

OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

JUNE 9, 2016

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, June 9, 2016, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Fred Kewes, Chairman
Larry Moore
Irvin Rogers
Beverly McEnroe
Manual Ball
Terra Knight, Attorney
Brian Howard
Larry Boswell
John Kazlauskas
Steve Frey
Angela Hardaway
Lewis Jean

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MR. CHAIRMAN: I'll call the June 2016 meeting of the Owensboro Metropolitan Planning Commission to order. We start every meeting with a prayer and pledge to the flag. That will be done by Mr. Lewis Jean tonight. Will you all stand.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

MR. CHAIRMAN: Thank you very much.

All of you should have received a copy of the minutes in your packet. Are there any questions or corrections to anything in the minutes?

If not, the Chair will entertain a motion. Mr.

1 Kazlauskas?

2 MR. KAZLAUSKAS: So move that the minutes be
3 approved.

4 MR. CHAIRMAN: Motion by Mr. Kazlauskas. Do we
5 have a second?

6 MS. MCENROE: Second.

7 MR. CHAIRMAN: Second by Ms. McEnroe. All those
8 in favor, raise your right hand.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 MR. CHAIRMAN: Before we get started this
11 evening with the regular business, I know a lot of you
12 have never been to an OMPC meeting. We appreciate your
13 coming. We're here every month. You might come down
14 again, but most folks don't return.

15 If you wish to speak, anybody is welcome to and
16 invited and encouraged to speak on any issue that's on the
17 agenda that you'd like to. If you wish to speak, you need
18 to come to the podium where the mics are, be sworn in, and
19 then you can express your opinions on any of the items
20 that are here. So we invite you to do that.

21 Also, we just remind the commissioners, if you
22 do speak, try to speak into the mic so the stenographer
23 can get your words correct. We all have a tendency to
24 back away from the mic. Makes it hard for them to hear.

25 Mr. Howard?

1 MR. HOWARD: All right. We're under zoning
2 changes. I will note that all of the zoning changes heard
3 tonight will become final 21 days after the meeting unless
4 an appeal is filed. If an appeal is filed, we will
5 forward a copy of the meeting information and the minutes
6 and all that stuff to the appropriate legislative body for
7 them to take final action.

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9 **ZONING CHANGES**

10 ITEM 3

11 1601 & 1611 Frederica Street, 1.151 acres
12 Consider zoning change:
13 From P-1 Professional/Service to B-4 General Business
14 Applicant: Tristate Pizza, LLC; Ashley Worth Rentals, LLC

15 MS. KNIGHT: Please state your name for the
16 record.

17 MR. HILTON: Mike Hilton.

18 (MIKE HILTON SWORN BY ATTORNEY.)

19 MR. HILTON: Staff is recommending denial of
20 this change. For that reason, I will read the report into
21 the record.

22 **PROPOSED ZONE & LAND USE PLAN**

23 The applicant is seeking a B-4 General Business
24 zone. The subject property is located in a Central
25 Residential Plan Area where General Business uses are
 appropriate in limited locations.

1 **SPECIFIC LAND USE CRITERIA**

2 **(a) Building and lot patterns; outdoor storage**
3 **yards** -- Building and lot patterns should conform to the
4 criteria for "Nonresidential Development" (D7) and outdoor
5 storage yards with "Buffers for Outdoor Storage Yards"
6 (D1).

7 **(b) Logical zoning expansions of proportional**
8 **scope** -- Existing General Business zones may be expanded
9 onto contiguous land that generally abuts the same
10 streets. The expansion of a General Business zone should
11 not significantly increase the extent of the zone in the
12 vicinity of the expansion and should not overburden the
13 capacity of roadways and other necessary services that are
14 available in the affected area.

15 **(c) Expansions across intervening streets** -- In
16 Central Residential, Future Urban, and
17 Professional/Service plan areas, the expansion of an
18 existing General Business zone across an intervening
19 street should be at least one and one-half acres in size,
20 but should not occur if this would significantly increase
21 the extent of the zone in the vicinity.

22 **(d) New locations in Central Residential plan**
23 **areas** -- In Central Residential plan areas, new locations
24 of General Business should be at least one and one-half
25 acres in size, "arterial-street-oriented" (D2), and sited

1 at corners of intersecting streets if located in close
2 proximity to existing dwellings.

3 **Planning Staff Review**

4 **GENERAL LAND USE CRITERIA**

5 **Environment:**

6 It appears that the subject property is not
7 located in a wetlands area per the US Department of
8 Agriculture Soil Conservation Service dated March 6, 1990.

9 The subject property is not located in a special
10 flood hazard area per FIRM Map 21059C0138 D.

11 It appears that the subject property is not
12 within the Owensboro Wellhead Protection area per the OMU
13 map dated 2015.

14 The developer is responsible for obtaining
15 permits from the Division of Water, the Army Corps of
16 Engineers, FEMA, the EPA, the OMPC
17 building/electrical/HVAC division or other state and
18 federal agencies as may be applicable.

19 **Urban Services:**

20 All urban services, including sanitary sewer,
21 are available to the subject properties.

22 **Development Patterns:**

23 The subject properties are two parcels that
24 total 1.151 acres in size and are located along a segment
25 of Frederica Street that consists mostly of

1 professional/service and residential land uses. The
2 properties to the north and west are office uses, zoned
3 P-1 Professional/Service. The properties to the east and
4 south are single-family residential, zoned R-4DT
5 Inner-City Residential. The closest B-4 zoned property
6 along Frederica Street to the north is approximately 760
7 feet away, just north of 14th Street. The closest B-4
8 zoned property along Frederica Street to the south is
9 approximately 250 feet away, between 17th and 18th
10 Streets.

11 The subject properties were rezoned in 2010 from
12 R-4DT to P-1. A final development plan for both parcels
13 was also approved in 2010, depicting two office buildings
14 and their required parking areas. The office building
15 located at 1601 Frederica Street was subsequently
16 constructed, while the proposed office building planned
17 for 1611 Frederica Street was never constructed.

18 A consolidation plat approved in 2010 restricts
19 the access to 1611 Frederica Street to the existing alley
20 between 1601 and 1611 Frederica Street. No additional
21 access to Frederica Street will be allowed however this
22 property is developed in the future.

23 Frederica Street in this location is classified
24 as a principal arterial roadway with a 500-foot driveway
25 spacing standard, a 75-foot building setback, and a

1 60-foot roadway buffer; although a variance was granted in
2 2010 to reduce the roadway buffer to 40 feet.

3 If this property is successfully rezoned, all
4 site improvements, including drives and parking areas
5 shall be paved and appropriate vehicular use area
6 screening shall be installed. Since the proposed zoning
7 for the subject property is B-4, buffer screening along
8 the south property line where abutting residential zoning
9 will be required, consisting of a ten-foot-wide
10 landscaping easement and a six-foot-tall solid element
11 with one tree every 40 feet. Due to the proximity to
12 existing residences, all site lighting shall be directed
13 away from the residential uses.

14 If this property is successfully rezoned, the
15 applicant must obtain approval of an amended final
16 development plan to demonstrate compliance with zoning
17 ordinance requirements including, but not limited to,
18 parking, landscaping, building setbacks, access
19 management, and signage prior to occupancy of the
20 property.

21 **SPECIFIC LAND USE CRITERIA**

22 The applicant's proposal is not in compliance
23 with the Comprehensive Plan. The proposed general
24 business use conforms to the criteria for non-residential
25 development. However, the proposal is not a logical

1 expansion of existing B-4 zoning in the area. The
2 proposal is not an expansion of existing B-4 zoning across
3 an intervening street. There is no commercial zoning
4 within this block, and the nearest commercial zoning to
5 the north and south is located several hundred feet away
6 and across streets. The proposal does not meet the
7 1.5-acre minimum requirement for a new location of general
8 business zoning in a Central Residential plan area,
9 although it is arterial-street-oriented. At 1.151 acres,
10 the proposal would be a significant increase in B-4 zoning
11 in the immediate vicinity and may overburden the capacity
12 of roadways and other necessary urban services that are
13 available in the affected area. B-4 uses typically
14 generate more traffic than P-1 type uses. Although
15 located at the corner of intersecting streets, the
16 existing use is appropriate in the P-1 zone. The proposed
17 commercial use is mid-block and adjoins residential
18 property.

19 **PLANNING STAFF RECOMMENDATIONS**

20 The planning staff recommends denial subject to
21 the findings of fact that follow:

22 **Findings of Fact:**

23 1. Staff recommends denial because the proposal
24 is not in compliance with the community's adopted
25 Comprehensive Plan;

1 2. The subject property is located in a Central
2 Residential Plan Area where general business uses are
3 appropriate in limited locations;

4 3. The proposed general business use conforms
5 to the criteria for non-residential development;

6 4. The proposal is not a logical expansion of
7 existing B-4 zoning in the area;

8 5. This proposal is not an expansion of
9 existing B-4 zoning across an intervening street;

10 6. There is no commercial zoning within this
11 block, and the nearest commercial zoning to the north and
12 south is located several hundred feet away and across
13 streets;

14 7. The proposal does not meet the 1.5-acre
15 minimum requirement for a new location of general business
16 zoning in a Central Residential plan area, although it is
17 arterial-street-oriented;

18 8. At 1.151 acres, the proposal would be a
19 significant increase in B-4 zoning in the immediate
20 vicinity and may overburden the capacity of roadways and
21 other necessary urban services that are available in the
22 affected area;

23 9. B-4 uses typically generate more traffic
24 than P-1 type uses;

25 10. Although located at the corner of

1 intersecting streets, the existing use is appropriate in
2 the P-1 zone; and

3 11. The proposed commercial use is mid-block
4 and adjoins residential property.

5 Staff requests that the staff report be entered
6 into the record as Exhibit A.

7 MR. CHAIRMAN: Anyone here representing the
8 applicant?

9 MS. KNIGHT: State your name.

10 MR. MEYER: J.D. Meyer, representing the
11 applicant.

12 MS. KNIGHT: Mr. Meyer, you're sworn as an
13 attorney.

14 MR. MEYER: Ladies and Gentlemen of the
15 Commission, I appreciate the opportunity to be here
16 tonight. We're asking the commission to approve the
17 zoning change from P-1 Professional to B-4 General
18 Business for the property located at 1601 and 1611
19 Frederica Street.

20 I'd like to introduce my clients, the applicants
21 in this matter, Sean Byrne and Jennifer Byrne, who are
22 with Tristate Pizza. Excuse me. Tristate Pizza, LLC.
23 And Cindy Bosley back here who is an owner of Ashley Worth
24 Rentals, LLC, who is the current owner of the property.

