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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

JUNE 4, 2015

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

- MEMBERS PRESENT: Ward Pedley, Chairman
- Judy Dixon, Vice Chairman
- Ruth Ann Mason, Secretary
- Brian Howard, Director
- Terra Knight, Attorney
- Jerry Yeiser
- Susan Free
- Fred Reeves

* * * * *

CHAIRMAN: Call to order the Owensboro Metropolitan Board of Adjustment June 4, 2015 meeting. We begin our meetings with a prayer and pledge of allegiance to the flag. Mr. Reeves will lead us. Will you stand, please.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: I would like to welcome everyone. Anyone wishing to speak on any item may do so. We ask that you come to one of the podiums and state your name and be sworn in. We welcome your comments and questions.

With that the first item on the agenda is to consider the minutes of the May 7, 2015 meeting.

1 Board members, you have a copy of the minutes
2 in your packet. Are there any additions or
3 corrections on the minutes?

4 (NO RESPONSE)

5 CHAIRMAN: If not the chair is ready for a
6 motion.

7 MS. DIXON: Move to approve.

8 CHAIRMAN: We have a motion for approval.

9 MS. FREE: Second.

10 CHAIRMAN: We have a second. All in favor of
11 the motion raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimous.

14 -----

15 CONDITIONAL USE PERMIT

16 ITEM 2

17 1631 Breckenridge Street, zoned B-5
18 Consider a request for a Conditional Use Permit in
19 order to operate a homeless shelter.
20 Reference: Zoning Ordinance, Article 8,
21 Section 8.2A7/6a
22 Applicant: Cross Roads, Inc.; Thomas H. & Mary Lou
23 Blackford

24 MS. KNIGHT: State your name for the record,
25 please.

MR. HILL: Mike Hill.

(MIKE HILL SWORN BY ATTORNEY.)

MR. HILL: Good evening, Commissioners.

1 This is a request for a conditional use permit
2 for an emergency overnight homeless shelter.

3 The applicant has been operating a soup
4 kitchen at this property since it was rezoned last
5 September to B-5 business industrial zone for a food
6 pantry and community center. The application proposes
7 to expand the services that they offer to the
8 community by opening an emergency overnight shelter
9 for women and children to be in use between 7 p.m. and
10 8 a.m.

11 The applicant has provided all the necessary
12 information required in the zoning ordinance for this
13 particular conditional use; demonstrating that they
14 meet the criteria for a conditionally permitted group
15 housing of which this use falls into that category.

16 The information that they have submitted
17 demonstrate they're compliant with the criteria. Most
18 of that is included in the packets that you all have
19 before you, if you're interested in looking through
20 that.

21 As far as the surrounding area, this part of
22 Breckenridge Street is a variety of land uses,
23 commercial, industrial and professional offices all
24 within the vicinity around the site.

25 On the Staff Report we listed the specific

1 zoning ordinance requirements that pertain to this
2 conditional use permit. I'm not going to go through
3 every one of those, but they're there for your
4 reference. They have submitted information that
5 demonstrate that they have met all the criteria listed
6 there.

7 Just in brief it's things like supposed to be
8 located within half a mile of a public transit; not
9 located in a historic district; the facility has to
10 have an on-site administrator that administers the
11 rules of the house so-to-speak. They have submitted
12 the information regarding that. They have to have a
13 fire exit plan. They have to demonstrate that
14 hallways and stairs and other means of egress shall be
15 kept clear of obstructions. So that information is in
16 your packet.

17 The board, of course, as it mentions in the
18 code and in this conditional use permit may impose
19 additional conditions on request if they choose to do
20 so.

21 The one suggested condition that we have
22 listed is at the bottom of the Staff Report. They
23 obtain the necessary building, electrical and
24 mechanical permits, inspection and certificates of
25 occupancy and compliance from the Owensboro

1 Metropolitan Planning Commission.

2 Staff request that the Staff Report be entered
3 into the record as Exhibit A.

4 CHAIRMAN: Anyone here representing the
5 applicant?

6 MR. TAYLOR: Good afternoon. Sepptimous
7 Taylor. I'm the attorney for Cross Roads and the
8 applicant. Ms. Ison and Mr. Blackburn are here if you
9 have any questions.

10 MR. YEISER: Mr. Chairman, I will need to
11 excuse myself since it's a personal friends asking for
12 this conditional use permit.

13 CHAIRMAN: So noted.

14 Do you have any comments that you want to
15 share with us, and we'll see if you have any questions
16 from the board members?

17 MR. TAYLOR: The one condition that the Staff
18 has presented, they are ready and able to meet that
19 condition. Other than that, everything is submitted
20 in the application, but we can answer any questions
21 that you may have.

22 CHAIRMAN: Board members, do you have any
23 questions of the applicant?

24 (NO RESPONSE)

25 CHAIRMAN: Is anyone here that would like to

1 speak in opposition of this application?

2 (NO RESPONSE)

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

5 MR. REEVES: I'll move for approval of the
6 application based on the fact that this area of the
7 community already has a great deal of mixed use in
8 there, and the proposed use by the applicant would not
9 have any negative impact on any of those current uses;
10 also proposed use would not have any significant
11 impact on the increase traffic or noise in the area.

12 CHAIRMAN: We have a motion for approval by
13 Mr. Reeves.

14 MS. DIXON: Second.

15 CHAIRMAN: Second by Mrs. Dixon. Any comments
16 or questions on the motion?

17 (NO RESPONSE)

18 CHAIRMAN: All in favor of the motion raise
19 your right hand.

20 (ALL BOARD MEMBERS PRESENT - WITH THE
21 DISQUALIFICATION OF JERRY YEISER - RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimous.

