

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 APRIL 1, 2010

3 The Owensboro Metropolitan Board of Adjustment  
4 met in regular session at 5:30 p.m. on Thursday, April  
5 1, 2010, 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 Rev. Larry Hostetter  
Marty Warren  
Sean Dysinger  
Clay Taylor

\* \* \* \* \*

13 CHAIRMAN: Let me call the Owensboro  
14 Metropolitan Board of Adjustment to order. We start  
15 our program each month with a prayer and the pledge of  
16 allegiance. We invite you all to join us. Father  
17 Larry will have our prayer this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

18 CHAIRMAN: Again, I want to welcome you to the  
19 Board of Adjustment meeting this evening. If you have  
20 any comments on any item, please come to one of the  
21 podiums. State your name and you'll be sworn in and  
22 we'll proceed with that.

23  
24 With that the first item is consider the  
25 minutes of the March 4th meeting. They're in the

1 office. We haven't found any problems with it. With  
2 that I'll entertain a motion to dispose of the item.

3 MR. PEDLEY: Motion to approve.

4 MR. DYSINGER: Second.

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

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries.

9 Next item, please, sir.

10 -----

11 CONDITIONAL USE PERMIT

12 ITEM 2

13 2300 Harbor Road, zoned I-2

14 Consider a request for a Conditional Use Permit in  
15 order to replace an existing beltline system with a  
16 new beltline system in the floodway.

17 Reference: Zoning Ordinance, Article 18,  
18 Section 18-4(b)3, 18-5(b)4, 18-6(b)3

19 Applicant: Bunge North America, Inc.; Owensboro  
20 Riverport Authority

21

22 MR. NOFFSINGER: Mr. Chairman, the applicant  
23 has submitted a letter asking that this board take  
24 action to postpone this item until our meeting in May,  
25 and that will be the first Thursday in May at 5:30 at  
26 this location.

27 MR. DYSINGER: Mr. Chairman, move to  
28 postpone.

29 MS. MASON: Second.

1 CHAIRMAN: A motion has been made and a  
2 second. Any other questions on it?

3 (NO RESPONSE)

4 CHAIRMAN: If not, all in favor raise your  
5 right hand.

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries.

8 Next item.

9 ITEM 3

10 4101 Vincent Station Drive, zoned I-1

Consider a request for a Conditional Use Permit in  
11 order to operate an indoor recreational facility.

Reference: Zoning Ordinance, Article 8,  
12 Section 8.2B11/13

Applicant: Majesty Academy, Inc.; Hayden Development  
13 Company, Inc.

14 MR. SILVERT: State your name, please.

15 MS. EVANS: Melissa Evans.

16 (MELISSA EVANS SWORN BY ATTORNEY.)

17 ZONING HISTORY

18 There have been no Zoning Map Amendments for  
19 the subject property.

20 This Conditional Use Permit application is to  
21 operate an indoor recreational facility. The  
22 applicant is initially proposing to have 24  
23 participants and 50 spectator seats.

24 LAND USES IN SURROUNDING AREA

25 All the surrounding properties are zoned I-1

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1 Light Industrial.

2 The applicant has met the parking and  
3 landscaping requirements as shown on the site plan  
4 submitted with the application.

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

7 CHAIRMAN: Thank you.

8 Is there any opposition or questions filed in  
9 the office?

10 MR. NOFFSINGER: No, sir.

11 CHAIRMAN: Does the Staff have any comments at  
12 this time to add on to it?

13 MR. NOFFSINGER: No, sir.

14 CHAIRMAN: Any board member have any questions  
15 or comments?

16 MS. MASON: I think there's a little confusion  
17 because our paperwork here says the applicant is  
18 Brescia University, but then the other it says the  
19 applicant is Majesty Academy. So it is Majesty  
20 Academy, correct?

21 MS. EVANS: Yes. That's a mistake on the  
22 Staff Report.

23 MS. MASON: Okay. I was just confused.

24 CHAIRMAN: Is there any other comments from  
25 the board members?

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1 (NO RESPONSE)

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

4 MR. PEDLEY: Mr. Chairman, I make a motion for  
5 approval based on findings that it is compatible. It  
6 will not have an adverse influence on the future  
7 development, and the applicant has met all its  
8 requirements.

9 CHAIRMAN: Is there a second to the motion?

10 MR. DYSINGER: Second.

11 CHAIRMAN: A motion has been made and a  
12 second. Any other comments from the Staff?

13 MR. NOFFSINGER: No, sir.

14 CHAIRMAN: Any other comments or questions  
15 from the board?

16 (NO RESPONSE)

17 CHAIRMAN: Hearing none all in favor raise  
18 your right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries.

21 Next item, please.

22 -----

23 VARIANCES

24 ITEM 4

25 34 Booth Field Road, zoned I-1

Consider a request for a Variance in order to

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1 eliminate the required 6' high continuous solid wall  
or fence for outdoor storage along the north, south  
2 and west property lines.

Reference: Zoning Ordinance, Article 17,  
3 Section 17.3115A(D)

Applicant: Lamsco Transfer, LLC

4

5 MR. EVANS: The applicant is requesting to  
6 eliminate the required 6 foot high continuous solid  
7 wall or fence for screening for outdoor storage along  
8 the north, south and west property lines.

9 The topography of the property to the north  
10 justifies eliminating the required screening element  
11 because it is wooded and has a fairly steep hill  
12 providing accurate screening.

13 The property to the west is zoned by the  
14 applicant and is used in conjunction with the subject  
15 property for outdoor storage of equipment and  
16 material. Behind this property the topography  
17 provides a natural screening from other properties;  
18 therefore, screening along the west property line of  
19 the subject property would not be warrant.

20 The property line to the south, 22 Booth Field  
21 Road, is also used for outdoor storage in conjunction  
22 with the subject property. The equipment and  
23 materials stored on this lot is visible from Booth  
24 Field Road and US Highway 60 West. The installation  
25 of screening along the property line, along the south

1 property line of the subject property, 34 Booth Field  
2 Road, would place the screening in the middle of the  
3 storage area between 22 Booth Field Road and the  
4 subject property, which is 34 Booth Field Road.

5 It would not serve the purpose of screening  
6 the storage area from the road or neighboring  
7 properties; however, screening along the south  
8 property line of 22 Booth Field Road would place the  
9 screening on the outside of the entire outdoor storage  
10 area between 22 Booth Field Road and the adjoining  
11 church property.

12 We would support the variance for the  
13 elimination of the screening along the south boundary  
14 of 34 Booth Field Road if screening is provided along  
15 the south property line of 22 Booth Field Road.

16 In the event the adjoining properties are sold  
17 or developed, the 6 foot high continuing solid wall or  
18 fence shall be installed.

19 Findings of Fact:

20 1. Granting this variance will not adversely  
21 affect the public health, safety or welfare because  
22 the topography of the property to the north provides  
23 natural screening and the properties to the south and  
24 west are used in conjunction with the subject property  
25 for storage of equipment and materials.

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1           2. It will not alter the essential character  
2 of the general vicinity because the surrounding  
3 property is also zoned I-1 and is used for industrial  
4 purposes or is vacant.

5           3. It will not cause a hazard or a nuisance  
6 to the public because there is natural screening to  
7 the north and the properties to the south and west are  
8 also used for outdoor storage by the applicant.

9           4. It will not allow an unreasonable  
10 circumvention of the requirements of the zoning  
11 regulations because of the natural screening already  
12 in place and the existing use of the adjoining  
13 properties if screening is provided along the south  
14 property line of 22 Booth Field Road.

15           Staff recommends approval with the following  
16 Conditions:

17           1. In the event the adjoining properties are  
18 sold or developed, the 6' high continuous solid wall  
19 or fence shall be installed along the north, south and  
20 west property lines.

21           2. Install the required screening of a 6'  
22 high continuous solid wall or fence along the south  
23 property line of 22 Booth Field Road to provide the  
24 appropriate screening for the outdoor storage area  
25 being used by 22 and 34 Booth Field Road.

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1           We would like to enter the Staff Report into  
2           the record as Exhibit B.

