

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 JULY 2, 2009

3 The Owensboro Metropolitan Planning Commission  
4 met in regular session at 5:30 p.m. on Thursday, July  
5 2, 2009, at City Hall, Commission Chambers, Owensboro,  
6 Kentucky, and the proceedings were as follows:

7 MEMBERS PRESENT: C.A. Pantle, Chairman  
8 Ward Pedley, Vice Chairman  
9 Ruth Ann Mason, Secretary  
10 Gary Noffsinger, Director  
11 Madison Silvert, Attorney  
12 Judy Dixon  
13 Clay Taylor

14 \* \* \* \* \*

15 CHAIRMAN: Want to call the Owensboro  
16 Metropolitan Board of Adjustment to order. We start  
17 our program each time with a prayer and the pledge of  
18 allegiance. I ask you all to join us. Ruth Ann will  
19 have our prayer this evening.

20 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

21 CHAIRMAN: Again, I welcome you to the  
22 Owensboro Metropolitan Board of Adjustment meeting.  
23 If you have any comments on any item, please come to  
24 one of the podiums and state your name and we'll have  
25 a record in case there's problems down the road.

With that we'll start with our first item  
which is considerate the minutes of the last board  
meeting, June 4th. They're in the office on record.

1       There haven't seem to be any problems with it.

2               MR. NOFFSINGER:  No, sir.

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

5               MS. DIXON:  Move to approve.

6               MS. MASON:  Second.

7               CHAIRMAN:  All in favor raise your right hand.

8               (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9               CHAIRMAN:  Motion carries.

10              Next item, please, sir.

11              -----

12                                   CONDITIONAL USE PERMITS

13       ITEM 2

14       3015 Rinaldo Road, zoned I-2  
15       Consider a request for a Conditional Use Permit in  
16       order to construct and operate a tank farm facility  
17       for liquid fertilizer products.

16       Reference:  Zoning Ordinance, Article 8,  
17       Section 8.2G4/27

17       Applicant:  Owensboro Riverport Authority

18              MR. SILVERT:  State your name, please.

19              MS. EVANS:  Melissa Evans.

20              (MELISSA EVANS SWORN BY ATTORNEY.)

21       ZONING HISTORY

22              The subject property is currently zoned I-2  
23       Heavy Industrial.  OMPC records indicate there have  
24       been no Zoning Map Amendments on the subject property.  
25       The subject property is currently vacant.

1           An additional Conditional Use Permit will need  
2           to be approved to construct the pipe line shown on the  
3           site plan in the floodway.

4           LAND USES IN SURROUNDING AREA

5           The property to the north, south, west and  
6           east are zoned I-2 Heavy Industrial with existing  
7           industrial activity.

8           ZONING ORDINANCE REQUIREMENTS

- 9           1.   Parking requirements - none.  
10          2.   Landscaping requirements - none.

11          SPECIAL CONDITIONS

- 12          1.   Approval of an additional Conditional Use  
13          Permit to build the pipe line shown on the site plan  
14          in a floodway.

15          MS. EVANS:   We would like to enter the Staff  
16          Report into the record as Exhibit A.

17          CHAIRMAN:   Any objections filed in the office  
18          or comments?

19          MR. NOFFSINGER:   No, sir.

20          CHAIRMAN:   Is there anyone wishing to speak in  
21          opposition of this item?

22          (NO RESPONSE)

23          CHAIRMAN:   Hearing none does the applicant  
24          have anything you want to bring forward at this time.

25          APPLICANT REP:   No.

1           CHAIRMAN: A board have any comments to add to  
2 it?

3           MR. NOFFSINGER: No, sir.

4           CHAIRMAN: Does the board have any questions  
5 of the applicant?

6           (NO RESPONSE)

7           CHAIRMAN: Hearing none I'll entertain a  
8 motion to dispose of the item.

9           MR. PEDLEY: Mr. Chairman, I make a motion for  
10 approval based on findings it is in compatible use  
11 with the surrounding neighborhood and it will not have  
12 an adverse affect on future development, with  
13 conditions approval of an additional conditional use  
14 permit to build the pipeline shown on the site plan in  
15 a floodway.

16          CHAIRMAN: Is there a second to the motion?

17          MS. DIXON: Second.

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

21          (NO RESPONSE)

22          CHAIRMAN: Staff have any other thing to add  
23 to it?

24          MR. NOFFSINGER: No, sir.

25          CHAIRMAN: Hearing none all in favor raise

1 your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries.

4 Next item, please.

5 ITEM 3

6 2351 Triad Drive, zoned I-2  
7 Consider a request for a Conditional Use Permit in  
8 order to construct and operate a marina in the  
9 floodway.

Reference: Zoning Ordinance, Article 8, 18,  
Section 8.2K7/42, 18-4(b)3, 18-5(b)4, 18-6(b)3  
Applicant: Owensboro Marina; Pilot Properties, LLC

10 MR. NOFFSINGER: Item 3 the applicant has  
11 requested postponement. You will need to vote on that  
12 item.

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

15 MS. DIXON: Move to postpone.

16 MS. MASON: Second.

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

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries.

