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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

NOVEMBER 5, 2015

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, November 5, 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
- Robynn Clark

* * * * *

CHAIRMAN: Come to order the Owensboro Metropolitan Board of Adjustment November 5, 2015 meeting to order. We will begin our meeting with a prayer and pledge of allegiance to the flag. Mr. Reeves will lead us. Would you stand, please.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

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

Board Members, we ask that you do the same.

1 The first item on the agenda will be to
2 consider the minutes of the October 1, 2015 meeting.

3 Board Members, you have a copy of the minutes
4 in your packet. Are there any additions or
5 corrections?

6 (NO RESPONSE)

7 CHAIRMAN: If not, chair is ready for a
8 motion.

9 MS. DIXON: Move to approve.

10 MS. MASON: Second.

11 CHAIRMAN: We have a motion to approve and a
12 second. All in favor of the motion raise your right
13 hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: The minutes are approved.

16 Next item, please.

17 -----

18 CONDITIONAL USE PERMIT

19 ITEM 2

20 1280 Gobler Ford Road, zoned A-R
21 Consider a request for a Conditional Use Permit in
22 order to operate an outdoor recreational facility for
23 birthday parties with hand led pony rides and private
24 riding lessons.

23 Reference: Zoning Ordinance, Article 8,
24 Section 8.2K7/42

24 Applicant: Christina Perlowski; Kevin Perlowski

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

1 please.

2 MS. EVANS: Melissa Evans.

3 (MELISSA EVANS SWORN BY ATTORNEY.)

4 ZONING HISTORY

5 The subject property is currently zoned A-R
6 Rural Agriculture.

7 There was a Conditional Use Permit approved in
8 July of 2012 by the Board to operate with the
9 hand-lead pony rides and private riding lessons. It
10 was stated at the previous meeting that any increase
11 in the size or scope of the operation would need to
12 come back before the Board for additional approval.

13 Recently, the Zoning Administrator received a
14 complaint about a large building being constructed on
15 the subject property. Upon investigation of the
16 complaint, the Zoning Administrator contacted the
17 applicant who confirmed the construction of a 65 foot
18 by 120 foot building. The applicant was advised to
19 stop construction and follow the proper procedures for
20 the construction of the building. They're now
21 requesting to continue the current operation of the
22 hand-led pony rides for birthday parties with the
23 private riding lessons, and to construct this new
24 building over the riding arena to provide protection
25 from the elements.

1 LAND USES IN SURROUNDING AREA

2 The properties to the north are zoned R-1A
3 Single-Family Residential and A-R Rural Agriculture.
4 The properties to the south, east and west are zoned
5 A-R Rural Agriculture.

6 ZONING ORDINANCE REQUIREMENTS

7 1. Parking - 1 space for each employee on the
8 maximum shift, plus 1 space for every 3 participants,
9 plus 1 space for every 3 spectator seats. All parking
10 areas shall be paved or gravel.

11 2. Landscaping - Vehicular Use Area screening
12 consisting of a 3 foot high continuous element with 1
13 tree every 40 feet of the vehicular area between the
14 right-of-way and the vehicular use area.

15 SPECIAL CONDITIONS

16 1. Obtain all necessary building, electrical,
17 and HVAC permits, inspections and certificates of
18 occupancy and compliance as required by the OMPC.

19 MS. EVANS: We would like to enter the Staff
20 Report into the record as Exhibit A.

21 CHAIRMAN: Is anyone here representing the
22 applicant?

23 MS. PERLOWSKI: Yes.

24 CHAIRMAN: Do you have something you would
25 like to share with us? Step the podium, please.

1 MS. KNIGHT: If you could please state your
2 name for the record.

3 MS. PERLOWSKI: Christina Perlowski.

4 (CHRISTINA PERLOWSKI SWORN BY ATTORNEY.)

5 MS. PERLOWSKI: I would like you to consider
6 my application. I'm sorry, I'm more of a cowgirl than
7 a business woman. That's why I didn't really know
8 that I needed this permit the second time for the
9 canopy. So I do apologize for that. I am working
10 with the OMPC to do this properly.

11 CHAIRMAN: Any board members have any
12 questions of Ms. Perlowski?

13 MR. REEVES: You did confirm that you were
14 unaware of the need for permitting to build the
15 building?

16 MS. PERLOWSKI: Yes, sir.

17 MR. REEVES: Who is building that building for
18 you?

19 MS. PERLOWSKI: My husband.

20 MR. REEVES: You didn't hire a contractor who
21 would know that you would need a permit?

22 MS. PERLOWSKI: No, sir. It's a kit building.
23 It's fairly simple to construct. Yes, I did not know.

24 MR. REEVES: Will there be electricity in the
25 building?

1 MS. PERLOWSKI: Eventually, yes.

2 MR. REEVES: That's all I have.

3 MS. PERLOWSKI: And I'm going to make sure
4 that they have all the permits for that or get the
5 permits for that and everything.

6 CHAIRMAN: Any other board members have any
7 questions?

8 (NO RESPONSE)

9 CHAIRMAN: Thank you for right now. Let's see
10 if we have any opposition.

11 MS. PERLOWSKI: Thank you.

12 CHAIRMAN: Anyone here would like to speak in
13 opposition or have any questions on this application?

14 MS. SMEATHERS: Yes.

15 CHAIRMAN: Yes, ma'am, would you step to the
16 podium, please.

17 MS. KNIGHT: Please state your name for the
18 record.

19 MS. SMEATHERS: Leslie Smeathers.

20 (LESLIE SMEATHERS SWORN BY ATTORNEY.)

