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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

JUNE 4, 2008

The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, June 4, 2009, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: C.A. Pantle, Chairman
- Ward Pedley, Vice Chairman
- Ruth Ann Mason, Secretary
- Gary Noffsinger, Director
- Madison Silvert, Attorney
- Marty Warren
- Sean Dysinger
- Clay Taylor
- Judy Dixon

* * * * *

CHAIRMAN: Call the Owensboro Metropolitan Board of Adjustment meeting to order. You can join us in prayer and pledge of allegiance.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

Again, I want to welcome all of you here this evening. If you have any comments on any item, please come before the podium. State your name and be sworn in so we can get you on record. With that we'll proceed with our meeting.

The first thing is the minutes of the May 7th meeting. They're on record in the office. I don't think there's any problem. Unless somebody has something to add to it I'll entertain a motion to

1 dispose of the minutes.

2 MS. DIXON: Move to approve.

3 MR. DYSINGER: Second.

4 CHAIRMAN: A motion has been made and a
5 second. All in favor raise your right hand.

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries.

8 Next item, please, sir.

9 -----

10 VARIANCES

11 ITEM 2

12 5488 Ridge Pointe Court, zoned A-U
13 Consider a request for a Variance in order to reduce
14 the side street building setback line along Covington
15 Ridge Drive from 35' from the right-of-way line to 25'
16 from the right-of-way line.

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

Applicant: Michael G. Ballard and Brent A. Ballard,
d/b/a Ballard's Development, LLP

17 MR. SILVERT: State your name, please.

18 MS. EVANS: Melissa Evans.

19 (MELISSA EVANS SWORN BY ATTORNEY.)

20 MS. EVANS: The applicant is requesting a
21 reduction in the side street building setback line
22 because there was an error during construction which
23 caused the house and detached garage to encroach into
24 the side street building setback line. The subject
25 property is zoned A-U Urban Agriculture and there have

1 been no other variance requests in this neighborhood.

2 A building permit was issued for the
3 construction of the house and a detached garage on
4 March 16, 2009 with a site plan showing the proposed
5 building meeting the required side street setback.

6 On a March 17, 2009 field inspection, there
7 were no property pins spotted and the foundation
8 inspection was failed. Upon a follow-up inspection,
9 it was determined the foundation was too close to call
10 and the inspector requested the applicant get a survey
11 of the property to ensure the buildings were not in
12 the setback and the second foundation inspection was
13 failed.

14 The applicant continued to proceed with the
15 construction of the house and detached garage.

16 On April 29, 2009, the applicant requested an
17 electrical rough-in inspection and was refused this
18 inspection because the foundation inspection had never
19 passed. At that time the applicant submitted a letter
20 acknowledging the mistake of the encroachment and
21 their intention to apply for a variance. The
22 applicant states that around April 15, 2009, they
23 realized the building encroached into the setback.
24 Also, with this letter, the applicant acknowledged
25 that if they continued with construction after the

1 date of this letter, they were doing so at their own
2 risk.

3 Granting this variance will alter the
4 essential character of the general vicinity because
5 this house and detached garage will be considerably
6 closer to Covington Ridge Drive than the rest of the
7 houses on that street. It will allow an unreasonable
8 circumvention of the requirements of the zoning
9 regulations because the applicant did not follow the
10 recommendations of the field inspector and even after
11 realizing there may have been a problem continued with
12 construction. It may impact the site visibility on
13 Covington Ridge Drive for the property south of the
14 subject property.

15 Granting this Variance will adversely affect
16 the public health, safety or welfare because the
17 proposed buildings may impact the site visibility on
18 Covington Ridge Drive; it will alter the essential
19 character of the general vicinity because the house
20 and detached garage will be considerably closer to the
21 street than the rest of the structures in the area; it
22 will cause a hazard or a nuisance to the public
23 because it may impact the site visibility on Covington
24 Ridge Drive for the property south of the subject
25 property; it will allow an unreasonable circumvention

1 of the requirements of the zoning regulations because
2 the applicant continued with construction even after
3 realizing there may have been a problem.

4 Staff recommends denial.

5 We would like to enter the Staff Report into
6 the record as Exhibit A.

7 CHAIRMAN: Thank you.

8 Is the applicant here and ready?

9 MR. SILVERT: State your name, please.

10 MR. BALLARD: Mike Ballard.

11 (MIKE BALLARD SWORN BY ATTORNEY.)

12 MR. BALLARD: Dennis inspected the footer.

13 When we staked it off, I was 100 percent sure the
14 footer was right. He said it was too close to call,
15 but the footer was okay to do. So we continued on
16 with the process.

17 He said we had to have it surveyed. We knew
18 that was okay to do. I called Bryant Engineering
19 sometime in the next few days and told them to do it,
20 but it was no rush because I knew for 100 percent sure
21 that our setback was good.

22 The next thing I knew was the electric
23 inspection came and they turned it down because the
24 survey was not complete. So that's the day, I guess,
25 we got into a bigger rush to get the survey done.

1 Then we submitted it here.

2 By that time the frame was up, the brick was
3 on, the electrical was in, the HVAC was done and
4 everything was proceeding right along because it was a
5 presold house. That was the end of the story.

6 That's just a mistake was made. I had nine or
7 ten feet on the other side of the house that I could
8 have moved it easily. Didn't have any idea the
9 mistake was happening. When we did, we corrected it
10 the best we could. That's it. I don't have any
11 reason other than I just made a dumb mistake. Just
12 did.

