

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 JANUARY 6, 2011

3 The Owensboro Metropolitan Board of Adjustment
4 met in regular session at 5:30 p.m. on Thursday,
5 January 6, 2011, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

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

16 * * * * *

17 CHAIRMAN: Let me call the Owensboro
18 Metropolitan Board of Adjustment meeting to order. We
19 start our program each evening with a prayer and
20 pledge of allegiance. We invite you to join us at
21 this time.

22 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

23 CHAIRMAN: I want to vary just a little bit
24 from the agenda and ask Mr. Clay Taylor to come
25 forward, please, and get Mr. Noffsinger to make a
presentation please, sir.

(PRESENTATION TO CLAY TAYLOR.)

CHAIRMAN: Next item I'll turn the floor over

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1 to Madison to handle our elections at this time,
2 please.

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

4 Every January we traditionally have the
5 election of officers for the Owensboro Metropolitan
6 Board of Adjustment. We'll be electing three officers
7 today; Chair, Vice-Chair and Secretary.

8 I'll open it up for nominations for the role
9 of Chair for 2011.

10 MR. PEDLEY: I nominate Audie Pantle.

11 MS. MASON: Second.

12 MR. SILVERT: I have nomination and a second.

13 Are there any other nominations?

14 (NO RESPONSE)

15 MR. SILVERT: Is there a motion that the
16 nomination cease?

17 MR. WARREN: Motion for the nomination to
18 cease.

19 MR. DYSINGER: Second.

20 MR. SILVERT: A motion and a second. All in
21 favor that the nomination cease say aye.

22 (BOARD MEMBERS MARTY WARREN, SEAN DYSINGER,
23 WARD PEDLEY, RUTH ANN MASON AND FATHER LARRY HOSTETTER
24 RESPONDED AYE.)

25 MR. SILVERT: The nomination is for Mr. Audie

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1 Pantle. Everyone who is in favor of Audie Pantle
2 remaining as Chair for 2011 signify by raising your
3 hand and say aye.

4 (BOARD MEMBERS MARTY WARREN, SEAN DYSINGER,
5 WARD PEDLEY, RUTH ANN MASON AND FATHER LARRY HOSTETTER
6 RESPONDED AYE.)

7 MR. SILVERT: Thank you, Mr. Chair.

8 Next is for the office of Vice-Chair. Do I
9 hear any nominations for the office of Vice-Chair?

10 MS. MASON: I nominate Ward Pedley for
11 Vice-Chair.

12 MR. WARREN: Second.

13 CHAIRMAN: Mr. Silvert, I move that nomination
14 cease and that he be elected by acclamation.

15 MR. WARREN: Second.

16 MR. SILVERT: All opposed?

17 (NO RESPONSE)

18 MR. SILVERT: All in favor of the motion that
19 nomination cease and that Ward Pedley be elected as
20 Vice-Chair signify by saying aye.

21 (BOARD MEMBERS MARTY WARREN, SEAN DYSINGER,
22 C.A. PANTLE, RUTH ANN MASON AND FATHER LARRY HOSTETTER
23 RESPONDED AYE.)

24 MR. SILVERT: Congratulations, Mr. Pedley.

25 Finally the office of Secretary. Are there

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1 nominations for the office of Secretary?

2 MR. DYSINGER: I nominate Ruth Ann Mason as
3 Secretary.

4 MR. WARREN: And I'll second that.

5 MR. SILVERT: There was a nomination and a
6 second.

7 CHAIRMAN: Mr. Silvert, I move that nomination
8 cease and she be elected by acclamation.

9 MR. DYSINGER: Second.

10 MR. SILVERT: We have a motion that the
11 nomination cease and a second. All in favor of the
12 motion signify by saying aye.

13 (BOARD MEMBERS MARTY WARREN, SEAN DYSINGER,
14 WARD PEDLEY, C.A. PANTLE AND FATHER LARRY HOSTETTER
15 RESPONDED AYE.)

16 MR. SILVERT: Congratulations, Mrs. Mason.

17 I'll turn it back over to you, Mr. Chairman.

18 CHAIRMAN: Thank you. I appreciate
19 re-election and hopefully I can do the job that needs
20 to be done.

21 With that, again, I want to welcome each one
22 of you to our meeting this evening. If you have any
23 comments, please come to one of the podiums. State
24 your name and be sworn in so we'll have a permanent
25 record if some problems develop or something like

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1 that.

2 Again, welcome to have you with us and good to
3 have you with us evening.

4 First item is to consider the minutes of our
5 December 2nd meeting. They're on record in the
6 office. There's no problems with it I don't think.
7 Hearing none entertain a motion to dispose of the
8 minutes.

9 MR. PEDLEY: Motion for approval.

10 MS. MASON: Second.

11 CHAIRMAN: A motion has been made and a second
12 for approval of the minutes. All in favor raise your
13 right hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries.

16 Next item, please.

17 -----

18 VARIANCE

19 ITEM 2

20 9924 Delaware Ferry Lane, zone A-U

21 Consider a request for a Variance in order to reduce
22 the street yard building setback line from 45 feet from the centerline of
23 the road, as approved by
24 Variance dated July 1, 2010, to 40 feet from the centerline of the road.

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

Applicant: Susan L. Calhoun

MR. SILVERT: State your name, please.

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1 MS. EVANS: Melissa Evans.

2 (MELISSA EVANS SWORN BY ATTORNEY.)

3 MS. EVANS: The subject property is a corner
4 lot at the intersection of Delaware Ferry Lane and
5 Highway 258. This Variance is to reduce the street
6 yard building setback line along Delaware Ferry Lane
7 from 45 feet from the centerline of the road as
8 approved by Variance dated July 1, 2010, to 40 feet
9 from the centerline of the road or 10 feet from the
10 property line.

11 The previous Variance was granted to allow the
12 applicant to build the then proposed structure out of
13 the flood plain and the special circumstances of the
14 topography and flood area were considered at that
15 time.

16 Since the previous Variance was approved in
17 July of 2010, the applicant has changed the size and
18 configuration of the structure, making it wider, and
19 also found that the existing septic system would be
20 located under a corner of the new structure.

21 The applicant is requesting an additional
22 Variance in order to avoid costly excavation and fill
23 in the area below the flood plain and the cost of
24 relocating the existing septic system to accommodate
25 the newly proposed structure.

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1 The newly proposed structure could be built
2 meeting the approved setback of 45 feet from the
3 centerline of the road if the septic system was moved.
4 There is no evidence from the Health Department that
5 prohibits the septic system from being located
6 somewhere else on the property.

7 Additionally, ten feet from the property line
8 on any side street is the minimum distance allowed by
9 the zoning ordinance for a structure to be built. The
10 10 foot street yard setback is reserved for
11 redeveloping properties within existing neighborhoods
12 using setback averaging or in planned residential
13 developments where setbacks are flexible. Both
14 situations are in more densely populated areas with
15 typically lower traffic speeds than a rural county
16 road without curb and gutter. Allowing this structure
17 to be located only ten feet from the property line on
18 this rural county road could cause safety concerns
19 with vehicles more likely to veer off the road.

20 Granting this Variance will adversely affect
21 the public safety by allowing this structure to be so
22 close to a rural county road. It will allow an
23 unreasonable circumvention of the requirements of the
24 zoning regulations because a variance has already been
25 granted for this property allowing the originally

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1 proposed structure to be built outside of the flood
2 plain. The newly proposed house could fit in the
3 allowed area if the septic system was moved.

4 Staff recommends denial and we would like to
5 enter the Staff Report into the record as Exhibit A.

6 CHAIRMAN: Is anyone wishing to speak against
7 this item?

8 (NO RESPONSE)

9 CHAIRMAN: Is there any comments in the
10 office?

11 MR. NOFFSINGER: No, sir.

12 CHAIRMAN: Is the applicant here and you want
13 to come forward and state your case?

14 MR. SILVERT: Would you state your name,
15 please.

16 MR. BRUCE: Mike Bruce.

17 (MIKE BRUCE SWORN BY ATTORNEY.)

