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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

MARCH 2, 2017

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, March 2, 2017, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Judy Dixon, Chairman
Ruth Ann Mason, Secretary
Brian Howard, Director
Terra Knight, Attorney
Jerry Yeiser
Fred Reeves
Bill Glenn
Lewis Jean

* * * * *

CHAIRMAN: Call to order the Board of Adjustment meeting of March 2, 2017. We will begin our meeting with a prayer and pledge to the flag.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: First item is to consider the minutes of the February 2, 2017 meeting. All members have been mailed a copy and have had time to look them over. At this time I need to see if anyone has any additions or correction?

(NO RESPONSE)

CHAIRMAN: Hearing none I will entertain a motion to approve.

MR. JEAN: Motion to approve.

1 MS. MASON: Second.

2 CHAIRMAN: A second by Ms. Mason. All in
3 favor of the motion raise your right hand.

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion carries.

6 Item 2, Mr. Howard.

7 -----

8 CONDITIONAL USE PERMITS

9 ITEM 2

10 4812 Highway 144, zoned A-U
11 Consider a request for a Conditional Use Permit for
12 agritourism activities, specifically receptions and
13 events, as a part of an existing agricultural
14 operation on a property greater than ten acres.
References: Zoning Ordinance, Article 8,
Section 8.2H9
Applicant: Valerie Reid Reel & William H. Reid

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

17 MR. HILL: Mike Hill.

18 (MIKE HILL SWORN BY ATTORNEY.)

19 MR. HILL: This request is on a property
20 portion of which is known as Reid's Orchard.

21 The applicants request a conditional use
22 permit for what the zoning ordinance refers to as
23 agritourism. Specifically they are requesting to be
24 able to host various events, receptions, weddings,
25 things of that nature, outdoors on the property, as

1 well as inside an existing structure.

2 The site plan you have on the screen, there
3 you can see kind of the layout of the center of the
4 property which shows the building that they're using,
5 proposed parking area, some walkways or driveways
6 between the parking area and the buildings.

7 If any of the interior changes, if the
8 applicant wishes to make any interior changes of the
9 building, they'll have to go through the construction
10 plan review process through the OMPC building staff to
11 determine compliance with any applicable building code
12 requirements prior to any building permits being
13 issued or certificates of occupancy being issued.

14 Our zoning ordinance defines agritourism as
15 "Activities conducted on a working farm, orchard,
16 winery, greenhouse, hunting preserve, livestock show,
17 etcetera, and offered to the public or to invited
18 groups for the recreation, education or active
19 involvement in the agricultural operation. Such
20 activities include tours, hayrides, corn mazes,
21 classes and picnic facilities and may include limited
22 retail sale of merchandise and food."

23 Agritourism is required to obtain a
24 Conditional Use Permit in the agricultural zoning
25 district, which this property is zoned agriculturally.

1 The applicant has also provided a letter which
2 is in your packet, a letter of support from the
3 Kentucky Department of Agriculture. The letter does
4 confirm that in their minds this particular use meets
5 the State's requirements to be considered an
6 agritourism activity. For this type of Conditional
7 Use Permit request for agritourism, it's our policy to
8 request, actually require that the applicant provide
9 the letter from the State when they apply locally for
10 a Conditional Use Permit.

11 Related to parking requirements: Zoning
12 Ordinance requires one parking space per five building
13 occupants. Based on the floor plan that applicants
14 provided to the Staff, this equates to 48 spaces at a
15 minimum being required. On their site plan they've
16 shown 48 spaces. The zoning ordinance also requires
17 that the spaces be located on a hard surface such as
18 gravel, asphalt or concrete. The applicant is
19 requesting that their parking area spaces be located
20 on a grassy area with a gravel drive lanes leading to
21 them. I'm sure they will talk about this, but they're
22 going to ask you to allow their operation to have
23 their parking on a grass area rather than gravel or
24 pavement. They have two ADA spaces shown on the site
25 plan. We've been working with them on that up until

1 today to get those spaces located in the closest place
2 possible to the proposed building or the building
3 where they propose activity will take place. So they
4 have actually relocated those to where they're shown
5 on the screen, which is a different location than the
6 site plan that's included in your packet. Regardless
7 of where they're shown now and if approved, they'll
8 have to submit a site plan to our office to ensure
9 there's compliance with parking and landscaping and
10 the other applicable zoning ordinance requirements if
11 approved.