3           CHAIRMAN: Thank you.

4           Has there been any comments in the office for  
5           or against?

6           MR. NOFFSINGER: No, sir.

7           CHAIRMAN: Is anyone in the audience wishing  
8           to speak in opposition on this?

9           (NO RESPONSE)

10          CHAIRMAN: Is the applicant here have any  
11          comments you would like to add at this time?

12          (NO RESPONSE)

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

15          (NO RESPONSE)

16          CHAIRMAN: Staff have anything else to add?

17          MR. NOFFSINGER: No, sir.

18          CHAIRMAN: Entertain a motion to dispose of  
19          the item.

20          MR. DYSINGER: Mr. Chairman, given the  
21          findings that the strict application would cause an  
22          undue burden on the applicant at this time, further  
23          that the proposed action is bettering the stipulations  
24          of the zoning ordinance, I move that we grant the  
25          variance with the following conditions: 1) In the

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1 event the adjoining properties are sold or developed,  
2 the 6' high continuous solid wall or fence shall be  
3 installed along the north, south and west property  
4 lines; 2) Install the required screening of a 6' high  
5 continuous solid wall or fence along the south  
6 property line of 22 Booth Field Road to provide the  
7 appropriate screening for the outdoor storage area  
8 being used by 22 and 34 Booth Field Road.

9 MR. TAYLOR: Second.

10 CHAIRMAN: A motion has been made and a  
11 second. Any other comments or questions from the  
12 board?

13 (NO RESPONSE)

14 CHAIRMAN: Staff have anything else?

15 MR. NOFFSINGER: No, sir.

16 CHAIRMAN: Is the applicant here this  
17 evening?

18 APPLICANT REP: Yes.

19 CHAIRMAN: Do you understand the conditions  
20 and you accept those?

21 APPLICANT REP: Yes, sir.

22 CHAIRMAN: All in favor raise your right hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries.

25 Next item, please.

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1       ITEM 5  
2       201 West 17th Street, zoned R-4DT  
3       Consider a request for a Variance in order to allow a  
4       1,040 square foot addition to an existing residential  
5       garage exceeding the ground floor square footage of  
6       the principle structure on a lot less than a one-half  
7       acre.

8       Reference: Zoning Ordinance, Article 3,  
9       Section 3-6(c)

10      Applicant: Gary Postlewaite

11               MS. EVANS: The applicant is requesting to  
12      build a 1,040 square foot addition to the existing  
13      1,104 square foot garage. The existing square footage  
14      of the ground floor of the principal structure is 980  
15      square feet.

16               The total lot coverage will be 29 percent  
17      according to the applicant.

18               A revision to the zoning ordinance in 2003  
19      prohibits the square footage of an accessory structure  
20      exceeding the square footage of the ground floor of  
21      the principal structure on lots that are less than  
22      one-half acre.

23               There are other properties where the square  
24      footage of the accessory structures may exceed that of  
25      the ground floor of the principal structures, at 111  
26      and 203 West 17th Street.

27               Also, the existing garage on the property  
28      already exceeds the ground floor of the principal  
29      structure. These structures all predate the zoning

1 ordinance requirements.

2 Findings of Fact:

3 1. Granting this Variance will not adversely  
4 affect the public health, safety or welfare because  
5 the addition will be built in the interior of the  
6 property and not visible from the street.

7 2. It will not alter the essential character  
8 of the general vicinity because there are other  
9 properties on this street where the square footage of  
10 accessory structures may exceed that of the ground  
11 floor of the principal structures.

12 3. It will not cause a hazard or a nuisance  
13 to the public because the addition is being  
14 constructed in the interior of the property not  
15 visible from the street.

16 4. It will not allow an unreasonable  
17 circumvention of the requirements of the zoning  
18 regulations because there are other properties on this  
19 street where this same scenario may exist and the  
20 total lot coverage will still be below the allowable  
21 lot coverage.

22 Staff recommends approval with the following  
23 Conditions:

24 1. The garage shall only be used for  
25 residential purposes.

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1           We would like to enter the Staff Report into  
2           the record as Exhibit C.

3           CHAIRMAN: Any comments or opposition in the  
4           office?

5           MR. NOFFSINGER: No, sir.

6           CHAIRMAN: Is the applicant here this evening?

7           APPLICANT REP: Yes, sir.

8           CHAIRMAN: Do you have any comments you want  
9           to bring at this time?

10          APPLICANT REP: No, not unless you have any  
11          questions.

12          CHAIRMAN: Any board member have any questions  
13          of the applicant?

14          (NO RESPONSE)

15          CHAIRMAN: Anyone wishing to oppose this item?

16          (NO RESPONSE)

17          CHAIRMAN: Entertain a motion to dispose of  
18          the item, please.

19          MR. TAYLOR: Mr. Chairman, move to grant the  
20          Variance based that the building structure will not  
21          alter the essential character of the neighborhood.  
22          The existing garage already exceeds the only ordinance  
23          that this is going against. So it will not alter  
24          anything that is against the ordinance. The only  
25          condition that I put on this is that the garage can

1 only be used for residential purposes.

2 MR. DYSINGER: Second.

3 CHAIRMAN: A motion has been made and a  
4 second. Any other comments from the Staff?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: Any other questions or comments  
7 from the board?

8 (NO RESPONSE)

9 CHAIRMAN: Hearing none all in favor raise  
10 your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries.

13 Next item, please.

14 ITEM 6

15 1708 Todd Court, zoned R-3MF (postponed from the March  
16 4, 2010 meeting.)

17 Consider a request for a Variance in order to reduce  
18 the street yard building setback line from 25 feet  
19 from the property line to 10 feet from the property  
20 line.

21 Reference: Zoning Ordinance, Article 8,  
22 Section 8.5.10(c)

23 Applicant: CTC Investments, LLC

24 MS. EVANS: The applicant is requesting to  
25 reduce the street yard building setback line along  
26 Southtown Boulevard from 25 feet from the property  
27 line to 10 feet from the property line.

28 Recently the City of Owensboro acquired  
29 right-of-way along Southtown Boulevard for the roadway

1 widening project of Southtown Boulevard. This  
2 acquisition caused the existing building to encroach  
3 into the newly applied setback of 25 feet. This  
4 building also encroaches into the permanent utility  
5 easement that was dedicated with the widening project.

6 The applicant proposes to remove only a  
7 portion of the structure leaving the remainder of the  
8 building encroaching 15 feet into the new setback.

9 There was a Minor Subdivision Plat approved  
10 for the property in December of 2009 for the  
11 dedication of the right-of-way that states in a note  
12 on the plat, "The structure encroaching into the  
13 utility easement at 1708 Todd Court to be removed."  
14 If the building is removed a smaller building could be  
15 constructed within the new building setbacks on the  
16 lot. The applicant appears to have been compensated  
17 for the value of the removal of the entire building as  
18 a part of the widening project under way. The  
19 acquisition of the right-of-way and the utility  
20 easement by the City of Owensboro do not provide a  
21 basis for granting this variance as the owner signed  
22 the plat dedicating the right-of-way and showing the  
23 structure to be removed.

24 While the structures at 1700 and 1704 Todd  
25 Court both encroach into the new setback line along

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1 Southtown Boulevard as a result of the right-of-way  
2 acquisition by the City of Owensboro, they do not  
3 encroach as far as the subject building and it was  
4 determined that the structures did not need to be  
5 purchased for the widening project to proceed.

6 Granting this variance may adversely affect  
7 the public health, safety or welfare because it was  
8 determined with the widening project that the building  
9 should be removed based on its proximity and  
10 encroachment into the right-of-way easement. It will  
11 alter the essential character of the general vicinity  
12 if the variance is granted because the building will  
13 be closer to the new right-of-way than the surrounding  
14 buildings. The variance would unreasonably circumvent  
15 the requirements of the zoning regulations because  
16 negotiations have already taken place regarding the  
17 removal of the building and there is a plat approved  
18 by the OMPC and signed by the applicant stating the  
19 structure is to be removed.

20 Would strict application of the regulations  
21 deprive the applicant of the reasonable use of the  
22 land and create an unnecessary hardship on the  
23 applicant?

24 No. If the Variance is not granted, the  
25 applicant will be required to remove the entire

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1 existing building instead of just a portion of it, but  
2 has already been compensated to do so. The applicant  
3 had agreed and signed the plat showing the structure  
4 to be removed. As the applicant appears to have  
5 received the compensation for the value of the entire  
6 building and its removal, removing the building should  
7 not pose a financial hardship.

8 Findings of Fact:

9 1. Granting this Variance may adversely  
10 affect the public health, safety or welfare because  
11 the applicant has already agreed for the building to  
12 be removed as part of the negotiation for the  
13 right-of-way to accomplish the widening project as  
14 evidenced by the owner's signature on the plat  
15 dedicating the right-of-way and showing the building  
16 to be removed.

17 2. It will alter the essential character of  
18 the general vicinity because if a portion of the  
19 building is left standing it will be considerably  
20 closer to the right-of-way than the surrounding  
21 buildings.