21 Next item.

22 -----

23 VARIANCES

24 ITEM 4

25 2800 Western Parkway, zoned R-1A

1 Consider a request for a Variance in order to reduce  
2 the side yard building setback line from 10 feet from  
3 the property line to 6 feet from the property line.  
4 Reference: Zoning Ordinance, Article 8,  
5 Section 8.5.5(d)  
6 Applicant: Hugh Patrick Bosley & Jennifer H. Bosley

7 MS. MASON: Mr. Chairman, I need to disqualify  
8 myself from this item.

9 CHAIRMAN: So noted.

10 (MS. RUTH ANN MASON LEAVES ROOM AT THIS TIME.)

11 MS. EVANS: The applicant is requesting a  
12 reduction in the side yard building setback line in  
13 order to construct a two-story residential addition.  
14 The subject property is zoned R-1A Single Family  
15 Residential and there have been no other variance  
16 requests on this street.

17 The applicant is proposing to build a  
18 two-story addition with a garage on the first floor  
19 and a master suite on the second floor according to  
20 the applicants' engineer.

21 Granting this Variance will alter the  
22 essential character of the general vicinity because  
23 there does not appear to be other encroachments in the  
24 area. Additionally, a two story addition located so  
25 close to the property line could block light and air  
from the neighboring property.

FINDINGS OF FACT:

1                   Granting this Variance:

2                   1. May adversely affect the public health,  
3 safety or welfare because the proposed two-story  
4 addition located so close to the property line may  
5 block light and air from the adjacent home;

6                   2. It will alter the essential character of  
7 the general vicinity because the addition will be  
8 considerably closer to the side yard property line  
9 than other structures in the area;

10                  3. It will not cause a hazard or a nuisance  
11 to the public;

12                  4. And it will allow an unreasonable  
13 circumvention of the requirements of the zoning  
14 regulations because no other structures in the area  
15 appear to encroach into the side yard building  
16 setback.

17                  Staff recommends denial.

18                  CHAIRMAN: Are there any comments or questions  
19 filed in the office?

20                  MR. NOFFSINGER: No, sir.

21                  CHAIRMAN: Is anyone in the audience wishing  
22 to speak in opposition of this item.

23                  (NO RESPONSE)

24                  CHAIRMAN: Is the applicant here and do you  
25 have any comments you would like to present?

1 MR. SILVERT: State your name, please.

2 MR. KAMUF: Charles Kamuf.

3 MR. SILVERT: Thank you, Mr. Kamuf.

4 MR. KAMUF: What we're asking for is a four  
5 foot side yard encroachment. The original Deed of  
6 Dedication in 1954 allowed for a two foot side yard  
7 exception.

8 The present OMPC regulations require a ten  
9 foot exception. What we are requesting is to build  
10 within six feet of the neighbor's property.

11 We're building a garage with a room above to  
12 the north side. I have a copy of the plat so you can  
13 fully understand. Here is a copy of the plat that  
14 we'll be talking about.

15 As you can see, what we have there is the plat  
16 of the Bosley property. If you see the driveway that  
17 goes back, there is a proposed addition where you can  
18 see the hash marks. To the rear there's an existing  
19 garage. That existing garage is within four feet of  
20 the property line at the present time. So you can see  
21 the garage is already closer to the property line, to  
22 the house than what our proposal is.

23 So the proposal will be a garage with a room  
24 at the top.

25 When we started this, Mr. Bosley went to the



1 Hafer & Associates. He asked them to prepare some  
2 type of plan that would blend into the neighborhood.

3 Pat Bosley wanted people to drive down the  
4 street and say, this is a beautiful house and not an  
5 addition.

6 When he came to me the first thing I told him  
7 to do was to go talk to the neighbors. There's one  
8 neighbor that is right next-door. This is Dr. Decker  
9 and Melissa Decker. They were ecstatic that he came  
10 over to talk to them. Dr. and Mrs. Decker will not be  
11 here tonight, but they've sent this letter strongly  
12 urging you to approve the approval. I have a copy of  
13 the letter that I would like to give you.

14 I would like to read this letter into the  
15 record, if I could.

16 "Owensboro Metropolitan Board of Adjustment

17 "To Whom It May Concern:

18 "We live at 2742 Western Kentucky Parkway.

19 Our property adjoins the Bosley's property to the  
20 north and we are the closest neighbors to the proposed  
21 building addition. We are familiar with the proposed  
22 plans of the Bosley's plan to construct a two story  
23 addition to the north of their property.

24 "We understand that the new addition will be  
25 within six feet of our property. It is pointed out

1 that the existing garage on the Bosley's property is  
2 less than four feet from our property. The proposed  
3 addition will not be closer to our property than the  
4 existing garage on the Bosley property. In addition  
5 we do not feel that the proposed addition is closer to  
6 our side yard than other structures in the  
7 neighborhood.