23 ITEM 3

24 1412 Tamarack Road, zoned R-1B
25 Consider a request for a Conditional Use Permit in
order to operate a by appointment only personal
training facility in a detached structure

1 Reference: Zoning Ordinance, Article 8
2 Section 8.2B 11/13
3 Applicant: Rocky Maddox; Brittany Gooley

4 MR. HILL: This is a request for a conditional
5 use permit for a personal training facility. The
6 zoning ordinance is listed as an indoor recreational
7 activity. There's several activities, and fitness
8 centers is one of those listed uses.

9 There's a little bit of history on this
10 property. I want to go through a little bit of that
11 for you as we move forward tonight.

12 At the beginning of January of this year, the
13 applicant approached the Planning Commission office
14 about this particular land use that they wanted to do
15 at the residence. Planning Staff advised them that
16 rezoning was more than likely not going to be
17 successful endeavor given the residential nature the
18 of neighborhood, and advised them that there is a
19 conditional use permit option that they could pursue
20 if they chose to.

21 We explained the process, how it works,
22 requirements that are involved including landscaping,
23 parking, things of that nature that would be required
24 of them associated with this conditional use permit
25 request.

At that time a business license was issued for

1 this address for the activities that they have
2 proposed with the caveat that they cannot occur on
3 this site until a conditional use permit is applied
4 for and successfully obtained. Any business
5 activities would have to occur off-site until such
6 time.

7 A few weeks later, the end of January of this
8 year, our office received a complaint that there was
9 business activity going on at the site. A Notice of
10 Violation was sent to the property owner.

11 Then exactly one month later on February 26th
12 our office received a response from the applicant's
13 attorney. They notified us that they intend to
14 complete the application, submittal process for the
15 conditional use permit. Asked if we would delay
16 further enforcement until they turn in their
17 application. Our office was agreeable to that.

18 Skip forward another six weeks or so. We
19 started receiving additional complaints from neighbors
20 in the area that business activity was going on at the
21 property at that time. So we were made aware by the
22 neighbors that this was ongoing. We sent out a
23 subsequent Notice of Violation, and I believe another
24 notice was also hand-delivered to the applicant by the
25 zoning enforcement team.

1 Then on May 13th a conditional use permit
2 application paperwork, completed paperwork was turned
3 into our office for tonight's agenda.

4 Regarding parking on the site, residential
5 portion of the site is required to have two parking
6 spaces per the zoning ordinance. The commercial
7 portion based on their activity and their number of
8 staff and appointments is also required to have two
9 spaces as well. They would be required to provide
10 screening for any vehicular use area that they propose
11 to implement on the sites where the parking areas
12 would be adjacent to residential properties, as well
13 as public street right-of-way on Tamarack.

14 The applicant has provided a site exhibit in
15 the packet that shows how and where they propose to
16 comply with the parking and landscape requirements.

17 As far as surrounding land uses in the area,
18 it's residential all around it.

19 The suggestive condition at this point that we
20 recommend is to obtain necessary building, electrical
21 and mechanical permit, inspections and certificates of
22 occupancy and compliance from the OMPC.

23 Staff request that the Staff Report be entered
24 into the record as Exhibit B.

25 CHAIRMAN: Anyone here representing the

1 applicant?

2 MR. PFEIFER: Mark Pfeifer.

3 MS. KNIGHT: Mr. Pfeifer, you're sworn as an
4 attorney.

5 MR. PFEIFER: I'm here for Brittany Gooley and
6 Rocky Maddox, they are here as well and will answer
7 any questions that anyone would have.

8 One thing I would say is the area immediately
9 surrounding their property is residential. If you
10 look on the screen, there are three buildings, further
11 east is all Blessing International, which is an
12 adoption agency, and right across the street, one
13 building closer to Frederica, is a chiropractic
14 center.

15 They are ready to comply with both the parking
16 requirements and the screening that is required by the
17 commission.

18 CHAIRMAN: Board members, do you have any
19 questions of the application?

20 MR. REEVES: I have a question for Staff.

21 Does the City issue business license for a
22 business even though a conditional use permit has been
23 not been approved?

24 MR. HOWARD: Jim, correct me if I'm wrong.

25 The business license was issued stating that,

1 basically allowing them to use their business name or
2 whatever, but would not allow it to take place at the
3 residence until a conditional use permit was approved.

4 MR. REEVES: Okay. I'm going to have several
5 questions, but go ahead.

6 CHAIRMAN: Anyone else have a question?

7 MS. DIXON: I have question.

8 Why did you continue using it before you got
9 the permit?

10 MR. PFEIFER: I'll let Mr. Maddox speak to
11 that. I don't know that he did continue using it.
12 There may be disagreement on that.

13 MS. KNIGHT: Mr. Maddox, would you state your
14 full name for the record, please?

15 MR. MADDOX: Rocky Maddox.

16 (ROCKY MADDOX WORN BY ATTORNEY.)

17 MR. MADDOX: When we first moved into the
18 property, I just applied for a license in order to
19 continue to do my personal training business in the
20 City of Owensboro. I've been a personal trainer, you
21 know, traveling around for two years. We first bought
22 the property like eight months ago. We didn't intend
23 of it flourishing or me becoming as popular as I
24 became in the city. It just kind of, you know, it
25 kind of potentially started picking up. Some of the

1 clients that I picked up I really need to have them
2 come by, you know. I maybe operate with around ten
3 clients and I need maybe half of them to come by the
4 house because I have to show them proper exercise
5 technique. I have to maybe go over their assessments,
6 set goals for them because they're at either gyms or
7 traveling or whatnot. I have a lot of prominent
8 clients that I go to their homes.