12 Landscaping: Actually there are not any
13 specific perimeter landscape requirements or interior
14 parking lot screening type requirements based on where
15 the site is situated. Not adjacent to any residential
16 or public rights-of-way right where this activity is
17 proposed to occur.

18 Staff does suggest two conditions if the Board
19 would be inclined to approve the request.

- 20 1. Approval of site plan would be necessary.
- 21 2. Obtain all necessary building, electrical
22 and HVAC permits and inspections and certificates of
23 occupancy and compliance.

24 Staff would like to enter the report into the
25 record as Exhibit A.

1 We have a couple of aerial photos and a couple
2 of different layouts or shots of their site plan on
3 our slides if you would like to see them during the
4 discussion. Thank you.

5 CHAIRMAN: Thank you Mr. Hill.

6 Is there anyone here wishing to speak on
7 behalf of the applicant?

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

10 MS. REEL: Valerie Reel.

11 (VALERIE REEL SWORN BY ATTORNEY.)

12 CHAIRMAN: Do you have anything you want to
13 add that's not included in the Staff Report?

14 MS. REEL: Just the parking. We've been doing
15 weddings out there and stuff. A lot of people like to
16 come and stay with the farm feel. So we were really
17 hoping to keep the grass. They like to come out there
18 and have the grassy area. Not feel like they're going
19 into a big area with big parking and all of that.

20 Sometimes, you know, there's other events like
21 Apple Fest and stuff that if there were gravel
22 parking, that could kind of interfere with some of the
23 other things that we do out there.

24 CHAIRMAN: Thank you.

25 Any Staff members have any questions?

1 (NO RESPONSE)

2 MR. REID: William Reid.

3 (WILLIAM REID SWORN BY ATTORNEY.)

4 MR. REID: We do have a lot of blacktop. We
5 try to keep the whole farm as a farm atmosphere,
6 orchard atmosphere. We have the gravel driveway that
7 we use to park cars off of, but we're trying to keep,
8 we want to try to keep everything green. It's a new
9 logo. Everybody is trying to promote. Less carbon
10 print. We're just asking to use our gravel roads, use
11 our blacktop to let the cars come in, and park them,
12 because we park a little different sometimes. It
13 depends on what the lady who is getting married where
14 she want the cars at. So there's always three people
15 there parking. We have security there all the time.
16 We're just asking to use the natural landscape of
17 Reid's Orchard to park cars on. Thank you.

18 CHAIRMAN: Does anyone have any questions of
19 Ms. Reel or Mr. Reid?

20 (NO RESPONSE)

21 CHAIRMAN: Anyone here wishing to speak in
22 opposition to this?

23 (NO RESPONSE)

24 CHAIRMAN: Any commission members have
25 questions or comments?

1 (NO RESPONSE)

2 CHAIRMAN: If not, I'll entertain a motion.

3 MR. GLENN: I'll make a motion to approve the
4 request based on the Staff Report and the special
5 conditions which were the approval of the site plan
6 and, of course, obtain all the necessary building,
7 electrical, HVAC permits, inspections and certificate
8 of occupancy.

9 CHAIRMAN: We have a motion to approve by Mr.
10 Glenn. Do I have a second?

11 MR. HOWARD: We really need findings of fact
12 to go along with that, the reason why you feel it's
13 compatible and that type of thing.

14 MR. GLENN: Add findings of fact to that.

15 MR. HOWARD: Yes. You can add things it's an
16 existing orchard and agriculturally-related operation
17 and that this will be in compliance or conformance
18 with whatever is already taking place.

19 MR. GLENN: I see what you're saying. The
20 findings of fact would be that it actually kind of
21 conformed to what is already out there now, as far as
22 agricultural farmland and greenery and green space.