22 3. It may cause a hazard or a nuisance to the  
23 public because the negotiation for the right-of-way  
24 included a commitment from the owner to remove the  
25 building as evidenced on the approved subdivision plat

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1 dedicating the right-of-way.

2 4. It will allow an unreasonable  
3 circumvention of the requirements of the zoning  
4 regulations because a plat approved by the OMPC and  
5 signed by the applicant shows the structure as to be  
6 removed. Also, if the building were completely  
7 removed, a smaller building could be accommodated on  
8 the lot meeting the required setbacks.

9 Staff recommends denial of this Variance  
10 request.

11 We would like to enter the Staff Report into  
12 the record as Exhibit D.

13 We would also like to enter into the record  
14 the plat dedicating the right-of-way, the PVA card,  
15 the appraisal and the sell agreement. All was  
16 provided to the board members in their packet. Thank  
17 you.

18 CHAIRMAN: Is there any opposition or comments  
19 in the office?

20 MR. NOFFSINGER: No, sir.

21 CHAIRMAN: Board members have any questions of  
22 the applicant at this time?

23 MR. PEDLEY: Yes, I have questions of the  
24 applicant.

25 Last month we postponed this because there

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1 were issues that we weren't aware of and weren't sure  
2 of. Some of the things that I questioned. The  
3 information that I did not have until the meeting was  
4 the larger plat. The plat that I had was a reduced  
5 copy of the plat and I could not scale it.

6 There's two things. One, was this through  
7 negotiations with the City of Owensboro or was it  
8 through eminent domain?

9 CHAIRMAN: Before you start, let me get you  
10 sworn in.

11 MR. SILVERT: Could you just state your name,  
12 please?

13 MR. JOHNSON: Tyler Johnson.

14 MR. SILVERT: Tyler, are you a duly licensed  
15 attorney in the State of Kentucky?

16 MR. JOHNSON: I am.

17 MR. SILVERT: I don't require you to take an  
18 oath.

19 CHAIRMAN: Answer the question, please, sir.

20 MR. JOHNSON: There was a negotiation with the  
21 City of Owensboro. CTC Investments had drawn up  
22 figures on their behalf. The City of Owensboro had  
23 drawn up figures on their behalf, and they did come to  
24 an agreement.

25 As far as the details of that agreement, we

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1 would dispute that removal of the building was the end  
2 all be all of that agreement.

3 MR. PEDLEY: Well, evidently you had a plat  
4 and you also had an appraisal by an appraising  
5 company. I assume that Mr. Clark saw that before he  
6 agreed to be compensated for that amount; is that  
7 correct?

8 I mean if the appraisal was done before the  
9 final negotiation and agreement was signed, he was  
10 agreeing to the appraisal and agreeing what the City  
11 was offering; is that correct?

12 MR. JOHNSON: Yes. The City had an appraisal  
13 done and Mr. Clark had an appraisal done. There were  
14 some differences between those and differences of  
15 opinion. They reach a price and he did dispute it,  
16 but in hopes of settling the matter accepted the offer  
17 from the City. I don't know if that completely  
18 answers your question.

19 MR. PEDLEY: It does. Evidently they made an  
20 offer and he accepted it. That's my question. Did he  
21 accept the offer that they made, and it was through  
22 appraisals. He signed the deed, according to what we  
23 have in front of us. He accepted it based on the  
24 plat, based on the appraisal. So evidently he was  
25 satisfied at that time. My question is now: Why is

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1 he not wanting to honor what he --

2 MR. JOHNSON: It's not the fact that he  
3 doesn't want to honor that agreement. It's the fact  
4 that we don't feel that that agreement has any bearing  
5 on granting a Variance. The fact the negotiations  
6 went on to reaching a fair price and the fact that he  
7 is attempting to gain a variance through the city.  
8 They don't comingle with each other. They're two  
9 separate things.

10 MR. PEDLEY: It does have a lot of meaning on  
11 granting the variance because if he was adequately  
12 compensated and he agreed to it, he agreed to take  
13 that building down, and it does have affect on Todd --  
14 actually Southtown Boulevard was rebuilt setting  
15 closer to Southtown it will have an affect on it.

16 My question, I just want to make sure that he  
17 was compensated and he was in agreement. He agreed to  
18 take the building down. We don't really have any  
19 grounds to grant a variance. That's my opinion.  
20 That's why I'm asking these questions and make my  
21 statement.

22 Also, he was paid for the building, paid to  
23 take it down. Rent loss several things according to  
24 the appraisal. Now his lot, one things that jumped  
25 out at me, his lot doesn't have 10,500 square feet to

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1 build a duplex, two family housing. Although, he owns  
2 1712 Todd Court. The property we're talking about,  
3 1708. There are two things that he could do. He  
4 could take -- there are no easements between those two  
5 lots. 1712 has adequate land that he could move the  
6 property line. Make a lot division. Make 1708 large  
7 enough to build his duplex back. He's got room  
8 between the front and back easement to turn the  
9 building the other way and build 30 by 60, 1800 square  
10 foot building. To me he's been adequately compensated  
11 and he could still build his duplex back. As far as  
12 I'm concerned, that's the big issue with me.

13 CHAIRMAN: Let the Staff make one comment.

14 MR. NOFFSINGER: Mr. Chairman, yes, please.

15 In that appraisal the appraiser did make an  
16 error in terms of the minimum square footage required  
17 for a duplex. The minimum square footage required in  
18 the zoning ordinance in an R-3MF zone for a duplex is  
19 6,000 square feet. This lot is a little over 8,000  
20 square feet. I think it's 8,712 square feet. So the  
21 size of the lot is not an issue in terms of rebuilding  
22 a duplex on the lot, the minimum lot size.

23 Two, in terms of this Variance, the Planning  
24 Staff only brings up the appraisal as well as any  
25 mention of compensation to acknowledge that, yes,

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1 right-of-way was sold. There was an agreement by plat  
2 as to what was to take place in terms of that building  
3 being removed and there was compensation there. We  
4 simply want to address the financial hardship issue as  
5 it may exist in terms of a hardship with the statutes.

6 There are various other reasons and a number  
7 of more important reasons I think to deny this  
8 variance request. Certainly those are contained in  
9 the Staff Report and will also have some more  
10 information for you.

11 Again, only bringing up the compensation issue  
12 just to show that this was not through eminent domain.  
13 There was an agreement and there was compensation.  
14 We've not given those numbers. If we need to address  
15 that financial hardship issue, which is one of the  
16 basis potentially for Variance, we can address those.

17 MR. PEDLEY: Mr. Noffsinger, I have a question  
18 on your zoning, R-3MF. 6500 square feet, what I read,  
19 is zoned in the R-4DT Inner-City Residential zone.  
20 That's not R-4DT Inner-City Residential zone. You  
21 going down to two family or to MF zone it states  
22 10,500 square feet. Which is correct?

23 MR. NOFFSINGER: Six thousand square feet is  
24 correct, Mr. Pedley.

25 MR. PEDLEY: How can it be corrected if it's

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1 not in R-4DFT Inner-City Residential?

2 MR. NOFFSINGER: Well, it's in R-3MF  
3 Multi-Family.

4 MS. STONE: Becky Stone.

5 (BECKY STONE SWORN BY ATTORNEY.)

6 MS. STONE: The R-2MF zone, which is a two  
7 family multi-family zone requires the 10,500. The  
8 R-3MF zone for a duplex requires 6,000.

9 If you'll look under two family, you see R-2MF  
10 and it says 10,600. Right below that it says, R-3MF  
11 or R-4DT zone 6,000 square feet.

12 MR. PEDLEY: But it's not in my --

13 MS. STONE: It's an R-3MF zone.

14 MR. PEDLEY: That's right. What I'm reading,  
15 R-3MF zone only when it's in an R-4DT Inner-City  
16 Residential.

17 MS. STONE: I would have to look at your  
18 ordinance. My ordinance says two family, R-2MF is  
19 10,500. R-3MF and R-4DT is 6,000. Let me see where  
20 you're looking.

21 MR. PEDLEY: My purpose for the questions are,  
22 does he have room to take his duplex down, turn it in  
23 the other direction and still build 1,800 square feet.  
24 If it's 10,500, he does not; however he can take some  
25 property off of the 1712 and make it 10,500 square

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1 feet. If you take the plat and do a scale, his front  
2 easement, his rear easement, he has adequate room to  
3 turn the building the other direction and build a 30  
4 by 60 duplex.

