

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 MAY 7, 2015

3 The Owensboro Metropolitan Board of Adjustment
4 met in regular session at 5:30 p.m. on Thursday, May
5 7, 2015, at City Hall, Commission Chambers, Owensboro,
6 Kentucky, and the proceedings were as follows:

7 MEMBERS PRESENT: Ward Pedley, Chairman
8 Judy Dixon, Vice Chairman
9 Brian Howard, Director
10 Terra Knight, Attorney
11 Jerry Yeiser
12 Susan Free
13 Fred Reeves
14 Robynn Clark

15 * * * * *

16 CHAIRMAN: Call the Owensboro Metropolitan
17 Board of Adjustment meeting May 7 meeting to order.
18 We begin our meeting with a prayer and pledge of
19 allegiance to the flag. Would you stand, please.

20 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

21 CHAIRMAN: First I would like to welcome
22 everyone. Anyone wishing to speak we welcome your
23 comments and questions. We ask you to come to one of
24 the podiums and state your name and be sworn in.

25 The first item on the agenda is to consider
the minutes of the March 12, 2015 meeting. We do not
have a meeting in April.

Board members, you have a copy in your packet.

1 Are there any addition or corrections?

2 (NO RESPONSE)

3 CHAIRMAN: If not the chair is ready for a
4 motion.

5 MS. DIXON: Move to approve.

6 CHAIRMAN: We have a motion for approval.

7 MR. YEISER: Second.

8 CHAIRMAN: And a second. All in favor of the
9 motion.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimous. The
12 minutes are approved.

13 Next item.

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15 ADMINISTRATIVE APPEAL

16 ITEM 2

17 1320 West 3rd Street, zoned R-4DT
18 Consider a request for an Administrative Appeal
19 regarding the relocation of the primary residence to
20 the existing accessory dwelling unit on the subject
21 property.
22 Reference: Zoning Ordinance, Article 4, Section 4.3
23 Applicant: Joseph Trodglen

24 MR. HOWARD: Jim Mischel from our office is
25 here and he'll give you a brief overview, since he is
the zoning administrator, of what our Staff found in
our research. I know the applicant is here and he'll
give you some additional information as well.

1 MS. KNIGHT: Please state your name for the
2 record.

3 MR. MISCHEL: Jim Mischel.

4 (JIM MISCHEL SWORN BY ATTORNEY.)

5 MR. MISCHEL: Essentially the property here at
6 1320 West Third, there was a detached garage,
7 according to the records, that was built in 1971
8 behind the existing single-family house that's been
9 there for years. We didn't have a permit on that. It
10 has been there for a long, long time.

11 In 2005 we issued a permit to add on to that
12 rear structure. At the time we got a letter from the
13 owner here that stated that he will not use it for a
14 residence or apartment to live in or anything else.

15 I think he had a misunderstanding that, or
16 that's what he's telling us, that the existing
17 structure that was built in 1971 he was living in that
18 or it's been used as a residence up until the present
19 time. That the letter he wrote us in 2005 was for the
20 new addition that he built. That we would not live in
21 that. He would use that for a work shop or garage or
22 what have you. I guess that's where the cross up was.
23 We were saying that we didn't know about the other
24 structure.

25 To have a grandfather clause, there is a

1 grandfather clause in the zoning ordinance.
2 Essentially that comes into being in 1979. Anything
3 that existed prior to that was grandfathered in and
4 could continue that use as long it didn't have an 18
5 month gap.

6 I started in 1984 and at that time it was kind
7 of easy to tell, we had a history and we could tell if
8 something was grandfathered in or not. As each year
9 it goes on and on, it's getting harder and harder to
10 verify if it holds the grandfather status or not.
11 That's what we found here.

12 Also in the past, OMU will give us records
13 dating back to what, you know, the utility were a
14 certain amount each month, but a few years back they
15 quit that, saying that they couldn't give that
16 information out any more. More or less it's hard for
17 us to prove one way or the other. Sometimes we go
18 into the city directories. We have a lot of those to
19 see it was used, but it's getting harder and harder.
20 I think he's got some information, you know, stating
21 that it was used as a residence in the rear.

22 He would like to, I think Brian had mentioned
23 that he would like to take that front structure and
24 demolish it, it's in bad shape, and get rid of it and
25 just solely live in that structure in the back.

1 I think we have some picture there. I don't
2 know if everybody has looked at those.

3 That picture up there is the one that will be
4 torn down. Of course, that's the main house. Then in
5 the back you have the detach structure. I think that
6 picture there is showing the addition, structure that
7 was permitted in 2005 as part of that garage.

8 Then back there in the very back, that's the
9 detached structure, the second one. It faces an
10 alley. There's an alley in the back of this
11 structure.

12 I don't know if you all have any questions
13 right now on the history of it.

14 CHAIRMAN: Any board members have any
15 questions by Mr. Mischel before we bring the applicant
16 up?

17 MR. YEISER: Jim, has he been living there
18 longer than the grandfather clause took effect?

19 MR. MISCHEL: That's what I'm saying. It's
20 hard for us to know one way or the other. We just
21 don't have the information. We've checked all of our
22 records. We've check the city directories. We've
23 checked PVA. Really there's not enough information.

24 MR. YEISER: That's all I have.

25 CHAIRMAN: Are there any other questions?

1 (NO RESPONSE)

2 CHAIRMAN: Mr. Mischel, we might bring you
3 back up. Thank you.

4 Is anyone representing the applicant?
5 Would you step to the podium please.

6 MS. KNIGHT: State your name for the record,
7 please.

8 MR. TRODGLLEN: Joseph Trodglen.

9 (JOSEPH TRODGLLEN SWORN BY ATTORNEY.)

10 MR. TRODGLLEN: I was able to find because the
11 original building permit was somewhere in that house,
12 for whatever reason, from '71. So I have that.

13 The house directly across the alley from it
14 has -- Mr. Clark owned that house and built that
15 garage and he also built one similar to it right
16 across the alley. I have the permit for that. It was
17 built in '74. The purpose of bringing that one into
18 the picture, when they talked to them about building
19 the garage, they said the other one was, the staircase
20 and everything was already there for the apartment.
21 So in '74 it appears that that was already an
22 apartment at that time.

23 They built that apartment originally for
24 Mr. Clark's sister who was in bad health and she lived
25 there until 1979 when she died. Then three, I found

1 three other tenants that had lived there. I did the
2 same thing as you did. I've been down several times
3 to see if there was any kind of record with the city.
4 I went actually on a computer site and it lists
5 address who has lived in it. It just doesn't give
6 dates.

7 So basically it was Lela Smith was the woman
8 that lived in it until '97 when she died. Then there
9 were three other tenants which was John and Joni
10 Sutherland, Jay Kirkland and Ms. Hamilton during the
11 period until I purchased it in 2004. There was about
12 a seven year period there. I had three tenants. I
13 don't know what dates they lived there.

14 When I came to look at the house to purchase
15 it, the real estate company said they had had the
16 tenants move out so they could put it up for sale. So
17 someone lived in it until just shortly before I
18 purchased it. When I purchased it, I moved into it.
19 The house wasn't in the condition where you could live
20 in it. I've lived there ever since which is I guess
21 11 years now.

22 That's kind of the background of who lived
23 there, and that took a lot just to get that
24 information. I've been trying to find some documents.
25 The only documents I have are just the building

1 permits of when it was built and the receipt for the
2 building permit.

3 They had had theft problems so they closed all
4 the garage door openings in it and that's when I went
5 ad asked about building an addition to the front of it
6 so I could have a garage door because that one
7 basically was a workshop. There was no doorway.

8 At that time it was discussed about moving the
9 power then out to the other building, but that's been
10 seven, eight years ago, I guess. I wasn't getting the
11 electrical permits then because I wasn't ready for it
12 yet. I finally got to the point where I could do the
13 electrical in the new panel and that's when this came
14 up, when I went through, because I was going to move
15 the service to that and disconnect from the house so I
16 could get the house ready to tear down because it's
17 getting in worse shape as time goes on. It was built
18 in 1906. It's over 100 years old.

19 I don't know what else you need. I tried to
20 bring everything I could find. The woman I bought it
21 from died about four years ago. The only person I
22 could finds on that block that had lived there is
23 across the alley, is the only person that's still
24 alive that lived there during the time it was built.

25 CHAIRMAN: Mr. Trodglen, it says in 2005

1 permit includes a note by OMPC Staff that "The
2 detached garage cannot be used for living space and
3 the owner, Joseph Trodglen, at that time submitted a
4 letter stating 'the intended use of this garage is a
5 work shop, garage and storage area only. The
6 structure will not be used as a residence by me or it
7 will not be rented out.'"

8 At any time did you live in the main structure
9 and rent out the shop area? Has there been anyone
10 living in the main structure and the shop at the same
11 time?

12 MR. TRODGLEN: No. Since I've owned it, no
13 one has lived in the main structure.

14 CHAIRMAN: That's never occurred?

15 MR. TRODGLEN: It was never in good enough
16 condition to. It's an old house that has, it had a
17 shake roof and they just layered shingle on top of
18 shingle. They never tore it down and sheeted it.
19 I've had several people look at it and the only way to
20 repair it was to completely tear the roof off and
21 start all over again. It's an unusual shaped roof.
22 It was quite expensive. No one has ever lived in it
23 since I purchased it in 2004.

24 Concerning the letter, I actually wrote that
25 letter. Part of that as, I guess, a misunderstanding

1 on my part because I've always called this building
2 the apartment and the piece I added on was the garage.
3 I guess from your standards once you attach to it all
4 becomes the same structure. At the time I was told,
5 and I think actually you were the one that I dealt
6 with back then, that in order to get a permit I could
7 not be adding onto the apartment. That's why I wrote
8 the letter. That I was not going to be using it for a
9 dwelling. It was only for a workshop.

10 CHAIRMAN: Any board member has any
11 questions?

12 MR. REEVES: I've got a couple of questions.

13 Mr. Trodglen, this is a tough one for us
14 because there's so many unknowns. I truly respect all
15 the research you've done.

16 When you purchased the property, did you ever
17 intend to live in the main house that's on the street?

18 MR. TRODGLLEN: Actually I'm from here, but I
19 was living in Savannah, Georgia, and I came up one
20 week and looked at it. I had plans for the first
21 maybe month or two until I started pricing what it was
22 going to cost. It basically was out of my range. A
23 house in that neighborhood I think the taxable value
24 on my property is about 50 or 54,000, and it would
25 cost 50,000 to get this house even up to standards. I

1 just couldn't afford it. It's kind of been a plan
2 since early, you know, right after I bought it to tear
3 it town down as soon I could get the money to do it.

4 MR. REEVES: When I drove by and looked at it
5 -- I actually spent several nights there as a young
6 man. One of my very best friends lived in that house
7 when I was in junior high school so I was familiar
8 with the property.

9 This question is for Staff. Mr. Mischel or
10 Mr. Hill either one.

11 If we should deny this application, would that
12 mean that Mr. Trodglen would have to vacate his
13 property?

14 MR. MISCHEL: Yes. If you denied it, you
15 would be saying that it's not a grandfathered use.
16 His main purpose is to put the electrical service on
17 this structure in the rear so the front can be torn
18 down.

19 When we got that letter in 2005, that's not
20 unusual. Any time that somebody wants to add onto a
21 garage that's of pretty good size and there's a house
22 on the lot, we always get that letter. It's just
23 standard. We get that so they won't use it as a
24 residence.

25 MR. REEVES: Has the city never looked at that

1 house and see the disrepair and tear it down or
2 whatever? I'm surprised the building inspectors
3 haven't looked at that house before.

4 MR. MISCHEL: As far as the building or
5 electrical, we've never had any calls or complaints on
6 the structure. We do not do property maintenance.

7 MR. REEVES: I know that.

8 MR. MISCHEL: But looking and checking with
9 the City, I don't think there's been any major
10 complaint. Joe Sutherland is the property
11 maintenance.

12 MR. REEVES: Yes, I know Joe.

13 CHAIRMAN: Before we go any further, I'm going
14 to see if we have any opposition. Just a second, sir.

15 Board members, do you have any more questions
16 of Mr. Trodglen?

17 MR. YEISER: I would like to ask.

18 Have you gotten anything in the world that you
19 could substantiate that there has been people living
20 in it before '79? Do you have anything that shows
21 that somebody has lived in that structure before '79?

22 MR. TRODGLLEN: Well, they didn't run separate
23 electric or water so there's no separate meter. It
24 was a relative that lived in it. I have no document,
25 other than I found just the permit when it was built,

1 and that was just something I found in the house. I
2 thought that may come in handy some day so I through
3 it in with the deed or I wouldn't even have that.

4 MR. YEISER: I guess what I'm getting at, I'm
5 trying to determine in my mind was somebody using it
6 for a dwelling so-to-speak before this grandfather
7 clause came in. That would make a difference in my
8 opinion.

9 MR. TRODGLEN: I have tried very hard and I
10 think Mr. Warren has helped me. I was back down there
11 Monday, as a matter of fact, to see if there was any
12 kind of a document that established when it was
13 converted to an apartment, but they don't have
14 anything.

15 MR. HOWARD: Real quick too.

16 On the Back of your all's packet of
17 information, there is a letter from a neighbor, from a
18 JoAnn Rich. She basically says they got their permit
19 in '74 and "before ours was built Mr. Clark had built
20 the apartment in his garage." So that's a neighbor
21 that's saying it was there, but it's not necessarily
22 conclusive evidence certainly.

23 MR. YEISER: Better than nothing.

24 CHAIRMAN: Sir, let's see if we have any
25 opposition.

1 Sir, are you here to speak in opposition? You
2 have no comment?

3 AUDIENCE: No.

4 MS. FREE: I have a question.

5 CHAIRMAN: Okay.

6 MS. FREE: I just wanted to ask you about
7 timeline for demolition.

8 MR. TRODGLLEN: I've had a couple of different
9 companies come by to give me a price on it, but I
10 never could settle on anything because I couldn't tear
11 it down until -- I've been saving money for a couple
12 of years for this. I'm hoping within this year to do
13 away with it. It needs to go away. It's bad. I had
14 a price a long time ago of \$7,000 which I've saved up.
15 Then when they came back to look at it, then they
16 wanted \$10,000. So I've got to save another 3,000. I
17 think within this calendar year I can. Because first
18 we've got to disconnect the water, and the electric,
19 and the sewer, and the gas, because now they run into
20 the house and back out to the apartment.

21 MS. FREE: Thank you.

22 MR. TRODGLLEN: I have to do that before they
23 can tear it down.

24 MR. REEVES: Mr. Chairman, I would like to
25 make a comment to see what the other members of the

1 board think.

2 I went by that house and, like I said, I'm
3 really struggling with this, Mr. Trodglen, because I
4 think you made some good faith efforts to do a lot of
5 things, but when I drove by there, and I remember that
6 neighborhood very well as a young man. When I looked
7 from Goose Egg Park from the west toward the Munday
8 Center, that neighborhood is reviving. When I drove
9 by, I saw three different homes around Goose Egg Park
10 where actually people were out working on their homes.
11 They were updating them and fixing them. From Goose
12 Egg Park to the east, that's a whole other story.
13 There's a lot of deterioration down there.

14 This house is deteriorated, Mr. Trodglen,
15 which is not your fault.

16 My concern is for a neighborhood that's trying
17 to revitalize itself, that detached structure is not
18 attractive. When that house comes down, those
19 neighbors are going to have a very - for lack of a
20 better term I think - an ugly view to look at. I
21 don't know what you can do to protect the neighbors
22 who are investing and working. I saw young couples
23 there. I saw some moms out with kids doing things. I
24 don't know what you can do to protect the investments
25 that they're making when you take that house down, and

1 at the same time that house surely needs to come down,
2 unless somebody wants to put a bunch of money in it to
3 revitalize it. That's what I'm struggling with more
4 than anything else. That neighborhood is trying to
5 revitalize itself and come back. If you do what your
6 intentions are, I understand why you want to do what
7 your intentions are, but it's certainly not going to
8 be an attractive site for those neighbors there. It's
9 not going to enhance the value of their homes.

10 MR. TRODGLLEN: Well, most of those house are
11 rentals. They're up and down. In other words, they
12 have a tenant one. The one right next-door the tenant
13 has moved out. I don't know if you looked at it.
14 They've got the exterior walls tore off of it and all
15 because they've black mold over there.

16 The two on the other side of me, on the west
17 side, are actually peace mission buildings that they
18 built.

19 The one right next-door to me I think will
20 hold up to 18 boys from I think 11 to 18. It's a
21 shelter. At some point in time, you know, hopefully I
22 can live there until I can't live there. They want
23 the property later on to add on to theirs, but that's
24 the only property that I own right now. It's the only
25 place I've got to live.

1 MR. REEVES: I understand. Thank you.

2 MR. TRODGLEN: I had the thought too, and I
3 will make the offer, of putting up a front on that
4 garage to make it look like a house. Because I left
5 12 inch overhangs and all, which you really don't get
6 on the garage. I tried to make it look as much like a
7 house that I could. That end wall is blank, but
8 adding a ten foot face on to that with doors and
9 windows, I would be glad to do that to make it look
10 like a house.

11 CHAIRMAN: Does any other board member have
12 any comments or questions?

13 (NO RESPONSE)

14 CHAIRMAN: Staff, any further comments?

15 (NO RESPONSE)

16 CHAIRMAN: Mr. Howard?

17 MR. HOWARD: No.

18 CHAIRMAN: If no further comments or
19 questions, the chairman is ready for a motion.

20 MR. REEVES: I'm going to make a motion, and
21 I'm struggling but I'm going to make a motion anyway.

22 I think it's the right thing to do, but I'm
23 not happy to make the motion. I'm going to move that
24 the application be denied because the nature of the
25 structure that Mr. Trodglen is in would, I think when

1 the house is torn down in the front would certainly
2 alter the character of the neighborhood and would not
3 be in the best interest of its neighbors. However, I
4 would like to stipulate in my motion that we give Mr.
5 Trodglen a year to make arrangements for how he would
6 deal with that residence back there.

7 I don't want to see him, I would like to see
8 him have a year to make arrangements to move elsewhere
9 before he's ejected from that property. I don't think
10 it's fair. I think he's made some good faith efforts.

11 CHAIRMAN: We have a motion by Mr. Reeves.

12 MR. DIXON: Second.

13 CHAIRMAN: We've got a second by Ms. Dixon.

14 Any comments or questions on the motion?

15 (NO RESPONSE)

16 CHAIRMAN: All in favor of the motion raise
17 your right hand.

18 MR. REEVES: Mr. Yeiser, do you have a
19 question?

20 MR. YEISER: Are we just going to give him a
21 year? Obviously he's tied up almost everything he's
22 got in that property and getting rid of that in a year
23 and being able to find something else, it may not be
24 that easy. I would like to see him have a little
25 longer than that to get his ducks in a row to decide

1 what he wants to do with it. I don't know what it
2 would be, 18 months or whatever. Obviously it's not
3 hurting anybody. Nobody has complained about it with
4 him living in it. So I think we ought to give him
5 some time, if we could, to either improve the house or
6 do whatever he can, and then come back to us if he
7 wants to try us again after he's made improvements or
8 whatever he can do.

9 MR. REEVES: I would not object to that, Mr.
10 Yeiser. In fact, Ms. Dixon has a suggestion she may
11 want to mention. If she does, I'll be happy to
12 withdraw my motion.

13 MS. DIXON: If he comes back within a year and
14 let us know what progress he has made. Is that a
15 possibility?

16 MS. KNIGHT: I just want to point out that
17 this is an Administrative Appeal of a decision from
18 our zoning administrator. So really we're just here
19 to decide if the zoning administrator's decision is
20 correct and can be upheld or if it should be reversed.
21 Typically we have conditional use permits and
22 variances and things in front of us where we're making
23 findings of fact and putting conditions and things on
24 your decision. Really because this is an appeal the
25 decision that needs to be made is whether the zoning

1 administrator's decision should be upheld, which would
2 require Mr. Trodglen to vacate the residence, no
3 longer use his residence, or whether the decision of
4 the zoning administrator should be reversed and
5 allowing Mr. Trodglen to remain there and use that as
6 a residence. Does that make sense?

7 CHAIRMAN: We already have a motion on the
8 floor by Mr. Reeves. He has to either amend that
9 motion or withdraw.

10 MR. REEVES: I guess I want clarification from
11 counsel.

12 You're saying that you don't think it's
13 appropriate to put a condition on the motion?

14 MS. KNIGHT: I believe the authority of the
15 board tonight in hearing this appeal.

16 MR. REEVES: Then do I need to remake my
17 motion? I will withdraw the motion.

18 MS. KNIGHT: I believe there's already been a
19 second to the motion so we may have to --

20 CHAIRMAN: You withdraw your motion?

21 MR. YEISER: What if he went back --

22 MR. REEVES: Let me withdraw my motion first,
23 Mr. Yeiser. That way we're kosher.

24 I withdraw my motion.

25 MS. DIXON: And I'll withdraw my second.

1 MR. REEVES: Thank you. I appreciate it.

2 CHAIRMAN: So now we're ready for a new
3 motion.

4 MR. REEVES: Well, I think Mr. Yeiser had a
5 comment.

6 MR. YEISER: What if we sent this back to
7 Planning and Zoning and let them work with this
8 gentleman and come back later and decide?

9 MS. KNIGHT: I guess it could be postponed for
10 another month for further discussions, but I just
11 don't know. I mean we may leave that up to the
12 applicant to see if there is any further discussions
13 to be held. I'm not sure. There may not be anything
14 else.

15 MR. YEISER: I don't know if that's proper or
16 not.

17 MR. HOWARD: As Terra talked about, the issue
18 is whether or not Jim was correct. When he reviewed
19 the potential for a building permit, was Jim correct
20 in looking at it. The information we have is Jim
21 wasn't able to say that this was a grandfathered use.
22 So Mr. Trodglan is here trying to make a case that it
23 is and provide that documentation that he was able to
24 come up with. I think we've turned over every stone
25 we know to turn over, and I think he has too. I think

1 you could postpone it. You could have more time to
2 think. I just don't know what else we're going to be
3 able to find. I don't know what else he's going to be
4 able to find. I think everybody has looked everywhere
5 they can and it's just one of those situations trying
6 to get information back to 1979, 35 years ago, it's
7 hard to come up with documentation that is conclusive.

8 MS. KNIGHT: I would just point out to the
9 board, that the decision of the zoning administrator
10 was based, and referenced in the agenda and
11 everything, on Zoning Ordinance, Section 4.3.

12 So if you believe that the applicant has met
13 his burden of proof to show that there's been no --

14 MR. HOWARD: Which 4.3 is the nonconforming
15 use. So basically this is nonconforming. The
16 applicant is trying to make the case that this is a
17 nonconforming site and that it has a principal
18 residence on it and an accessory structure that had an
19 apartment, had two residential units on the property.
20 So yes, you all are making a determination or trying
21 to figure out if there's been enough credible evidence
22 entered to say that prior to 1979 when the zoning
23 ordinance went into affect, there has been two
24 residences on this property.

25 MS. KNIGHT: It's been a nonconforming use and

1 continues to be a nonconforming use, and therefore
2 grandfathered in as Jim point out earlier.

3 MR. YEISER: Without some kind of evidence
4 showing that, something, a document, signatures or
5 something, we're pretty well locked in to what they
6 found.

7 MS. KNIGHT: I think it's based on your
8 testimony that you heard tonight and what Staff has
9 been able to find out. So that's going to be your
10 evidence to base your decision.

11 MR. YEISER: Kind of puts us in a spot though.
12 We have no documents that we can really prove.

13 MS. KNIGHT: So it's up to the board to
14 determine, you know, weigh all the credibility of the
15 evidence to see if it's sufficient, etcetera.

16 MR. YEISER: I don't doubt that Mr. Trodglan
17 has done everything he can, but the thing of it is we
18 have nothing that nobody is willing to sign and say,
19 yes, there was people living there. We lived here
20 before and they lived there, we can verify that, and
21 this sort of thing. We have no names to prove that.
22 So we've kind of got our hands tied it looks like.

23 MR. REEVES: One other question, counsel.

24 So what you're saying, I think I understand,
25 is the consequences of our decision should not enter

1 into our decision. The consequences for the property
2 should not enter into our decision?

3 MS. KNIGHT: It's not the same findings of
4 fact as you would make.

5 MR. REEVES: I wanted to make sure it was
6 clear.

7 MS. KNIGHT: When you consider issuing a
8 permit in a variance, those are questions that are in
9 the statute for consideration and you base your
10 findings on that, but in this situation you're right.

11 MR. REEVES: I understand that and I
12 appreciate your clarifying that.

13 MS. KNIGHT: Absolutely.

14 MR. REEVES: I make a motion that the
15 application be denied.

16 MR. YEISER: Second.

17 CHAIRMAN: We have a motion and a second.
18 Comments or questions on the motion?

19 (NO RESPONSE)

20 MS. KNIGHT: To clarify. That would mean that
21 the appeal is denied.

22 MR. REEVES: Is denied. The appeal is denied.
23 That's my motion, that the appeal be denied.

24 CHAIRMAN: We have a second by Mr. Yeiser?

25 MR. YEISER: Yes.

1 CHAIRMAN: If no comments or questions, all in
2 favor of the motion raise your right hand.

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Motion carries unanimous.

5 Next item would be motion to adjourn.

6 MR. REEVES: I have a question before we
7 leave, if you don't mind. I'm probably going to have
8 to refer to counsel.

9 When I looked at this, because we were looking
10 at a non-conforming use, if we approve the appeal, it
11 seems to me like, when I went down there to look in
12 the neighborhood, there were no notices posted in
13 there that this board was going to act on anything.
14 This to me is almost like a conditional use permit.
15 The neighbors had no idea that we were going to
16 consider this tonight and what consequences it might
17 have. Is this something we shouldn't just treat like
18 a conditional use and maybe advertise it so people in
19 the neighborhood know? If Mr. Mischel had been able
20 to approve this in advance, the neighbors have no say
21 so. If there's an appeal on an issue that might
22 impact their property, would it be out of order for
23 the neighbors to at least know something to be
24 considered in that neighborhood or not?

25 MS. KNIGHT: Sure. Under the statute the

1 public notice requires an appeal hearing, public
2 notice given in accordance with Chapter 424, which is
3 the newspaper notice, and written notice to the
4 appellant, and the administrative official, which is
5 Mr. Mischel. There is no public posting like there
6 would be at a zoning amendment application.

7 MR. REEVES: Can we go beyond the requirement
8 because it's only fair to the neighbors?

9 MS. KNIGHT: Yes.

10 MR. REEVES: That's just my -- I don't know if
11 it's wise or not.

12 MS DIXON: A lot of people don't get the
13 paper.

14 MR. REEVES: I want to know what the staff
15 thinks and what other board members think. It just
16 occurred to me something may happen here that would
17 impact my property, and I don't know what's going to
18 happen or not.

19 CHAIRMAN: I agree with that. We have things
20 before the Board of Adjustments that adjoining
21 property owners should be notified by certified mail,
22 and they're not and it severely effects them. I agree
23 with what Mr. Reeves said. I think this thing needs
24 to be looked into. I don't know the process you would
25 have to require that. I know it's not a requirement

1 now, but I'm seeing things over the last 20 years
2 where the neighbors should have been notified. Same
3 way what Mr. Reeves has said. The neighbors, it will
4 affect them. Any time you have something that affects
5 the adjoining property owner, they should be notified.
6 This is a public hearing. They should be able to come
7 down here and be heard.

8 MR. YEISER: What if it's a lot of rental
9 property, like he was stating, quite a bit of it
10 around there is and you sent out registered letters,
11 it's going to go to that address, but the rental
12 people are probably not going to be interested and
13 it's going to cause Planning & Zoning a lot of extra
14 work.

15 MR. REEVES: If the notice is posted on the
16 property, at least a notice posted out there. That's
17 what I was looking for. I was concerned more with was
18 there any kind of posting, kind of colored paper out
19 there that said something about this property.

20 MR. YEISER: I see what you're saying.

21 MR. HOWARD: The letter would go to the
22 property owner based on PVA information. So it
23 wouldn't go to the renter. It would go to, you know,
24 Bob Jones wherever he lives.

25 MR. YEISER: That's what I was getting at.

1 MR. REEVES: I raised that as an issue.

2 Staff, you all may want to think about that.
3 I'm not one to say -- I raised that as an issue so you
4 can take a look at it.

5 MS. DIXON: Better to have an understanding at
6 the beginning than a lot of questions afterwards.

7 CHAIRMAN: It's required on the conditional
8 use permits. It's required on the variances. It
9 should be required on anything of this magnitude where
10 it affects the adjoining property owners.

11 MR. HOWARD: We do on a conditional use
12 permits and variances because the state statutes
13 require it. As Terra mentioned, this type of thing
14 doesn't. We'll look at it. We'll look at the
15 positives and negatives that may eventually result
16 from doing that. We'll discuss it.

17 MR. REEVES: Thank you. I appreciate that
18 very much.

19 CHAIRMAN: Are there any other comments?

20 (NO RESPONSE)

21 CHAIRMAN: If not, we need a motion to
22 adjourn.

23 MR. TRODGLLEN: May I say something? Where
24 does leave me now?

25 CHAIRMAN: Mr. Mischel or Brian.

1 MR. TRODGLLEN: I mean I'm living there and
2 you're telling me I can't live there. Where does that
3 leave -- where do we go from here?

4 MR. HOWARD: What kind of procedure will we
5 look at for something like that?

6 MR. MISCHEL: I guess the best thing at this
7 point would be for him to come into our office and he
8 can discuss it with us. Let us take a look at it, as
9 far as time-wise and stuff, and we can report back.

10 MR. YEISER: What if he come up with names of
11 people that can verify that has been, people living
12 there before 1979? Has he got a way to come back and
13 reopen this?

14 MR. MISCHEL: I guess he could file a new
15 application to come back before the board.

16 MR. TRODGLLEN: Can I say something?

17 You're telling me to do this there has to be
18 documentation, but the city has no documentation. I
19 have more than you all have because you had nothing
20 that shows a permit on the building. I dug all of
21 that up. So I'm basically being told after spending
22 \$30,000 plus the cost of the property I can't live in
23 it because the City of Owensboro doesn't have any
24 records back then. I don't know. That just seems
25 quite unfair to me.

1 The house and the garage in the back, you
2 know, I've got pictures of how it looked when I bought
3 it compared to where I'm at now. I mean everything
4 I've done has improved it. I thought there was a
5 record for that house and it told everything that
6 happened since it was built, but there's no such
7 thing.

8 MR. YEISER: Well, I feel like the board went
9 out of their way tonight to try to help you on this
10 and the Planning & Zoning I know have, but without
11 some burden of proof we're kind of hand-tied. I mean
12 we've got stuff we've got to abide by.

13 MR. TRODGLEN: But you're telling me I have to
14 prove, but you don't have to prove anything is what
15 you're telling me. The city hasn't kept any
16 documents. I don't know where this goes.

17 MR. MISCHEL: In most of these cases the city
18 doesn't know. It's up to the property owner. If they
19 either stated through PVA, here is what I have, I have
20 two residences on this property starting back in '74,
21 but that's usually not done. If whoever owned it
22 previous to you had made it known to everyone in
23 public record, we would have that information, but
24 most of the time people don't do that. It just
25 occurred and happens and nobody knows about it, unless

1 we get a complaint or somebody says something.

