still build the
9 pool. He just wouldn't have a pool house.

10 MR. CARROLL: Right.

11 MR. WARREN: I have a pool and I don't have a
12 pool house.

13 MR. CARROLL: Right.

14 MR. WILLIAMS: Mr. Chairman, I just would like
15 to remind the board that the granting of the variance
16 would place this building seven feet from the roadway
17 buffer. That's the plan expansion area of the roadway
18 right now. The reason to have the building setback
19 much further, 75 feet from the centerline, is in the
20 future if our community expands and years down the
21 road we pass to someone else, that they may have the
22 option of buy up land and expand the roadway as
23 necessary. That's the reason for the setback.

24 CHAIRMAN: Any board members have other
25 questions for Mr. Carroll or Mr. Williams?

1 MS. MASON: You're saying that there's not any
2 space to move the pool house over some?

3 MR. CARROLL: No. The only place they can
4 move it is to the end of the pool which is towards the
5 existing fence.

6 MS. MASON: But it's not actually showing the
7 diameter or the particular pool.

8 MR. CARROLL: No. The pool is not drawn on
9 there. That's the only place they can put the pool,
10 is right in the area, the pool house and the back of
11 the house.

12 If you deny it and they elect to build a pool
13 house, then they will have to put it down to the end
14 of the property, down at the end of the pool.

15 CHAIRMAN: Mr. Carroll, why couldn't they put
16 the pool house behind the garage? The pool house is
17 28 by 30 and you have 43 feet there.

18 MR. CARROLL: The existing concrete and patio
19 structure they could put it there if they chose to.

20 CHAIRMAN: Behind the garage?

21 MR. CARROLL: Behind the garage is where I'm
22 talking about. Behind the garage would be down at the
23 end of the pool. I see what you're saying. If you
24 went right straight behind the garage, that would be
25 at the end of the pool.

1 CHAIRMAN: Where are they proposing the pool
2 now? Behind the walk area?

3 MR. CARROLL: Yes, behind the concrete area
4 behind the house.

5 MS. MASON: Where it says, "proposed pool."

6 CHAIRMAN: Then why wouldn't you put the pool
7 house behind the garage?

8 MR. CARROLL: That's the only place they could
9 put it. They'll probably have to move the fence some
10 more and build it right in that area.

11 CHAIRMAN: But they could put it there.
12 There's plenty of room to put it there and be ou8t of
13 the setback.

14 MR. CARROLL: Yes, sir.

15 CHAIRMAN: Okay. Thank you.

16 Any board members have any additional
17 questions?

18 (NO RESPONSE)

19 CHAIRMAN: Mr. Noffsinger?

20 (NO RESPONSE)

21 CHAIRMAN: Zack?

22 MR. WILLIAMS: That's all.

23 CHAIRMAN: Chair is ready for a motion.

24 MR. DYSINGER: Mr. Chairman, given the
25 findings that the pool house will alter the essential

1 character of the general vicinity and allow an
2 unreasonable circumvention of the requirements of the
3 zoning regulations, I move that we deny that part of
4 this variance.

5 Further, I find that the six foot fence
6 provides for a safety concern and is in keeping with
7 precedence that we approve that portion of the
8 variance.

9 CHAIRMAN: We have a motion. Is there a
10 second?

11 MR. WARREN: Second.

12 CHAIRMAN: We have a motion and a second.
13 Comments or question on the motion?

14 (NO RESPONSE)

15 CHAIRMAN: All in favor raise your right hand.

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries unanimously.

18 Next item.

19 ITEM 8

20 4439 Wilderness Trace, zoned R-1B (Postponed at July
21 3, 2008, meeting)

22 Consider a Variance to reduce the required building
23 setback from 75' to 60' from the centerline of
24 Fairview Drive.

Reference: Zoning Ordinance, Article 8,
Section 8.5.6(c)

Applicant: Joseph and Jo Anne Mason

25 MR. WILLIAMS: Staff finds that there are some

1 special circumstances with regards to this property
2 and application.

3 The subject property and adjacent properties
4 were developed as a part of the Hillcrest Oaks
5 subdivision in 1988. The subject property has a
6 platted 40 foot building setback from the property
7 line. However, the zoning regulations were revised in
8 May of 1996 increasing that setback to 75 feet from
9 the center of Fairview Drive or 45 feet from the
10 property line.