23 CHAIRMAN: Thank you. We have a motion by
24 Mr. Glenn. Is there a second?

25 MS. MASON: Second.

1 CHAIRMAN: Second by Ms. Mason. Any questions
2 on the motion?

3 (NO RESPONSE)

4 CHAIRMAN: Any comments on the motion?

5 MR. HOWARD: No. That's fine.

6 CHAIRMAN: All in favor of the motion raise
7 your right hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimously.

10 Next item.

11 -----

12 VARIANCE

13 ITEM 3

14 570 Highway 140 West, zoned A-U (Postponed from the
15 February 2, 2017 meeting)
16 Consider a request for a Variance in order to reduce
17 the front yard building setback line from 60 feet from
18 the centerline of the road to 41 feet from the
19 centerline of the road.
20 Reference: Zoning Ordinance, Article 8,
21 Section 8.5.2(c)
22 Applicant: Joseph & Susan Shultz

23 CHAIRMAN: Do we have anything that Staff
24 needs to read in before we start?

25 MR. HOWARD: We presented the Staff Report
last month and then Mr. Reeves made a motion to
postpone to just allow everybody an additional
opportunity to go out and look at the site. Our Staff
Report hasn't changed since last month.

1 CHAIRMAN: I'm assuming because of the
2 familiar face that I see that we have someone that
3 wishes to address this issue.

4 MS. KNIGHT: Ms. Chairman, before we begin I
5 believe Board Member Yeiser has something to say.

6 MR. YEISER: Yes. I have to ask to be excused
7 be I wasn't here for the first meeting. So I'll have
8 to ask to abstain.

9 CHAIRMAN: Thank you.

10 MS. KNIGHT: Mr. Kamuf, you are sworn as an
11 attorney.

12 MR. KAMUF: Charles Kamuf. You know, every
13 case has a name and this case is the \$100,000 mistake.

14 I represent Joseph and Susan Shultz. He's a
15 chief engineer for CSX Railroad, and he pilots the
16 train. Ms. Shultz owns and operates Deloris
17 Restaurant there on Triplett Street.

18 Both of them love horses. The reason that
19 they bought this farm is so on the weekends that they
20 could use it, use the old barn that they had and ride
21 horses.

22 Now, in 2002 they bought the farm. As you
23 know, 2016 they built this building. It's not
24 completely constructed, but it's a building as you can
25 see on the plat up there. It's a 150 by 50. So it's

1 approximately 7500 square feet.

2 The question is: Why did we build the barn
3 where we built it? The Shultz did not want to build
4 the barn along the highway. They wanted to build the
5 barn behind them. We have some exhibits here to show
6 you, as usual.

7 There are four exhibits that I show you.
8 We'll talk about them one at a time, if we can.

9 As you can see this first exhibit that we
10 have, I have it numbered 1, 2, 3. Number 1 is to show
11 you exactly where they tried to build the barn to
12 start out with. It's an old riding stable to the
13 rear. The reason that they couldn't is because it
14 required 8 fill of dirt. You'll hear from the builder
15 who started to build there and then they decided not
16 to build there.

17 The next one you see will be Number 2. They
18 tried to build along the side of the house. The
19 reason they couldn't there is because it's too steep.

20 So they built along the highway. Even along
21 the highway, if you see from Exhibit Number 2 that I
22 have, and that's this one here that you see. You can
23 see none of the property is exactly level. Even along
24 the highway area you can see it required several feet
25 of fill along that area.

1 The cost of the building would be over
2 \$100,000. They obtained a loan from South Central
3 Bank and mortgaged the building for over \$40,000.
4 South Central Bank did not require any permit. If
5 they have to tear down the building, they will still
6 be required to pay the mortgage.

7 Why did they not get a permit? This will be a
8 key question.

9 There was confusion about the permit. Along
10 Highway 144, and I'm not telling you that all of these
11 buildings have been built or any of them are
12 grandfathered in except a couple of them, but all
13 along that highway, if you had a neighbor, and the
14 neighbors will testify to this. That all along that
15 highway there's houses, there's barns, very near this
16 roadway.

17 Most are grandfathered in. I'm not trying to
18 mislead the Board. There's one or two that we might
19 talk about in just a few minutes that it looks like to
20 me that have been built recently.

21 The second one that you see is the barn that
22 we'll talk about, and that is this one right here.
23 This building, I went out there a second time. This
24 building is -- you can see it. It may be a mile and a
25 half, a mile from the subject property. It's right in

1 a curve. If you look at that building, I think
2 Mr. Glenn, you had some question maybe the last time
3 about the newness of the building. I didn't check,
4 but it looks like it's a new building. You have it in
5 front of you. You can make your own decisions. Most
6 people think that a 10 acre tract zoned agricultural
7 in the farming area is not only exempt, but it exempt
8 from all planning and zoning regulations. I might
9 tell you that I've checked with at least ten people
10 and the only people that I have found that knew that
11 you had a setback on a 10 acre tract were
12 professionals such as an engineer or a surveyor. I've
13 check with many of these people that are sitting back
14 here. They had no idea. One of the people that we'll
15 put on the stand will be Gerald Price.