8 "We do not believe that the proposed addition  
9 to the Bosley's property will adversely affect the  
10 public health and safety of the neighborhood and do  
11 not feel that the two story addition will have any  
12 effect on the air flow to our house.

13 "We do not feel that the proposed addition  
14 will alter the essential character of the  
15 neighborhood. We feel that the proposed addition will  
16 enhance the neighborhood and increase the property  
17 values of the neighborhood.

18 "We will be out of town due to a prior  
19 commitment, but we strongly urge the Owensboro  
20 Metropolitan Board of Adjustment to approve the  
21 variance as requested by the Bosleys."

22 I will show you three exhibits.

23 This shows the property that we have. This is  
24 the Decker property. The Decker property will be  
25 garage to garage. If you look at that plat that I've

1 showed you, our proposed addition will be a garage.

2 This is what it will be next to.

3 I will pass that around in just a second.

4 This is a picture of the Bosley property. As  
5 you can see, this garage here is closer to the  
6 sideline of the Decker property than what we have  
7 proposed. That driveway that you see, and it's shown  
8 on the plat, the driveway, there will be addition over  
9 the top of the driveway. The driveway will not be  
10 disturbed.

11 The point I'm making here is that the green  
12 grass area that you see on this picture will not be  
13 disturbed. The concrete will not be disturbed. It  
14 will be built over the top of the concrete.

15 Here is another picture, and certainly you all  
16 probably drive by it every day. This is the Arnold  
17 property. Mr. Arnold passed away. I think the  
18 property has been purchased recently. Certainly they  
19 wouldn't object to it.

20 As you can see, this property that I show you  
21 here has a pond on it at the present time. The  
22 property that is owned by the Bosleys is directly past  
23 the fence that you see. So I would like to pass these  
24 out.

25 In addition in talking to Mr. Decker, he

1 talked to all the neighbors. Every neighbor that I  
2 have listed on that petition of adjoining property  
3 owners have agreed and want this addition to be done.

4 I guess the reason that Ruth Ann left, I think  
5 her father lives next-door, but he has no objection to  
6 this.

7 So we talked to Dr. Callis. Dr. Callis owns  
8 the property directly across the street. His wife  
9 thought it would be a lovely addition to the  
10 neighborhood.

11 Also a two story house across the street is  
12 Donald and Thelma Bivens. They liked the idea.

13 We talked to a Mr. Boling, which is also  
14 across the street. He stated he has no objection, but  
15 he would rely more on what Mr. and Mrs. Decker say.  
16 As I told you, they have no objection.

17 What makes this neighborhood different is that  
18 in 1954 there was a final plat made of the property.  
19 Six months within that final plat they had a redesign  
20 of the subdivision. One reason they did that, this  
21 year -- in '54, I didn't know it went back that long,  
22 but they had the Parade of Homes. When the Parade of  
23 Homes came through many of the builders built  
24 different type of designs. So this area that we have  
25 has all kind of things. It has ranch type houses,

1 two-story houses, single-family houses. The reason  
2 that there are many, many changes have been made in  
3 that subdivision.

4 In Wesley Heights Subdivision this board  
5 approved the variance six houses away from this. Six  
6 house away. They approved a variance.

7 Number 2, the OMPC board signed off on an  
8 easement reduction for the construction of a carport  
9 that was within the easement area. I'll show you a  
10 photograph in a minute three houses down from this on  
11 Wildwood Drive. There are two houses that are very, a  
12 lot closer than what we are requesting.

13 So the question that you would have is tell me  
14 about those exceptions.

15 March 13, 1995 this board approved a front  
16 yard variance at 317 St. Claire Drive within one block  
17 or six houses down from this property.

18 I'll pass these to you at one time.

19 Here is what it looks like. That was a front  
20 yard exception. The front yard exception to this  
21 property you can see the window there. That was where  
22 they built a new room onto the front of the property  
23 and it was in violation of the setback line and it a  
24 variance was approved.

25 In May 11, 2001, the OMPC board signed off on

1 an easement reduction for the construction of a  
2 carport at 2940 Tanglewood Drive. That was within the  
3 setback area. This is a photograph of the carport  
4 that was approved on Tanglewood.

5 Located at 4133 Wildwood Drive, two houses  
6 down. This is on Western Parkway. If you go north on  
7 Western Parkway, two houses down at the address of 411  
8 and 333 Wilder Drive there are two houses that are  
9 next to each other and they're closer than what we're  
10 asking for.

11 As you can see this plat here, those houses,  
12 that doesn't look like there's any setback between  
13 those. That's 411 and 333.

14 If you notice on that last exhibit where I  
15 told you on Wilder Drive. The reason that it doesn't  
16 make any difference is because it's garage to garage.  
17 That's what we have in this situation here. The  
18 garage is back up to one another and therefore it  
19 shouldn't have any affect whatsoever on the health and  
20 welfare.