5 MS. STONE: Our opinion is that he could build  
6 a duplex on the existing lot as the lot of record  
7 exist after the taking of the right-of-way.

8 MR. PEDLEY: So as is it's adequate to build a  
9 duplex back?

10 MS. STONE: Yes.

11 MR. PEDLEY: As long as he can stay inside --

12 MS. STONE: Within those setbacks, right.

13 MR. PEDLEY: And he has room to build a 30 by  
14 60?

15 MS. STONE: I haven't measured the dimension  
16 of the building.

17 MR. PEDLEY: The other issue last month, I had  
18 a reduced copy. You can't scale it. So I didn't know  
19 if he could build that duplex back. So now you have  
20 supplied us with a full plat to an inch, 20 feet. You  
21 can do that now. Also we have appraisal. We have a  
22 lot more information here tonight than we had last  
23 month. That's my reason for asking for a  
24 postponement.

25 MS. STONE: Right.

1 MR. NOFFSINGER: Mr. Pedley, you are right.  
2 That option exist to adjoining property with this  
3 property if the applicant chooses. I agree that this  
4 can be somewhat difficult to read in the zoning  
5 ordinance because there are a lot of numbers here.  
6 There are a lot of zones and there are a lot of if you  
7 do this, this is what applies.

8 In the R-3MF zone for a duplex, the minimum  
9 lot size is 6,000 square feet.

10 MR. PEDLEY: That's not what the appraiser  
11 found, if you look at what the appraiser said.

12 MR. NOFFSINGER: That's right.

13 MR. PEDLEY: He said that lot has 8,936 square  
14 feet. It take 10,500. So I went to my zoning  
15 ordinance and I raised this question here. That's  
16 where it should be raised.

17 MR. NOFFSINGER: Yes, you're absolutely right,  
18 and there was an error in that appraisal because it  
19 should have read 6,000 square feet is the minimum lot  
20 size. It would make this lot a developable lot under  
21 the existing ordinance requirements.

22 MR. PEDLEY: My reason for these questions is  
23 Mr. Clark adequately compensated for his property. I  
24 could not draw that conclusion last month. I have  
25 now. I have the information. I have.

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1           MR. JOHNSON: I certainly understand your  
2 reasoning behind that. We're of the opinion that  
3 obviously he wasn't. Certainly when you look at the  
4 Variance statutes in conjunction with what we're  
5 proposing today, it would meet those statutes.

6           If you're talking changing use or the existing  
7 use of the property, we'd be conforming more so by  
8 moving the building back a few feet off of that  
9 right-of-way and granting a Variance that would look  
10 like the neighborhood has always looked. The building  
11 would remain on the city tax roll and the city would  
12 receive revenue. There's not going to be another  
13 building on there if the variance isn't granted. It  
14 would be a vacant lot. The city would draw no revenue  
15 from insurance tax premium, from property tax premium.  
16 The lot is just too small to make a usable piece of  
17 property or usable building to make it financially  
18 feasible. If you're going to address issues with  
19 adjoining landowners, it is a fact that Mr. Clark owns  
20 the adjoining piece of land, but you're asking other  
21 things to take place rather than simply turning it on  
22 the lot. You're asking for a new deed to be drawn up  
23 with a new piece of property going above and beyond  
24 what needs to be done.

25           Aside from the compensation argument, I would

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1 like to just show the big picture. I do have one  
2 drawing of Southtown Boulevard with the existing  
3 right-of-way, if I may.

4 I know it's a little small, but the utility  
5 easement as it stands right now is represented by the  
6 blue line. This is the subject property right here  
7 that we're speaking of. These are two other pieces of  
8 property on the same court owned by a different  
9 entity. Here is the setback line as it is now.

10 What we're asking to do is look like these  
11 guys right here. They're a few feet past this  
12 permanent utility easement. All we want to do is move  
13 back. They're over the 25 foot setback by over 10  
14 feet. We just want to move back over the utility  
15 easement giving them access as they compensated  
16 Mr. Clark for.

17 If you're talking about turning a piece of  
18 property on its side, you're talking about changing  
19 what the characteristics of the neighborhood looks  
20 like the statute says, it makes sense to just move it  
21 back and it looks exactly like it is rather than move  
22 a building over here or turn it on its side here.  
23 Which, again, won't happen because it's just not  
24 economically feasible to do.

25 We just want to look like the rest of the

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1 neighborhood and conform with the right-of-way.

2 MR. DYSINGER: Mr. Chairman, I have a question  
3 for Staff.

4 I assume part of the reason for the taking or  
5 the acquisition of the property was widening plans  
6 moving forward. What kind of concerns does the Staff  
7 have regarding safety, nearing to traffic, that  
8 granting this Variance appears to me to present?

9 MR. NOFFSINGER: Mr. Dysinger, we have a  
10 number of concerns in question regarding the location  
11 of this structure if it were to remain or even be just  
12 slightly moved.

13 Melissa Evans has some information she would  
14 present in terms of the public health, safety and  
15 welfare.

16 MS. EVANS: We believe the public health  
17 safety hazard, the rear property -- it's located near  
18 the intersection of Southtown Boulevard, which is a  
19 minor arterial street with over 10,000 vehicles per  
20 day and Martin Luther King, Jr. Loop, which is a minor  
21 arterial street, with under 10,000 vehicles per day.  
22 So that's an intersection of two major streets.

23 We feel like if allowing this building to be  
24 only ten feet from the property line on this major  
25 thoroughfare that it would pose a safety hazard to

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1 both vehicles driving along the road and also the  
2 residents and the structure.

3 Now, the traffic will be right outside the  
4 doors, which could pose a nuisance and a safety issue  
5 to the residents of the structure. If there was a  
6 wreck, vehicles could easily end up going into the  
7 structure since it would be so close to the road.

8 The ten foot proposed setback would occupy,  
9 would be right up against the public utility easement.  
10 So if there's ever an additional widening project  
11 along Southtown Boulevard, then what are they going to  
12 do with these public utilities? You know, there's  
13 nowhere else for them to be moved. The building would  
14 at that time have to be removed or more of the  
15 building would have to be taken off.

16 We also feel like this is an unreasonable  
17 circumvention of the zoning ordinance. There is a  
18 plat dedicating the right-of-way showing the structure  
19 to be removed that was signed in the planning office  
20 by Mr. Noffsinger. It was also signed by CTC  
21 Investments with that note on there. There's an  
22 appraisal for the acquisition of the right-of-way. In  
23 that appraiser it indicates that there will be a  
24 vacant lot that was also signed by the owner. These  
25 were all completed prior to the application for this

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1 Variance. So it was our understanding that he was  
2 under the impression that this building was going to  
3 be removed because he did sign this plat showing that  
4 it's going to be removed and he also signed the  
5 appraisal that indicated the building was going to be  
6 removed.

7 There is also on the PVA card that shows the  
8 transfer of the right-of-way has already taken place  
9 prior to the application for this Variance. So  
10 everything with all of the agreements with the city  
11 and actual transfer of the property had all taken  
12 place before he applied for this Variance.

13 We also feel like there is a nuisance to the  
14 public. This is a residential area and with being so  
15 close to the new road, the loud traffic noise being so  
16 close to this residence would drop the enjoyment of  
17 the quietness that they seek in their residence.

18 Will also need to look at setting a precedence  
19 for the area. There's a lot of undeveloped land along  
20 Southtown Boulevard. If we allow CTC Investments to  
21 build only 10 feet from the property line, you know,  
22 are we going to allow the rest of the property that's  
23 undeveloped on Southtown Boulevard to build that close  
24 to the road on this major thoroughfare that's through  
25 there.

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1           We do believe that there can be a building  
2           erected on this lot as a duplex. There is enough  
3           square footage on the lot that only requires 6,000  
4           square feet. There even could be a multi-family unit  
5           built on this lot because that only requires 6,500  
6           square feet and the applicant still has over 8,000  
7           square feet.

8           They could build a new building on this lot  
9           and still meet all the zoning requirements and setback  
10          requirements.

11          MS. DYSINGER: Thank you, Mr. Chairman.

12          CHAIRMAN: Any other questions from the board  
13          members of the Staff at this time?

14          (NO RESPONSE)

15          CHAIRMAN: Staff have any other comments?

16          MR. NOFFSINGER: Yes.

17          Is it, Mr. Johnson?

18          MR. JOHNSON: Yes, sir.

19          MR. NOFFSINGER: I would like to just submit  
20          an aerial photo taken from the geographic information  
21          system that shows the existing development pattern  
22          along most of Todd Court. There are two residences to  
23          the east, 1704 and 1700. They are shown in this  
24          picture as well as the subject property, 1708. Those  
25          two residents adjoining to the east are oriented in

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1 such a fashion that Mr. Pedley was speaking of.