25 I think it's important for the Commission to

1 first know and understand what the intended use and the
2 purpose for the rezoning is. I've provided information in
3 the way of a packet that was sitting at all of your all's
4 place when you sat down. And at this time, I'd like to
5 kind of go through that packet.

6 It's my clients' intention to build a new
7 building. This is a - - like I said, this is a vacant lot
8 at the current time. They plan to construct a Donato's
9 Pizza location, which will be a single, stand-alone
10 building. Estimated costs at completion of construction
11 as well as furnishing and fixing the restaurant are
12 estimated between \$1,000,000 and \$1,200,000.

13 Additionally, Tristate Pizza plans to employ
14 approximately 40 people, you know, at this restaurant.
15 Not at any one given time, but that would be their current
16 payroll.

17 As you can see as you flip through these
18 pictures, the first picture is a picture of a Donato's
19 Pizza that's actually located in Nashville, Tennessee.
20 And all of these pictures are taken from that location.
21 This is the type of structure that they would build.
22 Obviously, it wouldn't conform exactly to this piece of
23 property, as it would have to conform in shape and size to
24 meet the other building requirements.

25 The second page represents an outside picture,

1 and then third page is just sample interior. On the third
2 and fourth pages, where you have just a standard casual
3 pizza restaurant that we believe will compliment this
4 neighborhood and this area.

5 And then the last picture is of an outdoor area
6 for outdoor seating. Obviously, the weather here is great
7 during the summertime and we believe that we would do all
8 we can to utilize and maximize the space for patrons of
9 the restaurant to enjoy outdoor seating.

10 Next you have a picture of the notification
11 area. I know that was provided and sent - - provided
12 earlier as part of the staff report. But we respectfully
13 disagree with the staff. We do believe that the proposed
14 rezoning does meet the requirements of the Comprehensive
15 Plan.

16 If I can - - this is old school, before
17 computers and all of those high-tech devices and things of
18 that nature. But this is a depiction, you know, of the
19 property. And I think it's important that the Commission
20 have a general overview and lay of the land.

21 The next page on your packet is actually a
22 fold-out of this exact drawing, and you can see that - -
23 you can see that the subject property is located here at
24 the corner of Phillips Court, almost where it intersects
25 with Griffith Avenue. There's an existing building here

1 that houses Marcus Bosley & Associates as well as Ashley
2 Worth. And the vacant lot is here at this location. And
3 we have properties down here. This map and chart,
4 properties outlined in blue are professional use;
5 properties outlined in yellow are residential; and
6 properties outlined in red are currently B-4 zoning.

7 So I think it's important for everybody to make
8 sure they have an understanding of the general outlay of
9 the property and how it comports, because it's important
10 to look at the planning staff. I think they're in
11 agreement with us. When you look at the requirements for
12 rezoning from a Professional into a B-4 General Business
13 classification into what's characterized as a Central
14 Residential zone, the property has to conform to
15 non-residential development.

16 And as I indicated before, this property is
17 intended to be a casual pizza place, a casual pizza
18 restaurant where families in the neighborhood can walk
19 down and, you know, grab a slice of pizza; can enjoy the
20 night with their family; obviously walk home. Of course
21 there will be traffic from other sources, but this is a
22 natural compliment to a residential neighborhood.

23 In fact, if you'll note on the map, to the south
24 of the property, you have almost a mirror image of what
25 the proposal would look like if the Commission granted and

1 approved the zoning request. Because you have on 17th
2 Street, on the corner of 17th Street and Frederica Street,
3 on the south side, that's a professional zone. I believe
4 that's an optometry building. You have Dairy Queen, which
5 is a restaurant. You have a vacant lot, and then you have
6 Myriad CPA Group there on the corner. That used to be the
7 old - - I think at one time was York Neel & Company. And
8 then you have 18th Street.

9 Across the street is Owensboro High School.
10 Again, the proposed use of the property is complementary
11 to the high school and those students who may be able to
12 leave campus and obtain lunch and then get back for their
13 classes, as well as any teachers or other staff members
14 who may want to do the same.

15 There are also other professional buildings, you
16 know, within the area that would support that, that same
17 type of use where they could walk and enjoy lunch or
18 dinner after work.

19 So we agree with the staff and I believe it
20 would support a rezoning of the property since the
21 proposed use as a restaurant conforms to the criteria in
22 satisfying and merging with the residential development.

23 I think the other important factor that needs to
24 be looked at and considered in connection with the
25 rezoning is the qualification and requirement where you

1 have a new business zone that's going into a central
2 residential development. And there's three criteria there
3 that have to be met and found.

4 The first criteria is that the property must be
5 located on an arterial street. As the planning staff
6 reported, Frederica Street is certainly an arterial
7 street. That is, you know, one of the main arteries, as
8 you all all know, for traffic patterns. It's a four-lane
9 road; and there's a turning lane running down the middle
10 of all of Frederica Street, especially in and near this
11 property.

12 The second requirement that they have looked at
13 in that classification is that the property proposed to be
14 rezoned should be on a corner lot, essentially. Here
15 certainly the property is located at a corner lot, there
16 at the corner of Phillips Court and Frederica Street.

17 I think it's important for the Commission to
18 take note of the fact that there is a traffic light.
19 While it's not directly at Phillips Court, there is a
20 traffic light there at Griffith Avenue. I know a concern
21 that the planning staff had in objecting to the zoning
22 request was the impact that the restaurant may have upon
23 traffic patterns. We believe the fact that there is a
24 light there will help slow the traffic down and alleviate
25 any concerns of people in the neighborhood, as well as

1 allowing for pedestrians to cross the street to access the
2 property.

3 We do recognize and acknowledge that the lot
4 itself is a 1.15-acre tract of land. The criteria for
5 locating a new business zone in a central residential
6 development states that we should have a 1.5-acre tract of
7 land. It's our submission that this tract of land
8 substantially complies with that requirement. And the
9 reason that it substantially complies with that
10 requirement is it meets the spirit of the planning and
11 zoning ordinances. We have an adequate-sized piece of
12 property to support the building and the structure.
13 Certainly will meet all of the parking requirements that
14 exist with respect to the Planning Commission.

15 I would note that there is a small - - it's
16 easier for me to show. There's a tract of land that's
17 actually also owned by Ashley Worth, which is located
18 right here, that is to the east of the little jut-out
19 there on the property. That's a six-hundredth of an acre.
20 If you add that to the 1.15, we've almost got 1.21 acres
21 of land. That lot, there is some conditional use
22 requirements and land development restrictions that's
23 actually tied to the property and is to be utilized as
24 parking. So I think it's important for the Commission to
25 take note of the fact that with that requirement and tying

1 of the properties together that little .06 acres of land
2 should be considered when you're looking at what the total
3 land acreage size is. Not technically part of the
4 rezoning; we do acknowledge that. But, again, if it's
5 tied to the property, it's required to be utilized as
6 parking. It helps further meet the substantial - -
7 substantially meet the code and substantially comply with
8 the provisions there.

9 As we've said and we've pointed out, we do
10 believe that this is a logical expansion and a logical
11 use, especially when you consider the property to the
12 south. I call it the Dairy Queen block. It's almost a
13 mirror image, as I indicated before, of what we are
14 intending to do - or are asking the Commission to do -
15 with this piece of property.

16 There is another issue that we would point out,
17 too. Not really an issue, but something to consider is
18 that Abbington's Bridal House, their business actually is
19 one that is more akin to be located in a B-4 Business
20 zone. It's technically zoned P-1 Professional. We
21 believe that that use may actually predate the code;
22 that's why they didn't have to rezone their property. But
23 there is a closer, more business general, a more general
24 business use than what the staff proposed further down and
25 further north on Frederica Street.

1 We don't believe that traffic patterns will be
2 an issue. Most of the access is going to be confined to
3 this corner. The running between where it says "the two
4 subject properties" is actually an alley. There's already
5 an access point there. We believe most of the traffic
6 will just simply come in there and exit that same space or
7 exit down behind. There's another alley running behind on
8 the eastern side of the property. All the traffic will
9 exit that way, exit onto Phillips Court, and then go down
10 Frederica Street. Frederica Street is already a busy
11 street and location. We don't believe that the casual
12 pizza restaurant is going to overburden the existing
13 infrastructure and add to the traffic. We don't believe
14 that that's an issue that would prevent and bar rezoning
15 of the property.

16 Lastly, I think it's important for the
17 Commission to consider the nature and the change that
18 Owensboro has undergone. I know Commissioner Reeves was
19 part of that in a prior life when he served on the
20 downtown boards. We're trying to make Owensboro a more
21 urban area, an urban area with mixed residential
22 commercial development. And as we said before, we believe
23 that this project and this proposal to rezone the property
24 fits within that spirit of a mixed residential urban area
25 with commercial uses where people can get out and walk; be

1 active; take their kids; get pizza; and then, you know,
2 leave to go back home.

3 So we believe that these facts all support the
4 rezoning of the property and we respectfully request the
5 Commission to do so.

6 The last page, we provided sample findings for
7 you all, based upon the testimony that's been presented
8 through me and as well as testimony presented by the
9 planning staff, that you all can utilize and base to find
10 that rezoning the property from P-1 Professional to B-4
11 Business is appropriate, as the building and lot patterns
12 along Frederica Street corridor conform to the criteria
13 for non-residential development and that the proposed
14 zoning substantially complies with the criteria for a new
15 business location within a central residential plan
16 because it is located on an arterial street, which is
17 Frederica Street; and that the proposed rezoning is
18 located on a corner, and that it's on a corner, Frederica
19 Street and Phillips Court; and that the acreage size
20 substantially complies with the requirement in the
21 regulations for at least an acre and a half, especially
22 when you consider that lot that's dedicated as a parking
23 facility; and lastly, that it meets the overall zoning in
24 the area where you have other similar properties along
25 Frederica Street that are a mixed professional B-4 zone

1 with residential neighborhoods behind them.

2 The conditions imposed in the planning staff
3 report, we're acceptable to meeting them; and then we
4 would submit our final development plan for review and
5 approval by the OMPC staff as well as the city engineers
6 and that we'd meet the appropriate buffer zones as
7 required by the zoning ordinances.

8 So with that, I would request on behalf of my
9 clients, Ashley Worth Rentals as well as Tristate Pizza,
10 that you all approve the zoning request.