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

15 MR. PEDLEY: Yes.

16 Mike, as you well know I'm a foundation
17 contractor. Probably put in 3,000 foundations.

18 MR. BALLARD: Several hundred over the years.
19 This is the first one.

20 MR. PEDLEY: I'm just confused and concerned
21 why, what measurements you might have been using to
22 get that setback. It's your subdivision. You know
23 the setback is 35 feet. Ninety-five percent of our
24 subdivisions setback is 25 feet. It's easy to make
25 that mistake. Mentally, you know, thinking 25. I

1 don't really realize what measurement you might have
2 been using to be off as much as ten feet in places.
3 Pretty much concern why. I really do think that you
4 made an honest mistake. I know you have a great
5 subdivision. It looks good. I know you're proud of
6 it. I don't think that you did this intentionally
7 because I know how you are about your development.
8 It's a great development. It does look good. I don't
9 know if you can even explain how or why that you made
10 a mistake to that extent. I would like to hear that,
11 if you could tell me.

12 MR. BALLARD: Well, I will say this: If you
13 would look at the plat of that lot, it has a 35 foot
14 setback marked out on the front of the lot. On the
15 side of the lot it has a 35 and a 25 within about a
16 quarter of an inch of each other on that same plat.
17 One of them is the setback for a proposed sewer use
18 that, you know, we gave to the RWRA when we developed
19 the subdivision. Definitely knew it was 35 foot.
20 Just read the wrong number and made the wrong mistake.
21 That was just it. Can't do anything about that now.

22 MR. PEDLEY: So were you using the 25 feet?
23 Were you --

24 MR. BALLARD: I used the 25 feet and I allowed
25 myself 2 1/2 feet to be wrong. At the time that

1 Dennis came, I just absolutely knew for sure we had
2 two feet four inches to spare. It just didn't happen.

3 I will say this, and I've been promoting this
4 for a long time. On corner lots where the curbs and
5 radius all the way around, had every pin pulled up and
6 marked, he still couldn't have measured it from that
7 angle.

8 I don't know if Dennis will remember or not,
9 but I measured the 9 foot 6 setback and put a string
10 up. I measured the 25 foot setback all the way around
11 that whole lot and put a string up so he would have
12 something to measure by. They're not allowed to
13 measure from the curb, which I think is an insane
14 thing that happens, you know. I know today is not a
15 good day to discuss that, but had we measured from the
16 curb we would have caught that mistake before the
17 footer got poured. I was 100 percent sure I was right
18 when he came there the second time.

19 MR. PEDLEY: Looking at this plat I can only
20 assume that you thought the setback was 25 feet.

21 MR. BALLARD: That's what I thought.

22 MR. PEDLEY: It appears that on the garage.
23 It appears that on the front corner of the house. For
24 some reason you was thinking the setback was 25 feet.
25 Am I correct on that?

1 MR. BALLARD: Yes, you're correct. Had the 25
2 foot been right, I would have been 2 foot past the
3 setback, and that's what I thought I was.

4 MR. PEDLEY: I really believe you're telling
5 us right. There was no reason for you to -- you had
6 another ten feet on the side lot. You could have
7 easily moved back. There's no reason for you to do
8 this.

9 MR. BALLARD: No.

10 MR. PEDLEY: Absolutely no reason. I think
11 it's an honest mistake, but this is major, you know.

12 MR. BALLARD: I understand that. Again, it
13 was a mistake. I had all kinds of room to move it so
14 there was no reason for me to do it intentionally. I
15 mean that would have been insane. To be here
16 intentionally and to do all this stuff you've got to
17 go through to get here is insane, if you don't have
18 to. Absolutely it was an honest mistake.

19 MR. PEDLEY: I drove down there this afternoon
20 and took a look. The house itself visually doesn't
21 have a major impact being close. It's hard to tell
22 that it really is close. In fact, at one point it is
23 about 33, 34 feet in that radius, and a cul-de-sac is
24 common mistake is made. But the garage does jump out
25 at you. You can clearly see it's out of character with

1 the neighborhood.

2 MR. BALLARD: Again, like I said it's an
3 honest mistake. That's the best I can tell you.
4 Brent lives right next-door. He didn't know it
5 either. Nobody in the neighborhood knew it or said
6 anything about it. We just got by. But the garage is
7 26 foot off the setback from what I thought was right.
8 So it was a foot over what I thought I needed, you
9 know.

10 MR. PEDLEY: The garage is 26.25. It just
11 appears that you were using 25 foot setback.

12 MR. BALLARD: That's what I did. I just knew
13 100 percent sure it was the right one.

14 MR. PEDLEY: That 25 foot setback, is that a
15 sewer easement?

16 MR. BALLARD: Yes. It's for future sewer
17 easement. I even went to RWRA and got a letter saying
18 it was okay to do that. Our septic tank is going to
19 be on some of that easement. Before we got started,
20 we got them to say it was okay to get on that future
21 sewer easement. There's no plan, as far as I know of,
22 to ever using it. Some day probably will be. They
23 didn't have a problem with it either.

24 MR. PEDLEY: We have Dean Behnke's signature.
25 He's okay with the encroachment into --

1 MR. BALLARD: I can't hardly hear you, Ward.

2 MR. PEDLEY: Dean Behnke's signature, he
3 okayed encroaching into the sewer easement?

4 MR. BALLARD: Yes, he did.

5 MR. PEDLEY: So he's okay with it?

6 MR. BALLARD: He is. Again, that happened
7 even before I thought I -- when I thought it was
8 right, he was okay with doing it before we found out
9 there was a mistake.

10 MR. PEDLEY: From the time you put the
11 foundation in, the footer and the block, how much time
12 passed before you had that house under roof?