18 MR. BRUCE: The ten foot setback is common for
19 side yards. The comment about the rural road, this is
20 a dead end road with only a couple of properties past
21 it. It ends up at the Green River. We provided some
22 pictures of the surrounding area. There's almost no
23 traffic on this road because it dead ends and there's
24 only one other house past. Well, one other trailer
25 that is residential past this property.

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1 The county engineer when we first started
2 working on this didn't have any concerns about the
3 traffic or any plans to upgrade the highway. So we
4 figured this is pretty low volume and really not much
5 of an impact to the setback.

6 CHAIRMAN: Staff have any comments at this
7 time?

8 MR. NOFFSINGER: No, sir.

9 MS. EVANS: I would like to add that the
10 application did say that there were pictures attached,
11 and there were no pictures attached to the application
12 that was received in the office. We called JDQ to
13 request those photos, if there were some, and there
14 were never any brought down to the office. That's why
15 you don't have them in your packets.

16 CHAIRMAN: Any other comments from the Staff?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: Does any board member have any
19 questions of the applicant at this time?

20 MR. BRUCE: I have the pictures here.

21 MR. DYSINGER: Mr. Chairman, I would like to
22 see the photos.

23 MR. SILVERT: Would it be acceptable to you
24 that we enter those into evidence and give them to our
25 court reporter?

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1 MR. BRUCE: Certainly.

2 MR. SILVERT: Thank you.

3 CHAIRMAN: I'm going to number these 1 through
4 4, if you have any comments on each one.

5 Any comments on these pictures you want to
6 state or tell us, 1, 2, 3, 4?

7 MR. BRUCE: No. They describe the area.

8 CHAIRMAN: I didn't know if you wanted to make
9 a comment on any of them, sir.

10 Any board members have any comments or
11 questions of the applicant at this time?

12 MR. DYSINGER: I would ask the Staff, they may
13 have known beforehand. I'm sure they did. Does it
14 change their opinion of the safety consideration at
15 all with the knowledge it's a dead end street?

16 MS. EVANS: No. We drove out to the site and
17 looked at the site and it does not change our opinion.
18 We feel that even though it is a dead end down there
19 it's still a very narrow road and there are no curb
20 and gutters to protect anything from veering off the
21 road and that would be pretty close to the road where
22 they want to build the house.

23 MR. DYSINGER: Thank you, Mr. Chairman.

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

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1 (NO RESPONSE)

2 CHAIRMAN: Anybody else have any other
3 comments that they have?

4 (NO RESPONSE)

5 CHAIRMAN: Staff have anything else to add?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: Hearing no other comment from
8 anyone or questions, either one of you have any
9 comments?

10 (NO RESPONSE)

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

13 MS. MASON: Mr. Chairman, I move to grant the
14 Variance and my findings are it will not adversely
15 affect the public health, safety or welfare because
16 it's on a road with limited traffic or not much
17 traffic at all, it's in a rural area; and it will not
18 alter the essential character of the general vicinity,
19 as it will not be noticeable due to the rural nature
20 of the general vicinity; and it will not cause a
21 hazard or a nuisance to the public because the small
22 distance will not affect travel on this rural dead end
23 road; and it will not allow an unreasonable
24 circumvention of the requirements of the zoning
25 because the variances is for only five feet.

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1 CHAIRMAN: We have a motion. Is there a
2 second?

3 MR. WARREN: Second.

4 CHAIRMAN: A motion has been made and a
5 second. Any other comments or questions from the
6 board?

7 (NO RESPONSE)

8 CHAIRMAN: Staff have any other comments?

9 MR. NOFFSINGER: No, sir.

10 CHAIRMAN: Hearing none all in favor of the
11 motion raise your right hand.

12 (BOARD MEMBERS MARTY WARREN, WARD PEDLEY, RUTH
13 ANN MASON AND FATHER LARRY HOSTETTER RESPONDED AYE.)

14 CHAIRMAN: All opposed.

15 (BOARD MEMBER SEAN DYSINGER RESPONDED NAY.)

16 CHAIRMAN: Motion carries.

17 Next item, please.

18 ITEM 3

19 6045 Highway 54, zoned B-4, I-1

20 Consider request for a Variance in order to eliminate
21 the required 6 foot high solid fencing around an outdoor storage area, to
22 allow the existing Highway 54 entrance at the intersection of Winkler
23 Road and Highway 54 to be located 0 feet from the intersection right-of-
24 way rather than 50 feet as required and to waive the screening element
25 from the intersection of Highway 54 and Winkler Road to the east 188
linear feet.

24 Reference: Zoning Ordinance, Article 8, 13 and 17, Section 8.5.3(1),
13.22, 17.312, Table 17.312(5a)

25 Applicant: Bluegrass Truck, Trailer & Equipment, LLC; Carl & Linda
Boarman

1 MR. SILVERT: Would you state your name,
2 please.

3 MS. STONE: Becky Stone.

4 (BECKY STONE SWORN BY ATTORNEY.)

5 MS. STONE: There are three separate variances
6 that are being considered for this one site. So what
7 I will do is just kind of give a brief overview of the
8 site and then we'll take the variances one at a time.
9 So we can do a Staff Report per variance and then the
10 applicant will have an opportunity to present their
11 evidence and we'll take those one at a time.

12 This property has been, we've been trying to
13 accomplish zoning ordinance compliance on this
14 property for several years.

15 Prior to 2009 the property was being developed
16 with a number of businesses. Some of those businesses
17 were being located in zones that were not appropriate
18 zones.

19 Under the advice of the Staff, the applicants
20 submitted a zoning change to the Planning Commission.
21 There is now split zoning on the property with B-4
22 zoning and light industrial zoning to allow those
23 business occupations to occur on that site.

24 With numerous businesses they were also
25 required to submit and have approved a final

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1 development plan.

2 It went before the Owensboro Metropolitan
3 Planning Commission in January of 2009 and at that
4 time, as is allowed in zoning ordinance, several
5 variances were requested. You can request a variance
6 in conjunction with the zoning change. The Owensboro
7 Metropolitan Planning Commission heard and acted on
8 those variances that were requested.

9 There were some approved and some were denied.

10 There were various site development
11 improvements that we required on the final development
12 plan.

13 In January of 2009, the final development plan
14 was approved. Those site development requirements
15 were noted on that development plan and they had their
16 zoning approval and their final development plan
17 approval.

18 Since that time the property has not complied
19 with those requirements of the final development plan
20 and the zoning ordinance. A violation notice was
21 issued. The property is still not in compliance and
22 there is court action regarding that noncompliance.

23 At this time the applicants are again
24 requesting some variances from the Board of
25 Adjustment. They're asking for three separate

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1 variances from those requirements.

2 So the first one is to waive the 6 foot high
3 solid fencing around an outdoor storage area.

4 One of the pieces of evidence we would like to
5 submit is that there have been other properties in
6 that vicinity that have had to comply with the zoning
7 ordinance. Those are listed in your Staff Report.

8 We have not had any complete waiver of
9 screening on outdoor storage in Daviess County or the
10 City of Owensboro since this ordinance came into
11 affect. There have been some limited waivers, but
12 only where topography or natural elements provided the
13 intent of that ordinance and provided that screening
14 element.

15 There are no topographical or lot constraint
16 issues with the property to prevent the screening from
17 being installed as required where that outdoor storage
18 is located on the site.

19 While the intent of the ordinance includes the
20 esthetic screening of stored materials from public
21 view, it may also act as a safety feature to prevent
22 hazard or nuisance to the public. Screening provides
23 an additional safety factor for material storage,
24 particularly during periods when unattended by the
25 owners or operators of the business.