21 MS. SMEATHERS: My name is Leslie Smeathers.
22 I live at 1274 Gobler Ford Road. We share the
23 property line with Chrissy and Kevin Perlowski, doing
24 business as Party Pony, LLC.

25 I have several concerns, if you guys will give

1 me just a moment to give some history and concerns as
2 to why we have a problem with this ongoing business
3 and any expansion of this business.

4 First of all, the neighbors in the immediate
5 vicinity of the property, with the exception of
6 Mrs. Perlowski's mother who lives on the other side of
7 her, were never notified of the development of the
8 business until we happen to see flyers out in the
9 community. We protested the original conditional use
10 permit. While we support the entrepreneurship of the
11 Perlowskis and their right to use their property as
12 they see fit, we also demand our rights as property
13 owners and tax payers. We are being asked to respect
14 their rights while ours be are being trampled.

15 When we began building our house, the
16 Perlowski property was vacant. We literally built our
17 house, doing most of the work ourselves and it took
18 over two years. We were very familiar with the area
19 because my husband grew up on the farm less than a
20 mile away and was part owner of a livestock venture at
21 a farm adjacent to our current property. We knew many
22 of the neighbors. We especially came to know Mary and
23 George Baldwin, 1301 Gobler Ford Road, that moved in
24 approximately a year after our house was completed.

25 When the Perlowskis moved in, there was no

1 mention of a business. In fact, it was nearly two
2 years before that developed. We had numerous problems
3 prior to the business onset and have continued to have
4 issues. We have also learned that the Baldwins and
5 the Greenwells, neighbors directly across from us,
6 also had issues.

7 These are the issues that we have had and this
8 is why we are finding it difficult to sit back and
9 allow development of that property:

10 If you guys would like copies of this and
11 supporting documents, I have copies.

12 1. We have had numerous problems with the
13 Perlowski's livestock escaping the property's
14 inadequate fencing to wonder on our property and other
15 adjacent properties. I have found horse manure and
16 hoof prints in my landscaping, including the mulch of
17 my foundation plantings. We have no evidence to prove
18 that it was Mrs. Perlowski or any of her associates,
19 but soon after we noticed the first trespassing of the
20 animals on her property, we found the existing fence
21 cut along our shared property line to the rear of her
22 property.

23 We also had problems with their dogs. Most of
24 our new neighbors have dogs, but theirs are the only
25 ones that have been a problem. I'm a huge dog lover

1 and have two large dogs of my own, but I take
2 objection to having her small dog chase my car down
3 the driveway and nearly be hit. I've asked Chrissy to
4 please contain the dog because I would be devastated
5 if I injured Cleo. Her response was something to the
6 effect, "If she was too stupid to get out of the way,
7 go ahead and hit her."

8 This same dog and others on that property have
9 chased, nipped and charged myself and my dogs when we
10 were outside. It had gotten so bad that we avoid the
11 dogs. Cleo has run up on our porch and our garage
12 area trying to bite. She did in fact bite my dog and
13 draw blood.

14 Ironically, Mrs. Perlowski posted on social
15 media about a cat that was bothering her animals and
16 wanted someone to capture it for her to be taken to
17 the pound because it was on her property.

18 If we are having problems now, how is it going
19 to be with this business expanding?

20 2. We, and surrounding neighbors, have had a
21 significant problem with Mrs. Perlowski trespassing on
22 our land despite being told to desist. She has
23 brought students and other riders onto our property
24 even though we have made it clear that we do not want
25 the liability.

1 She has also interfered with my husband and
2 sons hunting on our property. My husband was fearful
3 for her safety during a recent deer season and had to
4 speak to her about it. While my son was in a deer
5 stand on our property near the property line, Mrs.
6 Perlowski rode her horse through the woods wearing
7 brown duck coveralls. She was not wearing orange or
8 taking any other safety precaution. This occurred
9 just before sunset on the opening weekend of deer
10 season. Anyone in this area knows that's a prime time
11 for deer and you don't go in the woods unprotected
12 without an orange vest.

13 After my husband warned her that her activity
14 was unsafe for her and her animals, and he did this
15 out of concern, she repeated the action the very next
16 day, but this time was singing loudly as she rode.

17 If she has the right to use her property as
18 she sees fit, why do we not have the same right?

19 Although it is not a trespassing issue, we
20 have safety issue of her riding her horses in the
21 roadway. Sometimes it's her and two other riding
22 abreast. The roads in our neighborhood are narrow,
23 hilly and curvy. It is scary to come around a curve
24 and be faced with horses and riders.

25 3. When cleaning out the barn, the Perlowskis

1 pile manure just a few feet from our property line and
2 also proximately 10 to 20 foot from our driveway. Any
3 time it rains the water drains and pools on our
4 property and driveway.

5 4. One of the biggest complaints we have is
6 that Mrs. Perlowski has defamed and slandered us on
7 social media because we have challenged her and gone
8 through the proper channels to do so. I have examples
9 of those posts. There is also proof of our claims of
10 trespassing because of a photo that she had posted on
11 Facebook. On Facebook Mrs. Perlowski even condoned
12 one of her friends vandalizing our property. In fact,
13 the post said, we shall go over to his yard and paint
14 jerk in Round-Up on his yard, which she liked, and I
15 see it as a method of condoning it.

16 On social media, Mrs. Perlowski slammed my
17 husband for reporting her to the EPA for burning a
18 mattress. My husband is obligated by his profession
19 and current position to do that. He had no other
20 choice. We have witnessed them burn other materials
21 such building materials, old tires and other things
22 that is against the law to burn.

23 I would appreciate it if we could keep
24 comments of liar and such be kept at a minimum from
25 others because they will get their chance to speak.