13 MR. BALLARD: Fourteen days.

14 MR. PEDLEY: I know how quick you move.

15 MR. BALLARD: How long what?

16 MR. PEDLEY: Getting the house under roof,
17 from the time of the foundation.

18 MR. BALLARD: It took 14 days from the day
19 Dennis turned it down it was under roof. Had 18 guys
20 on it and it took 14 days to do the whole thing.

21 Again, all the time we realized that we was
22 going to have to get a survey done, but I was 100
23 percent sure that it was right so I wasn't worried
24 about a survey. I knew it was a formality because of
25 the radius street. You know, it's just hard to deal

1 well those sometimes. I didn't have a problem doing
2 the survey and I had already called Bryant to do it.
3 I told them no big rush. We've got plenty of time
4 because I know it's right.

5 MR. PEDLEY: On the second inspection, the
6 follow-up inspection, at what point did you call for
7 that?

8 MR. BALLARD: What point did I do what?

9 MR. PEDLEY: The second follow-up inspection,
10 where were you with your construction?

11 MR. BALLARD: Hadn't done anything when he
12 come back. It was the next day. I think the next day
13 so hadn't anything been done. He told me that day, I
14 had all the pins dug up and located and strung up, but
15 he said it was too close to call. You'll have to get
16 a survey. I knew that. He said, the footer is okay.
17 So we just poured the footer an hour after he was
18 there, you know, and we started doing everything we
19 normally do. It wasn't okay is the only thing I can
20 tell you. It wasn't okay.

21 MR. PEDLEY: I'm just trying to clarify all
22 the things that happened, everything that took place.

23 MR. BALLARD: Again, we didn't do anything
24 intentionally. There would have been no gain for us
25 to do it intentionally. We had ten foot to spare on

1 the other side of the house.

2 MR. PEDLEY: That's exactly what I'm trying to
3 clarify. If you intentionally did it.

4 MR. BALLARD: No.

5 MR. PEDLEY: And I don't believe you did
6 because you had no reason to. That's all the
7 questions I have for you, Mike. I just wanted to
8 clarify all the issues and things.

9 Maybe Dennis might like to fill us in on
10 anything that might have been different to what you
11 heard here.

12 Dennis.

13 CHAIRMAN: Dennis, before you start, are there
14 any other questions from the board members of the
15 applicant?

16 MR. DYSINGER: I would, Mr. Chair.

17 Sir, at what point did you find out the
18 setback should be 35 as opposed to 25?

19 MR. BALLARD: When I got turned down for the
20 electrical inspection. Not because it failed, but
21 because Dennis hadn't okayed it and the survey had not
22 been completed. I was setting in my office ten miles
23 away and it just, the light come on and it was a dumb
24 mistake.

25 MR. DYSINGER: So on or about April 29th you

1 realized that the error was made?

2 MR. BALLARD: Yes. Way long time after we
3 done it all.

4 MR. DYSINGER: I am not in construction so
5 some of the questions I'll ask you will appear dumb to
6 you so be patient with me.

7 The survey, were you notified on the 18th that
8 the survey should be done? Is that the point in which
9 it was decided it was too close to call by Dennis?

10 MR. BALLARD: Yes.

11 MR. DYSINGER: And at that time he informed
12 you that you should have a survey done?

13 MR. BALLARD: Yes. I knew that we were going
14 to have to do it. I'm not sure what day I called
15 Bryant. I'm not even sure what date, if the 18th is
16 the correct date. I didn't look at the calendar. I
17 don't know.

18 As soon as I realized I had to do it, I called
19 Bryant and they were real busy. I said, don't worry
20 about it. We don't have to, you know, we've got to
21 get it some day before we close the house out, but
22 otherwise it's not a big rush. They done everything
23 else prior to, I guess. Waiting on me, you know, for
24 them to get time. I didn't really see a problem at
25 all and why we had to get it done in two days. I

1 didn't know there was a problem.

2 MR. DYSINGER: So it's your testimony you did
3 contact the engineer to have a survey done, but did
4 not schedule a survey?

5 MR. BALLARD: Right. I told him to do it when
6 he got time.

7 MR. DYSINGER: Mr. Chairman, unless Bryant is
8 here to question, then I would be interested in what
9 Dennis had to say.

10 That's all I have right now, sir. Thank you.

11 CHAIRMAN: Any other questions by the board?

12 (NO RESPONSE)

13 MR. SILVERT: State your name, please.

14 MR. THURMAN: Dennis Thurman.

15 (DENNIS THURMAN SWORN BY ATTORNEY.)

16 MR. PEDLEY: Dennis, normally when you say
17 it's -- I know you do inspections for me. Normally
18 when you say it's too close to call, we're talking
19 about six inches or maybe one foot. When you
20 inspected this, did you think that was a 25 foot
21 setback or did you know it was a 35 foot setback?

22 MR. THURMAN: Mr. Pedley, when I did the
23 initial inspection on the 17th there were no property
24 pins visible. I cannot do a setback inspection
25 without property pins. So I informed Mr. Ballard that

1 I needed the property pins. He indicated he would
2 call when he got them.

3 According to the inspection sheet here, on the
4 19th I went back and Mr. Ballard had the property pins
5 exposed. There was no string line. I can't measure
6 it without a string line. So I turned it down and
7 called it too close to call. I can't measure without
8 a string line on the property pins.

9 MR. PEDLEY: What did you think the setback
10 was there? Did you think it was 35 or 25 when you
11 were out there and you had the plat?