11 MR. CHAIRMAN: Thank you, Mr. Meyer. Would you
12 stay up there for questions.

13 I think what we're going to do, folks - - and I
14 know some of you want to speak on the other side of the
15 issue. What we're going to do is let the commissioners
16 ask any questions they have of Mr. Meyer and then we will
17 open up for anyone who wants to support the application or
18 anyone who wants to oppose the application to make their
19 comments, and we'll make sure to ask questions of you. If
20 you raise issues that need to be addressed by the
21 applicant, we will. All the questions will be addressed
22 to me. That way we don't go back and forth. This is kind
23 of like - - it's almost like being in court, but not quite
24 like being in court. And we'll make sure that the
25 applicant then addresses your questions.

1 So, Commissioners, any of you have questions of
2 the applicant?

3 Mr. Kazlauskas?

4 MR. KAZLAUSKAS: Thank you, Mr. Chairman. I've
5 got some questions of the applicant and the applicant's
6 attorney and then maybe some questions to the staff. So
7 I'm going to ask all my questions at one time. And then,
8 Mr. Meyer, maybe you can answer or get some answers for
9 us.

10 On the proposed building, the size of the
11 building and the occupancy, how many seats would be in
12 that building? Because - this is where the staff comes in
13 - the size of that building and the seats in it would have
14 an impact on the required parking; is that correct?

15 MR. HOWARD: That's right.

16 MR. KAZLAUSKAS: So I think it's important that
17 we know the size of the building, how many seats are going
18 to be in that building, and what the required parking is
19 going to be.

20 And also, for the staff, down the road if this
21 facility was not to stay as a pizza restaurant, what other
22 types of business under B-4 would be able to move into
23 that? I think we all need to know what could happen down
24 the future - five, ten years down the road - if this
25 restaurant proved not to be successful. We all want all

1 our businesses to be successful.

2 And then when we come to the traffic, we all
3 know how heavily-traveled Frederica Street is. And from
4 the schematics that I see here, there are no entrances and
5 exits to Frederica Street. I think I see two on Phillips
6 Court there, if that's correct. Would those entrances and
7 exits be able to handle the amount of people that would be
8 driving in there and parking cars? So maybe if we could
9 get some answers to those questions, I would appreciate
10 it.

11 MR. MEYER: Okay. Thank you, Commissioner. The
12 size of the building we propose to construct is about
13 2,800 square feet. That's the total size of the building.
14 I'm not sure what the parking requirements - - based upon
15 the square footage, that would require 14 parking spaces
16 on that lot or in that area that can be used either -
17 -specifically on that lot or within the adjoining, you can
18 have a mutual parking agreement with the other property.

19 And I think one of the things, Commissioner
20 Kazlauskas, you pointed out, or asked about, was traffic
21 patterns. And I think there's two things to point out
22 with respect to and in response to that question. The
23 first is, is that - - an important thing to note is the
24 style of the building that's already there. That building
25 is currently - - it houses the Bosley's

1 insurance/investment kind of agency. That is permitted in
2 a B-4 zone. That building went in at a cost of in excess
3 of a million dollars, I know, as well. And that use will
4 probably always remain a professional use just because of
5 the style of that building. Now, I'm not saying you can't
6 go in and renovate things; but logically, I don't believe
7 they intend to locate anywhere else in town. It's a very
8 beautiful piece of property. So the traffic patterns
9 there, we believe, are going to be limited because that
10 building on the northern lot will probably more likely
11 remain professional.

12 Now, with respect to the traffic patterns and
13 placing a lot of access on the alleys moving to Phillips
14 Court - - it's probably easier for me to show you all on
15 this schematic. But there is an alley - - there's an
16 entrance right here on the property. So there is an
17 access point here for access entry into the parcel, as
18 well as there's an alley that runs here as well, and then
19 there's an alley that runs behind it. And this alley runs
20 all the way back to - - I believe this is part of the Mary
21 Kendall campus. So it accesses all the way back. So it's
22 our opinion that most of the traffic pattern is either
23 going to either access here and then exit here or will
24 access Phillips Court and up that property line.

25 MR. KAZLAUSKAS: Phillips Court and that alley

1 dead-ends to the east; is that correct?

2 MR. MEYERS: This alley? I don't know the
3 answer to that question.

4 MR. KAZLAUSKAS: Phillips Court?

5 MR. CHAIRMAN: Phillips Court dead-ends at the
6 Mary Kendall Home.

7 MR. MEYER: Phillips Court dead ends, but I
8 think the alley runs all the way out.

9 MR. CHAIRMAN: The alley runs all the way
10 through, runs right adjacent to the Mary Kendall Home
11 property. Comes out on -

12 MR. MEYER: Allen Street.

13 MR. CHAIRMAN: - Allen Street.

14 Mr. Kazlauskas, does that answer your questions?
15 I think we had some response from Mr. Howard.

16 MR. KAZLAUSKAS: I was just wondering if that
17 alley would be proposed to handle the traffic. It's an
18 alley, right?

19 MR. CHAIRMAN: I was out - - I don't know how
20 many of you have been, but I was out there today. That
21 alley is extremely narrow. It's extremely narrow, but it
22 would be able to handle certainly traffic going down
23 through there.

24 MR. MEYER: You have a shared access point,
25 Commissioner, here. Right here. It's onto Frederica. So

1 there's really - - logically, if you're a patron of the
2 restaurant, you're not going to exit down the alley that's
3 going to run back. You're going to use the shared access
4 point here on Frederica or here on Phillips Court, which
5 will run behind the professional building here. And this
6 alley running behind, combined with the parking lot, is a
7 very wide alleyway, very wide alleyway; as well as the
8 access point.

9 MR. KAZLAUSKAS: Do you know the dimensions on
10 it?

11 MR. CHAIRMAN: It's at least a couple of lanes
12 wide. Maybe a little more than that

13 MR. MEYER: You could easily fit two cars in
14 there at the same time.

15 MR. KAZLAUSKAS: Just one more question. We
16 know it's going - - the applicant said it's going to be
17 2,800 square feet, but we don't have a proposed occupancy
18 for how many seats are going to be in there. How many
19 people are going to be in that building at one time?

20 MR. MEYER: Maximum occupancy would be between
21 35 and 40.

22 MR. KAZLAUSKAS: We're not talking about a whole
23 lot of people, I guess.

24 MR. CHAIRMAN: Yes, Mr. Howard?

25 MR. HOWARD: If I could, they were correct as

1 far as parking itself. The parking is one space per 200
2 square feet. So occupancy comes in when our building
3 department is looking at the plan review and the fire
4 department and that type of thing. The parking itself
5 would be dictated solely by the square footage of the
6 building.

7 And then I'll address the other question you
8 asked of me a few minutes ago as far as what other
9 businesses could go in a B-4 zone. Basically, a B-4 zone
10 is General Business. And because it's general, it will
11 allow basically any type of commercial use to go in there,
12 whether it's an office, like the property to the north, or
13 restaurant or, you know, something like that, anything in
14 between barber shops and - - it will allow almost any type
15 of commercial/retail/restaurant type use.

16 MR. CHAIRMAN: I have a question on this, too.
17 So I'm assuming that if we rezone this, the existing
18 building would also fall under B-4. I know what their
19 plans are for the building; but say plans down the road
20 are not that. You could conceive to have a restaurant go
21 in there, check-cashing center, barber shop?

22 MR. HOWARD: Right. Any of those use would be
23 permitted in a B-4 zone.

24 MR. CHAIRMAN: Any other commissioners have any
25 questions? Mr. Boswell?

1 MR. BOSWELL: A number of them ties into what
2 Commissioner Kazlauskas mentioned. The access off of
3 Phillips Court, looks like two accesses, entrances or
4 accesses there, or exits. Do you anticipate people coming
5 in off of Phillips Court, coming across that lot, over to
6 that facility, rather than using that alley?

7 MR. MEYER: When you say "that alley," what's -
8 -

9 MR. CHAIRMAN: I think he's talking about through
10 the existing property here at the end.

11 MR. BOSWELL: That goes into the Bosley
12 property. It has two entrances off of Phillips Court.

13 MR. MEYER: I'll let David Weaver with Bryant
14 Engineering answer that question.

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

16 MR. WEAVER: David Weaver.

17 (MR. WEAVER SWORN BY ATTORNEY.)

18 MR. WEAVER: I would anticipate that most of the
19 traffic coming into the business would come off a shared
20 access point on Frederica. And then leaving, could easily
21 go out the alley at Phillips Court, and then it puts you
22 at a light.

23 MR. CHAIRMAN: Anything else, Mr. Boswell?

24 MR. BOSWELL: Yes, I do.

25 One of the questions I have is around the

1 statement that you had in your overview on your findings,
2 applicant's findings, for the zone change. You made
3 mention to classification in order to comply with Article
4 8 of the zoning ordinance. One of the things that I was
5 struggling with in looking at this is whether that fits
6 under the assembly section, which would be permitted, but
7 it's associated with item 15, which addresses a
8 drive-through and requirements if you have a
9 drive-through. Is this restaurant going to have a
10 drive-through?

11 MR. MEYER: There would be a pickup window but
12 not a drive-through, so you would - - similar to what is
13 on Fetta, where you can walk up, get your pizza, and then
14 leave. But there would not be a particular - - there
15 would not be a drive-up or drive-through as it would be at
16 Dairy Queen.

17 MR. BOSWELL: My concern - - there was a
18 statement that said that you had to be at least a hundred
19 feet from a residential zone if it were to have a
20 drive-through.

21 MR. MEYER: Right.

22 MR. BOSWELL: The other thing that - - I want to
23 get your take on this, your all's take on this. The other
24 argument, this last finding makes a statement about the
25 corridor from 25th to Parrish Avenue containing a mixture

1 of zoned properties of all types, B-4s, P-1s. You know,
2 my concern here is there's not been any real changes in
3 that area since our Comprehensive Plan was adopted, or
4 revised, in 2013. Putting this type of facility in there
5 is certainly going to create more traffic issues. The
6 concern I have is around how this is going to impact the
7 residents within this area. Have you all had any
8 conversation with residents?

9 MR. MEYER: Yes, sir. We did go door-to-door
10 and talk with the residents about what we intended to do,
11 what we intended to build, what the design of the
12 restaurant would be, what it would look like, our concept.
13 And so many of them are obviously here in the audience
14 tonight. But we did reach out to them prior to this
15 meeting in an attempt to discuss with them, you know, what
16 we intended to do and what our proposal was.

17 MR. BOSWELL: And what was your sense of those
18 findings or discussions?

19 MR. MEYER: The majority would have concerns
20 about the project. I think it's more from a safety
21 standpoint, of children in the neighborhood was a larger -
22 - a larger concern.