2 You said, I think you said that if you were to  
3 change the orientation of the building that's on this  
4 property, that would have an adverse affect on the  
5 character of that area. I would disagree in that you  
6 would be turning the building in such a manner that it  
7 would be consistent with those two lots that are to  
8 the east the way the roof lines run. I don't see that  
9 you would have that inconsistency there.

10 MR. JOHNSON: Which buildings are you speaking  
11 of? These right here?

12 MR. NOFFSINGER: Yes, sir.

13 MR. JOHNSON: You're speaking of turning it  
14 like this?

15 MR. NOFFSINGER: Right.

16 MR. JOHNSON: This would be the dimensions of  
17 the lot as it is now or as it is with the current  
18 setback line. Turning the building on the side,  
19 you're squeezed to a certain degree to even fit a  
20 building in there. I'm not so sure that you could.  
21 Certainly not of the size that it is now. I know  
22 we've discussed that quite a bit, but it is different  
23 than they are now and in a cul-de-sac as it is you  
24 don't have buildings turned on the side that aren't  
25 facing the cul-de-sac. It just does not look like the

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1 rest of the neighborhood. Every other place has a  
2 driveway coming out of the cul-de-sac. So I don't  
3 know how you would drive up to a home when its  
4 sideways on a cul-de-sac. It just does not fit with  
5 the rest of the neighborhood.

6 MR. NOFFSINGER: Okay. You can do it and it  
7 is done. It may not be what you would propose, but  
8 certainly it's done and it certainly can be done on  
9 this particular lot.

10 I guess we're looking at alternatives in terms  
11 of how you could build on this lot to show that it is  
12 a developable lot under the requirements that are  
13 shown and set forth on that plat that was approved.

14 MR. JOHNSON: Certainly not as it is right  
15 now. We would disagree with that statement. The  
16 building structure that would be similar to the one  
17 that's currently standing you couldn't just turn it on  
18 its side and fit it in that spot that is there now. I  
19 just don't think you could do that with the existing  
20 setbacks as they are.

21 MR. NOFFSINGER: Perhaps you couldn't with the  
22 existing building that's there. I don't know if you  
23 could or not. Certainly you're looking at a building  
24 in the future that's not this size anyway. You're  
25 certainly going to have to take some of this building

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1 down. That section that's in the right-of-way and the  
2 public utility easement. So it's not going to be as  
3 large of a structure tomorrow as what it is today.

4 MR. JOHNSON: Which is exactly what we're  
5 proposing today, would be to make a smaller structure  
6 in conformity with the neighborhood as it looks now as  
7 it was originally developed. Make it smaller. Push  
8 it back. The lines would be even with the lines of  
9 the properties that are now there. It just seems like  
10 a better solution rather than tear down a building and  
11 create an entirely new building facing sideways to a  
12 cul-de-sac rather than cut the bottom off a building  
13 and it looks like the other two that are already there  
14 that are already over the setback line rather than  
15 push a new building up closer to the street and make  
16 it smaller and turn it on its side.

17 I would like to address the hazard issue as  
18 well that was mentioned. You mentioned the closeness  
19 to the roadway. I said over and over again that these  
20 two buildings that I'm assuming the city also had  
21 negotiated with for this permanent utility easement,  
22 they didn't ask those homeowners to move their  
23 properties back in. You can see how close this last  
24 property is to the permanent utility easement. If  
25 there was an issue with it being a hazard because it

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1 was so close to the roadway, you would assume the city  
2 would ask these people to move their building back as  
3 well.

4 MR. PEDLEY: I drove to the site today. I  
5 wanted to see for myself. I totally disagree. That  
6 building would be in more character if it was turned  
7 the other direction. You can see it there on that. I  
8 saw it when I drove down there today. You've got  
9 adequate room to do it. You've been adequately  
10 compensated. You agreed to do it.

11 I'm ready whenever you are, Mr. Chairman, for  
12 a motion.

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

15 MR. PEDLEY: Mr. Clark, Mr. Riney, anyone,  
16 I'll be glad to listen to any comments.

17 CHAIRMAN: Mr. Riney, you or Mr. Clark have  
18 any new information.

19 MR. RINEY: Mr. Clark has a comment.

20 MR. SILVERT: State your name, please.

21 MR. CLARK: Tony Clark. Full name is Gerald  
22 A. Clark. I'm the management member of CTC  
23 Investments.

24 (TONY CLARK SWORN BY ATTORNEY.)

25 MR. CLARK: A brief history and little run

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1 down here.

2 This has been going on for many years from the  
3 time we first met at Apollo High School. Sat down and  
4 looked at the road and the situation and what was  
5 going to happen. Roughly ten years may have come  
6 along here. I'm not quite sure. Quite a long, but  
7 close to it.

8 We sat and we looked and we analyzed and it  
9 was layed out by the state highway. 1.8 miles was the  
10 winding project. Of the 1.8 miles, there was one  
11 piece of property that was affected. One piece of  
12 real estate with a building on it. It was one of the  
13 duplexes that I own. I asked and talked, I've even  
14 got the area, shot the whole area with a plane up in  
15 the air showing all the farm land to the south. What  
16 could be done. There was no budge at all from an  
17 engineer anywhere to move that road one slight degree  
18 so as not to affect this particular property.

19 Time has passed and time is gone. The 1.8  
20 mile and here we are. I've been behind the scene just  
21 waiting patiently for years.

22 This past year, this past year my grandson is  
23 now ten years old. Played basketball with K through 3  
24 at the elementary school. Mr. Joe Schepers, the city  
25 engineer, was his basketball coach. Not that we got

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1 specifically in this project, but here is where it  
2 came from.

3 I made a decision I wanted to try to work it  
4 out for the good of Owensboro. Met several times with  
5 Mr. Ed Ray to Joe Schepers. We talked about this  
6 particular project. I did not meet with legal. I had  
7 talked to Reutlinger & Middleton, a law firm out of  
8 Louisville, how this situation happened.

9 Back up with the appraisal. When the  
10 appraiser first came in, his number was so  
11 ridiculously low I asked him to leave.

12 The bottom line, did three sets of numbers.  
13 The number that I wanted was here. The number the  
14 appraiser said was here. The number we negotiated  
15 with the city was here.

16 The reality of it is that compensation was  
17 paid, but relevant to the discussion I was the whole  
18 time operating that it was going to be condemned. It  
19 was fixing to happen Ed Ray will tell you the next  
20 step was, you know, they told me. I didn't have an  
21 attorney with me. It was probably my weakness, but  
22 I'm a pretty good negotiator and I'm very fair and  
23 very reasonable. If I do see something in line of the  
24 right-of-way blocking that view of Southtown Boulevard  
25 and it's dangerous, I wouldn't be here tonight. I

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1 would not be here tonight. I would say, that's fine.  
2 Go on.

3 In my opinion, it does not. I've had other  
4 people look at it. Once that road goes in there, the  
5 back of my project, the back of that building to the  
6 road line it's going to be somewhere around 30, 35  
7 foot. Not 10 foot we're talking about, but a major  
8 distance. A car would have to cover a lot of  
9 territory in order to come off that road and go up in  
10 that duplex.

11 By the way it happens all the time. You can  
12 go around town right now daily and you can see where  
13 somebody runs into a house. It does happen. So no  
14 matter what you do, down the road something can still  
15 run into your home.

16 So having said that, I spent the time with Joe  
17 and Ed. In my conversations with them, not one time  
18 did I discuss -- we did talk about what it would cost  
19 to take it down, what it would cost to build and come  
20 up with numbers and to come up with an agreeable  
21 number for satisfaction me sign that piece of paper.

22 Well, every conversation I had, and they'll  
23 have to tell you, and Mr. Ray is here, that my  
24 discussion was for to modify that building, to modify  
25 that building. I asked the city, I said, Ed, Joe,

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1       what would you all do with this? Take this and go  
2       forward and modify it? The answer was, we cannot do  
3       that. I accepted that. The direction was private  
4       engineering firm to do that.

5               Now, the other thing that I asked in final I  
6       said, when it's done I would like for you to put a  
7       privacy fence or something on the backside of the  
8       property. The reality of it was that, no, we're done.  
9       This doesn't work it's gone straight over to  
10      condemnation and deal with it from that side.