12 MR. THURMAN: Mr. Pedley, I can't answer that
13 question right at the moment. On my inspection sheet
14 I have the setbacks printed for me. I don't recall
15 what they were at this time, but they were on my
16 sheet.

17 MR. PEDLEY: Just trying to clarify. Normally
18 when we say "too close to call" we're talking about 6
19 inches to a foot.

20 MR. THURMAN: Yes, sir.

21 MR. PEDLEY: Not ten feet.

22 MS. EVANS: Here is the setbacks right here.

23 MR. THURMAN: Yes, sir. It's showing me
24 setbacks on the left side is 10 feet. On the right
25 side is 35 feet and the rear 20.

1 I guess the reason I put down too close to
2 call is because I could not measure it. I can't
3 measure it if I don't have something to measure from.

4 MR. BALLARD: Can I say something?

5 MR. THURMAN: Sure.

6 MR. BALLARD: On corner lots, had every pin
7 been exposed there was still nothing for him to
8 measure from. We measure from the curb because, you
9 know, if any of you have ever located -- I think you
10 have a plat there. The pins are 20, 30 feet around
11 the corner from anyplace he could have measured from
12 on that house. I measured from the curb myself 34
13 foot 6 because that's what the setback was. I give
14 myself 2 more feet and 6 inches just to be safe. When
15 I did put the pins up, I put the string up and I
16 measured the string from the curb because there's no
17 way to measure a radius lot and be accurate at all.
18 He can't do it either, you know. I'm not saying he's
19 wrong. I made the mistake.

20 MR. PEDLEY: I'm trying to determine why he
21 saying too close to call or you could be saying you
22 thought you were right when you're 10 feet off. I
23 don't understand why the 10 feet. Setback is 35. I
24 can only assume that you thought it was 25 and that's
25 what you were using.

1 MR. BALLARD: Yes, I thought it was 25 plus 9
2 foot 6 from the pin to the curb. I went that far plus
3 2 more feet and 6 inches just to cover my butt. If
4 you look at the plat, it's got 25 right at the corner
5 of the house line. It's on the plat 25, but the 25
6 somewhere else on that line says future sewer
7 easement. I put 57 on the things in there and none of
8 them have been wrong. It's just one of those
9 mistakes. Everywhere I built in Sorgho the setback is
10 25 feet and we put 30, 40 in there and they're all
11 right. First time we've made a mistake on a setback
12 on 300 houses or so. It's not like we had a reason to
13 do it, you know.

14 MS. MASON: I'm showing my stupidity because I
15 don't know much about building. Is it 35 feet
16 throughout your whole subdivision?

17 MR. BALLARD: Yes, it is. Corner lots are the
18 unusual situation. Anybody that's ever built knows
19 corner lots are just sometimes a nightmare. We
20 actually had the engineer give us a 70 foot envelope
21 inside of that house and upon the plat so we know how
22 big of a house we can put in there. We give ourselves
23 10 more feet for that. Still it was wrong. I just
24 made a mistake.

25 CHAIRMAN: Do you have any other comments you

1 want to make?

2 MR. THURMAN: No, sir.

3 CHAIRMAN: Board members have any other
4 questions of the inspector?

5 (NO RESPONSE)

6 CHAIRMAN: Staff have any other comments?

7 MR. DYSINGER: Mr. Chairman, I'm sorry.

8 Dennis, when you failed the inspection on the
9 19th and you put "too close to call," and I know
10 almost as much about inspection as I do about
11 construction so my questions are going to seem pretty
12 dumb to you too.

13 When you fail an inspection, does it matter
14 why you fail it? Insomuch as to the applicant, should
15 it have mattered that you said to close to call or are
16 there specific things that you guys -- should you
17 have, in other words, said, I can't measure it because
18 there's no strings or does that matter?

19 MR. THURMAN: That was my mistake. I should
20 have indicated on the report, no string lines and I
21 could not measure it. I think the reason I put too
22 close to call was because of the utility easement that
23 Mr. Ballard had laid out and it was pretty close.

24 MR. DYSINGER: You guys do a great job in a
25 lot of tough situations.

1 I think that's the only question I have for
2 Dennis right now, Mr. Chairman. Thank you.

3 MR. PEDLEY: That's all I have, Dennis. Thank
4 you very much.

5 MR. THURMAN: Thank you.

6 CHAIRMAN: Staff have any other comments?

7 MR. NOFFSINGER: I've heard Mr. Ballard state
8 that he didn't know it was a problem at the time, but
9 I'm just wondering if he sees that it's a problem now.
10 I'm just wondering if he sees it's a problem in the
11 future. I'm really concerned about that because our
12 inspectors did not pass that inspection and Mr.
13 Ballard moved forward with the inspection failing.
14 After our inspector asked for a survey and said,
15 whether he said it was too close to call or what, he
16 moved forward. How does that affect us in the future?
17 Where do we go? I understand the mistake was made,
18 but what about the next time? And the next time the
19 inspector comes out and says, it's too close to call
20 or passes it, are we going to continue to build or
21 what do we do?

22 MR. BALLARD: I'm pretty sure we'll have a
23 different opinion next time. Pretty sure we will.

24 MR. PEDLEY: Being a builder and also a
25 foundation contractor, I definitely think we need to

1 take a look at how that's handled, you know. We can't
2 keep having this. We don't want builders or
3 contractors or foundation contractors thinking that,
4 well, I'll go ahead with it and then I'll go get a
5 variance. That puts this board in a bad situation.
6 That's not what we're here for. We're here for the
7 remedy, situation like this, but we also have
8 guidelines that we have to go by. Findings that we
9 must make to approve this variance.