23 But the access and the way, in our opinion - -
24 in our opinion, the way that the property would flow from
25 the traffic pattern is it would all be directed away from

1 the residential area, with a shared access point coming in
2 off Frederica Street, which is, of course, in the middle
3 of the property, not adjoining any of the residential
4 property. And then the remaining access being - - the
5 other main access out of the property would be, you know,
6 behind the building on the northern lot, out to Phillips
7 Court. So we believe most of the traffic is directed away
8 from the residences.

9 You know, you're going to have the same concerns
10 there as you do having a professional office building. If
11 I were to locate my law firm there, I mean, I would still
12 bring clients in and out, you know, throughout the day,
13 especially in the summertime. But that's just - - that's
14 part of the nature of the property and where it's located.

15 And David would like to - -

16 MR. WEAVER: Just a couple of points I wanted to
17 add to what J.D. said.

18 I think the change that's happened since the
19 adoption of the Comprehensive Plan is the community
20 strives to become a living/walking community. Having a
21 pizza facility in close proximity to office spaces and to
22 residences gives the ability to walk to those.

23 And another point. Oh, my other point, traffic.
24 One thing to note is, as far as the traffic patterns go,
25 when you have a pizza facility, it's not going to affect

1 the peak-hour traffic because you don't have people going
2 to get pizza at eight a.m. in the morning when people are
3 commuting to work. And people leave work and go get
4 something to eat, but it's the same traffic that's already
5 there. So to me, if you had a professional use, you
6 almost add traffic, because it's peak hours of what's
7 happening in that vicinity increase, if you follow my
8 logic.

9 MR. BOSWELL: Another question I had was, in
10 looking at the packet of information you supplied, there
11 was a picture of what appeared to be like a loft area
12 where it would be outdoors.

13 MR. MEYER: Yes, sir.

14 MR. BOSWELL: I think it's the last picture in
15 the packet. Do you have a sense of how that would be
16 located? Would that be facing Frederica Street?

17 MR. MEYER: At this point, we don't know. And
18 it's not really a loft area. If you go back and look at
19 the second picture, you can see that there must be an
20 elevation change on this property because there's no
21 seating at street level.

22 MR. BOSWELL: Right.

23 MR. MEYER: So, as I said, this would be
24 pictures that were taken just to give the Commission a
25 feel for what the restaurant may look like. Most of this

1 will be at street level. Certainly, I think the focus
2 would be more - - but that outdoor seating area would more
3 likely than not face Frederica Street as much as possible.
4 But it will probably, more likely than not, be more at
5 street level with Frederica Street.

6 MR. BOSWELL: Thank you.

7 MR. CHAIRMAN: Is this what they call the Gulch
8 in Nashville? Is that were this Donato's is?

9 MR. MEYER: Right downtown, yes, sir.

10 MR. CHAIRMAN: Just a couple of questions on
11 kind of what your intent are. If this were to be rezoned,
12 of course, you're sitting right next to residences. I
13 notice in here that they have music. I assume they're
14 going to be open till midnight or so?

15 You may want to address that. If you'll come
16 and be sworn.

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

18 MR. BYRNE: Sean Byrne.

19 (MR. BYRNE SWORN BY ATTORNEY.)

20 MR. CHAIRMAN: So what would you anticipate your
21 closing hour would be?

22 MR. BYRNE: Probably around midnight. I don't
23 know that we'll have any kind of music there at all. The
24 reason they have it there in particular is because it's
25 Nashville. So they try to get entrenched in every

1 community they've got. And one of the things they have in
2 Nashville is they like music, so they have people up there
3 that come in and play music for them. It's not by any
4 means going to be a nightclub-type atmosphere. If
5 somebody's out there playing, it would be like music that
6 you see down at Fetta. They may play music for a while,
7 pizza, whatnot.

8 MR. CHAIRMAN: But you do plan on having outdoor
9 dining in the front?

10 MR. BYRNE: We would like to have that, but a
11 lot of that depends on how the site would be laid out and
12 how many parking spaces we have and, you know, what the
13 setbacks are to is.

14 MR. CHAIRMAN: Okay. And this may be a question
15 for Brian. I'm not sure. We just had a rezoning back - -
16 we did not rezone it. The fiscal court rezoned a piece of
17 property over our objection. And when the site plan came
18 in, the developer did what was completely legal but
19 destroyed the property next to it. That property there
20 sits on an angle. Would you be planning to build your
21 property to fit into the angle, or would you be planning
22 to cut and level it off there?

23 He knows what I'm talking about. It's on 54.
24 That was falling off a cliff back there.

25 MR. WEAVER: With the lot, I would almost

1 anticipate there would be a need for a retaining wall over
2 on that side. Of course, you have to have a ten-foot
3 landscape buffer, but that's a detail that has to be
4 worked out. We've actually kind of talked along the
5 context of, you know, the six-foot continuous element
6 that's required, we would want to make sure that we
7 situated that such where it's near the top. It would
8 probably be closer to the property line as opposed to
9 being, you know, in the ten foot; so you've got more of a
10 barrier there. Does that answer your question?

11 MR. CHAIRMAN: Yes, it does. You know what my
12 concern is.

13 MR. WEAVER: I know what you're talking about.
14 The slope of the grade across there? Its a detail we
15 haven't looked at yet.

16 MR. CHAIRMAN: I know that's not as harsh as
17 what was on 54.

18 MR. WEAVER: Yeah. Yeah.

19 MR. CHAIRMAN: Any other commissioners have any
20 questions? Mr. Ball?

21 MR. BALL: I have a question for staff. There
22 was an example of Abbingdon's Bridal House being a
23 mercantile use, which would obviously fit in a B-4 and not
24 a P-1. Can you explain to us a little bit about what
25 happens with that, how that's grand-fathered in, and what

1 other uses could be there in the future? Could it ever
2 change to a restaurant due to that? How does that work?
3 Can you explain that to me?

4 MR. HOWARD: Sure. As far as grand-fathered in,
5 if it was in existence prior to the adoption of the zoning
6 ordinance, it can remain what it is until there's a
7 change. It could change from a bridal shop to a similar
8 type of use without going through a rezoning process.
9 However, if they had a desire to convert it to a
10 restaurant, it would have to go through a rezoning process
11 because you would be increasing the intensity of the use
12 on that property.

13 MR. BALL: So it really never changes. It never
14 changes the type of use that it has as opposed to in the
15 event that this other property is rezoned - - and right
16 now we're looking at a pizza restaurant and an investment
17 business. Those could potentially change to anything that
18 would fit inside B-4, correct?

19 MR. HOWARD: That is correct.

20 MR. BALL: Thank you.

21 MR. CHAIRMAN: Any other commissioners have any
22 questions?

23 MR. MEYER: I would like to point one thing out.
24 I would like to point out the fact that my clients are
25 both - - and especially Tristate Pizza. They're both

1 engrained in this community. They were born and raised
2 here. They have other businesses located here. They own
3 the Shammy's Car Wash up the street. And they have intent
4 on continuing in various business ventures, you know,
5 throughout the city. So they have a vested interest.
6 This is their community. They want to remain here.
7 Certainly anything can happen in a business, but they're
8 committed to doing everything they can to make sure that,
9 you know, they're good neighbors to the residential
10 neighborhood behind them.

11 MR. CHAIRMAN: Mr. Howard, this may be a
12 question to you, and the engineer may want to - -

13 The existing traffic going into the business
14 there - - that is an investment and insurance agency, so
15 they may have a car going in every 30 minutes, every hour
16 or so. My concern is just how close that alleyway
17 entrance between the two lots is from Frederica if you had
18 people getting off work and going in there to pick up a
19 pizza on the way home. I'm not particularly concerned
20 about the business with the insurance agency there, but I
21 am concerned about - - would the the State Transportation
22 Cabinet weigh in on this at all, or does that resolve the
23 issue?

24 MR. HOWARD: There's an existing access point
25 there; and, you know, it is what it is. We would look to

1 the State and ask them if anything would need to be done
2 from their perspective if this was developed as a
3 restaurant. You can look at the Institute of
4 Transportation Engineer Traffic Generation Manual; and
5 it'll give you a formula to calculate how many parking
6 spaces would be required for a professional office, a
7 bank, a restaurant, anything. And you're right in general
8 - and that was pointed out in our staff report - an office
9 use like that is going to have a lower traffic count and
10 lower traffic generation than a restaurant would.

11 MR. CHAIRMAN: I'm really concerned about the
12 left turns of the people going south there during peak
13 business hours at the restaurant. I just didn't know if
14 the Transportation Cabinet would weigh in on that or not.

15 MR. MEYER: It's probably no different than what
16 is already going on in Dairy Queen just a block down. But
17 as David indicated, it is on your way home, it is at
18 different hours, and we would - - we don't believe it'll
19 have that great of an impact.

20 MR. CHAIRMAN: It is a little bit different than
21 Dairy Queen because of the way Griffith comes in there.
22 Dairy Queen is about halfway down the block. This one,
23 you enter just a few hundred feet down the block. I
24 suspect that that's - -

25 Mr. HOWARD: Well, and to piggy-back on that,

1 the concern I would have there is - - in it being
2 different from Dairy Queen, as Mr. Meyer pointed out
3 earlier, there is is central turn lane that goes the
4 length of Frederica Street. However, at the point where
5 this alley, the east/west alley between the two properties
6 goes into Frederica Street, that's actually at the
7 tail-end of a designated left turn lane at the signal for
8 traffic entering Griffith Avenue. So I would have a
9 concern about where southbound left-turn traffic trying to
10 enter this site would sort. You're going to have a
11 conflict there with that being a designated left turn
12 lane.

13 MR. CHAIRMAN: We always abide by what the - -

14 MR. MEYER: Sure. We do have to meet all of
15 their requirements.

16 MR. CHAIRMAN: Any other commissioners have any
17 questions of the applicants before we hear from anyone
18 else in the audience? Yes, Ms. Hardaway?

19 MS. HARDAWAY: I have one. You said that with
20 the size of the building, you would need about 14 parking
21 spaces?

22 MR. MEYER: Yes, ma'am.

23 MS. HARDAWAY: And so I assume that some of your
24 employees would be using some of those parking spaces.
25 Correct?

1 MR. MEYER: They would.

2 MS. HARDAWAY: I was just wondering, what are
3 you going to do with overflow in case, you know, you have
4 a lot of cars come in? Where is you parking going to take
5 place, the overflow parking?