1 In fact, in that packet there are posts from
2 Mrs. Perlowski's Facebook account showing them burning
3 a couch behind their house, which is also an EPA
4 violation.

5 5. In October, Party Ponies was issued a stop
6 work order by Planning and Zoning because they did not
7 have permits nor had they submitted the requisite
8 paperwork to Planning and Zoning. They continued to
9 work for two days after that until their stop order,
10 their violation of the stop order was protested by a
11 neighbor.

12 If this is how this business is going to
13 comply with the law, how do you expect them to abide
14 by rules and regulations set forth by this board?

15 If Party Ponies, LLC is to be allowed to
16 expand their business, these are the things that we,
17 my husband and I and some other neighbors, would
18 respectfully request that they be required to do:

19 1) Install and sustain maintenance of an 8
20 foot privacy fence along road frontage and the
21 property line shared with our property. If an 8 foot
22 fence is not allowed by Planning and Zoning, then a
23 minimal 6 foot is requested. This would help with the
24 problem of her wandering livestock and trespassing.

25 2) We request that she be required to comply

1 with all federal, state and local laws, regulations
2 including and especially the ADA. Mrs. Perlowski
3 touts her work with disabled children so she should
4 comply with the ADA.

5 3) We request permanent bathroom facilities on
6 this premises. If this is a permanent business, then
7 the temporary "port-a-potties" should go. By the way,
8 how is that ADA compliance?

9 4) We also ask prohibition against external
10 lights on the riding area, present or future. This
11 would be very invasive for our surrounding neighbors.

12 One other request that I did not put in here,
13 but there's never been a mention of height of the
14 structure. We were curious to know what that is
15 because we were never informed that it was being
16 built, let alone what it's going to look like when
17 it's done. Thank you.

18 CHAIRMAN: Board Members, do you have any
19 questions of Mrs. Smeathers? Anyone?

20 (NO RESPONSE)

21 CHAIRMAN: Take a seat and we'll see if we've
22 got anyone else that would like to speak.

23 MRS. SMEATHERS: Thank you for your attention.

24 CHAIRMAN: Anyone else would like to speak in
25 opposition?

1 Would you step to the podium, please.

2 MS. KNIGHT: State your name for the record.

3 MS. STADTLANDER: My name is Nancy
4 Stadlander.

5 (NANCY STADTLANDER SWORN BY ATTORNEY.)

6 MS. STADTLANDER: That was such a list I don't
7 even know where to start.

8 One of the things I would like to point out
9 that came out when they contested my daughter first
10 starting the business, is that they've always said
11 that they moved in at the same time. That is
12 absolutely not true. My daughter and her husband were
13 living there a good two years before they even started
14 building. It took them two years to build. They
15 didn't move in at the same time.

16 My daughter does have a dog that wandered some
17 and, yes, it has chased them up the driveway and I can
18 understand where that would be infuriating. She has
19 tried to do something about that.

20 The livestock wandering has been so minimal.

21 The hunting incident I would like to point
22 out, I was the one singing in the woods. Yes, we
23 should not have been there, but it is our property and
24 between my property and my daughter's property, which
25 is about ten acres of woods in the back, I figure we

1 ought to be able to go ride our horses on our own
2 property. So, yes, I was singing. I'm not stupid. I
3 realize somebody could be there without permission.
4 We went back as far as we could and we stopped our
5 horses and sat for a minute. Somebody shot a gun off
6 within 20, 25 feet of where we were. We had no idea
7 anyone was in that woods. In fact, they weren't in
8 the woods. When we started back, we found out that
9 Chrissy's neighbors had built a permanent blind about
10 10 feet from my daughter's property. They did not ask
11 for permission. They did not tell us they were going
12 to do that. Their lucky my horse did not bolt.

13 The riding across their property, would you
14 really want to ride across their property? They get
15 upset if a horse accidentally gets in there. Are we
16 going to be dumb enough to ride across their property?
17 I don't think so. Thank you.

18 CHAIRMAN: Ma'am.

19 MS. KNIGHT: Please state your name for the
20 record.

21 MRS. BALDWIN: Mary Baldwin.

22 (MARY BALDWIN SWORN BY ATTORNEY.)

23 MRS. BALDWIN: Mary Baldwin. I live at 1301
24 Gobler Ford Road, directly across from the Perlowskis.

25 When we moved there, the Perlowskis did live

1 across the street and they had horses, but there was
2 no business. This home is our retirement investment.
3 It's beautiful to see the horses graze, but the
4 business came. One day we seen a sign go up directly
5 across from our house. That's when we learned there
6 was going to be a business.

7 The light from the barn that they have now
8 shines directly into our front door. So our concern
9 is that what size is this building going to be and how
10 much lighting will there be?

11 During the summer, I know is a horse riding
12 business, but there has been a lot of two-cycle
13 motorcycles there on the weekends racing up and down.
14 Sounds like little bumble bees. We decided with
15 having a business across the street and with all this
16 noise, we put up a line at our expense at the end of
17 our property hoping they will grow up and be some
18 privacy there.

19 Our request would be for this that there is,
20 on their side of the road, on their business, that
21 they put up a line of trees to cut down on the light
22 shining and the noise from the business. With this
23 going on they did work several days past the stop work
24 order. That's all I have.

25 CHAIRMAN: Thank you.

1 Board Members, do you have any questions of
2 this lady while she's up? Anyone?

3 MR. REEVES: I have a question for her,
4 please.

5 As I hear your testimony, it seems that I'm
6 hearing that you have great concerns about their
7 existing business, which is already conditionally
8 permitted; is that correct?