10 I'm going to bring it up to the Homebuilders
11 Board meeting. I'm also going to ask Gary and Jim to
12 meet with us and come up with something more. I'm not
13 wanting to restrict us any more so we can't continue
14 on, but at the same time I do not want for builders or
15 foundation contractors to continue doing these things
16 and going, if I'm wrong I'll go get a variance.
17 That's not the purpose of this board; although we
18 grant a lot of variances on mistakes like yours.
19 That's one of the things we do. That's one of the
20 purposes of the board of adjustment. That's what the
21 board of adjustment is all about.

22 I've made this mistake three times. I've
23 never been here. Last year I made this mistake. I
24 was in a rush. Was going to Wisconsin with the ball
25 team. Staked out a foundation and told them to go

1 ahead and pour it. Building inspector, we only had
2 two inches on each side. It's too close to call.
3 I'll get an engineer. I get back the footer is
4 poured. I found out I was wrong. I had it wrong. I
5 tore the footer out and poured another one. I didn't
6 come down here. It's not the first time I've done
7 that. It's three times I've done that.

8 Another time I did it at Stone Gate. The
9 foundation was wrong. Rear property pin. It was an
10 honest mistake. But the only remedy that I could do
11 is buy five feet off of the lot from Melvin Pagan.
12 That cost me \$7,000 to buy that lot. I did a
13 consolidation and a lot division, but I didn't come
14 down here. I did one other time. I tore the footer
15 out.

16 Mike, you've got a situation here that's very
17 devastating to you if you have to tear that house
18 down.

19 MR. BALLARD: Yes. About \$300,000 worth.

20 MR. PEDLEY: Yes, and I understand that. This
21 is a tough one. This is one of the toughest ones I've
22 had to deal with, but a 10 foot mistake that's major.
23 It's not one foot. It's 10 feet. It's major.

24 I drove down there this afternoon. The house
25 itself doesn't have a visual impact on that

1 development. Even with my trained eye I can see the
2 difference, but it doesn't have a major impact. The
3 garage itself does. It is totally out of character
4 with that subdivision.

5 MR. BALLARD: Well, the garage was lined up
6 exactly straight line with the side of the house.
7 That's why it's that way. We wanted it to look
8 straight with the house and that's the way it looks.

9 MR. PEDLEY: Still the garage itself is what
10 has the major impact on it and out of character.
11 That's the things that we must find. We have four
12 things. That's one of them. It does alter the
13 essential character of the neighborhood. It does.

14 MS. MASON: I also drove by and I could tell.
15 The house was hard for me to tell, but the garage I
16 could definitely tell it was a lot closer.

17 I have a question. Has there been any letters
18 received in the office from other property owners? I
19 didn't hear any.

20 MR. NOFFSINGER: We have two gentlemen in the
21 audience, and I'm not sure why they're here. We
22 haven't heard from them, but Mr. Mischel in the office
23 did have a call from one or two folks that lived out
24 there. He can share with you what conversations he
25 might have had just in general. Yes, we have had some

1 contact from people that lived or own properties out
2 there.

3 CHAIRMAN: Jim, before you start.

4 You gentlemen have any comments you want to
5 add at this time, either one of you?

6 (NO RESPONSE)

7 CHAIRMAN: Jim.

8 MR. SILVERT: State your name, please.

9 MR. MISCHEL: Jim Mischel.

10 (JIM MISCHEL SWORN BY ATTORNEY.)

11 MR. MISCHEL: I had two calls, but it was from
12 the same gentleman. He voiced some concerns about the
13 setback and allowing it to occur. I got the
14 impression that he wanted this house to meet the 35
15 foot setback. That was about it.

16 CHAIRMAN: Any questions of Jim from the
17 board?

18 (NO RESPONSE)

19 CHAIRMAN: Mr. Ballard, do you have anything
20 new that would help us any in our decision?

21 MR. BALLARD: I don't know. No, not in your
22 decision, no, I don't have anything new on that. It
23 was just an honest mistake and first one I've made in
24 300 houses. Just something happened sometime.

25 I can say this for some advice. Had Dennis

1 been allowed to measure from the curb he and I
2 together would have caught this mistake before the
3 footer got poured, but I was 100 percent sure I was
4 right. He didn't know. He's not allowed to measure
5 from the curb so we couldn't have caught the mistake
6 until the survey was done. That's no excuse, but that
7 would have alleviated this problem before the footer
8 got poured had he been allowed to measure from the
9 curb. Anybody looks at radius lots, if you've got the
10 plat in front of you, can see where the pins are and
11 it's impossible to measure from both and get a
12 setback.

13 Again, I say it was an honest mistake. I
14 didn't do it on purpose. It's just the way it is. I
15 didn't do it.

16 CHAIRMAN: Thank you.

17 You other two gentlemen have anything you to
18 add?

19 MR. B. BALLARD: Yes, I would like to speak.

20 CHAIRMAN: Come forward.

21 MR. SILVERT: State your name, please.

22 MR. B. BALLARD: Brent Ballard.

23 (BRENT BALLARD SWORN BY ATTORNEY.)

24 MR. B. BALLARD: I live right next-door to
25 this house, which is south of the house that we're

1 talking about. I look at it every day and I didn't
2 even know that it was off until he caught it.