16 Fred, he used to work for RWRA when you were
17 out there.

18 He was an inspector. He's done all kind of
19 easements. I prepare all the easements for RWRA.
20 He's been involved for 20 or 30 years and he lives
21 across the street. He has no objection. And he'll
22 tell you that he had no idea that there was a
23 requirement by planning or zoning for a 60-foot
24 setback line. It's there, we're not saying it's not
25 there, but we're saying that if you checked around and

1 you checked around with people that were not in that
2 area, such as engineers, I checked with the county
3 engineer and he knew. I checked with a couple of
4 ex-city engineers and they knew, but I haven't found
5 anybody else that did know.

6 Now, they have acted in good faith. If you
7 look at my last exhibit that I have, it's a permit
8 from the highway department. If we were going to make
9 some type of willful act, we wouldn't go to the
10 highway department and get a culvert permit. This is
11 where it was approved for that location.

12 At the time that we went to the highway
13 department to get the permit, there was never any
14 explanation or anything that said we had to get a
15 setback, that there was a setback. Kenergy went out
16 and looked at the property in this particular area
17 that you see here. There's a power line that goes
18 through here. Kenergy was on the property and they
19 were there looking at this power line and they never
20 mentioned anything about a setback line.

21 So all I'm trying to show you of that is that
22 we acted in good faith. The violation was brought to
23 our attention, I think according to the transcript
24 that I read, because Kenergy said you needed an
25 electrical permit and they went to Planning and Zoning

1 and checked and had to get an electrical permit.

2 Now, here is the code that's involved. I've
3 read this code ten times and my client has looked at
4 it and he said, I still don't see where I'm in
5 violation of the code.

6 The code reads this way, and I'll read it a
7 couple of times because if you read this code, and I
8 think it's on the internet, you would think that you
9 didn't have to do anything else.

10 It says this, Section R1012 of the current
11 Kentucky Residential Code as amended states "Building
12 and electrical inspections are not required for farm
13 dwellings and other buildings and structures located
14 on farms which are incidental to the operation of the
15 farm and located outside of the boundary of a
16 municipality." Let me read you that one more time.

17 "Building and electrical inspections are not
18 required for farmed dwellings or other buildings or
19 structures located on farms which are incidental to
20 the operation of the far ands located out of the
21 boundary line."

22 I'm just telling you that most people think
23 that any time you have a 10 acre tract on a farm that
24 you're exempt, not only from building setback, but a
25 lot of people, and Gerald will testify here and also

1 the builders, that they didn't understand that there
2 was a setback.

3 Now, the purpose of this law, it's
4 understandable. Why do you have a 60-foot setback?
5 It's because of visibility. Because you don't want
6 anybody to get hurt. Because you don't want to have
7 any traffic problem.

8 The next exhibit that I'll show you, and I
9 think this is probably the gist of the case.

10 Now, the purpose of this exhibit is to show
11 several really things. If you look at this exhibit
12 that you see, and the dimensions are on the exhibit
13 that I showed you. From this point to this point,
14 there's 908 feet. So the visibility along this road
15 here is pretty clear.

16 You come up this line here, and I'll show you
17 another picture in just a second. That's the whole
18 idea of that. We're not blocking anybody's view in
19 this area. We feel that in this, that even though
20 we're in violation of the strict interpretation of the
21 law, we feel like that we can come within the spirit
22 of the law.

23 Now, the purpose of the law is like we said,
24 is to be sure that a driver does not lose visibility
25 along the line.

1 Now, I will try to show you -- and when
2 Mr. Shultz filled his application out he didn't state
3 all the reasons as to why, maybe under KRS 100, that
4 this should be approved. Let me try.

5 There are special circumstances which
6 generally do not apply to the land in the general
7 vicinity. That's what we're saying by the first map
8 that I showed you. Because of the topography of the
9 land it's impossible for the contractor really to
10 build anyplace on the property that is completely
11 level.