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1 Additionally, KRS 100.243 Section 2 says that
2 if the actions taken by the applicants are willful
3 violations of the zoning ordinance, that the Board
4 should deny that application.

5 The Staff's opinion is that the applicant did
6 take willful actions in violation of the zoning
7 regulation. The variance requested for the waiver of
8 this screening requirement has been heard once already
9 by the Owensboro Metropolitan Planning Commission. It
10 was denied. They did have a final development plan
11 approved with that screening requirement shown on the
12 development plan and they have made the decision not
13 to install that screening.

14 MR. NOFFSINGER: Excuse me, Ms. Stone. You
15 will need to read the Staff Report into the record in
16 its entirety.

17 MS. STONE: The subject property was
18 recommended for rezoning from A-U Urban Agriculture to
19 B-4 General Business and I-1 Light Industrial with the
20 zoning change final on February 8, 2009. This portion
21 of the property that contains the outdoor storage area
22 is zoned I-1 Light Industrial. The applicants applied
23 for a variance to waive the required six foot high
24 screening on January 8, 2009, in conjunction with the
25 zoning change. The OMPC denied the variance request

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1 to eliminate the required screening. A final
2 development plan was approved at the same OMPC
3 meeting. Changes were needed on the plan to record
4 the action of the OMPC on several requested variances
5 and the OMPC approved the development plan to be
6 signed by the Executive Director provided the changes
7 were appropriately noted on the plat. The final
8 development plan was approved on January 16, 2009, and
9 was in compliance with the zoning ordinance and
10 variances as approved by the OMPC.

11 Other properties in this vicinity have been
12 brought into conformance with the requirements of the
13 zoning ordinance upon redevelopment and there is no
14 special circumstance to allow the subject property to
15 continue in violation of the zoning ordinance
16 requirements.

17 6192, 6200 Highway 54 was rezoned in May of
18 2008. As a result of that zoning change, a final
19 development plan was required. Vehicular use areas
20 had to be paved, appropriate screening in compliance
21 with the zoning ordinance and access in compliance
22 with the access standards was required.

23 6028 Highway 54 was rezoned in July of 2001.
24 That zoning change required that landscaping and land
25 use buffers be installed and provided that no access

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1 be provided to Highway 54, a major roadway. The
2 property was in use as a post office and the
3 applicants, Joseph and Linda Boarman, were proposing
4 to develop the back of the property as a car lot. No
5 site plan for the car lot development was proposed and
6 the zoning requirements were not implemented. If
7 there is a proposal for the lot to develop at a future
8 date, the landscaping and land use buffers and the
9 access requirements will be applied.

10 In December of 1999, 6235 changed occupancy of
11 an existing building and all vehicular use areas were
12 required to be paved with outdoor storage required to
13 be screened with minimum six foot high solid wall or
14 fence.

15 In 1997 there was a condition on property
16 located in the 5500 block of Highway 54 being rezoned
17 to B-4. That there would be no direct access onto
18 Highway 54 or Old Highway 54. This property was
19 consolidated to property to the east located at 5600
20 Highway 54 and no additional access was permitted
21 other than the access point that existed on 5600 to
22 Old Highway 54. It currently complies with the access
23 requirements.

24 Since the zoning change in 2008 of the subject
25 property and the denial of the variance request, the

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1 site has continued to operate as a gravel storage yard
2 for Bluegrass Natural Stone. The latest zoning
3 violation regarding the subject property was sent in
4 August 2010 and has resulted in action in circuit
5 court because the violation has not been corrected.

6 Screening of outdoor storage yards has not
7 been waived in its entirety on any property in Daviess
8 County since this screening requirement was adopted in
9 the zoning ordinance. Partial waivers have occurred
10 only where topographical or other natural elements
11 have effectively provided the screening of the outdoor
12 storage from public view. Approval of this variance
13 request would be an unreasonable circumvention of the
14 adopted zoning ordinance requirements as this
15 requirement applies to all outdoor storage in Daviess
16 County.

17 The approval of this variance could alter the
18 essential character of the vicinity as there are no
19 other storage yards in the immediate vicinity and
20 approval of this variance will set a precedent for
21 future storage yards in the area.

22 There are no topographical or lot constraint
23 issues with the property to prevent the screening from
24 being installed as required. While the intent of the
25 ordinance includes the aesthetic screening of stored

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1 materials from public view, it may also act as a
2 safety feature to prevent hazard or nuisance to the
3 public. Outdoor storage such as pallets of stone may
4 be considered an "attractive nuisance." Screening
5 provides an additional safety factor for the material
6 stored, particularly during periods when unattended by
7 the owners or operators of this business.

8 The subject property can be used as proposed
9 under the requirements of the zoning ordinance and the
10 approved final development plan.

11 Are the circumstances from which relief is
12 sought a result of the applicant's willful actions
13 taken after adoption of the zoning regulation?

14 It is the Staff's opinion that the applicant
15 took willful actions in violation of the zoning
16 regulation. The Variance requested for the waiver of
17 this screening requirement was denied by the OMPC.
18 The applicants did not appeal the OMPC decision. The
19 applicants presented and signed the final development
20 plan in accordance with zoning regulations and failed
21 to implement the zoning requirement to screen the
22 outdoor storage area. The applicants decided to
23 ignore the approved development plan, the regulations
24 of the zoning ordinance, and the notice of violation
25 sent to them regarding this item resulting in pending

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1 court action.

2 The Findings would be that it will adversely
3 affect the public health, safety or welfare by
4 allowing unscreened outdoor storage that is
5 aesthetically unattractive and may pose a hazard or
6 nuisance to the public during periods where the
7 owners/operators are not present on the site.

8 It will alter the essential character of the
9 general vicinity by allowing unscreened storage areas
10 in an area where there is no outdoor storage in the
11 immediate vicinity and may set a precedent for
12 unscreened outdoor storage for future proposed
13 activities in the area.

14 It may cause a hazard or a nuisance to the
15 public during periods where owners/operators are not
16 present on the site to police potential trespassing.

17 It will allow an unreasonable circumvention of
18 the requirements of the zoning regulations because the
19 screening of outdoor storage has been consistently
20 applied in Daviess County with waivers only considered
21 where topography or natural elements provide
22 comparable screening to the six foot high element.

23 The Staff's recommendation is for denial.

24 CHAIRMAN: Thank you.

25 The first item we're going to take into

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1 consideration is the 6 foot solid fence around the
2 outdoor storage area.

3 Is there anyone with information wishing to
4 speak in opposition to this?

5 (NO RESPONSE)

6 CHAIRMAN: Applicant have any comments at this
7 time?

8 MR. SULLIVAN: Opposition to?

9 CHAIRMAN: I'm asking: Is there any
10 opposition. Now to the applicant if they have
11 anything to add.

12 MR. SULLIVAN: My name is Ron Sullivan. I'm
13 an attorney. I represent the applicants.

14 I do not wish to speak in opposition to it.

15 CHAIRMAN: Excuse me, Mr. Sullivan. I asked
16 was anyone in opposition for information.

17 (NO RESPONSE)

18 CHAIRMAN: Now we'll have your presentation at
19 this time.

20 MR. NOFFSINGER: There may be a gentleman
21 right here that wishes to speak. I don't know what
22 order you want to take that in.

23 CHAIRMAN: Sir, let me take the applicant
24 first and then we'll hear from you. I just want
25 information if there was someone objecting.

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1 Mr. Sullivan, present your case.

2 MR. SULLIVAN: Thank you.

3 The current matter under consideration is to
4 waive the 6 foot fence around the outdoor storage
5 area.

6 What the applicants are looking hopefully to
7 accomplish is to, based upon topography, to relocate
8 the outdoor storage of their stone to part of their
9 real estate that is physically lower by several feet
10 than where it is presently being stored.