3 The lady was talking earlier about south of
4 the house. I live south of the house and I'm the only
5 one that does and it's a dead end right past me. I
6 live on the dead end. Scott Duvall and Jim Schwartz
7 also live south to the house. They're across the
8 street. None of us even realized that this happened.
9 Once we realized it, we had talked to them and they
10 don't have a problem with it. That's why they're not
11 here tonight. Me personally, it may be a conflict of
12 interest because I'm a partner with Dad in this
13 building business, but I just happen to live next-door
14 to it, but it doesn't bother me. I don't think it
15 sticks out like a sore thumb. The owner of the house
16 doesn't have a problem with it. I think if a lot of
17 people had a problem with it they'd be here tonight.

18 CHAIRMAN: Any questions of the applicant?

19 MR. PEDLEY: You haven't had anyone complain?
20 Any of the neighbors, they haven't complained to you
21 about it?

22 Mike, you or Brent either one?

23 MR. B. BALLARD: No.

24 MR. M. BALLARD: No.

25 MR. PEDLEY: They were mailed a notice of this

1 meeting.

2 MR. M. BALLARD: Nobody has contacted me
3 period. Boots Norris contacted me and said, what's
4 this letter all about? I told him. He said, I'm not
5 going to that damn meeting. That's crazy. That's the
6 only comment that I've got.

7 MR. NOFFSINGER: And that's the issue Staff
8 has. Is whether or not we're taking this whole
9 process serious.

10 I can tell you these inspectors do and our
11 Staff do. I want to make sure the process is taken
12 serious because it's a serious situation. To say that
13 you couldn't tell that that building is off.

14 Brent, how close is your house built to the
15 setback line? Is it right on the setback line? If
16 you couldn't tell that that garage was 10 foot out in
17 front of your house? I mean you can see that with
18 your eye. When my Staff went out there, the Planning
19 Staff, they could easily see that that garage was
20 sticking out further. If we were to measure it from
21 the curb, we don't know if that curb was put in the
22 way the plan show. But when you identify property
23 pins, we have something and you put a string line
24 there, we have something to measure off of. But that
25 curb is not a stake. We've got to go off the property

1 pins. If we measure, what would the distance be if we
2 measured from the curb? You've got 35 feet. Are we
3 going to measure 42 feet or is it 40 feet? How do we
4 know that that curb -- we've got an issue in the
5 Locust Grove Estates right now that the curb was put
6 in on the private property, on the lots. It was not
7 put in, the street wasn't put in in the center of the
8 right-of-way. So we can't just go off a curb.

9 That's why we need the property pins found and
10 we need string lines put up and we all need to take
11 the process very seriously.

12 MR. M. BALLARD: Can I say one more thing?

13 CHAIRMAN: Come forward.

14 MR. M. BALLARD: Had we put the string up on
15 the existing property pins and we found every one of
16 them, the string would have been like that, octagon or
17 something shaped going around that lot. It would have
18 been absolutely no way to measure from anywhere except
19 the pin where the dimension is actually accurate. The
20 only way to do it, and we did that. We painted a line
21 from the back of the curb, 9 foot 6, with every pin we
22 measure was at 9 foot 6. We painted that line and
23 pulled a string off that line. We done everything
24 humanly possible other than get a GPS system or
25 something to spot the house on the lot. Again, we did

1 not do it on purpose. We had no reason to do that.

2 MR. DYSINGER: Mr. Chairman, sorry to
3 interrupt.

4 The pins that you put, the lines that you put
5 in, sir, were for 25 foot setback; is that correct?

6 MR. M. BALLARD: They were 9 foot 6 plus the
7 25 foot because at that time I still was 100 percent
8 sure 25 foot was right.

9 MR. DYSINGER: You did intentionally put the
10 lines in the wrong place. You just thought it was the
11 right place?

12 MR. M. BALLARD: I thought the string was
13 exactly where it was supposed to have been. There was
14 no way in the world I would have built the house
15 having 10 feet on the other side of that house. That
16 I could have moved it with no trouble at all. That
17 would have been insane to build that house close to
18 that setback line knowing it was 35 foot. I built a
19 lot of houses. I've built in Sorgho. Everywhere.
20 The setback is not the same everywhere.

21 MR. DYSINGER: I understand, sir, and I agree.
22 I think it's important to point out that however this
23 board decides there is a difference between a willful
24 action and doing something with malice. I can't speak
25 for the rest of the board. I don't think you

1 intentionally did the wrong thing here, sir. I don't
2 think that at all.

3 I do think that this could have been avoided,
4 and it's unfortunate for everybody, but you
5 intentionally set those lines at 25 feet plus what you
6 mentioned, which is not correct. The correct setback
7 is 35 feet.

8 MR. M. BALLARD: That's correct.

9 MR. DYSINGER: The fact that it's 25 feet
10 intentionally I'm afraid, sir, indicates that you
11 willfully, to me, and I'm not making a motion at this
12 point, but you willfully violated the zoning ordinance
13 perhaps without knowing it, but it did happen on
14 purpose.

15 Further, it could have been avoided with a
16 survey and maybe some better communication all the way
17 around.

18 As I see it, and absolutely if I said anything
19 that is not factual feel free to correct me, but as I
20 see it those lines were put 25 feet on purpose, plus
21 the addition, on purpose which is not correct and is
22 in the setback.

23 MR. M. BALLARD: That's correct. I put them
24 at 25 foot on purpose because in my brain I was 100
25 percent sure that the 25 foot was the correct setback

1 when I did that.

2 MR. DYSINGER: Thank you, sir.

3 MR. B. BALLARD: Can I say one more thing?

4 CHAIRMAN: State your name.

5 MR. B. BALLARD: Brent Ballard.

6 We didn't notice that the mistake was made and
7 the neighbors that I mentioned earlier didn't notice
8 the mistake was made until they got the letter.