9 I didn't start a business because my gym is
10 not finished yet. If you see it, you would probably
11 laugh. It's not really finished yet so I didn't --
12 other than have people come over, whether friends that
13 are nurses or my friends, whether jogging around the
14 street or something, I didn't operate a business where
15 I was taking monetary funds in order to allow people
16 to work out. My facility is not really big enough to
17 actually have that volume and have people work out in.

18 CHAIRMAN: Any other questions from board
19 members?

20 MR. REEVES: I have a couple of questions.

21 Is there a reason that you didn't apply for
22 the appropriate permits when you made improvements to
23 the building?

24 MR. MADDOX: Sir, the only improvement that I
25 made is for the drywall. I contracted a company. I

1 really didn't know anything about business or how this
2 goes. I just made a call to a company and they came
3 and put drywall up. That's the only things I've made.
4 I haven't done any other changes, electrical or
5 anything. I just a made call and asked to put drywall
6 up. I didn't remodel it or anything.

7 MR. REEVES: Mr. Warren, would that be
8 accurate? Was there any improvements made that should
9 have been inspected other than drywall?

10 CHAIRMAN: Mr. Warren, will you step to the
11 microphone, please.

12 MS. KNIGHT: Would you state your name for the
13 record, please.

14 MR. WARREN: Matthew Warren.

15 (MATTHEW WARREN SWORN BY ATTORNEY.)

16 MR. WARREN: I have not actually been in the
17 garage at this time. The enforcement of the building
18 code issues, I was going to wait until this was taken
19 care of to see if it was approved or disapproved
20 before we looked at what we are going to do. All I
21 can do is take him at his word that that's all he did.
22 I have not done an inspection at this time.

23 MR. REEVES: Thank you.

24 CHAIRMAN: Any other questions of the
25 applicant?

1 (NO RESPONSE)

2 CHAIRMAN: I'm going to ask for any
3 opposition. Just have a seat.

4 Anyone here would like to speak in opposition
5 of this application?

6 MS. KNIGHT: Mr. Land, you're sworn as an
7 attorney.

8 MR. LAND: Good evening, Mr. Chairman, Board
9 Members, Counsel, Mr. Howard. My name is Sean Land.
10 I'm here tonight on behalf of several neighboring
11 property owners. Here tonight are Don and Sylvia
12 Barlow, Cindy Bartley and Brenda Whitmer. They may
13 wish to speak.

14 With counsel's permission I would like to pass
15 out a couple of copies of items.

16 My clients strongly object to the conditional
17 use permit sought by the applicant at this evening's
18 meeting.

19 The applicant's property, as well as my
20 clients' property, is located in a residential zone.
21 It's R-1B, previously discussed in Staff Report and by
22 the applicant.

23 The applicant seeking a conditional use permit
24 in order to operate an appointment only personal
25 training facility in "a detached structure." This

1 detached structure actually is an existing garage in
2 the rear of the applicant's yard. In fact, I believe,
3 that garage was constructed many years ago. Long
4 before the applicant purchased the property. It was
5 there at the time they purchased.

6 In the packet that I have passed out, in fact,
7 it's probably the same photo that's on your screen, it
8 clearly shows the detached structure.

9 Now, my clients that are here tonight, the
10 Barlows, Mrs. and Mrs. Barlow, I guess live next-door
11 to the subject property to the east. Mrs. Whitmer
12 lives next-door to the west. Mr. and Mrs. Bartley is
13 across the street.

14 Looking at that aerial photo you can see that
15 this detached structure of the garage where the
16 activity would occur, if the conditional use permit is
17 granted, is actually closer to Mr. and Mrs. Barlow's
18 dwelling than the applicant's dwelling.

19 Now, I've also including, and I'm sure you
20 have a copy, of a site plan drawing that was submitted
21 with the application. To assist I have a blown up
22 copy of that.

23 This site plan drawing clearly shows a portion
24 of the applicant's detached structure, the garage,
25 where the with business would be conducted, actually

1 encroaches on a public utility easement. We have a
2 five foot public utility easement at the rear of the
3 property line. I believe the south -- well, the rear
4 corner closest to Mr. and Mrs. Barlow's house actually
5 as shown on the site plan submitted with the
6 application, just over three feet from the rear
7 property line.

8 My clients object to the conditional use
9 permit essentially on two basis. First, they actually
10 when I'm finish may wish to speak to this issue. We
11 believe that it's contrary to the general nature and
12 character of the surrounding area and the
13 neighborhood. As noted in the Staff Report, all
14 properties in the immediate vicinity are zoned
15 residential or are used as such.

16 Mr. Pfeifer is correct, several properties
17 down on the corner of I guess Tamarack and South
18 Griffith there is adoption agency. Then as you going
19 towards Frederica there is chiropractor, then of
20 former Texas Gas building, well, JA building then
21 Texas Gas.

22 We believe there is simply as to this area
23 there is simply no precedence for this sort of use or
24 business.

25 The second basis for my clients' objection is

1 we believe that the proposed use or activity would
2 violate at least three portions of the zoning
3 ordinance. I have included copies of excerpts of
4 those in the package that I've passed out.

5 First in Article 3 of the zoning ordinance in
6 Section 3-6(a)(1) it provides "residential zone -
7 accessory buildings shall not be used for or involved
8 with the conduct of any business, trade or industry."

9 Of course, as you all are well are, Article 14
10 of the Zoning Ordinance, the definition section deals
11 with definitions for words such as may or shall. In
12 all circumstances, according to Article 14, the word
13 "shall" is mandatory. Not merely directive.