11              Having said that, that's where the bottom  
12      line. I did sign, but all of my conversations dealt  
13      with modifying that building and taking that building  
14      back. There was never discussion that said I could  
15      not do that or, no, we're paying you for this and  
16      therefore you can't do it.

17              MR. DYSINGER: Mr. Chairman.

18              Mr. Clark, the plat you signed shows the  
19      structure gone.

20              MR. CLARK: Yes. I don't deny that, but the  
21      other side of the story, the thing that -- I did that  
22      in order to keep from going forward with the  
23      condemnation. Again, I was not represented by an  
24      attorney at all on that. I did this myself. But the  
25      reality of it, you know, I'm not so sure I can stand

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1 up in court and tell you that I knew that -- I knew  
2 they were paying me for it, but I also knew that I was  
3 going to come back to this Board of Adjustment to ask  
4 for a Variance on that.

5 Mr. Ray is here and Mr. Joe Schepers, city  
6 engineer. There was never any discussion at all that  
7 says, Tony, you cannot do that. We're paying you to  
8 take it down. Thank you.

9 CHAIRMAN: Any other questions from the board  
10 members?

11 MR. TAYLOR: To the Staff.

12 What would the difference be, because we  
13 really haven't seen a picture of their modification.  
14 What would the difference be from those other two  
15 buildings? Is it going to be closer?

16 MR. NOFFSINGER: The building that they're  
17 proposing where it would set, would it be closer to  
18 the setback line than those building?

19 MR. TAYLOR: Correct.

20 MR. NOFFSINGER: It's my understand that it  
21 would be.

22 CHAIRMAN: Mr. Riney, do you have anything you  
23 could add?

24 MR. TAYLOR: I would just ask: Would it pose  
25 any more danger than the other two that are

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1       encroaching it? I realize that there's good things  
2       that have gone through the compensation and things.  
3       My question is: Would it pose any more danger than  
4       the building that are right beside it?

5               MR. NOFFSINGER: It appears that their  
6       proposal would be to place the building right on the  
7       public utility easement. The corner of the other two  
8       buildings are that close. One corner. However, the  
9       majority of the structure, the way they're angled,  
10      would be further away from the utility easement than  
11      what they're proposing.

12             CHAIRMAN: Mr. Riney, can you add anything  
13      else?

14             MR. SILVERT: State your name, please.

15             MR. RINEY: Jim Riney.

16             (JIM RINEY SWORN BY ATTORNEY.)

17             MR. RINEY: Mr. Clark asked me, and I'm going  
18      to walk up in front of the exhibit to confirm  
19      something. I didn't bring my pocket protector and my  
20      scale with me so you have to forgive me.

21             This is a copy of the highway plan that the  
22      highway department developed. They had the building  
23      already shown as where they were for aerial  
24      photography. So the orientation is whatever it was.  
25      I'm not sure what Mr. Noffsinger has.

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1           What we're estimating, where my finger is is  
2           the back of the curb for the roadway for the proposed  
3           improvement. Mr. Clark has talked about removing this  
4           part of the structure. That distance appears to be  
5           somewhere in the league of 30 to 35 feet. One inch  
6           equals 20 feet on this drawing, Mr. Pedley, if you  
7           want to look at it.

8           MR. PEDLEY: That's what your plat is.

9           MR. RINEY: Yes.

10          MR. PEDLEY: It's 20 feet?

11          MR. RINEY: Yes, sir. I know MR. Pedley is  
12          familiar with dimensions on drawings. He deals with  
13          it all the time. I'm just estimating. I haven't  
14          scaled anything. I can't certify anything. It's a  
15          fairly decent dimension across there. It looks like  
16          they could still maintain that roadway ditch.

17                 If you drove out there today and looked at you  
18          that, you saw a ditch between the road and the  
19          property. The state highway department plan, this  
20          arrow, this line with arrow heads on it shows that  
21          it's going to have drainage boxes from the back of the  
22          curb to the drainage ditch, which is still going to be  
23          through there. The drainage ditch separates the back  
24          of the curb. There will be a curb here in the urban  
25          section. The back of the curb from the property for

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1 protection. So you've got the curb as the first line  
2 of the fence. Then you've got the ditch and then  
3 ultimately the property that's cut off. I've heard  
4 the statements about safety and I understand that, but  
5 anything can happen.

6 If you just think about the intersection of US  
7 60 East and the bypass, how far back that house was  
8 and that road tractor ran right into the house. Stuff  
9 happens. If you're going to protect it from one  
10 thing, I don't know how you can protect it from all.  
11 We've got too many situations.

12 The house, the structure right now is oriented  
13 fairly parallel. I wasn't sure what the discussion  
14 was on the orientation and roof lines and so forth,  
15 but I can observe that the orientation right now is  
16 fairly consistent with the neighborhood. If you come  
17 in and put another structure on the lot, on the  
18 remaining lot, which this red line would represent  
19 that building envelope. The economy is faced to fit  
20 that on there, you would need to skew that building to  
21 the orientation of the building now. Everything is a  
22 matter of opinion.

23 That picture over there, some of you might  
24 think that art is beautiful. Some of you may not  
25 agree with that. It's all opinion.

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1           My opinion is that it would be different and  
2           be out of character with the neighborhood with the  
3           orientation change from what it is now because these  
4           appear to be fairly parallel.

5           The note on the plat has had a lot of  
6           significance with the Staff. That note was a note  
7           that was pinned on, a review copy by the Planning  
8           Staff. We were under the impression, we were led to  
9           believe that meant that the part of the structure that  
10          was going to be inside of the setback was to be  
11          removed. We did not understand, we were lead to  
12          believe it was just part of the structure in conflict  
13          and if the balance of the structure to be remained in  
14          place, that it would be remaining in place. That note  
15          was not prepared by us on behalf of Mr. Clark or  
16          Mr. Clark. That was a note that was given to us by  
17          Planning Staff.

18          MR. PEDLEY: You was talking about skewing the  
19          building. If you skew that building to meet the  
20          setback, you're going to be setting on the exact same  
21          angle as to the building to the right. When you put  
22          that building -- the plat down below. You put that  
23          building in there, it's going to be setting basically  
24          the same angle as those other two buildings. So  
25          you're not getting out of the character. You're

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1 putting more in to character.

2 MR. RINEY: I may be thinking different terms  
3 than you are, but I was thinking that you would end up  
4 trying to make it more -- since this is your limit.

5 MR. PEDLEY: Look at your bottom picture down  
6 there. You turn it to fit it in there. Turn the  
7 building. Thirty feet deep, 60 feet wide. It's going  
8 to be almost in line with those other two.

9 MR. RINEY: It looks like it would need to be  
10 parallel here if you put it on some sort of --

11 MR. PEDLEY: If you scale that, I think you'll  
12 find that 30 by 60 will go in there.

13 MR. RINEY: What I'm saying is for economy of  
14 space it would need to be parallel with this setback.  
15 If you put it in here on some sort of a diagonal like  
16 it is now, the longer dimension of the house is on the  
17 diagonal or some skew of that. For economy of space,  
18 you would make it parallel, depending on which size of  
19 rectangle you use. So that's my point. If you put it  
20 in there parallel, then it's going to be out of  
21 character with the other buildings. I'm using this as  
22 the base.

23 CHAIRMAN: Any other new comments or  
24 information?

25 MS. MASON: I have a question for Mr. Clark.

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1           The money which you were compensated for to  
2       remove this building, I don't know what it cost now to  
3       build, but was that enough money to be able to build a  
4       new duplex?

5           MR. CLARK: No. No, it's not. Again, the  
6       compensation factor -- let's go back to the appraisal.  
7       Got Harold Brantley from Bowling Green, Kentucky. He  
8       had me sign three items. One of the consideration  
9       that we talked was consideration for the possible  
10      demolition of that. So that goes back to day one.  
11      That fact that he was friendly and nice and he wasn't  
12      rude whenever I signed those three documents.

13           Now fast forward to where it comes from. No,  
14      I would not have taken it if I thought there was any  
15      option that I would not have this approved tonight, I  
16      would not have taken this and I would have gone  
17      forward.

18           MS. MASON: But you did sign though saying  
19      that you would remove the building?

20           MR. CLARK: I'm going to state this to you  
21      with the right hand up: I did not know I signed that  
22      knowing that I had to take that building down. If I  
23      had to take the building down, it was going this way,  
24      I would have sold you the whole lot. I don't want to  
25      get stuck with a little piece of a sliver in there. I

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1 really question the position of that on that, the  
2 cul-de-sac. Granted Mr. Pedley has built for years  
3 and knows how to build well, but the reality of it is  
4 the position of that particular cul-de-sac and the  
5 modification.