11 The development plan showed the outdoor
12 storage area to be located basically on the front of
13 the property adjacent to the building on the adjacent
14 lot. Realizing the opposition of the Staff to the
15 granting of a variance to do away with the 6 foot
16 fence that would surround the stone storage, the
17 objective of the parties, of the applicants is to move
18 the storage area to the back of the property, which is
19 several feet lower in elevation, and store the stone
20 there where the topography will prevent a view of the
21 stored stone from the traffic on Highway 54.

22 If you look at the development plan which was
23 approved, one will see that the elevations are to 424
24 to 430 feet on the front of the property and they are
25 418 to 413 feet from the back of the property. That's

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1 shown on the approved development plan.

2 It's the desire of the applicant to have a
3 waiver of areas that is of the 6 foot fencing
4 requirement because the topography will prevent a view
5 of the storage area, if the storage area is removed to
6 the back of the lot, which is Number 6071, isn't it?
7 The easternmost of the property. So that's where they
8 are in that regard.

9 They would like a variance based on the fact
10 that they will have an outdoor storage area which is
11 not viewable from vehicles traveling on 54 because of
12 the topography. That will require a development plan
13 change, which will have to be approved, that will
14 implement this variance.

15 Now, there are photographs. There are some
16 photographs of the property. They really don't show
17 the elevation except perhaps one of these photographs
18 that I'll put in evidence and we'll mark it as Exhibit
19 1.

20 The Exhibit 1 photograph that I would like to
21 show you, it shows the way the terrain, shows the way
22 the terrain drops to the low elevation to the back of
23 the property.

24 What we want this Board of Adjustment to do
25 hopefully is to grant the Variance on the condition

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1 that the outdoor storage area is not viewable from the
2 traveling public on Highway 54 by relocation of the
3 outdoor storage area for the stone to the lower
4 elevation at the rear of the lot.

5 Concerning some of the observations, some of
6 the comments of Staff. My clients are small business
7 people who are trying to do something to increase the
8 economic development of our county during a time when
9 we have all been suffering with what happened in 2008,
10 immediately before they were at the OMPC two years
11 ago.

12 Since that time, as you know, the economic
13 situation of this county has been bad and they have
14 not had an opportunity to get things put together and
15 to accomplish the directives of the development plan;
16 although they have been working on it.

17 During all of that time, they've been in
18 communication with the county fathers; particularly
19 the county judge executive, in an attempt to comply
20 with the law, in an attempt to get this thing worked
21 out. They actually had specific directions from the
22 county judge executive to hold off on doing certain
23 things because he thought the matter would be worked
24 out. It didn't get worked out.

25 You talk about willful. It is not a matter of

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1 willful. It's a matter of a couple of young people
2 trying to get something going in our county who have
3 been unable to get it put together because of the
4 financial constraints created by the development plan
5 and by the zoning ordinance requirements that they
6 have been trying to comply with, but have not yet been
7 able to comply with.

8 I would like to ask for an opportunity for
9 Mrs. Boarman to address what they have been trying to
10 do and why they have not complied with the previous
11 requirements.

12 Now, as far as the litigation that's ongoing,
13 there is some litigation. We have answered that
14 litigation. We know we're going to have to bite the
15 bullet and face up to that. Some of the violations
16 that are cited in the litigation have been remedied.
17 These small business people have been working on it.
18 They have put in screening. They have closed Winkler
19 Road entrance as was one of the requirements. They
20 are putting in pavement for parking and for vehicular
21 use on the property. They've done many things and
22 expended many dollars in their attempt to get right
23 with the planning authorities of this county. They
24 are going to continue to do that until they get this
25 thing worked out. They've got to get it worked out.

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1 Either that or throw up their hands and let the thing
2 go to foreclosure, which hopefully, we hope does not
3 happen.

4 CHAIRMAN: Mr. Sullivan, let me interrupt you.
5 When was this picture made?

6 MR. SULLIVAN: Today, I think, Mr. Chairman.
7 The elevations are clearly shown on the
8 development plan, as I indicated. The elevations in
9 the front are 424 to 430 feet, and in the back they're
10 418 to 413 feet, and then they go on down to a ditch
11 of 409 feet, 407 feet. So there's plenty of room for
12 the outdoor storage area to be put away from view of
13 the traveling public by the topography.

14 It was mentioned by Staff that for tographical
15 reasons in the past they have been variances granted.
16 This is an instance where there should be a variance
17 granted to eliminate the six foot fence around the
18 outdoor storage area, on the condition that the
19 outdoor storage area is located in an area that the
20 terrain of the property, the elevation of the property
21 will prevent the view of the storage stone from the
22 traveling people traveling on the highway. This board
23 has the power to grant variances with the conditions.

24 I would like for Mrs. Boarman to address the
25 matter from her standpoint as to what they've been

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1 trying to do.

2 MR. SILVERT: Could you state your name,
3 please.

4 MRS. BOARMAN: Linda Boarman.

5 (LINDA BOARMAN SWORN BY ATTORNEY.)

6 MRS. BOARMAN: This is the second time I've
7 addressed the board. I'm a little more nervous this
8 time.

9 As was said, this has been going on for about,
10 I don't know, three years. It's been a few years. I
11 just wanted to have an opportunity to let you know how
12 we ended up here and how we ended up being sued by
13 Planning & Zoning.

14 It makes us sound very criminal when you hear
15 the description.

16 My husband and I bought this property several
17 years ago at the courthouse steps. At that time our
18 property was pretty run down. The prior owners had
19 several businesses at that location. It even had a
20 residence upstairs. It had Harper Trailer Sales,
21 Harper Amusements, a residences, Carousel Gift Shop,
22 four things. A tax shop, five things. Actually there
23 was five or six businesses were operating out of this
24 location for several years before we bought the
25 property.

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1 We bought the property and immediately put our
2 car lot, our little car lot because my husband and I
3 both have full-time careers. He's a full-time farmer
4 and I am a nurse practitioner. We both have full-time
5 jobs. This business was a side business that we were
6 hoping to build up really for our kids.

7 So a small car lot. An individual out of
8 Madisonville was wanting to open up a stone yard in
9 the Owensboro area. So we ended up consigning some
10 stone, never thinking that we were doing anything
11 against the law.

12 So we opened up two businesses. At the same
13 time Integrity Nursery went in the stone business the
14 same time that we did. Both of us brought stone to
15 Owensboro. They have a similar display area that has
16 not been cited.

17 We immediately rented out to Estes Electronic.
18 So we had three businesses right up front. Then a few
19 months later Jeff Estes's wife opened up a gift shop.
20 So we had four businesses there. Never realizing that
21 we were doing anything against the law, as you can
22 imagine. We bought it from -- the prior owners had
23 more businesses than we and never cited for years.

24 Our property, the building was built back in
25 the 1970s. Crabtree Equipment built it as a big

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1 tractor sales service. It's always had a lot of
2 things going on there.

3 Anyway, so we operated fine for several years
4 No citations. Then Estes Electronics moved out. It
5 was just us, our two businesses. Then an individual
6 approached us who had rented the property from the
7 prior owner to open up a paint and body shop. So we
8 started renting out to them in the back of the
9 building.

10 The way we ended up getting under the wrath of
11 Planning & Zoning was that we were initially cited
12 because the people who owned the body shop were
13 painting without a paint booth. So that's how this
14 all started. We were told that a competitor paint
15 shop called and reported them for painting without a
16 paint booth.

17 Those individuals bought their paint booth,
18 but it went on nine months. It's just like it
19 snowballed into this huge thing. Because once they
20 were cited and we got Planning & Zoning onto our
21 property, then it was multiple businesses, you need it
22 rezoned. It went on and on until it became this
23 monstrosity or big snowball. We ended up having to do
24 a development plan, which is very expensive. I just
25 can't tell you. It's like over \$100,000 worth of

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1 things that are required from this development plan.