14 There can be no question that the applicant is
15 seeking to use this detached structure or garage for a
16 business purpose. Thus it's expressly prohibited
17 under that section, again, Section 3-6(a)(1) of the
18 Zoning Ordinance.

19 Second, staying in Article 3 but now looking
20 at Article 3-6(e). It provides, "accessory buildings,
21 structures and features shall not encroach upon or be
22 located within public right-of-way, public utility
23 easements, or adjoining lots."

24 Again, we have the words "shall not" which are
25 imperative or mandatory. The fact that the corner of

1 this garage encroaches upon the public utility
2 easement, can't be questioned here. It was on the
3 site drawing submitted with the applicant's
4 application. Therefore the Zoning Ordinance would I
5 think prohibit granting the permit on that basis.

6 Finally, turning to Article 8 of the Zoning
7 Ordinance, specifically Section 8.2b11/13, which
8 relates to "Indoor Recreational Areas." It provides
9 in Part 13 where it can be done with the conditional
10 use permit, but Part 13 there that is included with
11 the package clearly provides "Commercial indoor
12 recreational activities are prohibited in all
13 Residential Zones."

14 The personal training facility applicant
15 wishes to operate clearly will constitute a commercial
16 use. It's a business. In fact, I have included
17 copies with the package, my clients became of aware of
18 this by January 15, 2015 article in the Messenger.
19 The head photo actually shows the applicant with a
20 client. The article discusses rates, fees, things
21 like that. That makes it very clear it is commercial,
22 and it clearly is in a residential area.

23 Article 8 in the applicable section provides
24 again, "Commercial indoor recreational activities are
25 prohibited in all Residential Zones."

1 I submit that the conditional use permit must
2 be denied based upon the effect and, again, my clients
3 may wish to speak on the effect that it will have on
4 the vicinity where they live, but most importantly it
5 must be denied due to the expressed provision of the
6 cited sections of the zoning ordinance.

7 Again, we're talking about Section 3-6(a)(1),
8 3-6(e), and finally 8.2b11/13.

9 Again, I appreciate your time, your
10 consideration.

11 CHAIRMAN: Let's see if any board members have
12 any questions.

13 Board Members, do you have questions on this?
14 Anyone?

15 (NO RESPONSE)

16 CHAIRMAN: If not, if you want to have a seat
17 and we'll see if anyone else would like to speak.

18 Anyone else like to speak on this?

19 MS. KNIGHT: Sir, can you state your name?

20 MR. BARLOW: My name is Don Barlow.

21 (DON BARLOW SWORN BY ATTORNEY.)

22 MR. BARLOW: My name is Don Barlow. I live at
23 1406 Tamarack Road. My wife and I have lived there
24 for 50 years. I would not have bought this house back
25 that many years ago if there had been a business there

1 already. My property is next to Mr. Maddox. Our
2 property is separated by a gravel driveway that
3 extends from the street back to Mr. Maddox's detached
4 garage, where his business is located. The building
5 is approximately three feet from my backyard. This
6 may devalue my property or at least make it
7 difficult to sell it as its true worth. Businesses
8 should not be allowed in residential zoned areas. To
9 compound the problem, parking and backing out of the
10 gravel driveway makes it more dangerous for his
11 clients as well as the surrounding neighbors that you
12 will hear from or already have.

13 Traffic on Tamarack Road already makes it
14 difficult for local residents to safely get out of
15 their driveway. This adds to the problem.

16 Kind of in summary. It takes away the
17 residential feeling, opens the gate for other
18 commercial businesses to move in. Evaluation probably
19 won't change, but I never will be able to sell my
20 property for what it's worth with a business there.
21 It creates more traffic problems by blocking view of
22 people trying to get out.

23 That's pretty much all I have to say. Does
24 anyone have questions for me?

25 CHAIRMAN: Any board members have any

1 questions?

2 (NO RESPONSE)

3 CHAIRMAN: Thank you, sir.

4 Anyone else who would like to speak in
5 opposition or have any comments or questions on the
6 application? Anyone?

7 MR. REEVES: I have another question for
8 Mr. Maddox, please.

9 CHAIRMAN: Let me make sure we don't have
10 anyone else in opposition, and then I'll call back Mr.
11 Pfeifer or Mr. Maddox.

12 Would you like to respond to the concerns and
13 questions that you've heard?

14 MR. PFEIFER: No.

15 MR. REEVES: Mr. Maddox, is this picture in
16 the Messenger-Inquirer an accurate representation that
17 you are in fact working with a client in your gym at
18 this property?

19 MR. MADDUX: When the Messenger-Inquirer came
20 to ask to do a story because they heard about my
21 popularity around town, they came and they did a
22 story. I was telling that, you know, I have a
23 building in the back that hopefully I can maybe one
24 day turn into a gym. The gentleman that was there
25 asked if he could take a picture. You know, I had a

1 cousin of mine that stated in the article that we've
2 been working out for two years, and remind you that
3 we've only been in the house for three months up until
4 January. I've been working out with her. It's a
5 friend of my family.

6 They asked if they could take a picture, you
7 know, for publicity. I was young. I didn't know that
8 it would get blown out of proportion to where they
9 would make it like I was really having a gym. I just
10 wanted to have a couple of my clients come by just as
11 normal traffic, no traffic in the road, but just to
12 come by and just to get assessed and just to get
13 taught the proper formation of exercise. I never
14 intended it on being what the newspaper made it out to
15 be, like a commercial gym. I can't compete with any
16 commercial gym. It's just a residence where I need a
17 couple of people to come over and show them certain
18 things. That's all. I don't want to interrupt
19 anything. I don't want to interrupt the residential
20 area. I like my property value how it is. I don't
21 want to interrupt any of my neighbors or anything.