6 So, no, I did not get enough money to wind up  
7 for me, regardless of what was signed or not signed.  
8 I was there without attorney representation. I was  
9 trying to be a good citizen. My ultimate goal was to  
10 modify the building, maintain the property on the tax  
11 roll and I present approximately \$1,000 a year tax  
12 base to the City and County of Owensboro.

13 CHAIRMAN: Let me interrupt. The attorney,  
14 the city attorney here has a comment and then he has  
15 to leave.

16 MR. SILVERT: State your name, please.

17 MR. RAY: Good evening. I'm Ed Ray, City  
18 Attorney for Owensboro.

19 As such, I was involved with the negotiations  
20 with Mr. Clark as my predecessor and other members of  
21 our staff were.

22 His position with the City of Owensboro, a  
23 couple of things.

24 One, we did acquire this land during those  
25 negotiations under threat of condemnation. Had those

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1 negotiations not gone favorably or were not favorable  
2 to reach a solution, then we would have proceeded with  
3 the assistance of the State of Kentucky and to  
4 condemnation.

5 Secondly, during those discussions that were  
6 brought up by Mr. Clark, we evaluate and negotiate  
7 under the state's quo. The state at the time showed  
8 the public utility easement going through part of this  
9 building. The state was contacted by our engineers to  
10 see if we could do any alterations. Based on the  
11 entire plan, that was rejected by the state. So it  
12 left us with evaluating how we could negotiate with  
13 Mr. Clark to compensate him.

14 Based on our assessment that he would have to  
15 then tear down the entire building. Based on our  
16 negotiations it was our position that the compensation  
17 that was paid would cover for demolition of the  
18 building. It would cover loss of rent during  
19 reconstruction of the building. It would cover the  
20 building of a new building. That we did not discount  
21 those figures based on the fact that I believe it's a  
22 1982 structure, new structure put in place.

23 All of that being said, Mr. Clark is right in  
24 that he did ask the city whether or not we would go  
25 forward as a condition of the sale to approach this

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1 body through the Planning Commission to get some type  
2 of Variance in case he wanted to do a modification or  
3 anything else. We told him that would not be the  
4 position of the city and that that would be something  
5 he would have to bring forward. He asked whether or  
6 not we would be opposed to him modifying that building  
7 or doing something other than tearing it down. Our  
8 position was that based on the conditions that were  
9 set, in that the city doesn't grant variances and the  
10 city isn't in a position of this body, that he would  
11 end up having to tear it down. If he was able to get  
12 a Variance, the city is not opposed to that based on  
13 the compensation negotiations.

14 Now, if our city engineer in the normal  
15 process of getting the plan approved has an issue with  
16 that, and I'm not speaking on behalf of him, but as  
17 far as the contract between Mr. Clark and the City of  
18 Owensboro, it doesn't address that we would oppose or  
19 we would support his position to do that. If he was  
20 able to get a Variance and do the changes to the  
21 building or modify the building. We did have that  
22 discussion very briefly, but we told him that we would  
23 not support that nor would we oppose that. That would  
24 be up to the body, this body to determine the  
25 Variance.

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1           So I hope that that clarifies a little bit of  
2           our position. We feel that based on the original  
3           appraised value of the building versus what was paid,  
4           those negotiations went up based on a demonstration by  
5           Mr. Clark. That our engineers verified and felt were  
6           reasonable and accurate as to what his out-of-pocket  
7           would be for demolition of the building, loss rents  
8           during the period of time in which he would have to  
9           reconstruct, and the reconstruction as square footage  
10          cost that was brought to Mr. Clark.

11          CHAIRMAN: Any board members have any question  
12          of the city attorney at this time?

13          (NO RESPONSE)

14          MR. RAY: Thank you.

15          CHAIRMAN: Does the applicant have any new  
16          information to help us make our decision, new  
17          information?

18          (NO RESPONSE)

19          MS. STONE: I would like to add one more thing  
20          just to stress because Mr. Clark talked about being  
21          left with a sliver of property.

22          That property is a lot that meets the  
23          requirements of the zoning ordinance. He would not be  
24          required to build back on that lot. He could market  
25          that lot to somebody else to build on that lot, but it

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1 is a standard lot in conformance with the zoning  
2 ordinance.

3 CHAIRMAN: Any board member have any questions  
4 of the Staff?

5 (NO RESPONSE)

6 CHAIRMAN: Does the applicant have anything  
7 else to add?

8 MR. JOHNSON: Just to reiterate the fact that  
9 Mr. Ray and the city were silent as to the contract  
10 and the contract signed by both the City of Owensboro  
11 and CTC Investments as to granting the Variance. They  
12 took no position. Did not request that he not apply  
13 for such a Variance. They felt that the compensation  
14 was such that they shouldn't be granted a Variance.  
15 If that were the case, you would think that the city  
16 would require in that contract to state, you will not  
17 apply for a Variance because the property needs to be  
18 torn down. We've paid you enough for it.

19 That obviously wasn't their position as they  
20 stayed silent. Just like to reiterate that fact.

21 MR. DYSINGER: Mr. Chairman, just one more  
22 thing.

23 Is it your belief, Counselor, and Mr. Clark  
24 can certainly answer this if he would like. Was the  
25 city, as far as you believe, as far as you know, were

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1 they negotiating with the idea that the structure  
2 would be torn down as stated on the plat that was  
3 signed?

4 MR. JOHNSON: Are you asking me what the city  
5 was negotiating?

6 MR. RAY: I would be glad to respond.

7 MR. DYSINGER: That would be fine.

8 MR. RAY: As to the city's position on that,  
9 the city didn't negotiate with the understanding that  
10 the building had to be torn down or not be torn down.  
11 The city negotiated in effort to gain the state's  
12 required easement and permanent fee simple  
13 acquisition.

14 The issue as to what the status of the  
15 building was going to be at the time if he was able to  
16 go in and change the status quo was an issue between  
17 the Planning Commission and Mr. Clark. Our position  
18 was that based on the status quo, based on his  
19 building encroachment into that position, that we  
20 found it reasonable to honor Mr. Clark's request that  
21 he be compensated for tearing that down and rebuilding  
22 it, which was a significant difference between the  
23 appraised value or the appraisal that we had and  
24 Mr. Clark's position. Then took Mr. Clark's position  
25 under advisement. Had our engineers then determine

1       whether or not Mr. Clark's numbers were reasonable in  
2       the current conditions with building conditions and  
3       everything else. We determined that they were  
4       reasonable based on, if we were going to take that  
5       land he would have to demolish his building, unless  
6       there was a change, like I said, in status quo. So we  
7       felt that was fair compensation. That's why it was  
8       significantly higher than the original appraisal that  
9       Mr. Brantley did that Mr. Clark was referring to.

10               Again, we have to enter into these  
11       negotiations as it is and everything exist at the time  
12       and to be fair to both sides. The tax payers in this  
13       case and to the person in which we're going to go  
14       acquire their land.

15               That being said what we were asked to support  
16       that Variance we said we wouldn't support it or we --  
17       if he did decide to do something other than tear it  
18       down, would we go ahead and give him the Variance?  
19       The answer to that question was, no. That we weren't  
20       in a position to do that. We wouldn't neither oppose  
21       nor support that.

22               MR. DYSINGER: The reason I ask that, Mr.  
23       Chairman, is for me personally, just speaking for  
24       myself, it's not so important whether an agreement  
25       existed to tear it down, didn't tear it down. The

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1 compensation to me is an issue of hardship and  
2 alleviating the hardship of the landowner. So it's  
3 helpful to me to understand what the city's thinking  
4 was going in to make my decision whether or not that  
5 there was an attempt to meet that. So that's why I  
6 ask that. It was well answered. Thank you.

7 CHAIRMAN: Any other board members have any  
8 questions of anyone?

9 FATHER LARRY: Mr. Chairman, I have a  
10 question. I don't know who to address it to.

11 If a variance were granted, given the fact  
12 that compensation had been given to demolish the  
13 building or what I'm understanding, what happens to  
14 that compensation, if the building is not demolished  
15 and the variance is given?

16 MR. SILVERT: That is a question of Mr. Ray.

17 MR. RAY: The deal that was brokered in the  
18 contract that was signed is done. If there is  
19 something that Mr. Clark is able to do to his property  
20 and some of those cost saving were gained by him, our  
21 position would be that that would be something to  
22 benefit Mr. Clark, the city would not be seeking any  
23 reimbursement of compensation or any type of  
24 accounting. The contract was clear. Here is the  
25 amount of money that we are paying for our easements

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1 and for permanent taking. Mr. Clark's ability to  
2 change or alter and do anything with the property  
3 would not cause the city to come back.