2 It's probably close to \$15,000 for us just to
3 come here to see you folks. In attorneys fees, and
4 then the surveyor, and then the fees that we have to
5 pay to come to these meetings. That's before we even
6 put concrete and shrubs and dig up things.

7 Anyway, in the process the guys who had this
8 paint and body shop were never allowed to have a
9 permit to put in their paint booth. They bought it.
10 It was in a crate for months and months because there
11 were so many issues with our place. Those guys ended
12 up leaving. So we lose our renters.

13 Then because of the economy -- we had a
14 development plan where we had another business was
15 going to rent from the back. He couldn't make it for
16 various reasons, economic. You know, the economy as
17 well as his health. So we had lost all of our
18 renters. So now we're down to just us there.

19 The stone yard, while we're talking about this
20 fence. We did come before the board and ask not to
21 have the 6 foot tall fence around our Bluegrass
22 Natural Stone. It's a decision made by Planning &
23 Zoning that our stone is considered outdoor storage
24 versus display. That was a decision that they made.

25 For us as just a small business owner, it's

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1 hard for us to comprehend that the other competitor is
2 allowed to have stone on pallets, on gravel, inside
3 the city limits with no problem, but yet our business,
4 which was initially cited for a paint booth that those
5 people are already gone. We have to put a 6 foot tall
6 fence around the stone and our argument has always
7 been that it's not brick. It's stone. It's what you
8 put on your patios, what you put on your fireplace.
9 People come in and they don't just say, I want some
10 brown rock to put on my patio. It's just how people
11 are. They like to choose. It's natural. Every
12 pallet is different. Some people pick from different
13 pallets.

14 We have support from our neighbors. At that
15 meeting, those on the board it was my impression at
16 that meeting that they had sympathy for our argument,
17 but the concern was if you allow us to put a fence
18 around a light industrial zoning that maybe my husband
19 and I, if we die and someone else bought the property
20 and had a junk yard, if that were granted that there
21 was no fence, then maybe the next people wouldn't have
22 to put a fence either.

23 After that meeting it was understood that we
24 could possibly go before your board after we were
25 cited and ask for your decision that it actually an

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1 outdoor display rather than outdoor storage.

2 Well, after the meeting that we went to, we
3 thought it was over. Then within the week after that
4 different individuals from Planning & Zoning came.

5 I can't emphasize how hard this has been on
6 us. I'm not talking \$10,000. We're talking over
7 \$100,000, and we've already lost our renters. It's
8 like where does it end?

9 After that meeting, I was just so frustrated
10 because someone else from Planning & Zoning comes and
11 says we have a storage building that's 6 inches off of
12 our property line down a bank to the street where we
13 mow. Like nitpicking.

14 Then someone else came and said our back
15 building needs a bathroom. Well, with a bathroom we
16 need an extra septic system; although we already had
17 two bathrooms in our front building. It's like it
18 never ends.

19 Then the electrical inspector comes. Then he
20 nitpicks.

21 The picture that you have of the slope that we
22 have already entered as an exhibit, it shows the
23 sloped grass that's been mowed. Well, someone from
24 Planning & Zoning sent the county engineer out because
25 it was all rough. We had filled it in. We were just

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1 hauling in dirt so we could mow it. They were getting
2 onto us about that. Had the county engineer there.
3 We just felt like, good grief. When is it ever going
4 to end? I'm crying here, but I'm telling it's
5 horrible. No business should have to go through what
6 we've had to go through.

7 We were just so frustrated. We didn't know
8 who to go to. Someone mentioned Reid Haire. Go to
9 him. So we go and Mr. Haire was so gracious. He
10 immediately just -- I had just been to Planning &
11 Zoning office just banging my head against the wall
12 for months and months.

13 It's like you have to do a development plan.
14 You have to do this and do that. All these laws.
15 You're breaking the law. You have to do all of these.
16 Even though when you drive from Planning & Zoning
17 office to our property you drive down Leitchfield Road
18 and there are dozens of businesses that have stone
19 right on the road. You have somebody selling
20 buildings on the road and no fence around it.
21 Somebody else that has trucks and trailers everywhere.
22 No solid fence around it. I mean you can't help but
23 feel really picked on.

24 Anyway, Mr. Haire listened to us. I just felt
25 so relieved that he was going to give us some relief.

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1 He actually wrote a letter saying, we didn't have to
2 do what they said. We would deal with fiscal court.
3 Fiscal court said we didn't have to do that. So
4 that's why we didn't do it. We were so relieved to
5 have what we thought was help.

6 Well, come to find out we have learned that
7 fiscal court has no legal say so on it. They are
8 wonderful. He was wonderful to listen to us and he
9 had his heart in it, but we ended up now because we're
10 so criminal we're now getting sued on top of
11 everything else.

12 So I am begging you that anything our attorney
13 ask they're really small. We still have a lot of
14 other things that we're doing. I'm just begging you
15 to have a little mercy on a small business and help us
16 get up going again. That's it.

17 CHAIRMAN: Any board members have any
18 questions of the applicant?

19 MR. DYSINGER: Mr. Chairman.

20 You referenced a letter from the judge
21 executive. Was that put into evidence?

22 MR. SULLIVAN: I have a letter dated September
23 15, 2010, to Gary Noffsinger, from Judge Haire, which
24 I'll have marked as Exhibit 2. That's not the only
25 correspondence.

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1 MS. MASON: Can that be read into the record?

2 MR. NOFFSINGER: It can, but please know that
3 this case is under litigation. You have this letter,
4 but you also have my response to that letter and other
5 correspondence that you're not reading. Certainly it
6 can be read into the record, but there's other
7 evidence to be presented that would be a response to
8 Judge Haire.

9 MR. SULLIVAN: I think the question was could
10 it be read into the record. I think the answer is,
11 yes, correct?

12 MR. SILVERT: That's what he said.

13 MR. NOFFSINGER: That's what I said.

14 MR. SULLIVAN: Exhibit 3 is a May 1 letter
15 from Reid Haire to Gary Noffsinger concerning these
16 matters.

17 MR. NOFFSINGER: If we're going to read these
18 letters --

19 MR. SULLIVAN: It is in the record having been
20 filed. It's certainly not necessary that it be read
21 in the record. That's up to you. Otherwise, each
22 board member can look at it or copies could be made
23 and handed to each board member in order to facilitate
24 the time reading it.

25 The gist of the letters, the one letter says,

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1 one says, don't bother to do which.

2 MRS. BOARMAN: Everything we're asking for
3 tonight.

4 MR. SULLIVAN: Everything we're asking for
5 tonight Reid Haire said, don't do that. Essentially
6 we're going to work this out for you people so we get
7 you into business. That's the gist of the matter. It
8 takes all the willfulness right out of this thing.

9 These are people that kind of remind me of
10 that Gladiator that was buried up to his neck in the
11 field and all he had was his teeth to work with.
12 That's the way these people feel about their situation
13 with the OMPC because of the restrictions that have
14 been imposed.

15 I have a couple of other things I would like
16 to file in the record.

17 One is an Affidavit or a statement signed by
18 most of the neighbors to this property saying, we
19 don't want a fence out there. I ask that to be marked
20 as Exhibit 4. That was filed previously, two years
21 ago, in the other proceeding. At the same time one or
22 two of the members who signed this testified that they
23 thought it would interfere with their view. They
24 didn't want the neighborhood changed. They thought
25 what my our clients were doing was a great improvement

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1 to the neighborhood. They signed this petition, which
2 is Exhibit 4. I would ask that the members take a
3 look. Each page is the same. The only difference is
4 all of the signatures are on several pages.

5 MR. DYSINGER: Mr. Chairman, if I may while
6 we're all reviewing these.

7 My interest in these letters has no bearing on
8 any litigation that may be taking place. It does not
9 even have any bearing on to whether or not who has got
10 the authority to do what.

11 However, with this particular variance, the
12 first one we're looking at, the 6 foot screen, there
13 seems to be two issues. One of which is primary, and
14 that is willfulness.