21 So we see that exceptions have been made.

22 Now, Mr. Bosley will tell you that he would  
23 have never filed this variance, never if he thought  
24 the neighbors had any objection. We've talked to  
25 every neighbor. We tried to bring you the exceptions

1 that we have. I called the Planning and Zoning board  
2 yesterday or the day before and there's no objection  
3 that's been filed by anybody.

4 So we're asking you that we feel that a  
5 variance will not have any adverse affect on the  
6 public. We feel that the neighbors all support this  
7 type, this little addition with a garage with a room  
8 on top. We think that we have showed you that there  
9 are plenty of exception to this neighborhood and it is  
10 a different type of neighborhood. We have the plats  
11 showing you what happened in 1954 and how they cut  
12 these lots up within six months because the builders  
13 wanted to build different type of homes in this  
14 subdivision as a result of the Parade of Homes.

15 Mr. Bosley is here and he'll explain to you  
16 just a little bit more than I have as to what's going  
17 on. We'll try to answer any questions that you have.

18 MR. SILVERT: State your name, please.

19 MR. BOSLEY: Patrick Bosley.

20 (PATRICK BOSLEY SWORN BY ATTORNEY.)

21 MR. BOSLEY: My name is Patrick Bosley. I  
22 live with my wife and two children at 2800 Western  
23 Parkway. I don't just live in the Wesleyan Heights  
24 Neighborhood. I grew up there. When a house came for  
25 sale which I accord in the neighborhood that I grew up

1 in, I knew it was a place that I wanted to raise my  
2 family. We bought the house. It had been vacant for  
3 years. We moved in with my mother-in-law for a month  
4 while we cleaned, repaired, landscaped and remodeled  
5 the house.

6 I already knew some of my neighbors. I had  
7 grown up playing with their kids. Others have kids  
8 now that play with mine.

9 When we decided to add on to our house to  
10 allow more room for my family to grow, it was  
11 important that the house fit the neighborhood. I  
12 wanted people to drive by and say, that's a nice  
13 house. Not that's a nice addition.

14 So in May of 2008, over a year ago, we  
15 interviewed several architects and chose to work with  
16 a local firm of Hafer & Associates, formerly Colligan  
17 & Nunley. Over the next month they came to the  
18 neighborhood several times to help find the design  
19 that works. Through the combined efforts of my  
20 family, neighbors input, and advice from the  
21 architect, the final design was approved a year after  
22 we started. With the addition my house will not be  
23 out of place or larger than other houses in the  
24 neighborhood. Some neighbors believe that my addition  
25 may even increase property values.



1           It is logical to add to the house, building a  
2           garage on top of the existing driveway. It is  
3           economical to add a room above the garage.

4           The architect delivered a design that I and my  
5           neighbors agree maintains the essence of the  
6           neighborhood.

7           For the garage addition to being built, I was  
8           informed by the architect that I would need a  
9           variance. Before contacting Mr. Kamuf to aid in my  
10          application now before this board, I had already been  
11          working for months with an architect and my neighbors.  
12          I would not have filed this application if my  
13          neighbors had objected to my plans. I was also aware  
14          of other variances being granted in the neighborhood  
15          and I feel that I'm not asking for an exception, but  
16          permission to build wisely. I have purposely left the  
17          survey flags by the surveyor, HRG, in place. They're  
18          still there today.

19          This is a neighborhood where many residents  
20          walk around the block and visit with one another.  
21          I've had many conversations about the flags and my  
22          plans. Everyone has been very supportive and  
23          positive.

24          The Deckers, my next-door neighbor whose  
25          property my addition will be closest to, have given me

1 their full support. Mrs. Decker had originally  
2 planned to attend this meeting to voice their support  
3 until we received the meeting date and it conflicted  
4 with plans they already had.

5 The Decker property is most impacted by the  
6 matter before you tonight. Because of their scheduled  
7 conflict and unwavering support, they have given me a  
8 letter for this board strongly urging you to request  
9 and approve my variance. The letter was already read  
10 into the minutes.

11 Thank you very much.

12 CHAIRMAN: Are there any questions from the  
13 board or Staff at this time of the applicant?

14 MR. PEDLEY: Mr. Bosley, do you have an  
15 architectural drawing of the addition that you intend  
16 to use?

17 MR. BOSLEY: I do.

18 MR. PEDLEY: Showing the elevation of the  
19 house. That is a concern to me since I'm a builder.

20 (MR. BOSLEY HANDS OUT DOCUMENTS.)

21 MR. BOSLEY: What is before you, you know, the  
22 rendering that has been done by the architectural  
23 firm, Hafer & Associates, they are waiting the final  
24 verdict of this hearing to do the actual floor plans  
25 and interior diagrams of the building. I hope this is

1 suffice to answer your questions.

2 MR. PEDLEY: That's the only question I had of  
3 you. I did want to see this.

4 MR. BOSLEY: This is the same picture I've  
5 been showing my neighbors by the way. They think the  
6 house is of a lovely design.