6 MR. MEYER: I think the beauty of the way these
7 properties can work together is that some of our peak
8 hours are the - - you can have overflow parking over to
9 the property on the north because our peak hours are not
10 going to - - generally, the property to the north would
11 have available spaces. There's also available spaces in
12 that .06 acres that I advised you all earlier is not part
13 of the zoning but is solely restricted to - -

14 MR. CHAIRMAN: Mr. Meyer, do you want to point
15 that out to Ms. Hardaway so she'll know for sure where it
16 is?

17 MR. MEYER: This spot right here is dedicated
18 parking for both parcels under some conditional - - some
19 prior conditional use permits. And so you have that. And
20 then, of course, you have overflow parking. We'll have to
21 reach an agreement, obviously, as part of our transaction
22 to utilize the property of Ashley Worth. But that can
23 also be utilized as overflow parking because their
24 employees will typically be gone during those peak hours
25 and after work.

1 MS. HARDAWAY: So are you open for lunch?

2 MR. MEYER: It is, yes.

3 MS. HARDAWAY: So possibly you could have the
4 business that's already there, their employees are there,
5 and then plus the restaurant's business for overflow
6 employee - - I mean - - I understand what I'm trying to
7 say.

8 MR. MEYER: I understand. The lunch crowd is
9 what I did not address.

10 MS. HARDAWAY: Yes. Yes.

11 MR. MEYER: And that's what you're raising?

12 MS. HARDAWAY: Yes.

13 MR. MEYER: We believe that we've met the
14 requirements of the, you know, planning. And of course we
15 won't have 40 people there at the same time. There's no
16 parking on Frederica Street. We would just have to find
17 another location for that.

18 MR. WEAVER: Fourteen parking spots is what's
19 required. That doesn't mean that that's what we're going
20 to have. Obviously we'll have whatever parking we can fit
21 on the lot in addition to Mr. Bosley's property. There's
22 a considerable amount of parking. They're way
23 under-utilizing that during office hours anyway. So, you
24 know, I think there's plenty of room.

25 MR. CHAIRMAN: Mr. Kazlauskas?

1 MR. KAZLAUSKAS: You just brought up an
2 important point. Walk me through this now. Don't walk
3 away.

4 MR. WEAVER: I'm sorry.

5 MR. KAZLAUSKAS: Walk me through this, because I
6 want to be sure that I'm understanding. Let me get my
7 other drawing here. All right. Here's my map.

8 The property at 1601 Frederica, the property at
9 1611 Frederica, and the property at Phillips Court, 210
10 Phillips Court, are all owned by different people; is that
11 correct?

12 UNIDENTIFIED SPEAKER: That is correct. That is
13 correct.

14 MR. WEAVER: I'm sorry. Which properties are
15 you talking about?

16 MR. MEYERS: 210 Phillips Court. I'm not sure.
17 This property is owned by Ashley Worth. I'm not sure of
18 the 210.

19 UNIDENTIFIED SPEAKER: That is my house.

20 CHAIRMAN: Ma'am, I know you want to, but you
21 haven't been sworn. Plus, she needs to get your comment.
22 We'll get to you.

23 MR. KAZLAUSKAS: Who owns the property at 1601?

24 MR. BOSLEY: Mark Bosley.

25 MR. CHAIRMAN: Mark, can you step back and be

1 sworn. You can be sworn right there. You've got the mic.

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

4 MR. BOSLEY: Marcus Bosley.

5 (MR. BOSLEY SWORN BY ATTORNEY.)

6 MR. KAZLAUSKAS: Who owns the property at 1611?

7 MR. BOSLEY: It's owned by Ashley Worth Rentals,
8 but my wife and I own - - Mark Bosley and Tina Bosley own
9 50/50 Ashley Worth Rentals.

10 MR. KAZLAUSKAS: Okay. Now, who owns the
11 property at 210 Phillips Court?

12 MR. MEYER: That property is owned by Howard
13 Adams, per the notification.

14 MR. KAZLAUSKAS: And that's where the agreement
15 is for overflow parking?

16 MR. MEYER: No.

17 MR. KAZLAUSKAS: That's what you kept pointing
18 at. That's what I couldn't understand.

19 MR. MEYER: This is Mr. Bosley's building right
20 here. And there's parking - - well, he may - -

21 MR. KAZLAUSKAS: And what was that other
22 address?

23 MR. BOSLEY: 210.

24 MR. MEYER: 210 Phillips Court is here. That's
25 an existing house. And the alley is directly to the west.

1 MR. KAZLAUSKAS: Is there overflow parking there
2 at 210?

3 MR. MEYER: No, sir. Just on the Bosley tract.

4 MR. KAZLAUSKAS: Okay. So what about 203?

5 MR. BOSLEY: Where's 203?

6 MR. MEYER: If I may.

7 MR. KAZLAUSKAS: Please.

8 MR. MEYER: If you could turn to the page in
9 your book before that map. You see the notification area
10 on the top. You'll see 1601, 1611.

11 MR. KAZLAUSKAS: Right.

12 MR. MEYER: And then there's a small, almost
13 square lot that is immediately behind the 1611 property.

14 MR. KAZLAUSKAS: Okay.

15 MR. MEYER: That says West 17th Street, Marcus
16 Bosley.

17 MR. KAZLAUSKAS: We're talking about overflow
18 parking now, right?

19 MR. MEYER: That's right. That is also owned by
20 Mr. and Mrs. Bosley.

21 MR. KAZLAUSKAS: Okay. So we don't have to
22 worry about any type of agreements between the property
23 owners?

24 MR. MEYER: Right. Right. That's correct.

25 MR. KAZLAUSKAS: As long as we're not talking

1 about three different property owners, I don't think we'll
2 have a problem there. And then how many - - on this
3 overflow parking, how many vehicles can we get in there?

4 MR. MEYER: You're talking about in the lot, the
5 West 17th Street lot?

6 MR. KAZLAUSKAS: Yeah.

7 MR. MEYER: It's about seven spaces.

8 MR. KAZLAUSKAS: Okay. Thank you.

9 MR. CHAIRMAN: Thank you all for clarifying
10 that.

11 Are there any more questions of the applicants?
12 If not, we invite anybody else who wants to speak on this
13 issue to come to the podium and be sworn, and we'll be
14 happy to hear from you.

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

16 MR. MCQUARRIE: Colby McQuarrie.

17 (MR. MCQUARRIE SWORN BY ATTORNEY.)

18 MR. MCQUARRIE: Well, there are a couple of
19 points that we'd like to make if we may. We won't get
20 into all the details about property size and all that.
21 But as far as soliciting any of the neighbors concerning
22 this project, we saw the signs. We apparently had
23 somebody come through the neighborhood. I'm not sure how
24 many times. Maybe once. I was never contacted, and I
25 think there was probably two or three neighbors that

1 weren't.

2 Just a little history and background. This is
3 probably one of the few intact neighborhoods, on Phillips
4 Court, of Victorian homes, single-family residences.
5 Folks that have been there for - - well, I know myself,
6 we've been there for 29 years. I bought the home,
7 restored it, renovated it, raised our children there. So
8 we've lived in the community. And most of our neighbors
9 are the same neighbors that were there before. Sure,
10 there's been a house change here and there. But for the
11 most part, it's solid.

12 And of course we are also a very good neighbor
13 of the Mary Kendall Home, which, you know, is just a
14 wonderful program with the church and the employees. And
15 we've never had an issue with any of the young people that
16 are there. We've never had an issue with any of the
17 property use or anything.

18 As time went on, when we were living on Phillips
19 Court, there were a number of homes that changed
20 ownership. And I'm sure you all probably remember quite a
21 bit of that, when the homes were in a dilapidated state.
22 Some weren't; some were. But for the most part, they had
23 been used for rentals over the years. The facades and the
24 front yards looked great. But honestly, the bones of the
25 buildings weren't there.

1 There was a project once before that was
2 mentioned, changing all of that area. And I believe at
3 one point they had an option on pretty much every parcel
4 from Phillips Court to 17th. Part of the concern was that
5 - - there again, that was - - probably look through your
6 records and see. Some years ago, there was proposed a B-4
7 business change.

8 I believe the Department of Transportation
9 looked at the project and realized that there was an issue
10 because of the Frederica Street and Griffith Avenue light.
11 There has never been a light on Phillips Court. There's a
12 stop sign. But we've dealt with that for years.
13 Honestly, as long as we've lived there, it's a right-hand
14 turn. It's never a left-hand turn. Because, one, the
15 traffic light is very short and it's dangerous to cross
16 traffic there, even with the light. So that project was
17 stalled because they were going to require an increase in
18 access to Phillips Court in order to change that project.
19 I believe Mr. Pembroke was working on that at that point,
20 and Mr. Cambron. So that project stalled.

21 When Mark bought the property and he presented
22 his program to the Phillips Court folks and the adjoining
23 community, we thought that this was a good use. We
24 understood that Frederica was going to be a professional
25 district, and there are buildings across the street all

1 around us that are used for office space. Not that we
2 were concerned about the traffic. That was not an issue
3 because we knew that it was professional. We knew there
4 would be one or two cars every 30 minutes or so and
5 probably five or six employees. And that's pretty much
6 remained the same since he built the building there.

7 The alleys themselves, both accessed from
8 Daviess Street and also 17th, are at best one-lane alleys.
9 By living there and using those alleys to access both
10 Daviess Street and also 17th Street, there's no way that
11 two cars can pass at all. And it does become a little bit
12 of a problem partly due to the fact that a lot of the
13 fences and a lot of the access to those alleys are closed.
14 And you have to be very, very careful when you're driving
15 through there, even today, or somebody will come out of a
16 driveway or back out or whatever it may be.

17 So we are concerned about the traffic, we are
18 concerned about the parking, and we are concerned about
19 our neighborhood. We understand progress. We all sit
20 here representing one opinion; and that is, we would like
21 to see that parcel of land remain professional one. And I
22 believe that all the concerns have been raised. I think
23 that staff did a great job in reviewing this and not
24 passing it.

25 One concern that I do have that I would say, as

1 a business person, is that we haven't seen the building.
2 We don't have a site map for the building. We don't know
3 how many seats are going to actually be there. We don't
4 know if there's going to be live music. Is there going to
5 be beer served there? Are they going to apply for an
6 alcoholic beverage license?

7 Where are they going to park their employees?
8 If there are 30 employees - which, ideally there probably
9 will be at start - where will they park? There's not
10 enough parking for even the customers if the employees
11 take up the parking lot. So you have Phillips Court, you
12 have 17th, and that's really where the parking is going to
13 be.

14 So I would move that you all would consider this
15 in not passing the proposed ordinance to change zoning on
16 that piece of property.