9 MS. STADTLANDER: I'm sorry, I do wear a
10 hearing aid. I didn't catch all of that. Your
11 concern?

12 MR. REEVES: Melissa, do you want to repeat
13 that?

14 MS. EVANS: He said that he was concerned that
15 you have concerns about the existing building now as
16 it is regardless of the expansion. The existing
17 business that's already permitted.

18 MS. STADTLANDER: I said with the existing
19 building they have a light. Now, it isn't on all the
20 time, but it will burn. They have an existing light
21 on the building that shines to our front door, which
22 reflects the light.

23 Our concern is with the new building will
24 there be -- we're concerned about the new building.
25 How much lighting? Will it be burning day and night?

1 MR. REEVES: That answers my question.

2 MRS. STADTLANDER: It's not the existing
3 building that we're concerned with. It's the new.

4 MR. REEVES: Okay.

5 I have a question, if I could, for
6 Mrs. Perlowski. If she could come back up.

7 CHAIRMAN: Let's go ahead, if we could, Mr.
8 Reeves, and get the opposition and then we'll bring
9 Mrs. Perlowski back up.

10 MR. REEVES: Well, this relates to what I just
11 asked.

12 CHAIRMAN: Okay.

13 MR. REEVES: Is it your intention to have
14 lighting in your new building?

15 MRS. PERLOWSKI: Yes. I think this will
16 actually be a lot better for them because it's going
17 to be on the inside where it's not shining out. It's
18 just florescent lights hanging inside the building.
19 So it might be a little bit better for what she's
20 talking about.

21 MR. REEVES: Is the pavilion that you're
22 proposing to build in the same location as where you
23 do the rides now?

24 MRS. PERLOWSKI: Yes, sir. There's really no
25 difference to the permit that you guys have already

1 given me besides the fact that I'm putting a canopy
2 over the riding area. I have a lot of kids and some
3 with disabilities that sometimes we have to wait a
4 week, two weeks, three weeks before they can get back
5 out to ride. I just thought that I would get this
6 canopy for the kids so that we could have them out
7 more regularly, more consistently. That way, you
8 know, we can not have to worry about the rain. That's
9 really the only difference here.

10 A lot of what I heard from my neighbors here,
11 we is like an ongoing feud that's really not going to
12 change whether I have a business or not, I guess. I
13 would like it to.

14 As far as the dog, that really doesn't have
15 anything to do with my business. As far as the
16 motorcycles, I mean my brother and his friends ride
17 motorcycles out at my place on the weekends. That
18 also doesn't have anything to do with my business.
19 I'm trying to think about the things that do. As far
20 as the livestock getting out, that's very, very rare.

21 MR. REEVES: I'm not concerned about that,
22 Mrs. Perlowski. I just want to know about the lights.

23 The other question I have for you is your
24 hours of operation.

25 MRS. PERLOWSKI: I don't think I have started

1 any earlier than 8 a.m. It's for kids so I mean 9
2 p.m. max.

3 MR. REEVES: Thank you.

4 MRS. PERLOWSKI: You're welcome.

5 CHAIRMAN: Anyone else would like to speak in
6 opposition or have any questions or concerns?

7 MS. KNIGHT: Please state your name for the
8 record.

9 MR. SMEATHERS: Dwane Smeathers.

10 (DWAYNE SMEATHERS SWORN BY ATTORNEY.)

11 MR. SMEATHERS: My name is Dwane Smeathers. I
12 live at 1274 Gobler Ford Road, directly northeast I
13 guess you would say or northwest of the Perlowski's
14 property.

15 My main concerns, my wife has already given a
16 lot of concerns. One of my main concerns is our
17 privacy. We have, as she stated, they have their
18 manure pile within ten feet of our property line and
19 it's on a steep incline. So all the mud from their
20 barn, it comes into our yard. Which that and noise I
21 believe at the minimum they should be required to
22 build a fence or put up some type of barrier to
23 respect our privacy.

24 CHAIRMAN: Board Members, do you have any
25 questions of Mr. Smeathers?

1 (NO RESPONSE)

2 CHAIRMAN: Thank you, sir.

3 Anyone else have any questions, concerns?

4 MS. KNIGHT: Please state your name for the
5 record.

6 MS. HOWARD: Virginia Howard.

7 (VIRGINIA HOWARD SWORN BY ATTORNEY.)

8 MS. HOWARD: My address is 1381 Gobler Ford
9 Road. We're across the street and down two houses
10 from Chrissy.

11 Our boys have done riding lessons with Chrissy
12 for the past, we're going on two and a half years now.
13 The rain and the ability to not be in the arena for
14 the boys is kind of a big deal. Having the canopy
15 over the arena would provide them to be able to do
16 their lessons every week. Two of our boys, our older
17 two boys do ride with Chrissy.

18 As far as the livestock, as neighbors we have
19 not had any issues with them having the animals out.

20 Also, just the ability to have that canopy
21 there so the boys could ride every week would make a
22 big difference having a regular consistency for them
23 riding. They've not only done arena riding with her,
24 they've done trails on our property. We have our own
25 trails and they've rode on our trails. They've also

1 done horse shows and different shows with Chrissy.
2 Having that consistency and that covering canopy so
3 they can ride so it's not too muddy would be a big
4 difference for us.

5 CHAIRMAN: Board Members, comments or
6 questions for this lady?

7 (NO RESPONSE)

8 CHAIRMAN: Thank you.

9 Anyone else like to speak pro/con, in support
10 of or opposed?

11 MRS. PERLOWSKI: I guess I would just like to
12 hit a couple of the things they've said, if you all
13 don't have any questions for me.