22 The structure is going to be there. I'm still
23 going to work out there. That structure is not going
24 to change, you know. The traffic is going to be
25 there. Tamarack is a high traffic area. Apollo is

1 down the street. There's people run up and down the
2 street all day long. I do that also. I don't want
3 any problems. I want to get along with my neighbors.
4 I really do. I wish we could have had a conversation
5 about it. I don't want to interrupt anything that
6 they've got going on.

7 In response to what you said, Mr. Reeves, I
8 never intended on it being what it was. The newspaper
9 came and they were really wanting a story. I mean
10 that's what they got. I really am sorry that it came
11 across to my neighbors as such a shock.

12 MR. REEVES: Did you represent Ms. Torres as a
13 client or did the Messenger-Inquirer independently
14 represent Ms. Torres as a client?

15 MR. MADDOX: Well, they represented to her
16 basically -- she was there. They basically asked if
17 she would come in and portray --

18 MR. REEVES: My question is --

19 MR. MADDOX: No.

20 MR. REEVES: -- who represented her as a
21 client?

22 MR. MADDOX: I am her personal trainer.

23 MR. REEVES: So she is a client?

24 MR. MADDOX: She is a client of mine.

25 MR. REEVES: That answers my question. Thank

1 you.

2 CHAIRMAN: Mr. Pfeifer, would you like to
3 address his concerns?

4 MR. PFEIFER: Well, with regard to the
5 encroachment issue, Mr. Maddox didn't do anything to
6 enlarge that structure. So that garage has been there
7 long before he ever bought that property last year.
8 He didn't do anything to expand the scope of that
9 building. He never added onto it. As far as that
10 goes, he hasn't done anything to change that in one
11 respect at all.

12 The main question you have is would this have
13 an adverse influence on any future development of the
14 subject property or the surrounding neighborhood.

15 Tamarack Road has been used heavily for a long
16 time. I've grown up in this town and it's changed
17 since I was a kid living in Thoroughbred Acres in
18 1980. That neighborhood has changed quite a bit.
19 There has been increased business along that
20 neighborhood. I don't think the scope of what
21 Mr. Maddox is envisioning is going to change the
22 essential nature of that neighborhood at all.

23 We would ask that the conditional use permit
24 be granted, his application be grant. He'll comply
25 with whatever reasonable restrictions you need to put

1 on it. Thank you.

2 CHAIRMAN: Board members, you have any
3 questions?

4 MS. MASON: Yes, I have another question for
5 Mr. Maddox.

6 I'm kind of glancing down through this
7 newspaper article. I see where you say the gym will
8 offer a clothing line that you're featuring shirts.
9 So you're planning to sell clothing which would be
10 people coming and going for that also?

11 MR. MADDUX: No. All my clothing purchases
12 are online. People order them and they're shipped to
13 their address.

14 MS. MASON: Okay.

15 CHAIRMAN: Any other questions from a board
16 member?

17 MR. YEISER: I really want to talk to Jim.
18 That's who I want to question.

19 CHAIRMAN: I'm going to come back to Staff.

20 MR. YEISER: Thank you.

21 MS. DIXON: I have a question for Mr. Maddox.

22 You stated that you wish you could have had a
23 conversation with your neighbors. When you first
24 bought the property and decided this was the use you
25 wanted, did you make an effort to talk to your

1 neighbors?

2 MR. MADDOX: They were really friendly. You
3 when the newspaper article came out everyone stopped
4 speaking to me. I don't see my neighbors. No one
5 really comes out or anything. They stopped speaking
6 to me I didn't want to really intrude. I really,
7 really wanted to go and speak with them. I spoke to
8 my attorney and when I went up to Planning and Zoning
9 they said that was a good idea. But I was just
10 getting a cold shoulder. I'm really young. I want to
11 do the right thing, but our age differences are kind
12 of large. I wish I could have, but I just didn't have
13 the opportunity.

14 MS. DIXON: When you first moved into the
15 property, before the newspaper article came out, did
16 you make an effort to explain to them, I'm considering
17 this?

18 MR. MADDOX: Well, when I moved into the
19 property, I never thought that this, I never intended
20 on having it. It was just like once the newspaper
21 came and I said, this is a facility that, I mean this
22 is what I have that I workout in and maybe I could
23 have it into a gym maybe. The story kind of got big
24 and people were asking me about it. I said, you know,
25 I'm going to apply for it and I'm going to see if I

1 can get the permit for it. Sounds like maybe a good
2 idea to have a couple of people over, you know. So
3 here I am now.

4 CHAIRMAN: Thank you sir. I'm going to see if
5 the opposing side, Mr. Land, would like respond to
6 this.

7 MR. LAND: Just briefly.

8 Earlier I brought up what I believe are three
9 violations of the zoning ordinance. Mr. Pfeifer
10 certainly addressed the issue about the encroachment
11 on the public utility easement. He's correct,
12 Mr. Maddox, neither of the applicants, current owners
13 of the property constructed that garage. The garage
14 was constructed after the neighborhood was developed.
15 It was after the plat. I believe I have the original
16 Town and Country, Unit 1, subdivision plat in the
17 packet I passed out, which shows five foot utility
18 easements. That structure did not exist. These folks
19 can probably tell you about, you know, the exact year
20 that it went up, but it was well after the easement
21 was granted.