17 MR. CHAIRMAN: Thank you, Mr. McQuarrie.

18 Does anybody have any - - any commissioners have
19 any questions of Mr. McQuarrie?

20 Would anyone else like to speak?

21 Thank you.

22 MS. KNIGHT: Please state your name for the
23 record.

24 MR. PELPHREY: Thomas Pelphrey.

25 (MR. PELPHREY SWORN BY ATTORNEY.)

1 MR. PELPHREY: I'm Thomas Pelphrey. I live at
2 203 West 17th Street. My house faces 17th Street; but the
3 alley that runs north and south between Phillips Court and
4 Daviness and 17th Street runs right beside my home. It
5 runs between my home and the home at 1617 Frederica
6 Street. And that alley is at best probably 14 feet wide.
7 Probably 12. It is very much a single lane. I've lived
8 there 24 years. Bought it from Judge Griffin, who raised
9 his family there. And know that that alley is a one-way
10 alley there. And that was one of my concerns.

11 The other concern that I have - - there are
12 multiple concerns I have, but the other one was addressed
13 by the question about the level and the elevation on that
14 property. It is a small property; and to put a building
15 like that on there and not build a retaining wall seems
16 very difficult in my mind. I'm not an architect, not an
17 engineer; but it would seem to be very difficult. And I
18 would be worried having to back out of my carport into the
19 alley that's small already if there's a retaining wall
20 right up against that alley. And that has not been ruled
21 completely in or completely out here tonight.

22 I do want to thank Sean for coming - - he did
23 come to my house, and we did have a conversation. And I
24 told him that I liked Donato's pizza. I grew up in Ohio,
25 been eating Donato's pizzas for a long time. We would

1 love to have them in our city. I just don't think that's
2 the location for them to be. I told him that I would be
3 coming and speaking in opposition to that.

4 Colby also mentioned, as I'm about to reiterate,
5 that there is no traffic light, as has been indicated here
6 tonight. There is no traffic light at the Phillips Court
7 turn signal for people - - when you go there, there's a
8 traffic light coming out of Griffith. There's a traffic
9 light for both sides, north and south, on Frederica. But
10 Phillips sits over here. There is no traffic light to
11 guide you there. Colby's exactly correct. You take your
12 life into your own hands if you try to go south there.

13 Same way on the central - - well, you've been
14 using the word "central access" - is that right? - for the
15 access in the middle of the block. Going south there, as
16 has already been mentioned, would be very difficult,
17 particularly with the turn lane for Griffith.

18 I would like to say that I'm one of those
19 engrained residents in Owensboro as well. There's been
20 mentioned that the person who'll be running this
21 establishment is engrained in the neighborhood. Well, we
22 all are too. I've been there 24 years. Been there 29.
23 My neighbor has been there about 22 or so. So a lot of
24 people around there have been there a long time. And we
25 would like to keep our residence as we have it now.

1 Again, there was no building size, and all of
2 that was not exactly detailed tonight. I want to say that
3 the seven additional parking spaces that have been
4 mentioned are at my property line from 203 17th Street.
5 My north property line is one of the borders for that
6 section of parking. It was originally - - it was
7 originally granted a conditional approval for that. And
8 at the time, I asked how long would that be. And people
9 said, well, it'll be forever. So am I hearing tonight
10 that we're going to change that conditional use and now
11 it's going to be parking for any one of those two
12 businesses?

13 And I have a further question that someone can
14 address. It's been mentioned by the counsel that the
15 building at 1601 is a business, it's a professional
16 business. And in counsel's own words, they will probably
17 never change that because they don't want to rebuild. My
18 question is, why is that being changed? Why is it going
19 from P-1 in existing property to B-4? I think the obvious
20 answer to that is that's the only way they can come up
21 with even 1.5 acres. Because if you just try to make the
22 parcel of land where the pizza place is going to be a B-4,
23 it would be very much less than one acre. So I have a
24 question about, you know - - I understand there are
25 options. But my question to the Commission is, why would

1 that be done if it's going to remain a business and be
2 professional?

3 MR. CHAIRMAN: I don't think we can answer your
4 second question because only the owner can do that. I
5 will ask Mr. Howard to answer the issue about the
6 conditional use on the small parcel back there.

7 MR. HOWARD: And I don't have the file in front
8 of me on that, but I do remember when it happened. You
9 can get a conditional use permit for parking, and that was
10 granted. So it is parking and it was shown on the
11 government plan that was submitted.

12 MR. PELPHREY: So that is parking for anybody or
13 just the owner?

14 MR. HOWARD: It could be for customers. Is that
15 what you mean? It could be for customers of anybody that
16 would be using either of those businesses.

17 MR. PELPHREY: So it's available for - - even
18 though there's going to be two pieces of property, one's
19 going to be owned by the rental company and one's going to
20 be owned - - if it were to pass, it would be owned by
21 someone else, Sean. I'm just trying to understand here.
22 So that means that he could have access to this
23 conditional parking even though he doesn't own it. Is
24 that correct?

25 MR. CHAIRMAN: I think that was the intent. Mr.

1 Meyer, am I correct that the restaurant would have access
2 to this additional parking that's conditionally permitted
3 right now?

4 MR. MEYER: It would be. It's property owned by
5 Ashley Worth or the Bosleys, and it's been conditionally
6 permitted to serve as a parking structure, additional
7 parking now to service the existing parcels. So if there
8 are - - if the property is sold, certainly from a legal
9 perspective, arrangements will be made with the owners of
10 the property to allow and permit, you know, Tristate Pizza
11 to utilize that parking as well as overflow parking.

12 MR. CHAIRMAN: I have a question for Mr. Howard.
13 Would there be any requirement for buffering on this lot
14 for the conditional parking?

15 MR. HOWARD: They were required to put in
16 screening based on zoning ordinance requirements when that
17 was done.

18 MR. CHAIRMAN: So it already has buffering
19 there?

20 MR. HOWARD: It should, yes.

21 MR. CHAIRMAN: I'm sorry, sir.

22 MR. PELPHREY: So my understanding is that even
23 though it was rezoned when the building was built, it
24 would not matter who owned that extra property.

25 MR. CHAIRMAN: That would be a business

1 agreement between the various owners as to the use of that
2 property. That would be worked out with their rental or
3 sales agreement.

4 MR. PELPHREY: All right. I understand. Thank
5 you for clarifying that.

6 I do want you to know - - I would like to make
7 the Commission aware that we have a petition of I'm not
8 sure how many names - probably 15, 20 names - in
9 opposition to this change in zoning.

10 And the last thing - - two other things I'd like
11 to say. We talked a lot about if it's B-4, what it could
12 be in the future if this were not to go well. And we've
13 mentioned a lot of different things, but it could be a
14 liquor store. Is that correct?

15 MR. HOWARD: A liquor store would be a permitted
16 use in a B-4 zone.

17 MR. PELPHREY: Would a liquor store be a
18 permitted use that close to the school?

19 MR. HOWARD: We don't dictate the ABC
20 requirements. That would go through the ABC licensure.

21 MR. PELPHREY: The reason I just bring that up,
22 my understanding - - and I may be wrong, sir. But the
23 potential builder of this also has some of these
24 businesses, and that concerns me as someone who is going
25 to be living by that. And the question that Colby brought

1 up about liquor licenses, etc., living beside that is a
2 very big concern to me.

3 The last issue that I would bring up to you is,
4 this is a community. I understand that we are trying to
5 live together well, and I want to do that. But I also
6 need for the Commission to remember that those of us who
7 would be affected by changes like that financially as
8 well. The property at 17th Street, do we know whether
9 that would go up? Or my property or my property at 203
10 West 17th? Now, that may not be your concern, my
11 property. But it sure is as a resident of the community,
12 my property value. I'm a minister. I'm not a rich man.
13 My biggest asset is that house. If that house goes down
14 in value, I'm in trouble. So I have that concern, and I
15 just want to bring that up, that other people who are
16 sitting here tonight have concerns about their value of
17 their property as well. And I would know and assume and
18 be assured that you would take those things into
19 consideration as well.

20 MR. CHAIRMAN: Thank you, Mr. Pelphrey.
21 Appreciate it.

22 MR. PELPHREY: Does any commissioner have a
23 question of me?

24 MR. CHAIRMAN: Would anyone else like to speak
25 to the issue?

1 Commissioners, if you have any additional
2 questions for either the applicant or anyone else in the
3 audience - -

4 Mr. Boswell?

5 MR. BOSWELL: Just a point of clarification. I
6 think the gentleman that just spoke mentioned something
7 about a retaining wall. And your understanding was it was
8 at the back part of the lot? I want to get clarifications
9 because I thought I heard something different from the
10 applicant.

11 MR. PELPHREY: There is not one there now. It
12 goes up on a grade. There's an alley from the center - -
13 from the center point of the alley, running north and
14 south, it goes up between our homes and then pretty
15 steeply down to 17th Street. Probably drops ten feet at
16 least. And my concern is, if it's a full depth from
17 Frederica back to the alley is used for the business, then
18 I would assume that there would be some kind of retaining
19 wall built there. And I'm just concerned about backing my
20 car out in a 12-foot wide alley with a retaining wall
21 there.

22 And my concern is, because that really hasn't
23 been addressed tonight, we don't have the final plans
24 here, we don't have site plans that say, "This is what
25 we're going to build." And we did have that when the

1 other property at 1601 was brought to us. It was
2 completely designed; "This is what we're going to build."

3 MR. CHAIRMAN: One thing I do want to point out
4 to you, they may have brought a site plan to you. That
5 would not have been binding. Okay? Site plans come after
6 the zoning. They can bring you pretty pictures, ugly
7 pictures. They may change the picture completely once
8 it's rezoned. That's up to the owner, who must come to
9 our staff to get site plans approved by this Commission.

10 MR. PELPHREY: Well, I thank you. I appreciate
11 the information.

12 MR. BOSWELL: The question I have for you folks
13 is, I thought I heard you say there would be a retaining
14 wall that would be between the 1617 property and the 1611
15 that would run east/west.

16 MR. WEAVER: Yes. I could probably clarify the
17 retaining wall issue. We haven't done any design as far
18 as the site goes, but I would anticipate the need for a
19 retaining wall along the south border of our property.
20 And that retaining wall would not continue in height all
21 the way to the alley to the east. It would obviously
22 taper down. The site grade would have to match up with
23 the alley.

24 In addition, I'd like to clarify just a few
25 things on the relationship of the alley and the access to

1 the property. The alley to the south of the development
2 is narrow. I don't really anticipate that being used for
3 commercial purposes in relationship to the restaurant.
4 But the alley going to the north, that takes you back out
5 to Phillips Court, has been widened as part of our
6 development. And that is a 24-foot width. That's street
7 width.