9 Now that we know that and when I look over I
10 can see that it's a little bit closer to the line now
11 that it's brought to everybody's attention, but before
12 that nobody knew. The neighbors didn't know. I don't
13 think that it sticks out that much where, I mean if it
14 was that bad I think people would have come to us and
15 said, hey, this don't look right, but nobody did that.
16 That's what I was referring to earlier when I didn't
17 realize it. You said you had drove by and seen that
18 it was that way. I just don't think that anybody
19 would have seen it if they didn't -- it's one of those
20 things when you know and you have it on paper that
21 it's wrong and then you go look at it and you already
22 know it's wrong before you get there, but the people,
23 including myself, that live right next to it didn't
24 even know it was that way until we got the letter.
25 The neighbors anyway. I mean we knew before we got

1 the letter.

2 CHAIRMAN: Thank you.

3 The other gentleman state your name.

4 MR. SILVERT: State your name, please.

5 MR. WEAVER: David Weaver.

6 (DAVID WEAVER SWORN BY ATTORNEY.)

7 MR. WEAVER: I'm David Weaver. I'm employed
8 with Bryant Engineering.

9 I can tell you that we did not stake the
10 foundation of this house. We typically do not stake
11 foundations of houses which is real typical with
12 what's typically done with the exception of regular
13 houses and houses that you're real close on setback
14 lines.

15 Mike is correct in several of the statements
16 that he made. The house itself, you could not
17 possibly have strung a line between the pins and made
18 a determination on the setback. Mike wasn't aware
19 that he had a problem until after we did our field
20 work and called Mike and explained to him where the
21 house was in relationship to the setbacks.

22 MR. DYSINGER: What date was that, sir?

23 MR. WEAVER: I don't know the exact dates.
24 He's correct. He did tell us that there wasn't a
25 rush.

1 I can tell you that we did stake the curb in
2 Mike's subdivision. The curb is, you know, I'm sure
3 it' accurate within a few inches. That's all I know.

4 CHAIRMAN: Any one of the three of you have
5 any new information that would help us at this time?
6 New information.

7 (NO RESPONSE)

8 CHAIRMAN: Any more questions from the board?

9 MR. TAYLOR: I've got a question and it's
10 mainly for the Staff.

11 I'm with Ward and Sean on this, obviously he
12 did not do that intentionally.

13 What I'm wondering is, and I'm kind of with
14 Ward too --

15 MR. DYSINGER: I'm sorry. For the record I
16 think it is intentional. Just not malicious.

17 MR. TAYLOR: Didn't intentionally maliciously
18 violate it. I'm sorry.

19 I'm with Ward, again, that this is probably
20 the greatest decision I've made on this board,
21 especially financially to an individual. Not to think
22 that it would help any more. I mean I can kind of
23 tell which direction everybody is pointing and what
24 way we're kind of supposed to have to vote on this if
25 we follow by the letter. But is there any way since

1 the way the house is structured and kind of on
2 somewhat of an irregular lot. The house is not
3 noticeable. Not that this is not going to be a
4 financial burden, which it would be.

5 Number one, is there any way to just address
6 the garage and let the house be, even though it's 2.72
7 feet, I guess, out or are we just one ruling on the
8 whole matter? I assuming I know what the result will
9 be if we deny this variance.

10 MR. NOFFSINGER: Mr. Taylor, you have the
11 option of approving the variance as is or you can
12 approve it only for the location of the existing home
13 and not for the garage. You do have some leeway and
14 opportunity there.

15 CHAIRMAN: Any more comments or questions?

16 MR. PEDLEY: I would like to clarify with
17 Dennis. He did his job. I want to make it very
18 clear.

19 Dennis, I want to clarify. You did your job.
20 You did exactly what you were supposed to do. I
21 didn't bring you up there to try to find you wrong.
22 You did your job. That's all I want to say. Thank
23 you very much.

24 MR. THURMAN: Thank you.

25 CHAIRMAN: Any other comments from the board?

1 MS. DIXON: I guess I just have a problem with
2 somebody proceeding after two failed inspections.
3 Because if the builder is going to say, I'm 100
4 percent sure I'm right, we really wouldn't need
5 inspections.

6 CHAIRMAN: Thank you.
7 Staff have anything else to add at this time?

8 MR. NOFFSINGER: No, sir.

9 MR. PEDLEY: I would like to say I don't have
10 a problem with the house the way it's sitting. Again,
11 I went down today and inspected it. It doesn't have a
12 visual impact. I do have a problem with the garage.

13 MR. TAYLOR: My only question would be in
14 response to Judy, and I'm assuming it's a common
15 trait, and Ward can correct me or Mr. Ballard can.

16 I'm not trying to point blame in any
17 direction, but if somebody said, you know, that it's
18 too close to call, and you were sure and somebody said
19 it was too close, then I would say commonly you do
20 proceed with some work from there knowing that it may
21 be in or out. I'm kind of with Ward. Kind of
22 reiterating, you know, how the house sits on somewhat
23 of an irregular lot, there's no way you could notice
24 the house. I kind of see where he's saying on the
25 garage, but the home, the two feet that it may be over

1 I don't see how. You know, even if you got a tape out
2 how you would be able to tell.

3 MR. PEDLEY: Mike, would you step back up.

4 How would you feel about scooting the garage
5 straight back eight feet?

6 MR. M. BALLARD: Of course, I don't want to.
7 It's going to cost me 17, \$18,000.

8 MR. PEDLEY: I know you don't want to do it.

9 MR. M. BALLARD: Sir?

10 MR. PEDLEY: I said I realize it's not
11 something you want to do.

12 MR. M. BALLARD: I know that.

13 MR. PEDLEY: But you can pour a foundation
14 straight in line, get your blocks. You can raise that
15 garage, you can slide it straight back.