14 (NO RESPONSE)

15 MRS. PERLOWSKI: As far as most of what
16 they're saying, with or without my business there a
17 lot of that is just I'm on a farm. That's just,
18 that's the way it would be whether I had my business
19 there or not. That's the way it has been before I
20 wanted this canopy. All I'm asking for a canopy over
21 the area.

22 I was made aware of the stop work thing. I
23 was told -- I was called and stated that I was
24 building a building. I said, yes. He said I needed
25 permits. I don't understand how this works, guys. I

1 didn't know that that meant to stop. As soon as he
2 was called back and told me that I needed to stop
3 working, I stopped working. I didn't realize they
4 called me stating that, meant that I was to stop
5 working. We were just doing it ourselves. We weren't
6 doing a whole lot during those two days. I'm really
7 sorry about that. I plead ignorance.

8 As far as the ADA standards, I am working with
9 Jim Mischel on making sure that I'm meeting the ADA
10 standards.

11 As far as the fence goes, I wish I could
12 afford one because they obviously really don't like
13 us. Whether I have my business there or not, I mean
14 people are going to be riding horses on my property
15 and through my woods. I have never rode a horse on
16 his property except before they moved there. I was
17 told absolutely, we don't do that, and I have never
18 been back since. I do have permission however to ride
19 on the Fullenweider's property. My business insurance
20 covers me on-site or off-site so we do go down the
21 road some and go on his property because he has a
22 beautiful farm that the kids enjoy riding on. We try
23 to stay off the road. It's actually state law in
24 Kentucky that I'm allowed to ride my horses on the
25 road and the vehicles have to yield to me.

1 I don't know what else to say. Thank you very
2 much for your consideration tonight.

3 CHAIRMAN: Anyone else? Any further comments
4 or questions?

5 MR. REEVES: Question for Mr. Mischel, please.

6 MS. KNIGHT: Please state your name for the
7 record, Jim.

8 MR. MISCHEL: Jim Mischel.

9 (JIM MISCHEL SWORN BY ATTORNEY.)

10 MR. REEVES: Mr. Mischel, if this conditional
11 use permit were approved and if they built the
12 structure but initially did not put lighting in the
13 structure, would they have to come back to the OMPC to
14 get the permit to put the electricity in there to do
15 the lighting?

16 MR. MISCHEL: Yes, they would have to have an
17 electrical permit. The building her husband, I think
18 she stated her husband was going to do the building,
19 which under state law that would be okay. They have
20 to get the permits and plan approved and everything
21 else.

22 On the electrical, they would not be under to
23 do it under the electrical law. They would have to
24 have a contractor, a licensed contractor. They could
25 only do it at their house.

1 MR. REEVES: And they're aware of this?

2 MR. MISCHEL: We talked initially about the
3 building permits and the plan review and what they
4 have to do, but I think they're waiting to get through
5 this process first. I think they've talked to an
6 engineer and done some of their preliminary work.

7 MR. REEVES: Thank you, Mr. Mischel.

8 MS. MASON: I have a question too for you,
9 Jim.

10 As far as the bathroom facilities are
11 concerned, if we were to approve this, do they have to
12 put bathroom facilities in or is a port-a-potty
13 permissible?

14 MR. MISCHEL: That's something we will have to
15 check into. I think under the previous one they had,
16 conditional use permit, I think we got something from
17 the health department that's in the file that
18 stated -- I'm not sure. Manuel Ball was at the last
19 meeting when we had it. I haven't read that. I did
20 see where the health department had given us a report
21 I think initiating that it did not have to have.

22 MS. MASON: Even working with handicap they
23 still don't have to have the bathroom?

24 MR. MISCHEL: That's something we're going to
25 have to look into. Since then we've changed the new

1 ANSI ADA. Those laws have changed. That's been quite
2 a while. You know, it's 2015 now. That's something,
3 like any other code, we just have to see if it's been
4 updated or whatever.

5 MS. MASON: Okay.

6 MS. EVANS: I'd like to add that I don't know
7 that that was necessarily looked at beyond saying that
8 the health department was okay with there being a
9 port-a-potty. Because previously on their conditional
10 use permit it wasn't to build any new structures out
11 there. They were just using the property for the
12 horse riding lessons. They weren't actually
13 constructing anything. So now this time they are
14 actually building something. There may be different
15 requirements for restrooms.

16 MS. MASON: Okay.

17 MR. MISCHEL: I did mention when she came in
18 when she showed the building and the parking that she
19 will have to have ADA parking, which is on that
20 drawing. We'll have to go over the specks of it with
21 her and everything. When we start doing plan review,
22 that really kicks in ADA, restrooms, whatever. It
23 just kicks it all in. That's part of the planning
24 review process.

25 MS. MASON: Okay.

1 CHAIRMAN: Any further questions from the
2 board members?

3 (NO RESPONSE)

4 CHAIRMAN: Mr. Howard, do you have any
5 comments?

6 MR. HOWARD: No, sir.

7 CHAIRMAN: If not the chair is ready for a
8 motion.

9 MR. REEVES: Mr. Chairman, I'll make a motion.
10 I'm going to move for approval of this conditional use
11 permit based on the facts that the health and safety
12 nor the character of the neighborhood will not be any
13 more impacted with this addition than the current
14 business that is there. I will add these conditions
15 to the conditional use permit.

16 Can I put conditions, counsel?

17 MS. KNIGHT: You can, yes.

18 MR. REEVES: That the business not operate
19 before 8 a.m. in the morning nor after 9 p.m. in the
20 evening Monday through Saturday. That on Sunday it
21 not operate before noon nor after 9 p.m.

22 That should they make a decision to put
23 lighting in the pavilion that they would come to the
24 OMPC Staff and secure the appropriate permits and that
25 they would work with the OMPC Staff to ensure that the

1 lighting would have the least possible impact on the
2 neighbors.