8 And once you get out to Phillips Court, they are
9 correct that Phillips Court and Griffith Avenue are offset
10 at the intersection. The light is with Griffith Avenue.
11 However, that light does assist you in coming out from
12 Phillips Court because it gives you the ability to turn
13 right. Now, I believe what's needed at Phillips Court at
14 that intersection is a sign that disallows left turns, but
15 that's a decision for the Highway Department and the City
16 Engineer to make.

17 MR. BOSWELL: Can you at this point - - you may
18 not be able to do that at this point, but can you
19 determine whether there would be a need to put the
20 retaining wall around the corner, which was his concern at
21 this point in time?

22 MR. WEAVER: I don't anticipate it would go
23 along the corner, just along the south side. It would
24 taper down as you go back toward the alley and back toward
25 Frederica Street.

1 MR. MEYER: But it would not obstruct the view?

2 MR. WEAVER: Would not obstruct the view.

3 MR. MEYER: There already is a little bit of a
4 grade drop-off there, just the natural topography of the
5 land.

6 MR. BOSWELL: Thank you. I just wanted to make
7 sure there was a clarification because I was confused
8 myself about where that was at.

9 MR. CHAIRMAN: Mr. Pelphrey, did you have
10 another issue?

11 MR. PELPHREY: I do. One of the discussions I
12 had with Mr. Payne, and my understanding is too - - two
13 issues. I would like to know the difference between a
14 walk-up window and a drive-through. They said there was
15 not going to be a drive-through.

16 MR. CHAIRMAN: There would be a driveway that
17 would let you go up to the walk-up window.

18 MR. PELPHREY. Okay. So you just have to park
19 and go up there?

20 MR. CHAIRMAN: Right.

21 MR. PELPHREY: All right. Thank you. And then
22 I don't think we've had any mention tonight of the
23 business - - would probably about a third of the business
24 be delivery?

25 MR. CHAIRMAN: Mr. Meyer?

1 MR. PELPHREY: And my understanding is that it
2 would be a lot of delivery. So we going to have not only
3 patrons come to this place, but delivery cars. And
4 delivery cars are going to run through the alley. And
5 that's another concern. And particularly the alley as it
6 runs east/west from Frederica to Daviess. As has already
7 been indicated, that is a single-lane alley. And if
8 delivery vehicles are going to use it, that would be a
9 real problem. And I don't think we've had any mention
10 tonight here - - but when I had conversations with Mr.
11 Payne, the indication was this would be delivery as well.
12 So it's not just going to be people coming there; it's
13 also going to be delivery and a lot of traffic.

14 MR. CHAIRMAN: Mr. Meyer, may we anticipate
15 there are going to be deliveries from the restaurant?

16 MR. MEYER: There will be deliveries from the
17 restaurant. Obviously we would instruct all of our
18 employees to utilize the access points that we've
19 discussed, being the shared access point on Frederica
20 Street, exit out Phillips Court. We can control that so
21 that that's not an issue or a problem.

22 MR. CHAIRMAN: Okay. Mr. Moore?

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

24 You mentioned that the alleyway going to
25 Phillips Court was 24 foot and the one going to 17th is

1 12. Did anybody ever indicate what the size of the one
2 coming off Frederica? What size is that one?

3 MR. CHAIRMAN: Get Brian back up here.

4 MR. HOWARD: I'm thinking that that's a 30-foot
5 access point, but I don't know for certain.

6 MR. MEYER: It's a large one. I know that, Mr.
7 Moore. It's 24 or larger.

8 MR. CHAIRMAN: Any other commissioners have any
9 questions?

10 Mr. Meyer, did you have any further comments?

11 MR. MEYER: I have nothing further. Appreciate
12 your time.

13 MR. CHAIRMAN: Thank you very much.

14 If there are no other questions, then the chair
15 will entertain a motion.

16 MR. KAZLAUSKAS: Mr. Chairman?

17 MR. CHAIRMAN: Mr. Kazlauskas?

18 MR. KAZLAUSKAS: I make a motion that the
19 application be denied based on the planning staff's
20 recommendation and findings of fact 1 through 11.

21 MR. CHAIRMAN: Have a motion from Mr.
22 Kazlauskas. Do we have a second?

23 MR. BALL: Second.

24 MR. CHAIRMAN: Have a second from Mr. Ball. Are
25 there any questions or concerns from any commissioners

1 regarding the motion?

2 If not, all in favor of the motion, raise your
3 right hand.

4 Opposed, like sign.

5 (ALL BOARD MEMBERS PRESENT RESPONDED.)

6 The application is denied by unanimous vote.

7 Thank you, everyone, for your participation.

8 Mr. Howard.

9 **ITEM 4**

10 1611 Sunrise Drive, 0.225 acres

Consider zoning change:

11 From P-1 General Business to R-1C Single-Family
Residential

12 Applicant: Sonrise Chapel, LLC

13 **PLANNING STAFF RECOMMENDATIONS**

14 Planning staff recommends approval subject to the
15 approval and findings of fact that follow:

16 **Condition:**

17 1. Approval of an Amended Final Development
18 Plan for 2624 New Hartford Road.

19 **Findings of fact:**

20 1. Staff recommends approval because the
21 proposal is in compliance with the community's adopted
22 Comprehensive Plan;

23 2. The subject property is located in an Urban
24 Residential Plan Area where urban low-density residential
25 uses are appropriate in limited locations;

1 3. The proposed use as a single-family
2 residence is compliant with urban residential development;

3 4. The proposal is a logical expansion of
4 existing R-1C Single-Family Residential zoning to the
5 south and west; and,

6 5. Sanitary sewer service is existing on the
7 subject property.

8 Staff recommends that the staff report be
9 entered into the record as Exhibit B.

10 MR. CHAIRMAN: Is anyone here representing the
11 applicant? Do you wish to speak, sir?

12 UNIDENTIFIED SPEAKER: No.

13 MR. CHAIRMAN: Anyone have any questions
14 regarding this application? Anyone wish to speak in
15 opposition to the application? If not, then the chair
16 will entertain a motion.

17 Mr. Rogers?

18 MR. ROGERS: Mr. Chairman, I make a motion for
19 approval based on planning staff recommendation with the
20 one condition and the findings of facts one through five.

21 MR. CHAIRMAN: We have a motion by Mr. Rogers.
22 Do we have a second?

23 MS. HARDAWAY: Second.

24 MR. CHAIRMAN: Second by Ms. Hardaway. Any
25 questions about the motion? If not, all in favor, raise

1 your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 Opposed, like sign.

4 Application is approved unanimously.

5 **ITEM 5**

6 6876, 6980 and a portion of 6946 West Louisville Lane,
3.306 acres

7 Consider zoning change:

8 From R-1A Single-Family Residential and B-4 General
Business to B-4 General Business

9 Applicant: Darrell and Rebecca Whittaker

10 **PLANNING STAFF RECOMMENDATIONS**

11 The planning staff recommends approval subject
12 to the condition and findings of fact that follow:

13 **Condition:**

14 1. Approval of a plat consolidating 6980, 6976,
15 and the B-4 zoned portion of 6946 West Louisville Lane.

16 **Findings of fact:**

17 1. Staff recommends approval because the
18 proposal is in compliance with the community's adopted
19 Comprehensive Plan;

20 2. The subject property is located in a Rural
21 Community Plan Area where general business uses are
22 appropriate in limited locations;

23 3. The proposed retail use conforms to the
24 criteria for non-residential development;

25 4. This proposal is a logical expansion of

1 existing B-4 zoning to the east; and

2 5. At 3.306 acres, the proposal is not a
3 significant increase in B-4 General Business zoning in the
4 vicinity and should not overburden the capacity of
5 roadways and other necessary urban services that are
6 available in the affected area.

7 Staff request that the staff report be entered
8 into the record as Exhibit C.

9 MR. CHAIRMAN: Is anyone here representing the
10 applicant?

11 Any commissioners have any questions of staff
12 with regard to this application?

13 If not, then the Chair will entertain a motion.
14 Mr. Boswell?

15 MR. BOSWELL: Thank you, Mr. Chairman. I move
16 for approval based on the planning staff recommendations
17 with the condition and the findings of fact one through
18 five.

19 MR. CHAIRMAN: Have a motion by Mr. Boswell. Do
20 we have a second?

21 MS. MCENROE: Second.

22 MR. CHAIRMAN: Second by Ms. McEnroe. Any
23 questionings about the motion?

24 If not, all in favor, raise your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 Opposed, like sign.

2 This application is approved unanimously.

3 **ITEM 6**

4 612 East Fifth Street, 0.063 acres

5 Consider zoning change:

6 From R-4DT Inner-City Residential to B-4 General Business

7 Applicant: America's Car Mart, Inc. and Michael A. Harl

8 **PLANNING STAFF RECOMMENDATIONS**

9 The planning staff recommends approval subject
10 to the condition and findings of fact that follow:

11 **Condition:**

12 1. Access to the property shall be limited to
13 the alley only. No access to East Fifth Street shall be
14 permitted.

15 **Findings of Fact:**

16 1. Staff recommends approval because the
17 proposal is in compliance with the community's adopted
18 Comprehensive Plan;

19 2. The subject property is located in a
20 Business Plan Area where general business uses are
21 appropriate in limited locations;

22 3. The proposed use as auto sales conforms to
23 the criteria for nonresidential development;

24 4. The proposal is a logical expansion of
25 existing B-4 General Business zoning to the south and
26 east; and

1 5. At 0.063 acres, the proposal does not
2 significantly increase the extent of general business
3 zoning in the vicinity and should not overburden the
4 capacity of roadways and other necessary urban services
5 that are available in the affected area.

6 Staff requests that the staff report be entered
7 into the record as Exhibit D.

8 MR. CHAIRMAN: Anyone here representing the
9 applicant? Do you wish to make any comments, sir?

10 UNIDENTIFIED SPEAKER: No, sir.

11 MR. CHAIRMAN: Thank you.

12 Commissioners, do you have any questions of the
13 applicant or questions of the staff?

14 If not, then Chair will entertain a motion. Mr.
15 Moore?

16 MR. MOORE: Mr. Chairman, I would like to make a
17 motion for approval based on staff's condition and finding
18 of facts one through five.