12 There would be no adverse affect on the
13 visibility that we have, and it will not alter the
14 essential character of the neighborhood.

15 Now, this big blowup that we have here is that
16 we have all of the neighbors that are here tonight.
17 Mr. Coakley, he's here. And this is where Gerald
18 Price lives, over here. He doesn't live there.
19 That's his dad's place, but he's been there all of his
20 life. He will be here to testify, and also the
21 builder. They will tell you that in their opinion
22 they drive this road every day, every day, and that
23 what we're doing has no danger to the public.

24 As you see this little area right here, this
25 barn is built approximately 20 foot from the

1 right-of-way. So not only is it not -- it is close.
2 We're in violation. I'm not trying to say that. As
3 far as the visibility, it does not affect the
4 visibility and block the view of anybody.

5 The next issue is the hardship issue. The
6 issue on the application states, "strict application
7 of the zoning regulation would deprive the applicant
8 of a reasonable use of the land and create an
9 unnecessary hardship."

10 The builder will testify: 1) there's no way
11 to move this barn. The building is impossible to
12 move. If it was located on the property in a
13 different way, where you could move it this way, you
14 could cut off part of the property, the barn and be
15 okay, but the barn is there. There's nothing you can
16 do. As a matter of fact, the only thing you can
17 salvage out of the barn is the roof and the sides.
18 The posts are in concrete.

19 Mr. Jean, you're familiar with accountability.
20 It would be very difficult to salvage that.

21 They would have to tear it down. Not only
22 that. There's a mortgage on the property and we would
23 have to pay off the mortgage and not have any
24 security.

25 Now, let's go over as to whether the actions

1 were willful. We would not have got a culvert permit,
2 we would not have talked to Kenergy if we were willful
3 violation of the statute.

4 Granting the variance, the public and general
5 welfare will not be affected by leaving the structure.
6 We showed you on the other exhibit 908 is the distance
7 that you can see forward. I think those two exhibits
8 show that pretty well.

9 If you look at the other barn, that other
10 exhibit, one of the first ones, there's a barn down
11 the road, which you can see it. I can stand where the
12 barn is and look and I can see this property.

13 It would not allow for unreasonable
14 circumvention of the requirements of the zoning
15 regulations. As you saw the first exhibit I showed
16 you, we tried to put it in two different places on the
17 farm and we couldn't. Even the last one had some
18 issues.

19 So we think and we hope that we can show you
20 that we have followed all the regulations and all the
21 special conditions of KRS 100.

22 The purpose of the Board of Adjustment and the
23 purpose of the statute is to allow the spirit and
24 broad use of the law to be applied and yet provide
25 hardship. If this is not a hardship case, I don't

1 know that we've ever had one before the Board. We'll
2 try to answer with these members and also with my
3 testimony why we should have the variance approved.

4 We will show I think that we acted in good
5 faith. We will show that it will not have an adverse
6 affect on the community. The neighbors are all here
7 to testify. We will show that a strict interpretation
8 of the statute will prevent great hardship because of
9 the mortgage, if not nothing else. And that the
10 essential character of the neighborhood will not be
11 changed.

12 As I explained early on, all along this
13 highway, and I think some of you according to the
14 transcript said you were going to go out there. In
15 this particular area that you see here, it is
16 straight. Most people would think, if they didn't do
17 planning and zoning, that when you have these
18 buildings along here that it would be okay to build
19 without a permit. A lot of people would not -- when I
20 explained to some of them that came in the office, a
21 lot of them didn't understand what grandfathered
22 means. That if it's grandfathered, and I'm saying
23 nearly all of them are grandfathered except the one
24 that I looked at.

25 What we're asking you to do, you know, this is

1 our last resort. You understand? We don't have any
2 other place to go. We can't go to Fiscal Court. This
3 is the only place we go. I kind of look at it each
4 case -- and I looked in the transcript and some of you
5 might be concerned about bad precedence. This is the
6 type of case, every case you have is on its own
7 merits. None of these cases that you hear are
8 identical, but this is not a case where I think you
9 would set a bad precedence. It's sort of like this,
10 that it's no harm, no foul is the way I see this
11 particular case. In other words, if I came up here
12 and told you it wasn't a willful violation, etcetera,
13 and there is harm, it might be a difficult case for
14 you to understand. But I figured it this way: No
15 harm, no foul. Some of the witnesses will be here.
16 Mr. and Mrs. Shultz will testify, and also we have the
17 builder, and we have two neighbors that will testify.