3 Thirdly, they abide by all requirements by the
4 health department regarding restrooms or any other
5 sanitary facilities on the property.

6 CHAIRMAN: We have a motion for approval by
7 Mr. Reeves.

8 MS. DIXON: Second.

9 CHAIRMAN: We have a second by Ms. Dixon. Any
10 comments or questions on the motion?

11 (NO RESPONSE)

12 CHAIRMAN: If not, all in favor of the motion
13 raise your right hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries unanimous.

16 Next item, please.

17 -----

18 VARIANCE

19 ITEM 3

20 1013 Hermitage Drive, zoned R-1A
21 Consider a request for a Variance in order to reduce
22 the side yard building setback line from 10 feet from
23 the property line to 6 feet from the property line.
24 Reference: Zoning Ordinance, Article 8,
25 Section 8.5.5(d)
Applicant: Jay & Susie Fillman

26 MR. REEVES: Mr. Chairman, I need to
disqualify myself from this item as I live in that

1 neighborhood.

2 CHAIRMAN: Okay. So noted.

3 MS. EVANS: The subject property is located in
4 the Massie Clarke Subdivision just off of Frederica
5 Street. All the lots on this block of Hermitage Drive
6 are approximately 100 feet wide and between 150 and
7 180 feet deep. The subject property is 100 feet by
8 165 feet.

9 The applicant is requesting a 4 foot side yard
10 building setback reduction in order to construct a 20
11 foot by 32 foot attached garage. With the garage
12 being attached to the house as part of the principal
13 structure; the required side yard setback for
14 principal structure is in an R-1A zone and is 10 feet
15 from the property line.

16 The applicant cites a garage on the adjoining
17 property at 1023 Hermitage Drive as encroaching into
18 the side yard setback and only six feet from the
19 property line as they are requesting. The garage on
20 the adjacent property however is a detached structure
21 connected to the principal structure by a breezeway.
22 As long as the breezeway remains open, the detached
23 structure is not considered attached by the Kentucky
24 Residential Building Code, and therefore may be
25 located 3 feet from the side property line as required

1 by the Zoning Ordinance.

2 There is a letter signed by the adjacent
3 property owner at 1023 Hermitage Drive stating that
4 the breezeway connecting the house and the detached
5 garage will not be enclosed.

6 That is in the building file for the property
7 at 1023 Hermitage Drive when they constructed that
8 breezeway.

9 There have been no variances granted in the
10 area and only two structures on this block of
11 Hermitage Drive appear to encroach into the side yard
12 building setback. Those appear to be original
13 encroachment or original part of the principal
14 structure that was built before the Zoning Ordinance
15 went into effect. So those are nonconforming, legally
16 nonconforming encroachments. There haven't been any
17 additions to any property that would trigger variance
18 or any nonconforming illegal encroachments into any
19 side yard building setbacks that appear to be in that
20 area.

21 Granting the Variance to reduce the side yard
22 building setback will alter the essential character of
23 the general vicinity and be an unreasonable
24 circumvention of the requirements of the zoning
25 ordinance because the majority of the structures in

1 the area meet the required setback and no other
2 variance requests have been granted in the area.

3 Would a hardship with strict application of
4 the regulations deprive the applicant of the
5 reasonable use of their land or create an unnecessary
6 hardship on the applicant?

7 Staff says, no. If the application is denied,
8 the applicant could construct a smaller addition or
9 construct a detached structure in a different part of
10 their property.

11 APPLICANT'S ACTIONS? Are the circumstances
12 from which relief is sought a result of the
13 applicant's actions taken after adoption of the zoning
14 regulation? No, they are not.

15 Findings for this Variance: It will not
16 adversely affect the public health, safety or welfare;
17 it will alter the essential character of the general
18 vicinity because the majority of the structures in the
19 area conform to the required setbacks with only two
20 structures that appear to encroach into the side yard
21 building setback; it will not cause a hazard or a
22 nuisance to the public; it will, however, allow an
23 unreasonable circumvention of the requirements of the
24 zoning regulations because a majority of the
25 structures meet the required side yard building

1 setback and there have been no other variances granted
2 in the area.

3 Staff would recommend denial of this
4 application.

5 We would request that the Staff Report be put
6 into the record as Exhibit B.

7 CHAIRMAN: Anyone here representing the
8 applicant?

9 MS. KNIGHT: State your name, please.

10 MR. FILLMAN: My name is Jay Fillman.

11 (JAY FILLMAN SWORN BY ATTORNEY.)

12 MR. FILLMAN: We just recently moved to this
13 location. We would like to construct a two-car garage
14 on the side of the house where the driveway is.

15 As was stated, we do have a neighbor that has
16 a garage that's about 5 1/2 feet from our property
17 fence. There apparently is a couple of other
18 structures that encroach on or are in the encroachment
19 area. Our request is for the two-car garage. Not
20 knowing all the legal rederick, or whatever the
21 correct word would be, at the end of the day our
22 neighbor's garage is still 6 feet, 5 1/2 feet from our
23 property. We would like to be given similar
24 consideration to, you know, make an addition to our
25 house and increase the property value.

1 CHAIRMAN: Board members, do you have any
2 questions of the Mr. Fillman?

3 (NO RESPONSE)

4 CHAIRMAN: Thank you. Let's see if we have
5 any opposition of this, sir.

6 MR. FILLMAN: I would like to ask that if this
7 is denied that I get an opportunity to ask another
8 question after that or do I need to ask that at this
9 time?