22 Question whether, you know, the permitting,
23 other than a conditional use permit, but as to the
24 building, Mr. Warren and his office may be conducting,
25 whether it can ever lead to a certificate of occupancy

1 based on that encroachment.

2 Of course, we can't forget the other two.
3 Again, I believe obvious prohibition in the zoning
4 ordinance dealing with business use is never
5 permitted. As stated in Article 3 there, "accessory
6 buildings shall not be used for or involved with the
7 conduct of any business, trade or industry."

8 Again, we're at Article 8. This has been
9 brought and a portion of the zoning ordinance cited
10 actually provides that "commercial indoor recreational
11 activities are prohibited in all residential zones."

12 Now, I believe Mr. Warren earlier said, you
13 know, we really have to take the applicant's word on
14 the nature of those using the facility over the last
15 several months. I'm sure any of these folks would be
16 happy to advise, ask to frequency of visitors, and
17 items like that, you know, if there's any specific
18 questions. I don't know that that actually
19 establishes any violation. It could be just lots of
20 people going by.

21 The Staff Report does indicate that the
22 connection with the planning office began with at
23 least an inquiry about the zoning change to the area,
24 and then resulted in the current conditional use
25 permit. I think that does make clear that the intent,

1 while it may be different after today, but up until
2 this point was clearly to engage in a business out of
3 that detached garage. Otherwise, I don't see the need
4 to go to those extremes.

5 CHAIRMAN: Board members have any additional
6 questions?

7 (NO RESPONSE)

8 CHAIRMAN: Anyone else? This is the final
9 round, final call. I think everyone has had adequate
10 time to respond to both sides.

11 I'm going to ask board members, do you have
12 questions of Staff.

13 MR. YEISER: I would like to ask Jim a
14 question.

15 On this zoning, according to what he just
16 read, Jim, these articles are pretty strong that we're
17 not supposed to do that. Is there something in the
18 condition that will allow us to be able to give them a
19 conditional permit?

20 MS. KNIGHT: State your full name for the
21 record.

22 MR. MISCHEL: Jim Mischel.

23 (JIM MISCHEL SWORN BY ATTORNEY.)

24 MR. MISCHEL: I'll try to clarify some of the
25 comments I've heard.

1 As far as the comments about Article 3, one of
2 the comments on the definition I think is the article,
3 when you get into assembly and recreational
4 activities, a fitness center does belong in that
5 activity and is conditionally permitted R-1B zone. I
6 believe that takes care of part of Article 3. That
7 gives you a reason why you can justify it.

8 I think if there's a gray area in there, you
9 would have to go to what's been pointed out to Number
10 13 where it says "Commercial indoor recreational
11 activities are prohibited in all Residential Zones."
12 That's kind of where you have to look at all the
13 evidence and see if you think it fits into that
14 neighborhood, integrates into the neighborhood.

15 I believe by it being conditionally permitted
16 in that zone that's why they come to this board.

17 As far as the other comment about Article 3,
18 the easements, this board really doesn't have the
19 authority to relieve that. I mean that structure is
20 in an utility easement. The only people that can
21 relieve that would be the utility company. They would
22 have to go to the utilities and ask for an easement
23 release. That wouldn't be done by this board.

24 MR. YEISER: The encroachment I'm not
25 concerned about. That's been there so long enough

1 it's going to be grandfathered anyway. Town and
2 Country has been in existence a lot of years. So I
3 can't see that anything can be done with that. I was
4 just concerned about this commercial and/or
5 recreational activities. He is doing this for pay. I
6 mean it is a business. My concern is are we allowed
7 to give him encroachment on something like this with
8 these rules.

9 MR. MISCHEL: I think you're allowed to
10 consider it by the sheer fact that it conditionally
11 permitted in an R-1B zone, but you have to weigh the
12 evidence to determine to what degree is that
13 commercial activity, I believe.

14 MR. YEISER: That's all I have. Thank you.

15 CHAIRMAN: Any other board members have
16 questions of Mr. Mischel?

17 (NO RESPONSE)

18 CHAIRMAN: Any other questions of Staff or
19 anyone?

20 (NO RESPONSE)

21 CHAIRMAN: Mr. Howard, do you have any
22 comments?

23 MR. HOWARD: No.

24 CHAIRMAN: Mr. Pfeifer, do you have any final
25 comments?

1 MR. PFEIFER: No. I think the fact that the
2 conditionally permitted use will allow you all to
3 grant it.

4 CHAIRMAN: Final call.

5 (NO RESPONSE)

6 CHAIRMAN: Board members, do you have any
7 additional comments or questions?

8 (NO RESPONSE)

9 CHAIRMAN: If not the chair is ready for a
10 motion.

11 MR. REEVES: Mr. Chairman, I move this
12 application be denied. First fact being that this is
13 clearly a residential area for over 50 years and the
14 applicant's property is located in the midst of this
15 residential area.

16 Secondly, Article 3, Section 3-6(a)(1) gives
17 an intent that "In residential and manufactured
18 housing park zones, accessory buildings shall not be
19 used for or involved with the conduct of any business,
20 trade or industry." Further Section 8.2b11/13
21 "Commercial indoor recreational activities are
22 prohibited in all Residential Zones."

23 CHAIRMAN: We have a motion for denial by
24 Mr. Reeves.

25 MR. YEISER: I'll second the motion.

1 CHAIRMAN: We have a second by Mr. Yeiser.
2 Any comments or questions on the motion?

3 (NO RESPONSE)

4 CHAIRMAN: All in favor of the motion raise
5 your right hand.

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries unanimously.