16 MR. M. BALLARD: I don't know how I can slide
17 it straight back. I'll just have to tear it down and
18 move it.

19 MR. PEDLEY: You can take it back eight feet.
20 The only thing you're going to lose is the brick on
21 the front. I looked at that today. Only thing you're
22 going to lose is the brick on the front. You extend
23 your rear, your foundation straight back. Get your
24 block laid. Get your anchor bolts loose. You slide
25 that garage straight back. You won't effect it any

1 and it's not a major expense. I can assure it's not
2 as expensive as I've done to correct my mistakes.

3 MR. M. BALLARD: Again, that's possible. I've
4 not ever done one that way, but I'm sure it's
5 possible.

6 MR. PEDLEY: That's the main thing that I see
7 with my inspection today. The garage has a major
8 impact on that neighborhood. That's a great
9 neighborhood. It looks great. You guys have done a
10 great job. I know you're proud of it. I think it
11 looks great.

12 MS. MASON: It is a nice neighborhood.

13 MR. PEDLEY: I think that garage has a major
14 impact.

15 Mr. Chairman, if you're ready, I'll try a
16 motion here.

17 CHAIRMAN: I'm waiting.

18 MR. PEDLEY: I'll make a motion to approve the
19 variance on the position of the house. It's based on
20 the findings that one thing we've had no one down here
21 in opposition tonight. They've been mailed a notice.
22 They see it. They see the structure. They know what
23 it is. There are no surprises. So they know what it
24 is. So the neighbors know.

25 MR. M. BALLARD: Yes.

1 MR. PEDLEY: That's one of my findings. It
2 will not adversely affect the public health, safety or
3 welfare because 90 percent of our homes are set at 25
4 feet back. It's not a public health issue. It's not
5 a safety issue. It has no bearing on that portion of
6 it.

7 Number two, it does alter the essential
8 character, especially with the position of the garage.
9 So with the garage moved back 8 feet, then it will not
10 essentially alter the essential character of the
11 neighborhood.

12 It does not cause a hazard or nuisance to the
13 public because, again, most of our developments are 25
14 foot setback. Those three items I don't find major
15 impact with, if you move the garage back eight feet.

16 It does allow an unreasonable circumvention of
17 the zoning ordinance, but that's one of the purposes
18 of this board for remedy of a situation like this.
19 Also, it would be a total devastation to your building
20 company, the impact of 2 to \$300,000 to move that
21 house. Unreasonable circumvention of the zoning
22 ordinance. I think that overrules that.

23 Now, the condition would be that you move that
24 garage straight back eight feet.

25 MR. M. BALLARD: You have to show me how to do

1 that.

2 MR. PEDLEY: I can show you how to do it.

3 It's not hard.

4 MR. TAYLOR: I second it.

5 MR. M. BALLARD: I guess my point is if that's
6 what we have to do, that what we'll have to do. Not
7 necessarily what I like, but if that's the board's
8 decision. I know you have a job and I do too so we'll
9 just do what we have to do.

10 MR. PEDLEY: One other thing. You must
11 understand, this is not part of the motion. This sets
12 the precedence in that neighbored. Somebody comes
13 down here next week and wants to build a garage 25
14 feet off the street.

15 MR. M. BALLARD: I agree, but there's only two
16 lots left in the neighborhood. I guess that's my
17 thought. I am pretty happy with the neighborhood. I
18 agree that it set a precedence.

19 MR. PEDLEY: Any one of those people down
20 there might decide to build a garage.

21 MR. M. BALLARD: I don't have an opinion of
22 what they think. Nobody has ever complained about
23 anybody in the whole neighborhood.

24 CHAIRMAN: We've discussed it pretty well.
25 He's made a motion. Is there a second to the motion?

1 MR. TAYLOR: Second.

2 CHAIRMAN: A motion has been made and a
3 second. Is there any other comments from the board
4 members?

5 MR. DYSINGER: The only thing I would say is
6 it gives me no joy to say this, but passage of this
7 motion is a mistake. I understand wanting to help
8 people out. It would break my heart to make this
9 gentleman do anything as devastating as that, but we
10 either decide things on the evidence on the record or
11 we don't. I would just ask each board member, with
12 all due respect, sir, that you think about that before
13 you vote.

14 CHAIRMAN: A motion has been made and a
15 second. Staff have anything else?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: The applicant, do you understand
18 that the motion was made, whether it passes or not,
19 move the garage eight foot back?

20 MR. M. BALLARD: I do.

21 CHAIRMAN: Hearing that all in favor raise
22 your right hand.

23 (BOARD MEMBERS MARTY WARREN, WARD PEDLEY, CLAY
24 TAYLOR, JUDY DIXON AND RUTH ANN MASON RESPONDED AYE.)

25 CHAIRMAN: All opposed.

1 (BOARD MEMBER SEAN DYSINGER RESPONDED NAY.)

2 CHAIRMAN: Motion carries.

3 Ward, being you're on the Housing Board be
4 sure and stress when there's questions stop from now
5 down the road.

6 With that I'll entertain one more motion.

7 MS. DIXON: Move to adjourn.

8 MR. DYSINGER: Second.

9 CHAIRMAN: All in favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 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 30 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 25th day of June, 2009.

18

19

LYNNETTE KOLLER FUCHS
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202 WEST THIRD STREET, SUITE 12
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22

COMMISSION EXPIRES: DECEMBER 19, 2010

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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