18 If I can answer any questions now before they
19 testify like to, I would like to.

20 CHAIRMAN: Before Mr. Kamuf sits down, does
21 anyone have a question of him?

22 (NO RESPONSE)

23 MR. KAMUF: Mr. Shultz.

24 MS. KNIGHT: Sir, could you state your name,
25 please?

1 MR. SHULTZ: Joseph Shultz.

2 (JOSEPH SHULTZ SWORN BY ATTORNEY.)

3 MR. SHULTZ: I stated before or last month the
4 reason built it was basically to ride horses. More
5 like a safety place for my wife. We didn't go out of
6 our way to do it on purpose. Like he said, up here on
7 the side of the house, first, and I mentioned this to
8 him before. I wanted to build one here, smaller. But
9 if you were out there you could see it. It grades
10 down to the pond. Over here, from here down, it
11 slopes down, back up, and back down to the side. That
12 right there was going to cost about \$8,000 worth of
13 ground work. So I told Mr. Butler, go down here
14 behind the barn. If you look there's a barn behind
15 the house. I've added two lanes and another 30 foot
16 on it. It cracked on me about how I built because
17 it's not square. I did -- the back field, if you look
18 at it at the top, the hill looks level, but it's not.
19 That's when Rod called me and had me come down and
20 look. One of his guys with a rod, it was about 6 foot
21 long, above his head where I guess a transit laser.
22 Wouldn't even hit it from where they were standing.
23 We tried to find a level spot. So that's why we
24 couldn't build it down at the bottom. That's why we
25 went to the top.

1 That's when I made my wife mad because she
2 didn't want to build it up there. That's the only
3 place I could build it. We walked around probably an
4 hour to find a good spot. We talked about the
5 right-of-way, Kenergy's right-of-way because I talked
6 to Kenergy. Kenergy told me it's got to be 25-foot
7 off the line. I didn't want the line there in the
8 first place, but they come in and moved it from the
9 back to the front. Used to be a big spruce tree
10 beside the house and they killed it by cutting it.

11 I wanted to build it the first time and they
12 wanted 4,000 to move the pole. I told them -- we
13 didn't build it there. That's why we ended up front.

14 I really didn't want to build it. My wife
15 likes the front of the house, the view. We're going
16 to live with it until otherwise. That's where we're
17 at.

18 When I went up there to talk to the guys up
19 there at Planning and Zoning, I thought they were
20 pretty fair guys until I got that letter said
21 "recommended denial," and I really didn't read it. My
22 wife told me about it on the way here last month.
23 When I looked at the paperwork, it looked like the
24 same paperwork I filled out. One of the letters was
25 from the attorney that I had to do the deed research.

1 That's when I seen. So I put it over to the side.
2 That's what we need to take with us when we go up
3 there. Then she read it and then she told me what was
4 going on. I said, well, see what we got. We come up
5 here and then I realized I was over my head. I'm glad
6 you guys rolled it over. I went to Mr. Kamuf to get
7 some help. I don't know. I feel like it's us against
8 them. It shouldn't be, but it is. I don't want it to
9 be.

10 CHAIRMAN: Thank you, Mr. Shultz.

11 Anybody have questions of Mr. Shultz?

12 (NO RESPONSE)

13 CHAIRMAN: No questions. Okay. Thank you.

14 MR. BUTLER: Rod Butler.

15 (ROD BUTLER SWORN BY ATTORNEY.)

16 MR. BUTLER: What Joe was telling you about,
17 the location where we looked to build it, I think
18 there was four different locations that Joe wanted to
19 look at about building the barn. I have in the past
20 done some work on the other old barn he referred to.
21 I built him a lean-to shed on it, a porch around the
22 front of it, and just general labor work around there
23 on the barns. It was down in the back of the farm
24 there. We didn't apply for a permit for that work.
25 Considering it was so many acres and everything, it

1 never really occurred to us that we needed a permit.

2 Like he said, there was one side of he house
3 there he wanted to build it, and the hill drops off so
4 suddenly that it would cost him a lot of money to do
5 the grade work there. Cut down trees and other
6 things.