8 MR. REEVES: I have a question before the
9 party leaves. This is for legal counsel.

10 Should the individual applicant here decide
11 down the road that they just choose to have folks
12 comes in and take compensation, people are attending,
13 are there any criminal or civil consequences for
14 somebody conducting this without the permit?

15 MS. KNIGHT: For purposes of this board it
16 would be another notice of violation or citation.

17 MR. REEVES: If that notice of violation is
18 sent, then what are the consequences if that violation
19 is upheld?

20 MS. KNIGHT: I don't know that it would be a
21 civil, like monetarily. Like the neighbors, I think
22 they have right to bring their own civil action if
23 they wanted to force that as well.

24 MR. REEVES: I'm wondering what value does
25 this denial have in terms of consequences if anybody

1 chooses not to abide by findings of this board.

2 MR. MISCHEL: I guess the only recourse we
3 would have if it came to that fact is we would issue a
4 letter of violation, and eventually if it wasn't
5 complied with it would end up in Daviess District
6 Court for resolution.

7 MR. REEVES: Would we take that action?

8 MR. MISCHEL: Yes, we would take that action.
9 We would send it over to Daviess District Court.

10 MR. REEVES: Would we send it to Mr. Porter or
11 would we send it directly?

12 MR. MISCHEL: If it would go to circuit court
13 it wouldn't be Mr. Porter.

14 MS. KNIGHT: Board of adjustment would file
15 suit of violation.

16 MR. REEVES: I wanted to make sure I
17 understand. Thank you.

18 CHAIRMAN: Thanks to everyone.

19 Next item, please.

20 ITEM 4

21 4901 West 5th Street Road, zoned A-U
22 Consider a request for a Conditional Use Permit in
23 order to operate a lawn care business.
24 Reference: Zoning Ordinance, Article 8,
25 Section 8.2H8/33a
Applicant: Delbert Falloway

MR. HILL: Good evening again.

1 Commissioners, this is a conditional use
2 permit request to operate a landscaping service.
3 Section 8.2H8/33a in the zoning ordinance allows for a
4 conditional use permit to be requested for a
5 landscaping service.

6 The applicant has provided an exhibit of the
7 site in the packet. Some of the items regarding
8 landscaping and access that will be mentioned here in
9 a minute are demonstrated on the exhibit that you
10 have.

11 In 1988 this property was consolidated with a
12 property directly to the east on Dove Court, 754 Dove
13 Court to be exact. There were a series of
14 consolidation plats over subsequent years to bring the
15 parcel that you seen on the screen highlighted in blue
16 to its current shape and size. The Dove court portion
17 residential lot carries residential zoning application
18 larger portion in the rear is zoned A-U Urban
19 Agricultural.

20 There is detached structure on the large
21 portion. The applicant has recently as a couple of
22 months ago try to obtain building permit for
23 additional structure on that large rear portion of the
24 property. At that time it was discover the applicant
25 intended to use the area for landscaping service. He

1 was then advised conditional use permit would be
2 required in order to proceed with that main use
3 activity of the property. Since the two properties
4 are consolidated and have split zone residential on
5 small piece and urban agricultural on the large piece,
6 if this is successful he is able to continue with his
7 business at the site, it will be required for two
8 segment of the property to be divided by minor
9 subdivision plat.

10 With regard to access, in 2006 there was a
11 subdivision plat that was presented to Staff and
12 approved. It had a note about the western access that
13 had to be removed. You can see it on the screen there
14 at the bottom left corner of the property. It is
15 required and it's been proposed to be a condition of
16 this application that that access be removed. There
17 is another reference in our current suggested
18 conditions that the one remaining access, which is to
19 the east on this site on Fifth Street Road, that it be
20 paved to a minimum of 50 feet into the property from
21 the edge of the pavement. Again, that shows on the
22 exhibit that you have in your Staff Report. It's the
23 color aerial photo that the applicant has provided.

24 Also suggested condition is to install a
25 required vehicular use area screening as required by

1 the zoning ordinance. That is also shown on that
2 exhibit I referred to. We failed to include in the
3 Staff Report the condition regarding minor subdivision
4 plat, but we do want to add what would be a fifth
5 condition that reads, "A minor subdivision plat will
6 be required to divide the residence at 754 Dove Court
7 and the subject property at 4901 West Fifth Street
8 Road."

9 The last condition we propose is to obtain
10 necessary building, electrical and mechanical permits,
11 inspections and certificates of occupancy and
12 compliance from the OMPC.

13 Staff request that the Staff Report be entered
14 into the record as exhibit C.

15 CHAIRMAN: Anyone here representing the
16 applicant?

17 MR. FALLOWAY: Yes.

18 MR YEISER: I need to be excuse myself. They
19 are friends of mine.

20 CHAIRMAN: So noted.

21 MR. FALLOWAY: I'm Delbert Falloway. I'm the
22 owner of the property.

23 (DELBERT FALLOWAY SWORN BY ATTORNEY.)

24 MR. FALLOWAY: I did talk to the county
25 engineer about the culvert on West Fifth Street Road.

1 I asked him, because there is guardrails that goes
2 down that road. I asked him if I left the culvert and
3 I took the access out because I do have to landscape,
4 continue the landscape down through the property, if I
5 could turn it in and grass it in. He said that would
6 be fine because the guardrail abutments, which are on
7 the end, they're already up to the safety code. That
8 he would not have to replace the guardrail. That was
9 the only question that I had about that.