7 MR. PEDLEY: I have some comments.

8 If other board members have any questions and  
9 then I have some comments.

10 MR. KAMUF: Mr. Chairman, I just want to point  
11 out one thing. If you look at that garage, that  
12 garage it's fixed where it can go all the way back and  
13 drive into the garage on the rear if necessary. It  
14 will be a through garage.

15 CHAIRMAN: Any board members have any  
16 questions at this time or Staff?

17 MR. NOFFSINGER: Yes. I do have a few  
18 questions of Mr. Kamuf.

19 First of all, in terms of the existing garage,  
20 on the property. That is a detached structure.  
21 Detached garages are allowed in all residential zones.  
22 They're allowed to be within 3 feet of a property line  
23 and outside of an easement, as long as they're to the  
24 rear of the main structure. So I don't think in any  
25 way that you should consider the location of this

1 detached garage in making your decision because that  
2 is permitted by right and it's permitted in all your  
3 residential zones.

4 Mr. Kamuf brought up three properties, at  
5 least three properties where there have been some  
6 variances or special exceptions made. I do have a  
7 question of Mr. Kamuf.

8 On the St. Claire property, that was a front  
9 yard variance or was it a setback reduction? What  
10 board approved that and what were the dimensions that  
11 were approved?

12 MR. KAMUF: First of all in answer to your  
13 first question, and I'll find that. The first  
14 question, if you look, and I'm not trying to say that  
15 the detached garage, I'm just saying what it is it is,  
16 but also that other exhibit that I showed you, if you  
17 will, Wildwood Drive, it shows both of those houses,  
18 garage to garage, if any setback on those. That's  
19 number one. That photograph shows that on Wildwood  
20 Drive.

21 Now, as far as this one here, if you have some  
22 questions and I'll try to answer them.

23 St. Claire Drive. By the way, I went over to  
24 the Planning & Zoning Board before I filed anything  
25 and met with the Staff. That's where I got these

1 reports so I'm sure you have them too.

2 MR. NOFFSINGER: I just want to make sure the  
3 record is straight in terms of what board approved and  
4 what was approved.

5 MR. KAMUF: The Variance was approved, it says  
6 down at the bottom, property survey and building  
7 setback revision located at 317 St. Claire. It shows  
8 on this plat that there was an old setback line on the  
9 front for a building close to the street and there was  
10 a new setback, new building setback line established.

11 MR. NOFFSINGER: What were those dimensions,  
12 the old setback and the new setback?

13 MR. KAMUF: I don't know. You'll have to ask  
14 Riney.

15 MR. SILVERT: State your name, please.

16 MR. RINEY: Jim Riney.

17 (JIM RINEY SWORN BY ATTORNEY.)

18 MR. RINEY: The plat that was approved shows  
19 that the old building setback was 40 feet on part of  
20 the lot, Mr. Noffsinger. These lots were redivided  
21 from when they were first created. That's part of the  
22 problem in the neighborhood. These lots, numerous  
23 lots are now one and a half lots. This lot had a 40  
24 foot setback and a 35 foot setback on the same yard,  
25 but the lot was 40 feet and 35 feet depending on where

1       you were from the house. It was reduced down to 34  
2       feet according to this document, the new setback.

3               MR. NOFFSINGER: The zoning ordinance requires  
4       a minimum of 25 feet. So there was not a variance  
5       granted there. It was a setback reduction from the  
6       platted setback of the original subdivision to a  
7       setback that exceeded the zoning ordinance  
8       requirements.

9               MR. RINEY: If I understand correctly, the  
10      planning offices imposes that minimum setback that  
11      requires that the citizens honor the setback that was  
12      platted, if it is something different than a minimum  
13      setback. So they had to come in because it was a  
14      legal setback. They had to come before this body to  
15      get that revision.

16              MR. NOFFSINGER: Not before this body, but  
17      before the Planning Commission.

18              I guess the point is there was no variance  
19      granted there by this board or the Planning  
20      Commission. It was simply a reduction of the setback  
21      line that still exceeded the minimum ordinance  
22      requirements.

23              MR. RINEY: Yes, sir. Setback revision.

24              MR. NOFFSINGER: Thank you.

25              The second would be on Tanglewood. There was

1 a mention that there was a variance or something.

2 What are the specifics of that?

3 MR. KAMUF: A reduction of an easement.

4 MR. NOFFSINGER: What would that reduction be?

5 I'm just trying to make sure that we have it straight  
6 for the record so that if we do have a case where a  
7 variance or exception has been granted, then we know  
8 what that is and this board can consider that in  
9 making their findings.

10 MR. RINEY: On the west side of the property  
11 there was a grant by the Planning Commission for  
12 easement reduction. The carport had to have this  
13 reduction in order to encroach over into a side yard  
14 where there was a 10 foot public utility easement and  
15 in the front yard there was a 20 foot. On this  
16 particular lot, a 20 foot building setback. Looks  
17 like it was an easement release to accommodate the  
18 carport that Mr. Kamuf said there was a setback into  
19 that easement.