15 If it was a willful violation, we are directed
16 by statute, we have no choice regardless of how
17 sympathetic we may be. That issue does seem -- these
18 letters do seem to apply there. I'm not saying
19 whether it does not. We're just all reviewing at this
20 point. I thought it might be helpful, Mr. Chair, if I
21 were to say a few words as to why I asked to them at
22 all.

23 CHAIRMAN: Appreciate it.

24 MR. SULLIVAN: Another thing that, and I don't
25 want to file. This is my only copy. I would like to

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1 show the development plan to confirm the elevations
2 that I mentioned. They're written right on here.

3 The property is described and the elevations
4 are shown. The front elevations are shown here and
5 these lines indicate the elevations, where they go
6 back to 412 feet back here and then 424 feet up in the
7 front.

8 FATHER HOSTETTER: Where is the proposed new
9 storage area?

10 MR. SULLIVAN: The new storage area will be
11 back here. The current storage area is here. That's
12 why the development plan would have to be changed.
13 The current storage is right smack dab in the middle
14 front and the proposed storage area would be back in
15 the lower elevation. Anyone care to see the
16 elevations?

17 MS. STONE: I just wanted to mention that
18 while topography is certainly an issue that can be
19 considered in alleviating the screening requirement,
20 we don't have a site plan that shows the boundary of
21 that screening. While a final development plan would
22 be required if the board decided to waive the
23 requirement if it were in that change in elevation,
24 you still don't know really what that boundary is and
25 I would suggest maybe that you would want to see the

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1 boundary of that prior to acting on the variance.

2 MR. SULLIVAN: Additionally, I would like to
3 point out that the property that we're dealing with
4 here is five miles outside of the belt line in rural
5 Daviess County. The situation that exists there is
6 one that has existed before, from before the time when
7 the zoning ordinance became applicable in Daviess
8 County which was around '77 or '78. It's almost a
9 situation of a grandfather situation here. That these
10 people should be allowed to operate on the property.
11 However, it does not qualify as a grandfather
12 situation, but the situation has been there for many,
13 many, many years.

14 Finally, I would like to say that the variance
15 will not adversely affect the public health, safety or
16 welfare that we've asked for. The variance will not
17 alter the essentially character of the general
18 vicinity. The variance will not cause a hazard or
19 nuisance to the public. They're simply trying to run
20 a business. It has not done so to this point. The
21 variance will not allow an unreasonable circumvention
22 of the requirements of the zoning ordinance. What we
23 submit that this Board of Adjustment should find with
24 respect to this variance, again, at a relocated area
25 on the property where the topography would prevent its

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1 visibility from traveling public on Highway 54.

2 CHAIRMAN: Mr. Sullivan, have you got a
3 diagram showing where the rock?

4 MR. SULLIVAN: Proposed. I have a photograph,
5 an aerial photograph of the area.

6 CHAIRMAN: Distance and everything listed?

7 MR. SULLIVAN: No. No, not as such, but we
8 have an aerial photograph we'd like to submit.

9 This is the property in the middle. On the
10 backside of the property and basically the property
11 lines are drawn in with a pen around the Boarman
12 property. In the back she has placed a rectangular
13 square and put stone. And that's where they would
14 like to have the stone located. I would like that to
15 be marked as Exhibit 5.

16 MR. NOFFSINGER: Mr. Chairman, the Staff is
17 not necessarily opposed to what Mr. Sullivan is
18 explaining; however, we do not have a site plan, a
19 detailed site plan that describes exactly what's going
20 to be done. We would recommend that a variance not be
21 considered or granted until such time as we have a
22 specific development plan revise that we could show
23 this board what they intend to do. That's what we've
24 wanted all along, is a detailed plan of what is
25 intended to be done and that that plan be met. At

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1 this point in time we do not have that.

2 Again, we're not necessarily opposed to what
3 Mr. Sullivan is proposing, but we want to know
4 definitely what is being proposed and it meets the
5 requirements.

6 MR. SULLIVAN: We understand that a
7 development plan has to be approved that implements
8 the variance. I'm trying to get the cart and the
9 horse set up here.

10 MR. NOFFSINGER: Exactly, Mr. Sullivan.
11 Realize we don't, Staff, we don't want to be in the
12 situation where we're having to deal with you and your
13 clients in terms of approving the development plan.
14 We want this board to see it and say, okay, this is
15 what we're approving this variance based upon. Not
16 what Mr. Noffsinger or Mrs. Stone is requiring. We
17 want it done before this board. Not before the
18 Planning Staff. Now, we will approve the development
19 plan, but we want to make sure that we know what
20 you're proposing and its in concrete and that's what
21 you intend to do.

22 MR. SULLIVAN: You're using a magic word, the
23 word "development plan" which to me means that
24 document which you ultimately approve.

25 MR. NOFFSINGER: Yes.

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1 MR. SULLIVAN: I think we're talking about a
2 plat that would be submitted with a variance
3 application.

4 MR. NOFFSINGER: You don't even have that.

5 MR. SULLIVAN: Not a development plan, but a
6 plat that would be submitted with the application that
7 would show what we're talking about.

8 MR. NOFFSINGER: That's fine, but you still
9 have to amend that development plan, if it's granted.

10 MR. SULLIVAN: If it's granted.

11 MR. NOFFSINGER: And that's fine.

12 MR. SULLIVAN: We can't get the development
13 plan until we get the variance, but we can submit a
14 map or plat that shows what variance we're seeking and
15 we have not done that.

16 MR. NOFFSINGER: Right. I agree.

17 MR. SULLIVAN: Now, can this board defer
18 ruling on this matter until that is submitted and take
19 it up at the next meeting?

20 MR. NOFFSINGER: At the next meeting I would
21 think so, yes.

22 MR. SULLIVAN: Because I think that we are
23 lacking in not having presented a map that shows you
24 where we're going to put that stone, where that stone,
25 outdoor storage area would be located within the

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1 elevations that would protect it from view of the
2 highway.

3 MR. NOFFSINGER: And then what that area is
4 going to be used for that's being used for storage
5 now.

6 MR. SULLIVAN: In that regard, we're proposing
7 agricultural sales use for that area. Either that or
8 just an open space. One or the other. It's not going
9 to be something we need to concrete or pave. That's
10 the point I'm getting at. We don't know if we're
11 going to be able to use that area that we're taking
12 the stone out of until we get another tenant or
13 something.

14 MR. NOFFSINGER: Which would require the
15 revised development plan if you make changes to that.

16 MR. SULLIVAN: Anything change, you know.

17 MR. DYSINGER: Mr. Chairman, for me the
18 primary issue was a question of willfulness. I think
19 the testimony we've heard here tonight cast at least
20 enough doubt on that issue that we can look beyond
21 that. We can proceed beyond that just a little bit.

22 It seems to me also that it's not unreasonable
23 to ask for a site development plan in advance of a
24 decision so we can make a decision.

25 I'm prepared to make a motion for postponement

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1 for 30 days.

2 Counsel, I'm not cutting you off or anything.

3 I just want to let everybody know that the
4 willfulness issue I think there's been enough doubt
5 cast on that with the testimony Mrs. Boarman gave.
6 There's been nothing to refute that testimony. Given
7 my knowledge of some of the players, I'm incline to
8 give it credence. That's where I'm at this moment,
9 Mr. Chairman.

10 MR. PEDLEY: Mr. Chairman, I have a couple of
11 questions for Staff.

12 CHAIRMAN: Okay.

13 MR. PEDLEY: This site plan that was
14 submitted, given to us in our packet, is that the
15 approved development plan by the Planning Commission?

16 MS. STONE: No. That was just a site plan
17 that they submitted with their variance application to
18 show the variance request that they --

19 MR. PEDLEY: This is totally inadequate for me
20 to make any kind of a decision. I would like to see
21 the approved development plan that was approved in
22 January of 2009. If they intend to amend another
23 development plan, I want to see it.