4 CHAIRMAN: Any board member have any other  
5 comments or questions? I think we've pretty well  
6 hashed it down.

7 MR. TAYLOR: My only thing that I would say or  
8 even bring up is, you know, say whether it was an  
9 unreasonable circumvention or not, you know, whether  
10 he was purposefully doing something, it seems that any  
11 time we do a Variance we're doing it in order to be a  
12 cost savings measure on whatever the owner is. I  
13 don't know if we should consider, you know, that he  
14 got paid. How much money he's saving or what we're  
15 doing because the cost really shouldn't affect us that  
16 much.

17 What I kind of look at is if there's that  
18 ditch there and other houses aren't any closer, what's  
19 the safety issue? Is it going to pose a larger safety  
20 issue, you know, to traffic? Which I think would be  
21 the main thing than what the other houses would.

22 That's kind of, I guess, is an unanswered  
23 question. I don't know how it would be answered.  
24 More of a point than a question.

25 CHAIRMAN: Father Larry, did your question get

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1 answered to suit you?

2 FATHER LARRY: Yes.

3 CHAIRMAN: Any other board members have any  
4 questions or comments?

5 (NO RESPONSE)

6 CHAIRMAN: Staff have anything else you want  
7 to add?

8 MR. NOFFSINGER: Yes. Just in response to  
9 Mr. Taylor's comments.

10 Planning Staff tried to address those issues  
11 in terms of take the compensation out, how much,  
12 because we haven't even gone over those numbers.  
13 That's not our primary issue against this rezoning.  
14 However, it is a factor or we wouldn't be here  
15 tonight.

16 There was an appraisal. It's been stated here  
17 tonight there was an appraisal and it's very clear in  
18 that appraisal as to what was being considered. The  
19 city attorney stated to you here tonight that there's  
20 pay in excess of that appraisal. Nowhere near what  
21 that appraiser came up with. Nowhere near the  
22 assessment that's been submitted into the record  
23 tonight of the property.

24 So it was very clear as to what was being  
25 considered as evidence based upon plat of record which

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1 states that the structure is to be removed. That is  
2 what I have heard here tonight, was the basis of and  
3 the settlement.

4 Now, but for that we wouldn't be here tonight.  
5 What are the issues in terms of if we approve this?  
6 What are we saying in terms of public safety?

7 Well, we stated that this is an intersection  
8 of two major streets, two arterial streets. We've  
9 also talked about the close proximity of this  
10 residence adjoin, immediately adjoining the public  
11 utilities easement, as well as the motoring public  
12 that uses this roadway and the safety hazard that  
13 prevents and closeness of this structure.

14 We have also attempted to state here tonight  
15 in terms of the location as to where there is a  
16 buildable lot and it can be built upon and meet the  
17 requirements of the zoning requirement.

18 With future roadway improvements on this  
19 roadway, if this Variance is approved, where are we  
20 going to be in the future? If the building encroaches  
21 the setback line, are we going to be back at some  
22 point in time with the public having to buy additional  
23 right-of-way to make improvements. Are they going to  
24 have to buy only additional right-of-way or are they  
25 going to be buying this building all over again?

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1           It all centers around the taking and, of  
2           course, that's why we're here, but it's been evidenced  
3           tonight that the City in their negotiations believe it  
4           was just compensation. I think the city did negotiate  
5           in good faith. We weren't approached about a Variance  
6           on this property until after those negotiations ended,  
7           after the subdivision plat was approved. It was  
8           signed and that structure was to be removed.

9           Now here we are today. Sounds like we're  
10          renegotiating the deal. That's where this board and  
11          this body, and the City Attorney correctly stated that  
12          that's why they're before this body. Because this  
13          body is the body that represents the citizens of this  
14          community and the tax payers in terms of making  
15          decisions about planning and about where we place our  
16          buildings now and in the future and what that future  
17          use may be.

18          So that's what you really have to consider.  
19          Is not just the impact of today, but also the impact  
20          of the future of the public health, safety and  
21          welfare.

22          CHAIRMAN: The applicant have any other  
23          statements?

24          MR. JOHNSON: A few points.

25          I know we've gone back and forth about the

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1 compensation numerous times, the contract that was  
2 involved.

3 CHAIRMAN: We're interested in new  
4 information.

5 MR. JOHNSON: Sure. I would just like to  
6 point out the fact that in the deed drawn by the City  
7 Attorney it was mentioned that they were purchasing a  
8 right-of-way. Nowhere in that deed does it say, tear  
9 down your building because we need a right-of-way.  
10 The Consideration Certificate states they're buying a  
11 right-of-way. Not that they're buying a right-of-way  
12 and requiring Mr. Clark to tear down his building. I  
13 know we've heard about the negotiation.

14 My final point is that if he's forced to tear  
15 down the building there will not be another building  
16 built. The city will not receive any new moneys from  
17 tax revenue. No property tax bill on the building.  
18 It will be a vacant lot in a subdivision not in  
19 conformity with the normal character of the  
20 neighborhood.

21 CHAIRMAN: Thank you.

22 Any other questions from the board members?

23 (NO RESPONSE)

24 CHAIRMAN: Entertain a motion for or against.

25 MR. PEDLEY: Mr. Chairman, I'm going to make a

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1 motion for denial based on that the property owner has  
2 been adequately compensated to remove the structure  
3 and that there was adequate money to rebuild that on  
4 that lot. That lot is large enough to rebuild. It  
5 will adversely affect the public health, safety and  
6 welfare to some extent for the fact that in the future  
7 when Southtown Boulevard is built there will be many  
8 structures up and down through there and it does set a  
9 precedence. We, as Mr. Noffsinger stated, will have  
10 other applications for a Variance. It will alter the  
11 essential character of the general vicinity because  
12 once Southtown Boulevard is built, that will be  
13 projected out further than anything else in that area,  
14 especially when you have new structures built further  
15 on down. It will cause a hazard or nuisance.  
16 Especially a nuisance in the future for setting out  
17 and people -- it is noticeable. It's setting out and  
18 you're driving down new Southtown Boulevard. But the  
19 other thing is some day Southtown Boulevard may need  
20 to be widened again on that side and you need that  
21 right-of-way so you don't have to start going down  
22 through there buying more right-of-way. It does allow  
23 an unreasonable circumvention of the requirements of  
24 the zoning regulations because it does, again, it sets  
25 the precedence. It puts this board in a position when

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1 we have others to come forward. They will put that  
2 you have approved other variances. We see that  
3 basically monthly. So based on that those are my  
4 conditions.

5 MR. DYSINGER: Second.

6 CHAIRMAN: A motion has been made and a  
7 second. Any other comments from the board?

8 (NO RESPONSE)

9 CHAIRMAN: Staff have any other comments?

10 MR. NOFFSINGER: No, sir.

11 CHAIRMAN: Hearing none all in favor raise  
12 your right hand.

13 (BOARD MEMBERS MARTY WARREN, SEAN DYSINGER,  
14 WARD PEDLEY AND RUTH ANN MASON ALL RESPONDED AYE.)

15 CHAIRMAN: All opposed.

16 (BOARD MEMBERS FATHER LARRY HOSTETTER AND CLAY  
17 TAYLOR RESPONDED NAY.)

18 CHAIRMAN: Four to two.

19 Any other business at this time?

20 MR. NOFFSINGER: No, sir.

21 CHAIRMAN: Entertain one final motion.

22 MR. WARREN: Motion to adjourn.

23 MR. DYSINGER: Second.

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

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1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: We are adjourned.

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1 STATE OF KENTUCKY)

)SS: REPORTER'S CERTIFICATE

2 COUNTY OF DAVIESS )

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and  
4 for the State of Kentucky at Large, do hereby certify  
5 that the foregoing Owensboro Metropolitan Board of  
6 Adjustment meeting was held at the time and place as  
7 stated in the caption to the foregoing proceedings;  
8 that each person commenting on issues under discussion  
9 were duly sworn before testifying; that the Board  
10 members present were as stated in the caption; that  
11 said proceedings were taken by me in stenotype and  
12 electronically recorded and was thereafter, by me,  
13 accurately and correctly transcribed into the  
14 foregoing 63 typewritten pages; and that no signature  
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the  
17 30th day of April, 2010.

18

19

\_\_\_\_\_

20

LYNNETTE KOLLER FUCHS  
OHIO VALLEY REPORTING SERVICES  
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22

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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