10 CHAIRMAN: If we have questions, I'll bring
11 you back.

12 MS. EVANS: You can go ahead and ask the
13 question.

14 MR. FILLMAN: I guess my question would be if
15 this request is denied, what's our appeal process?
16 What's our next step in the situation? I guess that
17 would be something to wait and see what happens.

18 MS. KNIGHT: Just in general once this board
19 denies something you've got 30 days to appeal it to
20 the Daviess Circuit Court.

21 MR. FILLMAN: Thank you.

22 CHAIRMAN: Is there anyone here that would to
23 speak in opposition on this item?

24 MR. OETINGER: My name is David Oetinger.

25 (DAVID OETINGER SWORN BY ATTORNEY.)

1 MR. OETINGER: We moved to our home 28 years
2 ago, which was next to Bruce Embry's home, which Jay
3 and his wife purchased recently.

4 We were told, I have a garage, attached garage
5 to my house. In order to get to the garage we've got
6 a driveway that goes all around to the back of the
7 house to get to the garage. We were told that because
8 this was in the Massie Clarke Subdivision, that there
9 is a covenant that prohibits front street facing
10 garages. Consequently people on Hermitage either have
11 carports or garages that are approached by driveway
12 around the back. So I don't know about the Massie
13 Clarke Subdivision issue. It's something I think Jay
14 should be concerned about.

15 I'm not against the variance at all. I have
16 another concern though. It's a one word.
17 Percolation. I monitored my sump-pump. We have a
18 full basement. I monitored my sump pump this spring.
19 It was coming on over 30 minutes. Each time it came
20 on, it pumped about 10 gallons of water, waste water.
21 That goes out to the back collection system. Over the
22 course of three months, that would be about 43,000
23 gallons of waste water. So percolation is an issue, I
24 think, in many areas of town. With more and more
25 coverage the land with buildings it becomes more and

1 more of a problem getting rid of waste water.

2 So if a garage is built, which I'm okay with,
3 it needs to have adequate drainage out to the street,
4 I guess, and not into my yard. That's my concern.
5 Thank you.

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

8 (NO RESPONSE)

9 CHAIRMAN: Thank you, sir.

10 Mr. Howard, would you address the issue on
11 deed restrictions?

12 MR. HOWARD: Sure. I would preface what I'm
13 going to say by saying in generally, we don't enforce
14 private restrictions on property. Those are recorded
15 covenants that are typically enforced by Homeowner
16 Associations or through legal channels.

17 However that being said, we do require for a
18 conditional use permit, a variance, for rezoning, any
19 of those types of applications, that a letter be
20 submitted from an attorney researching the deed
21 restrictions. We have a letter in the file dated
22 October 21st that was prepared by Bill Wilson, who is
23 a local attorney. He says after doing research for a
24 period of 30 years, find no deed of restrictions, no
25 deed of dedication or other covenants of record that

1 would prohibit the proposed use of the subject
2 property or invalidate consideration of the requested
3 variance by the Owensboro Metropolitan Board of
4 Adjustment.

5 The attorney has certified to us and you all
6 as a board that there are no private restrictions in
7 place. So that's the information we have to go on.

8 CHAIRMAN: Thank you, Mr. Howard.

9 Mr. Fillman, do you have further comments or
10 questions?

11 MR. FILLMAN: No, sir.

12 CHAIRMAN: Board Members, do you have any
13 comments or questions of Mr. Fillman?

14 (NO RESPONSE)

15 CHAIRMAN: If not chair is ready for a motion.

16 MS. DIXON: Mr. Chairman, I move for denial of
17 the variance based upon the findings that it would
18 alter the essential character of the general vicinity
19 because the majority of the structures in the area
20 conform to the required setbacks with only two
21 structures that appear to encroach on the side yard
22 building setback. Then it will allow an unreasonable
23 circumvention of the requirements of the zoning
24 regulations because a majority of the structures meet
25 the required side yard building setback and there have

1 been no other variances granted in the area.

2 CHAIRMAN: We have a motion for denial by
3 Mrs. Dixon. Do I hear a second?

4 MR. YEISER: Second.

5 CHAIRMAN: Any comments or questions on the
6 motion?

7 (NO RESPONSE)

8 CHAIRMAN: If not, all in favor of the motion
9 raise your right hand.

10 (ALL BOARD MEMBERS PRESENT - WITH THE
11 DISQUALIFICATION OF FRED REEVES - RESPONDED AYE.)

12 CHAIRMAN: Motion carries unanimous.

13 Next item, please.

14 ITEM 4

15 4701 US Highway 60 West, zoned I-1
16 Consider a request for a Variance to allow a 120 foot
17 wide industrial driveway which exceeds the allowable
18 maximum driveway width of 50 feet.
19 Reference: Zoning Ordinance, Article 13,
20 Section 13.231
21 Applicant: Sterett Crane & Rigging; Lamasco Transfer,
22 LLC

23 MR. YEISER: Mr. Chairman, I need to be
24 excused from this one. It's family.

25 CHAIRMAN: So noted. Mr. Yeiser disqualifies
himself.

MS. KNIGHT: State your name for the record.

MR. HILL: Mike Hill.

1 (MIKE HILL SWORN BY ATTORNEY.)

2 MR. HILL: This is a Variance request to allow
3 greater than the maximum allowable driveway width.

4 The subject property is 6 1/2 acre industrial
5 zoned parcel at the corner of Booth Field Road and
6 U.S. Highway 60 West.

7 It's centered there on the screen for you.

8 The applicant is Sterett Crane & Rigging.
9 They own the adjacent property just to the north of
10 it, as you can see on the screen. They would like to
11 use this parcel for storage of large construction
12 vehicles, equipment, crane equipment that they use
13 with their construction business.