24 I drove by the site today and I drove by the
25 site yesterday. I can see from the road 90 percent of

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1 this site. I didn't get out of my truck. I would
2 visit that site again. I want to see an amended
3 development plan. I want to see the approved
4 development plan.

5 When you look at this plat here, the
6 information is not here for us to make any kind of a
7 decision. You've got 6045. Where is 6071?

8 MS. STONE: It's actually all one lot. Now,
9 it was consolidated after the zoning change. So the
10 address of the property is 6045.

11 It is split zoned and there's a larger plan in
12 the file, Gary, if that would help him to do what he's
13 looking at.

14 If the board granted a variance, they would be
15 required to revise the final development plan to
16 reflect that. So at that point a development plan
17 would come in.

18 At this point they were doing a site plan to
19 try to identify those variances that were on the
20 property that they were seeking rather than revising
21 that whole development plan, not knowing what the
22 outcome of the variance request would be.

23 MR. PEDLEY: But this is totaling confusing.
24 I have two addresses here, 6045, 6071. I have a site
25 plan here that doesn't show those boundaries.

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1 MS. STONE: It's one lot. It's 6045 as was
2 advertised.

3 MR. PEDLEY: We don't have that information
4 that it was consolidated.

5 MS. STONE: There's just one address that's
6 advertised. It's all one piece of property.

7 There used to be two lots, 6045 and 6071.
8 It's now all one tract of property. It was
9 consolidated with the zoning change and the final
10 development plan. There was a consolidation plat.

11 MR. PEDLEY: It has been consolidated?

12 MS. STONE: It has been consolidated.

13 MR. PEDLEY: But the applicant's statement
14 here is talking about two different pieces of
15 property. This thing has got to be cleared up.

16 MS. STONE: I think they're trying to describe
17 the different activities that are taking place on the
18 property by using the previous address of the
19 property. The stone storage is on what used to be
20 6071 which is the eastern part of the property. The
21 car business is on the western part of the property,
22 of what used to be 6045, as is the body shop, what
23 used to be an ornamental iron business on that, but
24 it's all one piece of property. They had to do a
25 development plan because there's multiple businesses

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1 on that one piece of property. I think they were
2 using those addresses in an attempt to orient you to
3 which part of the property they were talking about on
4 that variance request.

5 CHAIRMAN: Mr. Sullivan.

6 MR. SULLIVAN: I thought I understood what
7 Staff just said. It sounded different from what was
8 said up here.

9 She said that the applicants need to provide a
10 site plan that shows what they're asking for. Locates
11 the outdoor storage area on that site plan, and also
12 perhaps shows elevations on that site plan. Then if
13 this variance were approved by this body a month from
14 now, then a new development plan would be drawn
15 incorporating that site plan information that was
16 approved as a variance here, if it were. Then that
17 development plan has to be approved by OMPC.

18 MS. STONE: I think that's correct.

19 MR. SULLIVAN: I just had a confusion between
20 the use of the word development plan and site plan. I
21 think I understand what we're being asked to do, if
22 that motion were passed, that the matter be deferred
23 for 30 days for the applicants to submit a site plan.

24 MS. STONE: If the board in 30 days approved
25 that variance request based on that new site plan

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1 submittal, then a condition of that variance should be
2 that the final development plan be revised.

3 MR. SULLIVAN: I understood that any variance
4 granted requires a new development plan approval.

5 MS. STONE: That's correct.

6 MR. DYSINGER: Mr. Chairman, I'd also, whether
7 or not we postpone tonight or whether the Staff or the
8 applicant would speak to it, if necessary tonight,
9 that this concept of display versus storage, does it
10 bear at all on zoning ordinance?

11 MS. STONE: The applicants had the opportunity
12 to appeal that interpretation after the 2009 Planning
13 Commission meeting. They did not appeal it. Their
14 appeal time has run out.

15 MR. NOFFSINGER: Mr. Chairman, I need to get
16 this on the record because Mr. Sullivan has submitted
17 one letter from the judge executive to me that he
18 correctly stated that the judge basically said, you
19 don't have to follow what Planning & Zoning tells you.
20 That was in error. That was totally wrong.

21 I immediately responded to Judge Haire as to
22 what they were required to do. If they were to do
23 something else, wanted to do something else, what the
24 process would be to go through the variance procedure.
25 I did that in a timely manner. Within just a few days

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1 of each letter that was submitted to me. Out of
2 respect to the Judge, I did not copy the Boarmans or
3 anyone else, unless someone else was copied.

4 The first letter to me dated May 1 of 2009 was
5 sent only to me. I did respond on May 5, 2009. It
6 was a three-page letter going through all processes we
7 had been through and what the requirements were. It
8 went directly to Judge Haire.

9 The next letter came September 16th of 2009.
10 Here we go again. The judge states in there, "This
11 situation needs to be resolved. We could allow this
12 controversy to drag on for many more months and the
13 end result would be more hard feelings."

14 I can tell you we don't have any hard
15 feelings. We're just looking for compliance as we ask
16 of anyone else and no less.

17 My response dated September 16, 2009. Again,
18 that letter was sent to all the county commissioners.
19 My response was to the Judge and copied each county
20 commissioner as to the process.

21 Another letter comes in on September 15, 2010.
22 Going through the same thing.

23 Again, I respond on September 17, 2010 to the
24 Boarmans and to the Judge, because they were copied on
25 this letter, that here's the situation. Here's where

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1 we've been. The next action is court action.

2 Then the court action was filed I believe
3 in -- when was it? December. Well, shortly after
4 that letter court action was filed.

5 We were very clear in terms of processes and
6 what needed to be done. I feel my Staff was very
7 clear. I was very clear to the Judge and I have that
8 in writing. The Judge did not effectively communicate
9 that to the Boarmans. I hate that, but it was
10 correctly sent to him and he new the process.

11 MR. SULLIVAN: I would like, if I may, say
12 something. I would like the record to reflect that
13 the Boarmans were without counsel at all until
14 November of 2010. At that point they had counsel.
15 Now, whether that counsel, the competency of that
16 counsel is still in question here. That would be
17 myself.

18 The Boarmans were meeting one morning in
19 November with the attorney for this board and with
20 Judge Haire. They called me at 9:00 and said, we've
21 got a meeting with the Judge at 9:30. Can you go? I
22 went to that meeting and became involved.

23 I think Staff said, Staff's attitude was,
24 we're glad you now have counsel involved. I think it
25 may help you. I hope that it ends up helping them.

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1 They had no counsel before November of 2010.

2 Since that time we've been making every effort
3 to try to get right with the law.

4 CHAIRMAN: Mr. Sullivan, Mr. and Mrs. Boarman,
5 we are elected to run or be on the Board of Adjustment
6 and try to make decisions. We need evidence, footage,
7 diagrams, anything that we have that we can look at
8 for concrete to go by to make our decision. We have
9 none of that this evening. We're having your intent.
10 We respect that. We agree with you with that, but
11 that's not what we can make a decision by.

12 I would recommend if your attorney and you all
13 agree to postpone this for 30 days. Get your
14 information available to present to us and then we can
15 make a decision for or nay, but we can't do it on what
16 you've got here this evening. If your wish is to
17 postpone it, we'll entertain that motion.

18 MR. SULLIVAN: I don't get to make the motion,
19 but that's exactly what we are asking for. That is an
20 opportunity to provide that information to you by your
21 deferring this matter for 30 days. Not withdrawing
22 it.

23 CHAIRMAN: Postpone it for 30 days.

24 MR. DYSINGER: Mr. Chairman, would the
25 applicant's counsel be amenable to posting all the

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1 actions this evening and doing them all at the same
2 time next month?

3 MR. PEDLEY: I second that motion.

4 MR. DYSINGER: I've made no motion as of yet.
5 I'm just asking if the applicant is amenable to
6 postponing action on all the motions tonight?