11 The applicants seek a variance that will allow
12 them to build to 30 feet from the property line.
13 Survey information provided by the applicant
14 determines that the site to the immediate east of the
15 subject property, which is 2309 Fairview Drive, has a
16 principal dwelling that is situated 32 feet from the
17 Fairview Drive right-of-way. The adjoining lot has a
18 platted setback of 30 feet. The lot immediately to
19 the west of the subject property across Wilderness
20 Trace, which is 4440 Wilderness Trace, also has
21 frontage on Fairview Drive and has a principal
22 dwelling situated 41 feet from the Fairview Drive
23 right-of-way and has a platted setback of 40 feet.

24 Both of the adjoining homes encroach into the
25 prescribed zoning ordinance setback for Fairview

1 Drive, a major arterial roadway. All three sites were
2 platted prior to the prescribed setback of 75 feet
3 from the street centerline. Because the adjoining
4 homes encroach into the setback, approval of this
5 variance would not alter the essential character of
6 the neighborhood. The roadway buffer of 50 feet from
7 the street centerline will not be broached and the
8 ability for future widening remains viable. A site
9 visit verified that the adjoining homes are located
10 much nearer the road than the subject property
11 dwelling.

12 The applicant has submitted survey evidence to
13 show that the character of the neighborhood can be
14 maintained with the granting of this variance.
15 Because the lots predate the zoning ordinance
16 requirements for the greater 75 foot setback, special
17 circumstances exist that warrant consideration of this
18 variance request. The granting of the variance will
19 not allow an unreasonable circumvention of the zoning
20 ordinance because other structures in the vicinity
21 also predate the setback requirements and encroach
22 into the prescribed setback. However, should the
23 variance be granted, the applicant must submit a new
24 minor subdivision of the lot reducing the platted
25 setback from 40 feet to 30 feet.

1 Staff finds that strict application of the
2 regulations would not deprive the applicant of the
3 reasonable use of the land because the applicants are
4 able to use the residence as originally built without
5 expanding their garage. The variance request states
6 basically that they just want to expand the size of
7 their garage so it will not affect their use.

8 The applicants have not yet taken any action
9 to violate the zoning ordinance.

10 Staff finds that granting this variance will
11 not adversely affect the public, health, safety or
12 welfare; will not alter the essential character of the
13 general vicinity; will not cause a hazard or a
14 nuisance to the public; and will not allow an
15 unreasonable circumvention of the requirements of the
16 zoning regulations.

17 Therefore, Staff recommends approval with the
18 submittal and approval of a minor subdivision plat to
19 change the platted setback from 40 feet to 30 feet.

20 I would like to enter the Staff Report into
21 the record as Exhibit G.

22 CHAIRMAN: Anyone here representing the
23 applicant?

24 MR. MASON: Yes.

25 CHAIRMAN: Anyone have any questions of the

1 applicant?

2 (NO RESPONSE)

3 CHAIRMAN: Would you like to do a
4 presentation, sir?

5 MR. MASON: No.

6 MR. TAYLOR: My name is Sepptimous Taylor, II
7 and I represent Mr. and Mrs. Mason. Mr. Mason is here
8 today.

9 CHAIRMAN: Do any board member have any
10 questions of the applicant?

11 (NO RESPONSE)

12 CHAIRMAN: Do you have any comments you would
13 like to make?

14 MR. MASON: Thank you.

15 CHAIRMAN: Chair is ready for a motion.

16 MS. MASON: Mr. Chairman, I would make a
17 motion for approval. I will say I'm not kin to the
18 applicant in any way.

19 It will not adversely affect the public
20 health, safety or welfare; it will not alter the
21 essential character of the general vicinity; it will
22 not cause a hazard or nuisance to the public; and it
23 will not allow an unreasonable circumvention of the
24 requirements of the zoning regulations. I do put the
25 condition on it that submittal and approval of a minor

1 subdivision plat to change the platted setback from 40
2 feet to 30 feet.

3 MR. DYSINGER: Second.

4 CHAIRMAN: We have a motion and a second. Any
5 comments or questions on the motion?

6 (NO RESPONSE)

7 CHAIRMAN: All in favor raise your right hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimously.

10 I need one more motion.

11 MS. MASON: Move to adjourn.

12 MR. WARREN: Second.

13 CHAIRMAN: All in favor raise your right hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 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 91 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 August, 2008.

18
19 _____
20 LYNNETTE KOLLER FUCHS
21 OHIO VALLEY REPORTING SERVICES
22 202 WEST THIRD STREET, SUITE 12
23 OWENSBORO, KENTUCKY 42303

24 COMMISSION EXPIRES: DECEMBER 19, 2010
25 COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY