

OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 JULY 2, 2009

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

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

17 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

18 CHAIRMAN: Again, I welcome you to the
19 Owensboro Metropolitan Board of Adjustment meeting

20 If you have any comments on any item, please come to
21 one of the podiums and state your name and we'll have
22 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
order to construct and operate a marina in the
floodway.

8 Reference: Zoning Ordinance, Article 8, 18,
Section 8.2K7/42, 18-4(b)3, 18-5(b)4, 18-6(b)3

9 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

Ohio Valley Reporting
(270) 683-7383

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

5 MS. MASON: Mr. Chairman, I need to disqualify
6 myself from this item.

7 CHAIRMAN: So noted.

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

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

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

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

25 FINDINGS OF FACT:

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;

2. It will alter the essential character of

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

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 it 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, they⁶ 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
the landscape buffer along the west property line from
10 feet to 2 feet.
4 Reference: Zoning Ordinance, Article 17,
Section 17.3127
5 Applicant: Jim Yeckering; Jim Wieder Enterprises, LLC

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

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

19 FINDINGS OF FACT:

20 1. This will not adversely affect the public
21 health, safety or welfare because there is existing
22 fences and trees that provide the intended screening;
23 2. It will not alter the essential character
24 of the general vicinity because the parking has been
25 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.

25 -----

1 NEW BUSINESS

2 ITEM 6

3 609 Wing Avenue, zoned R-4DT
4 Six month review of approved Conditional Use Permit.
4 Applicant: Boulware - The Mission on the Hill, Inc.

5 MR. NOFFSINGER: Mr. Mischel.

6 MR. SILVERT: State your name, please.

7 MR. MISCHEL: Jim Mischel.

8 (JIM MISCHEL SWORN BY ATTORNEY.)

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

16 Essentially the first room we went into that
17 he was showing me, the security, just to give you a
18 lay our. They do have security cameras on the outside
19 and the inside of the building which they can monitor
20 24 hours a day. The day I was up there on the 29th
21 they had 38 people staying there. He took me to where
22 they're staying. It's not where the permanent place
23 is will be. They haven't remodeled that yet. They
24 have them in two separate rooms. I counted there was
25 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 trimmers 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)
2)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
OWENSBORO, KENTUCKY 42303

22

COMMISSION EXPIRES: DECEMBER 19, 2010

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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