19 MR. CHAIRMAN: I have a motion by Mr. Moore. Do
20 I have a second?

21 MR. FRYE: Second.

22 MR. CHAIRMAN: Second by Mr. Frye. Any
23 questions about the motion?

24 If not, all in favor, raise your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 Opposed, like sign.

2 This application is approved unanimously.

3 **ITEM 7**

4 301 East Ninth Street; 824, 828, 830 and 832 Crittenden
5 Street; a portion of 817 J.R. Miller Boulevard, 0.844
6 acres

7 Consider zoning change;

8 From R-3MF Multi-Family Residential, R-4DT Inner-City
9 Residential and B-4 General Business to R-4DT Inner-City
10 Residential

11 Applicant: Cohen-Esrey Affordable Partners, LLC; City of
12 Owensboro

13 PLANNING STAFF RECOMMENDATIONS

14 The planning staff recommends approval subject
15 to the condition and findings of fact that follow:

16 **Condition:**

17 1. Approval of a Final Development Plan prior
18 to any construction activity to address all site
19 development requirements.

20 2. No access to the development from East Ninth
21 Street or J.R. Miller Boulevard shall be allowed. Access
22 to the development shall only be granted from Crittenden
23 Street.

24 **Findings of fact:**

25 1. Staff recommends approval because the
26 proposal is in compliance with the community's adopted
27 Comprehensive Plan;

28 2. The subject property is located in a Central

1 Residential Plan Area where Urban High-density Residential
2 uses are appropriate in general locations;

3 3. The proposal meets the goals of the
4 Germantown Redevelopment Plan to revitalize the area; and

5 4. The proposed use as an apartment building
6 meets the goals of the Comprehensive Plan to provide a
7 wide variety of types of housing suitable to a wide range
8 of people.

9 Staff requests the staff report be entered into
10 the record as Exhibit E.

11 MR. CHAIRMAN: Anyone here representing the
12 applicant? You want to make any comments?

13 MR. FREED: No, thank you, Chairman.

14 MR. CHAIRMAN: Anyone here in the audience like
15 to speak on this issue?

16 Commissioners, do you have any questions of Mr.
17 Freed?

18 We're very, very excited. I think all of you
19 realize this is the old, original Ken-Rad building. And
20 Keith has been working diligently for some period of time
21 to get this done as a city staff member now with part of
22 his company. So it's very, very exciting. I anticipate
23 what the motion might be, but we'll go from there. Chair
24 will entertain a motion.

25 MR. JEAN: Make a motion to approve based on the

1 staff report with conditions one and two and findings of
2 facts one through four.

3 MR. CHAIRMAN: We have a motion. Do we have a
4 second?

5 MR. BOSWELL: Second.

6 MR. CHAIRMAN: Second by Mr. Boswell. Mr.
7 Howard, I assume the conditions are okay with the
8 project?

9 MR. HOWARD: Yes, they are. Thank you.

10 MR. CHAIRMAN: Any questions about the motion?
11 All in favor, raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED.)

13 Opposed, like sign.

14 The application is approved unanimously.

15 * * * * *

16 **MAJOR SUBDIVISION PRELIMINARY PLATS**

17 **ITEM 8**

18 Gateway Commons, Section 2, 201.98 acres
19 Consider approval of a major subdivision preliminary plat
Applicant: Gateway Land, LLC

20 MR. HOWARD: Mr. Chairman and Planning
21 Commissioners, we received a request today and have
22 decided to postpone until the July 14th, 2016 meeting. it
23 is not in order at this point. They're still working out
24 a couple of details. So we would request that you
25 postpone this, please.

1 MR. CHAIRMAN: The Chair will entertain a motion
2 to postpone. Mr. Rogers?

3 MR. ROGERS: Motion to postpone.

4 MR. CHAIRMAN: Do I have a second?

5 MR. KAZLAUSKAS: Second.

6 MR. CHAIRMAN: Second by Mr. Kazlauskas. All in
7 favor, raise your right hand.

8 (ALL BOARD MEMBER PRESENT RESPONDED AYE.)

9 Opposed, like sign. Thank you.

10 * * * * *

11 MR. CHAIRMAN: Okay. We met Item 9 and we have
12 considered approval of the amended OMPC personnel policy.

13 Mr. Howard, I'm going to have you, I think, deal
14 with 9 and 10.

15 MR. HOWARD: Be glad to. All right. I have 9.
16 I'm going to be real brief.

17 Due to a change in legislation in regards to how
18 the Kentucky Retirement System calculates final pay for
19 employees that retire, we have found that it is necessary
20 to change the way we pay our employees. In the past,
21 we've been paid every other week. This proposal - - and I
22 included in your packet the change based on how the days
23 fall this year and moving forward. We're proposing that
24 it be that the employees are paid on the 15th and 30th of
25 each month, so they will be paid twice a month. It won't

1 affect the total pay for each employee annually, but it
2 will differ on how they are paid out. And if one of those
3 dates were to fall on a Friday, employees would be paid on
4 the Friday before.

5 So it's a change to the personnel policy.
6 That's the only change of the nearly 100-page document.
7 All I included in your packets was that one page with the
8 change highlighted.

9 MR. CHAIRMAN: Any commissioners have any
10 questions about this?

11 Yes, Mr. Boswell?

12 MR. BOSWELL: Thank you, Mr. Chairman. Just one
13 question. The associate director will review each
14 employee timesheet to verify time worked. How often is
15 that done? Is it at each point in time that the pay is
16 administered?

17 MR. HOWARD: It is.

18 MR. BOSWELL: Okay. Thank you.

19 MR. CHAIRMAN: Any other questions?

20 Chair will entertain a motion. Mr. Frye?

21 MR. FRYE: I'll make a motion to approve.

22 MR. CHAIRMAN: Motion by Mr. Frye. Do I have a
23 second?

24 MS. MCENROE: Second.

25 MR. CHAIRMAN: Second by Ms. McEnroe. All in

1 favor, raise your right hand.

2 (ALL COMMISSIONERS PRESENT RESPONDED AYE.)

3 MR. CHAIRMAN: Opposed, like sign.

4 Motion is approved.

5 MR. HOWARD: Item 10 is in consideration for
6 approval of the fiscal year 2017 OMPC budget and salary
7 chart. Each of you were given a copy of the proposed
8 budget and salary chart. We did receive funding request
9 from both the City of Owensboro and Daviess County Fiscal
10 Court and the City of Whitesville in the amounts that we
11 requested.

12 It does include a 2.75 percent raise for each
13 OMPC employee as part of this. However, we were able to
14 actually reduce some pay based on retirements. And then
15 whenever we hire new people in, they'll start at a lower
16 rate than people who have been working for a significant
17 time. We're actually saving on employees' salaries over
18 the year.

19 We are budgeting for one capital replacement for
20 a new OMPC vehicle. The current car is, I think, a 2003;
21 so it's quite dated and, you know, it's time to replace.
22 Otherwise, the numbers are very similar to years past. We
23 have updated the, you know, revenue source: the building,
24 electrical, HVAC permit fees and filing fees and things
25 like that.

1 But I'll answer any questions you might have
2 about the budget.

3 MR. CHAIRMAN: Anyone have any questions?

4 Mr. Howard, I assume you're comfortable with
5 this \$25,000 allocation to the downtown administrator?

6 MR. HOWARD: I am.

7 MR. CHAIRMAN: Has that position been filled
8 yet? I know you're working on it.

9 MR. HOWARD: We have been in negotiations with
10 someone, and they have the contract. It's not signed yet,
11 but I anticipate that will be done in the very near
12 future.

13 MR. CHAIRMAN: Mr. Nunley is still in service
14 through the end of this month, correct?

15 MR. HOWARD: June 30th is his last day.

16 MR. CHAIRMAN: Anyone else have any questions?

17 If not, the Chair will entertain a motion. Mr.
18 Kazlauskas?

19 MR. KAZLAUSKAS: Mr. Chairman, with the
20 statement that I find Mr. Howard and staff are certainly
21 fiscally-responsible, I make a motion that this be
22 approved.

23 MR. CHAIRMAN: We have a motion by Mr.
24 Kazlauskas. Do we have a second?

25 MR. JEAN: Second.

1 MR. CHAIRMAN: Second from Mr. Jean. All in
2 favor raise your right hand.

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 MR. CHAIRMAN: Opposed, like sign.

5 That motion is passed.

6 All of you received the April 2016 financial
7 statements in your packet. Does anybody have any
8 questions or concerns about anything in the financial
9 statements?

10 Chair will entertain a motion. Mr. Moore?

11 MR. MOORE: Move to approve.

12 MR. CHAIRMAN: Do we have a second?

13 MS. HARDAWAY: Second.

14 MR. CHAIRMAN: Second from Ms. Hardaway. All in
15 favor, raise your right hand.

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 MR. CHAIRMAN: Opposed, like sign.

18 Comments by the Chairman. I have none. Very
19 good meeting. I appreciate everyone's participation
20 tonight and your very diligent work on looking at all the
21 issues before us.

22 Any comments by the planning commissioners? Mr.
23 Howard?

24 MR. HOWARD: Real quick, I'll just say I
25 appreciate the attendance we had at the state planning

1 conference down in Bowling Green last month. Several
2 planning commissioners and board of adjustment members
3 went down. They had a specific commissioner training
4 session on Thursday, the whole day. And feedback, sounds
5 like it was a good session. So I appreciate everybody
6 that went down for that.

7 MR. CHAIRMAN: I'll take one last motion.

8 MR. JEAN: Motion to adjourn.

9 MR. CHAIRMAN: Motion to adjourn. Second?

10 MS. MCENROE: Second.

11 MR. CHAIRMAN: Second by Ms. McEnroe. All in
12 favor, raise your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED.)

14 MR. CHAIRMAN: We are adjourned.

15 (The meeting adjourned at 7:13 p.m.)

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1 STATE OF KENTUCKY)
2) SS: REPORTER'S CERTIFICATE
3 COUNTY OF DAVIESS)

4 I, RHONDA SIMPSON, Notary Public in and for the
5 State of Kentucky at large, do hereby certify that the
6 foregoing Owensboro Metropolitan Board of Adjustment
7 meeting was held at the time and place as stated in the
8 caption to the foregoing proceedings; that each person
9 commenting on issues under discussion were duly sworn
10 before testifying; that the Board members present were as
11 stated in the caption; that said proceedings were taken by
12 me in stenotype and electronically recorded and was
13 thereafter, by me, accurately and correctly transcribed
14 into the foregoing 76 typewritten pages; and that no
15 signature was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the 14th
17 day of July, 2016.

18 _____
19 RHONDA SIMPSON, NOTARY PUBLIC
20 STATE-AT-LARGE
21 OHIO VALLEY REPORTING SERVICE
22 2200 E. PARRISH AVE, SUITE 106E
23 OWENSBORO, KENTUCKY 42303

24 COMMISSION EXPIRES: AUGUST 17, 2019
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