2 MR. TRODGLLEN: At the time I got the permit to
3 add the garage on to it, it was discussed at length at
4 that point, which was I think seven years ago, that I
5 lived in the apartment. It was never hidden. It was
6 never questioned when I bought the property from the
7 real estate company. It's a four bedroom house with a
8 two bedroom apartment. At no time up until now has it
9 ever been questioned that there was any problem with
10 having that apartment there. I was told that I
11 couldn't add on to that property, which I didn't do.
12 Now, you know, after I spent all of this time and
13 money, then basically you're out of luck. I don't
14 know. If you want me to try to search more
15 information, I can, but I mean it is very hard to find
16 anything. It was hard to even find names because
17 every one that lived in that neighborhood at that time
18 is no longer alive, except for the one that I got the
19 letter from. So I don't know. If there was never a
20 building permit when it got converted to an apartment,
21 then there's no information to find anyway I don't
22 guess. I don't know. It seems quite unfair to invest
23 money, upgrade it and get to this point and then I'm
24 told, you know, you can't live there.

25 CHAIRMAN: Mr. Mischel, did you suggest he

1 come in and discuss this with you and see if there is
2 another route he could take or discuss final action on
3 it?

4 MR. MISCHEL: When he came in to move the
5 electrical to the back structure, we spent quite a bit
6 of time, we did, researching this trying to find
7 something. We just couldn't find anything, other than
8 what he had from that one letter, evidence he had. We
9 searched the courthouse, PVA, our records, things of
10 that nature.

11 MR. TRODGLEN: I even went to --

12 CHAIRMAN: Sir, would you step back up so the
13 reporter can hear you.

14 MR. TRODGLEN: I went to the sheriff's office
15 to see if they could trace it somehow by driver's
16 license, who had lived there and when. I went to the
17 post office. They said they didn't have any way of
18 documenting that. I went down to -- the woman that
19 lived there until '97 and died. I was trying to get a
20 copy of a death certificate or something so I could
21 establish that she was there all the way until '97.
22 You can do it, but you have to go through the state
23 and it takes time to get it. I mean I followed every
24 lead there is. I don't think anybody questions that
25 that building has been there since '71.

1 CHAIRMAN: Sir, at this point the board has
2 already taken action. We had a motion and a second
3 and we voted on it. Your appeal was denied. I don't
4 really know what your next step would be.

5 MR. TRODGLLEN: That's what I'm asking. If
6 that is your ruling, then where do I go from there?

7 CHAIRMAN: I don't know. Maybe Mr. Howard
8 could tell us, but I certainly don't know.

9 MR. HOWARD: Come back down and talk to us.
10 We'll see if there's anything else we can think of as
11 well. In the meantime, we'll work with you certainly
12 on time frames and everything else. I've got a couple
13 of things running around in my head right now that may
14 be options potentially, but we'll discuss that face to
15 face instead of in the public meeting.

16 MS. KNIGHT: I would just suggest, even though
17 I'm not able to offer legal advice, that you watch
18 your -- be mindful of your time because if there are
19 further appeals you may want to watch your timelines.
20 So if you're going to have further discussions, I
21 would suggest that you do it quickly.

22 MR. TRODGLLEN: Well, I don't know if there's
23 any information I can come up with beyond what I have.
24 I mean I may. I was looking, I was at the sheriff's
25 department on Tuesday trying to see if I could trace

1 anything by driver's license.

2 CHAIRMAN: Mr. Howard or Counsel, can he,
3 after a certain period of time, can he reapply for
4 this, if something looks like can be worked out?

5 MS. KNIGHT: I believe he's exhausted his
6 administrative remedy as to this appeal on this
7 specific issue. I think it's a matter of maybe trying
8 to come up with a different way of doing things at
9 this specific location.

10 MR. HOWARD: I'm no attorney. He could always
11 appeal to circuit court, your all's decision to
12 circuit court. There's always an outlet, there's
13 always a remedy. In this instance, at Staff level we
14 couldn't make a determination. You all are the
15 outlet, the appeal board. If he doesn't agree with
16 that decision, there's always further court action
17 that can take place.

18 Like I said, if you come down, we'll see if
19 there's something else that may be out there. I don't
20 know.

21 MS. KNIGHT: That's why I made the statement
22 about the timeline. Just be mindful of that.

23 MR. TRODGLLEN: Okay. Thanks.

24 CHAIRMAN: Chair is ready for a motion to
25 adjourn.

1 MS. DIXON: So move.

2 MS. FREE: Second.

3 CHAIRMAN: We have a motion and a second. All
4 in favor of the motion raise your right hand.

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 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 35 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 May, 2015.

18
19
20
21
22

LYNNETTE KOLLER FUCHS
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23 COMMISSION EXPIRES: DECEMBER 16, 2018
24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY
25

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