20 MR. NOFFSINGER: Was this a detached carport  
21 or was it attached to the home? Wouldn't there have  
22 been a ten foot side yard setback?

23 MR. RINEY: If it was attached. Just like the  
24 case we're talking tonight. It was an attached garage  
25 to the structure, to the physical structure. It was

1 not a detached garage.

2 MR. NOFFSINGER: So it was an attached  
3 carport. It would have allowed that carport to have  
4 been constructed into the setback, ten foot side yard  
5 setback?

6 MR. RINEY: Ten foot public utility easement  
7 setback. Ten foot public utility easement. You've  
8 got that plat in front of you. Use it. Labeled there  
9 as 10 foot.

10 MR. NOFFSINGER: No, sir, I don't have that  
11 one.

12 MR. RINEY: You want to see what I'm speaking  
13 about?

14 MR. NOFFSINGER: Yes, please.

15 MR. RINEY: I was pointing to the plat showing  
16 Mr. Noffsinger this is labeled the ten foot PUE.  
17 Graphically on the scale it shows the carport  
18 encroached into and across the PUE and the side yard.  
19 Then it shows there's a 20 foot building setback which  
20 the carport and part of the house encroached into.

21 MR. NOFFSINGER: So in this particular case,  
22 the Planning Commission Staff approved a survey of an  
23 existing lot of record and there was not an  
24 encroachment into the side yard setback. It was an  
25 encroachment into a public utility easement where the



1       easement, where the agencies, the utility agency  
2       signed off on an easement abandonment I guess you  
3       could say. It was not being built closer to the  
4       sideline. However, what you do have is a carport and  
5       a house that's built, well, closer than 20 feet to the  
6       right-of-way line where the zoning ordinance would  
7       have required a 25 foot setback.

8               I think that is important, Charlie, to note  
9       for your case. The easement is not the issue there.  
10       It's the fact that there is an existing home that was  
11       built into the front side yard setback.

12               MR. KAMUF: The point I'm making is the home  
13       there on Tanglewood, if you look at the address as you  
14       drive down Tanglewood, it doesn't front on Tanglewood.  
15       It fronts on the other street. It fronts on Wesleyan  
16       Place. The reason I'm trying to show you that is that  
17       this is a unique subdivision. They redivided and  
18       redivided those lots. It's the only house that I know  
19       that fronts on a certain street and has an address on  
20       another street.

21               MR. NOFFSINGER: I think what it actually  
22       shows there is that you do have an existing home that  
23       was built into the front setback line.

24               MR. KAMUF: Right.

25               MR. NOFFSINGER: There's not a side yard

1 violation there.

2 MR. KAMUF: I didn't try to say it was a side  
3 yard. There are exceptions all along there and that's  
4 just one of them that I tried to show you.

5 MR. NOFFSINGER: Then Wildwood Drive, what  
6 were the dimensions there?

7 MR. KAMUF: I don't have the plat there.

8 MR. NOFFSINGER: It's just the two attach  
9 garages are built --

10 MR. KAMUF: Right next to each other. The  
11 ones that I showed you -- what I'm trying to show you,  
12 I could have gone around there and taken pictures all  
13 day, but I tried to show the one that was closer to  
14 the house on those two. This is three houses down on  
15 Wildwood. It shows those two garages backing up to  
16 one another. Why is that important? That's what  
17 we're asking for. We've got two garages backing up to  
18 one another where nobody really cares as far as making  
19 a special objection to it because it's a garage to a  
20 garage.

21 MR. NOFFSINGER: I don't disagree with that  
22 photo. Again, I'm trying to help your case so that we  
23 have the dimensions. That's what I'm trying to get  
24 at. With those two garages that are attached, the  
25 photos tells the story.

1           We've got to make sure the record is correct  
2           and we have dimensions in there so if this board, if  
3           they chose to make findings for approval that they've  
4           got it documented into the record and they have those  
5           dimensions.

6           MR. KAMUF: Sure. On the dimensions I'll let  
7           Mr. Riney answer those. I'm not very good at that.

8           Are there any other questions that we can ask?  
9           The Bosleys are here to go over anything that you  
10          have.

11          We think it's a good proposal mainly because  
12          none of the neighbors have objected. They like this  
13          idea. There are two-story houses across the street.  
14          There are houses in the neighborhood that are closer  
15          with the ones that I showed you on Wildwood. Really  
16          as far as any environmental issue, we don't think  
17          there's any issue.

18          CHAIRMAN: Anyone on the Staff have any other  
19          comments?

20          MR. NOFFSINGER: No, sir.

21          MR. PEDLEY: I have some comments,  
22          Mr. Chairman. I'll try not to take too long.

23          I'm quite familiar with that neighborhood.  
24          Back 50 years ago when those houses were being built,  
25          I did a lot of work in there. Actually I could name

1 probably a third of the people that lived in there. I  
2 worked on most of those house. You're right,  
3 Mr. Kamuf. Seems like a lot has changed. I spent  
4 about 30 minutes this afternoon touring that  
5 neighborhood. I circled every street at least three  
6 times. I saw several structures encroaching into the  
7 setbacks. One of them you just described on Wildwood  
8 Western on the corner. That house is not any more  
9 than 15 feet off Wildwood. I put that basement in  
10 that house for Mr. Barns. I'm not guilty of the  
11 setback. That on the other corner, I can't name that  
12 street, but it's an attached carport. It doesn't have  
13 the rear yard requirement. There are several  
14 structures in that development that does not have  
15 either the side yard or rear yard. I didn't see front  
16 yard except that one. I don't about the variances. I  
17 don't know if this board gave variances or not. It  
18 hasn't been verified here tonight, but I do know there  
19 are several structures in there that are encroaching  
20 into the required setback. Three of them is on the  
21 rear yard. Two of them is on side yard. Then one we  
22 just described. I did do my homework. I spent quite  
23 a bit of time because I don't believe in giving these  
24 variances if it's out of character with the  
25 neighborhood.

1 I'm ready to make a motion, Mr. Chairman, if  
2 you're ready.

3 CHAIRMAN: I'm waiting.

4 MR. PEDLEY: I'm going to make a motion to  
5 approve this based on findings: Number one, the  
6 neighbors are aware of it. They have been approached.  
7 They seem to approve it. They like the idea. We  
8 haven't had any opposition and that's very important.

9 Then it will not adversely affect the public  
10 health, safety or welfare because there is adequate  
11 open space around those houses. There is adequate  
12 trees and green space. It's not an air circulation  
13 problem. It's not a health problem. So it will not  
14 adversely affect the public health, safety or welfare.

15 It will not alter the essential character of  
16 the general vicinity because there is several in there  
17 that are encroaching more severely than this,  
18 especially on those corner lots.

19 This addition to the house may enhance the  
20 general area because across the street is large two  
21 story homes. Several of them. One of them is Frank  
22 Hartz's home. It's a two-story home. Large columns  
23 directly across the street from this. It will not  
24 alter the essentially character.

25 It will not allow or cause any hazard or

1 nuisance to the public.

2 It will not allow an unreasonable  
3 circumvention requirements of the zoning regulations  
4 because there are already several in the neighborhood  
5 encroaching. Because I think this R-1A zone was put  
6 on that development after the development started. So  
7 the burden was, I'm not sure when R-1A zone was put on  
8 it. R-1A zone requires a ten foot side yard.

9 Based on those findings my motion is for  
10 approval.

11 CHAIRMAN: Is there a second?

12 MR. TAYLOR: Second.

13 CHAIRMAN: A motion has been made and a  
14 second. Any other questions or statements from the  
15 Staff?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: Any other questions from the board?

18 (NO RESPONSE)

19 CHAIRMAN: Hearing none all in favor raise  
20 your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries.

23 Next item, please.

24 (RUTH ANN MASON REJOINS MEETING AT THIS TIME.)

25

1 ITEM 5

2 1031 East 18th Street, zoned B-5  
3 Consider a request for a Variance in order to reduce  
4 the landscape buffer along the west property line from  
5 10 feet to 2 feet.

6 Reference: Zoning Ordinance, Article 17,  
7 Section 17.3127

8 Applicant: Jim Yeckering; Jim Wieder Enterprises, LLC

9 MS. EVANS: The Applicant is requesting a  
10 reduction in the landscape buffer along the west side  
11 of the property in order to preserve parking that has  
12 been in place for many years. The subject property  
13 was rezoned from I-1 Light Industrial to B-5  
14 Business/Industrial at the May 2009 OMPC meeting.

15 The applicant states there is an existing six  
16 foot high privacy fence along the parking area with  
17 two existing trees and a six foot high chain link  
18 fence along the gravel area with an existing tree and  
19 three proposed trees. The applicant also states there  
20 is a six foot high privacy fence belonging to the  
21 adjoining properties along the gravel area.

22 FINDINGS OF FACT:

23 1. This will not adversely affect the public  
24 health, safety or welfare because there is existing  
25 fences and trees that provide the intended screening;

26 2. It will not alter the essential character  
27 of the general vicinity because the parking has been  
28 used as is for many years;

1           3. It will not cause a hazard or a nuisance  
2 to the public because the existing screening  
3 adequately blocks the headlights from parking cars  
4 onto the residential property;

5           4. It will not allow an unreasonable  
6 circumvention of the requirements of the zoning  
7 regulations because the existing screening satisfies  
8 the intended purpose of the regulations.