14 The applicant states that due to the very
15 unique and extraordinary size of the hauling equipment
16 that they'll be transporting to and from the site,
17 that that justifies extra driveway width to
18 accommodate the required turning movement to and from
19 the site.

20 The Zoning Ordinance allowances and industrial
21 zone driveway to be a maximum of 50 feet in width.
22 They are proposing to have a 120 foot wide driveway.

23 You can see on the exhibit in your packet that
24 80 feet of that 120 feet is supposed to be paved. The
25 other 20 feet on the either side of the pavement is

1 proposed to be gravel, a sealed gravel mixture
2 shoulder area.

3 It's on State Highway U.S. 60 West. The Staff
4 has contacted KYTC Staff. They have indicated that
5 they are okay with the proposed width of 120 feet, as
6 well as the use of the gravel mixture shoulders.

7 It is worth noting that the applicant is also
8 going to be requesting at next week's Planning
9 Commission meeting a special exception that allows the
10 location of this proposed driveway to be in a
11 different location than what was originally platted
12 some years back. Again, tonight you're only dealing
13 with the width of the proposed driveway.

14 I also included in your packet a schematic
15 showing kind of a detail of what these transport
16 carriers may look like dimensionally. They're very
17 large. They could be up to 16 feet in width. They
18 could be over 150 feet in length when you include the
19 truck, the dimension of the truck, length, as well as
20 the trailer.

21 Applicant representatives are here tonight.
22 They may be able to speak more to the specifics of why
23 those are needed and what they're going to be used for
24 and those kind of things.

25 Staff feels that the granting of this variance

1 will not adversely affect the public health, safety or
2 welfare because it is not unusual for large industrial
3 and agricultural equipment to be seen on the roadway
4 in this area. Granting this variance will not alter
5 the essential character of the general vicinity
6 because the area already has been established as
7 industrial and agricultural. Granting the variance
8 will not cause a hazard or a nuisance to the public
9 because the construction of the driveway must meet or
10 exceed the standards required by the Kentucky
11 Transportation Cabinet. Granting this variance will
12 not allow an unreasonable circumvention of the
13 requirements of the zoning regulations because the
14 subject property is relatively large in size and
15 includes significant amount of road frontage which
16 will help minimize the impact of the extra wide
17 driveway.

18 Staff recommends approval of the request along
19 with four conditions as follows:

20 1. Obtain all necessary building, electrical
21 and HVAC permits, inspections and certificates of
22 occupancy and compliance.

23 2. Approval of a minor subdivision plat
24 amending the location of the driveway entrance onto
25 U.S. Highway 60 West by the Owensboro Metropolitan

1 Planning Commission.

2 3. A Site Plan Review by OMPC Staff will be
3 required which will include approval of the driveway
4 design by Kentucky Transportation Cabinet.

5 4. Any future change in use on the property
6 which discontinues the current proposed storage of
7 large cranes and the use of mammoth transport units
8 will require the drive to be reduced to a maximum 50
9 foot curb cut.

10 Staff request that the Staff Report be entered
11 into the record as Exhibit C.

12 CHAIRMAN: Anyone here representing the
13 applicant?

14 MR. RINEY: Yes.

15 CHAIRMAN: Do you have anything you want to
16 share with us?

17 MR. RINEY: I'll answer any questions or I
18 have show and tell if you want pictures.

19 CHAIRMAN: Any board members have any comments
20 or questions of the application?

21 (NO RESPONSE)

22 CHAIRMAN: If not, the chair is ready for a
23 motion.

24 MS. MASON: Mr. Chairman, I move for approval
25 based on that findings that it will not adversely

1 affect the public health, safety or welfare because
2 it's not unusual for large industrial and agricultural
3 equipment to be on the roadways in the area. It will
4 not alter the essential character of the general
5 vicinity because the area already is industrial and
6 agricultural. It will not cause a hazard or a
7 nuisance to the public because construction of the
8 driveway has to meet the standards required by the
9 KTC. It will not allow an unreasonable circumvention
10 of the requirements of the zoning regulation because
11 the subject property is large in size and includes
12 quite a bit of road frontage which will help minimize
13 the impact of the driveway being made larger.

14 The conditions that they obtain all necessary
15 building, electrical and HVAC permits, inspections and
16 certificates of occupancy and compliance. That they
17 have approval of a minor subdivision plat amending the
18 location of the driveway entrance onto U.S. Highway 60
19 West by the Owensboro Metropolitan Planning
20 Commission. A Site Plan Review by OMPC Staff will be
21 required which will include approval of the driveway
22 design by Kentucky Transportation Cabinet. Any future
23 change in the use on the property which discontinues
24 the current proposed storage of large cranes and the
25 use of mammoth transport units will require the drive

1 to be reduced to a maximum 50 foot curb cut.

2 CHAIRMAN: We have a motion for approval by
3 Mrs. Mason.

4 MS. CLARK: Second.

5 CHAIRMAN: Second by Ms. Clark. Comments or
6 questions on the motion?

7 (NO RESPONSE)

8 CHAIRMAN: All in favor of the motion raise
9 your right hand.

10 (ALL BOARD MEMBERS PRESENT - WITH
11 DISQUALIFICATION OF JERRY YEISER - RESPONDED AYE.)

12 CHAIRMAN: Motion carries unanimous.

13 Any new business?

14 (NO RESPONSE)

15 CHAIRMAN: If not we need a motion to adjourn.

16 MS. DIXON: Move to adjourn.

17 MS. MASON: Second.

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

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: We are adjourned.

22 -----

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 1st day of December, 2015.

18

19

 LYNNETTE KOLLER FUCHS
 20 NOTARY ID 524564
 OHIO VALLEY REPORTING SERVICES
 21 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