7 MR. SULLIVAN: Excuse me a moment. I need to
8 refresh myself as to what the other items are.

9 MRS. BOARMAN: Can I say one more thing, Mr.
10 Chairman?

11 CHAIRMAN: Yes.

12 MRS. BOARMAN: In regards to this fence, at
13 the time that we were cited, that place was really
14 doing well. Like they say the first five years of
15 business you're just under water. That first year we
16 above water. We had renters. Our stone business was
17 quadrupling. It was doing very well. We had a
18 full-time employee with health insurance.

19 After this citation and knowing the six foot
20 tall solid fence was looming over our shoulders, our
21 stone business has just -- I mean how do you run a
22 business when you think it's going to be closed.

23 You know, ever since this citation we've
24 pretty well been operating like, we don't know if
25 we're going to be closed or not. Basically you have

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1 this expensive property on Highway 54 and you can't
2 display your product for sale.

3 Just like if you guys drive down J.R. Miller
4 Boulevard, can you imagine if the nursery had to put a
5 solid 6 foot fall fence around what they have for
6 sale.

7 Apparently, it's not an issue of is it
8 display, is it storage. That's already been decided.
9 We've lost that opportunity to argue display versus
10 storage because -- I'm sorry, I just got so upset
11 after that last meeting because it didn't look like it
12 was ever going to end. That's when I went to
13 Mr. Haire and that's when we lost any opportunity to
14 argue that.

15 We're just -- it's like we're at the end. We
16 can move our stone to the back of our farm. I mean
17 we're asking to move it out of sight. It's kind of
18 like we're keeping a dying business alive barely. I
19 mean what we're asking is just so little is how I
20 feel.

21 I don't know why you have to have all that
22 drawing and everything is what I'm saying.

23 We have neighbors support even if we had it
24 out on the highway without a fence.

25 MR. SULLIVAN: The applicant has no objection

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1 to the whole matter being deferred to the next
2 meeting. Except I think that there was someone here
3 in opposition. I think you ought to hear that, in the
4 event that will satisfy him and he won't need to come
5 back again.

6 CHAIRMAN: Sir, come forward and state your
7 name. If you've got opposition, state it, please.

8 MR. SILVERT: State your name, please.

9 MR. CARDEN: Cebert Carden.

10 (CEBERT CARDEN SWORN BY ATTORNEY.)

11 MR. CARDEN: I just want to tell you that I've
12 lived across the road from this since January 4, 1964.
13 I've seen this property, and I see it from my house.
14 I also own a car lot that's straight across from it.
15 I was the one that got the petition going. The
16 neighbors does not want no fence. I've talked to
17 other people over the last two years and I haven't
18 found anybody that drives down 54 that wants to look
19 at this fence that you talk about. I know you all
20 have certain restrictions that you have to go by, but
21 you all need to work on that and get some of that
22 changed and think about the people, the neighbors out
23 there. Think about the people at Philpot. Try to get
24 the thing changed some way or the other. Think about
25 what is happening to these people right here. I mean

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1 it's been completely chaos, and I know it.

2 So you all need to go home tonight and think
3 about this a little bit while you're sitting around.
4 Because Daviess County, I mean people is wanting to
5 move out of Daviess County on account of the
6 restrictions and stuff. I know people looking for
7 places to go to other counties. I just want to bring
8 that in front of you. I wanted you to know how the
9 neighbors feel. Anybody in sight of it don't want the
10 fence. We like looking at the rock. The rock is
11 beautiful. People buy it for decorations to go in
12 their yard. So why in the world would they care to
13 look at it? Don't make any kind of sense to me.
14 That's all I've got to say.

15 CHAIRMAN: Thank you.

16 I'll entertain a motion now.

17 MR. DYSINGER: Mr. Chairman, I move that we
18 postpone this matter until the next regularly
19 scheduled meeting.

20 MR. PEDLEY: Second.

21 CHAIRMAN: A motion has been made and a
22 second. Any other comments or questions?

23 (NO RESPONSE)

24 CHAIRMAN: Hearing none all in favor raise
25 your right hand.

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1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries. Postpone that for
3 30 days.

4 Next item, please, sir.

5 ITEM 4

6 10201 Highway 1389, zoned A-R

7 Consider a request for a Variance in order to reduce
8 the front yard building setback line from 60 feet from
9 the centerline of the road to 58.5 feet from the
10 centerline of the road.

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

13 Applicant: Paul M. Dujardin; Wendy S. Dujardin

14

15 MS. EVANS: The subject property is over 10
16 acres and is considered farm exempt, meaning no
17 building permits are required for construction on the
18 property, but electrical permits are required. There
19 is an application for farm exemption that must be
20 filled out in our office and at that time the
21 applicant is informed of setbacks that must be met.

22 The applicant hired a contractor to build a
23 pole barn, and the contractor told him that the
24 property was farm exempt without filling out any of
25 the required paperwork; therefore, the applicant was
not informed of the setbacks for his property.

26 The pole barn was subsequently built too close
27 to the front property line and encroaches
28 approximately 1 foot into the front yard building

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1 setback. When the applicant applied for an electrical
2 permit, the encroachment was found.

3 Granting this variance will not alter the
4 essential character of the general vicinity because
5 the variance is for such a small distance; it will not
6 be noticeable due to the rural nature of the area and
7 scattered structures not closely spaced; it will not
8 stand out as different from other properties in the
9 area. It will not allow an unreasonable circumvention
10 of the requirements of the zoning regulations because
11 this variance is only for 1.5 feet.

12 Staff would recommend approval of this item
13 and we would like to enter the Staff Report into the
14 record as Exhibit C.

15 CHAIRMAN: Any comments filed in the office?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: Does the applicant have anything
18 you would like to add at this time, please?

19 APPLICANT REP: No, sir.

20 CHAIRMAN: Any board members have any
21 questions of the applicant?

22 (NO RESPONSE)

23 CHAIRMAN: Staff have any other comments to
24 add on?

25 MR. NOFFSINGER: No, sir.

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1 CHAIRMAN: Entertain a motion to dispose of
2 the item.

3 MR. WARREN: Move to grant the Variance based
4 on the findings that it will not adversely affect the
5 public health, safety or welfare because it's only an
6 encroachment of a foot and a half and will not affect
7 travel along the highway or disturb surrounding
8 properties.

9 It will not alter the essential character of
10 the general vicinity because the variance is for such
11 a small distance it will not be noticeable due to the
12 rural nature of the area and scattered structures not
13 closely spaced, it will not stand out as different
14 from the other properties in the area.

15 It will not cause a hazard or a nuisance to
16 the public because the small distance will not affect
17 travel on the highway.

18 It will not allow an unreasonable
19 circumvention of the zoning requirements since it's
20 only a 1.5 foot variance.

21 MR. DYSINGER: Second.

22 CHAIRMAN: A motion has been made and a
23 second. Any other comments or questions?

24 (NO RESPONSE)

25 CHAIRMAN: Staff have any other comments?

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1 MR. NOFFSINGER: No, sir.

2 CHAIRMAN: Hearing none all in favor raise
3 your right hand.

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion carries.

6 One more motion.

7 MR. WARREN: Move to adjourn.

8 MS. MASON: Second.

9 CHAIRMAN: All in favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: We are adjourned.

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1 STATE OF KENTUCKY)

)SS: REPORTER'S CERTIFICATE

2 COUNTY OF DAVIESS)

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and
4 for the State of Kentucky at Large, do hereby certify
5 that the foregoing Owensboro Metropolitan Board of
6 Adjustment meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 60 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 January, 2011.

18

19

LYNNETTE KOLLER FUCHS
NOTARY ID 433397
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
OWENSBORO, KENTUCKY 42303

22

23 COMMISSION EXPIRES: DECEMBER 16, 2014

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25

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