9           Staff recommends approval.

10           We would like to enter the Staff Report into  
11 the record as Exhibit C.

12           CHAIRMAN: Is there any opposition filed in  
13 the office?

14           MR. NOFFSINGER: No, sir.

15           CHAIRMAN: Is there anyone in the audience  
16 objecting to this item?

17           (NO RESPONSE)

18           CHAIRMAN: The applicant have any comments at  
19 this time?

20           (NO RESPONSE)

21           CHAIRMAN: Hearing none does the board members  
22 have any questions of the applicant?

23           (NO RESPONSE)

24           CHAIRMAN: Staff have any more comments  
25 pertaining to this?



1 MR. NOFFSINGER: No, sir.

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

4 MR. TAYLOR: Mr. Chairman, move to grant the  
5 variance. Granting this variance will not adversely  
6 affect the public health, safety or welfare. What  
7 we're granting on this variance there's already an  
8 intended purpose there by the existing trees and fence  
9 rows. It won't alter the essential character of the  
10 neighborhood or cause a hazard or nuisance to the  
11 public, and it's not allowing an unreasonable  
12 circumvention.

13 MR. PEDLEY: Second.

14 CHAIRMAN: A motion has been made and a  
15 second. Any other comments from the board or  
16 questions?

17 (NO RESPONSE)

18 CHAIRMAN: Staff have anything else?

19 MR. NOFFSINGER: No, sir.

20 CHAIRMAN: Hearing none all in favor raise  
21 your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries.

24 Next item, please.

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NEW BUSINESS

ITEM 6

609 Wing Avenue, zoned R-4DT  
Six month review of approved Conditional Use Permit.  
Applicant: Boulware - The Mission on the Hill, Inc.

MR. NOFFSINGER: Mr. Mischel.

MR. SILVERT: State your name, please.

MR. MISCHEL: Jim Mischel.

(JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: As Mr. Noffsinger stated, as the  
six month review came up and approximately on May 29th  
I called Mr. Craig, Bill Craig, their attorney, and  
asked that we be allowed to come in and do the  
inspection, the six month inspection, which he agreed  
to. I met him up there and he took me on a tour of  
the place.

Essentially the first room we went into that  
he was showing me, the security, just to give you a  
lay our. They do have security cameras on the outside  
and the inside of the building which they can monitor  
24 hours a day. The day I was up there on the 29th  
they had 38 people staying there. He took me to where  
they're staying. It's not where the permanent place  
is will be. They haven't remodeled that yet. They  
have them in two separate rooms. I counted there was  
approximately 38 cots, beds, located there.

1           Right now they have a staff of ten people that  
2           come and go at various times and everything.

3           On the Conditional Use Permit that was  
4           approved, it was approved for up to 90 people, which  
5           they haven't done that yet. Thirty-eight has been the  
6           most. He said in the future they will go to 90  
7           people.

8           I did go down and the gates that had some  
9           questions in the past they were locked. They were  
10          there. There was some questions of them not being as  
11          strong at one time, but they are there and they were  
12          locked and the Knox box was there. I don't know if  
13          you have any questions or not.

14          CHAIRMAN: Board members have any questions of  
15          him?

16          MR. MISCHEL: They did have the parking lot on  
17          the interior. It was being used while I was there.

18          CHAIRMAN: Any questions of Staff?

19          MR. NOFFSINGER: I do have a question.

20          Mr. Mischel, have you received any complaints  
21          noted in the office in the last, since the item was  
22          approved?

23          MR. MISCHEL: I haven't received any  
24          complaints. I received a comment today concerning  
25          some graffiti, but it wasn't necessarily a complaint.

1 It was just brought to our attention. Maybe if we  
2 could ask them to maybe see about taking the graffiti  
3 off. That's been it.

4 MR. NOFFSINGER: I think you mentioned this,  
5 but I think back several months ago we did receive  
6 some complaints in the office about the gate not being  
7 locked. Do you recall those complaints and what  
8 happened after that?

9 MR. MISCHEL: Yes. We received the complaints  
10 about the gates not being there and some of them being  
11 opened and being used. Traffic coming in and out.  
12 Essentially there was vehicles being parked on that  
13 side street. When we did go up there back that time  
14 ago there was some tree trimers in there. They were  
15 using, they were using that entrance to bring their  
16 equipment in to take some trees down. We informed  
17 them they should not do that. It was in front of the  
18 board and it was to be used for emergency personnel  
19 only and they quit doing it. They got the gates up.  
20 Put the knox box up.

21 As far as I know, that has not occurred or it  
22 hasn't been brought to our attention.

23 The day I was there it was closed and there  
24 wasn't any cars parked on that side or anything.

25 CHAIRMAN: Any other questions or comments

1 from Staff or the board?

2 (NO RESPONSE)

3 CHAIRMAN: Anyone in the audience have briefly  
4 something to say one or the other?

5 (NO RESPONSE)

6 CHAIRMAN: Hearing no comments entertain a  
7 motion to adjourn.

8 MS. DIXON: Move to adjourn.

9 MS. MASON: Second.

10 CHAIRMAN: All in favor raise your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 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 37 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 July, 2009.

18

19

\_\_\_\_\_  
LYNNETTE KOLLER FUCHS  
OHIO VALLEY REPORTING SERVICES  
202 WEST THIRD STREET, SUITE 12  
21 OWENSBORO, KENTUCKY 42303

22

COMMISSION EXPIRES: DECEMBER 19, 2010

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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