10 CHAIRMAN: Any board members have any
11 questions of Mr. Falloway?

12 (NO RESPONSE)

13 CHAIRMAN: Mr. Falloway, I'm going to see if
14 we have any opposition and bring you back.

15 Anyone here that would like to speak in
16 opposition on this item?

17 (NO RESPONSE)

18 CHAIRMAN: Would Staff like to address Mr.
19 Falloway's concerns?

20 MR. HOWARD: I will glad to.

21 That's fine. As long as it's grassed in and
22 it's not used as access and the gravel is gone. I
23 don't have an issue with that either, as long as the
24 county think it's okay.

25 CHAIRMAN: With no further comments or

1 questions, board members do you have any comments or
2 questions?

3 (NO RESPONSE)

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

6 MS. MASON: Mr. Chairman, I move for approval
7 based on the fact that the two adjoining properties
8 are consolidated and one of the properties is
9 agricultural which fits within the lawn care business,
10 and with the approval of the suggested conditions that
11 were mentioned earlier, 1 through 5.

12 CHAIRMAN: We have a motion for approval by
13 Mrs. Mason. Do we have a second?

14 MS. DIXON: Send.

15 CHAIRMAN: We have a second by Mrs. Dixon.
16 Any comments or questions on the motion?

17 (NO RESPONSE)

18 CHAIRMAN: All in favor of the motion raise
19 your right hand.

20 (ALL BOARD MEMBERS PRESENT - WITH THE
21 DISQUALIFICATION OF JERRY YEISER - RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimous.

23 Next item, please.

24 -----

25 VARIANCES

1 ITEM 5

2 308 Hubert Court, zoned R-1A
3 Consider a request for a Variance in order to reduce
4 the interior side yard building setback on each side
5 from 10 feet from property line to 9 feet from the
6 property line.

7 Reference: Zoning Ordinance, Article 8,
8 Section 8.5.5(d)

9 Applicant: Chester R & M. Elaine Pack

10 MR. HILL: Commissioners, this is a variance
11 request by the applicant to construct a new
12 single-family residence 9 feet from the property line
13 rather than the required 10 feet. It's a one foot
14 variance on each side of the subject property.

15 Applicant has provided an exhibit of
16 information that you have in your packet that shows
17 the area and a sketch of the footprint of the building
18 and relation to the required setbacks.

19 The subject property is located a
20 single-family residential zone and typically requires
21 a 75 feet of road frontage on lots in that zone. The
22 majority of the lots on Hubert Court are 60 feet. So
23 15 feet less wide than the typical lot in the zoning
24 district. After you remove the required 10 foot side
25 setback from 60 foot typical lot on Hubert Court, you
 are left with a 40 foot wide. The applicant's house
 plan, which copies are included in your packet as
 well, is proposed to 42 feet wide. So two feet wider

1 than the space that is given according to the zoning
2 ordinance.

3 The applicant as well as Staff did some
4 research on Hubert Court and the existing structures
5 in the area. We found at least six or eight along
6 Hubert Court that appears that the primary structures
7 encroach into the side yard setbacks. So there
8 appears to be an established pattern of this type of
9 development. This does not appear to be out of
10 character with the existing situation on the Hubert
11 Court neighborhood.

12 Staff finds that the granting of this variance
13 will not adversely affect the public health, safety or
14 welfare because the requested variance is only for 1
15 foot on each side leaving 9 feet from the structure to
16 the property line on each side.

17 Granting of the variance will not alter the
18 essential character of the general vicinity because 8
19 other primary structures appear to encroach into the
20 side yard building setback on Hubert Court.

21 Granting the variance will not cause a hazard
22 or nuisance to the public because a 1 foot variance on
23 each side leaves sufficient room for access between
24 structure and property line for emergency services.

25 Granting the variance will not allow an

1 unreasonable circumvention of the requirements of the
2 zoning regulations because a majority of the other
3 primary structures on the street appear to encroach
4 into the side yard building setback and at only 1
5 foot, the variance does not significantly impact the
6 area.

7 Staff recommends approval of the variance and
8 Staff also request that the Staff Report be entered
9 into the record as Exhibit D.

10 CHAIRMAN: Anyone representing applicant.

11 APPLICANT REP: Yes.

12 CHAIRMAN: Do you have anything you would like
13 to share with us?

14 APPLICANT REP: No. I think you've pretty
15 much covered everything. Any questions anybody like
16 to ask?

17 CHAIRMAN: Board members, do you have any
18 questions or comments?

19 (NO RESPONSE)

20 CHAIRMAN: Let's see if we have opposition.

21 Anyone here like to speak in opposition, have
22 any concerns or comments on the application?

23 (NO RESPONSE)

24 CHAIRMAN: Board members, do you have any
25 comments?

1 (NO RESPONSE)

2 CHAIRMAN: If there are none the chair is
3 ready for a motion.

4 MR. YEISER: I'll make a motion to accept the
5 Variance on the findings with all that they've asked
6 him to do.

7 CHAIRMAN: We have a motion for approval.

8 MR. REEVES: I'll second it.

9 CHAIRMAN: We have a motion for approval by
10 Mr. Yeiser and a second by Mr. Reeves. Comments or
11 questions on the motion?

12 (NO RESPONSE).

13 CHAIRMAN: All in favor of the motion raise
14 your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries unanimous.

17 We need one final motion.

18 MS. MASON: Move to adjourn.

19 MR. REEVES: Second.

20 CHAIRMAN: All in favor raise your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: We are adjourned.

23 -----

24

25

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 43 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 June, 2015.

18

19

LYNNETTE KOLLER FUCHS
NOTARY ID 524564
OHIO VALLEY REPORTING SERVICES
2200 E. PARRISH AVE., SUITE 106-E
OWENSBORO, KENTUCKY 42303

22

23 COMMISSION EXPIRES: DECEMBER 16, 2018

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25