7 When that didn't pan out, we looked to the
8 other side of the building or the other side of the
9 property and there was another area over there where
10 he had cut down some old hickory trees, there's an oak
11 tree and stuff that he had done, several thousand
12 dollars worth of dirt work over there also.

13 Then we went to the back of the property.
14 Down below the barn, the horse barn that's there now,
15 and just right in behind it. What he was talking
16 about, we were down there shooting grade and
17 everything. He was wanting to build 150-foot long and
18 each end of it was probably 6 or 8 foot drop at each
19 end of the 150-foot, and in the middle you could get
20 within grade. That's what he was referring to where
21 we were holding the grade stick up so high that you
22 could just walk under it almost to shoot the grade.

23 We starting setting up down there for that
24 location. It was just going to be so bad. I called
25 him. He come looked at it. Says, let's go up here

1 and look at the front. He was talking about Susan,
2 she didn't really want to build it in the front of the
3 property because it block the view of the road and
4 block the view of their house, but it was the best
5 place on the whole farm to build. It's where their
6 old tobacco patch was from the previous owners. They
7 had a tobacco base there.

8 You know, he picked the location where he
9 wanted it, to put it and I agreed. So we set up a
10 string and everything. To the best of our knowledge
11 we didn't know that we were within the setback, you
12 know. We didn't do it intentionally. It would have
13 been to our benefit to move back away from the
14 setback, as far as being able to get between the fence
15 and the building with equipment and stuff like that.
16 If we would have known, we would have moved it back.
17 It would have cost him some more work on excavation
18 and that type thing, fill work. The way it turned out
19 at the end, this end down here, we were like, I don't
20 know. The elevation is that much higher up there I
21 would say. I dropped the thing, the elevation down a
22 little bit when we set it up where I had to dig out
23 some dirt back at this point. That's what it was
24 really all about. Was trying to get the thing in a
25 spot where we could get by with minimum dirt work.

1 Also, that location was going to work out for
2 him too because he was closer to the road. He applied
3 for a culvert, to put a culvert in so he could get in
4 and out of there with his horse trailer. He parks the
5 horse trailer in the barn and that type of stuff.
6 Down here is where they park it now. They would
7 really like to get it out from in front of their
8 house. The whole purpose of the barn was for the
9 horses and for the horse trailer and storage and a
10 place to ride the horses; 50 by 50 of it is to park
11 the horse trailer in. The rest of it was for riding.
12 They're going to have a riding arena inside of there.

13 That's all I can say.

14 CHAIRMAN: Anybody have any questions of
15 Mr. Butler?

16 (NO RESPONSE)

17 MR. PRICE: Gerald Price. I live next-door.

18 (GERALD PRICE SWORN BY ATTORNEY.)

19 MR. PRICE: We have owned property since '65.
20 I've mowed this property several time. Testify, if
21 it's already been stated, that it's a pretty steep
22 except the location where he put the barn. That's the
23 only place he could have put the barn on this
24 property. There's no site problem with the stretch of
25 road. There's culverts on the driveway. There's no

1 problem by the barn. The other way east, she comes
2 out of her driveway there's no problem. Of course,
3 we're across the road.

4 Like I said, we've owned the property since
5 '65. We built a shop, a pole barn to feed cattle in
6 and a couple of sheds. We weren't aware and didn't
7 get a permit. The property valuation guy shows up and
8 we helped him measure and he put it on the property
9 and we pay taxes on it. We didn't get a permit, a
10 building permit.

11 I worked for the City of Owensboro, Regional
12 Water, for about 41 years. I dealt with right-of-ways
13 and easements and setback lines every day. I wasn't
14 aware of the fact that the setback, in the rural
15 section of the county, preliminary plat or something
16 like that, I didn't realize a setback line. So we
17 weren't aware of that either.

18 CHAIRMAN: Thank you.

19 Anyone have any questions of Mr. Price?

20 (NO RESPONSE)

21 CHAIRMAN: Thank you.

22 MS. FOSTER: I'm Ms. Foster. Mr. Coakley and
23 I live in the house next-door. I'm Janice Foster.

24 (JANICE FOSTER SWORN BY ATTORNEY.)

25 MS. FOSTER: Again, the thing that I said from

1 the last time, you know, consider it to be a danger,
2 and I don't see that causes any danger at all. I'm
3 more concerned about the other side of the road. When
4 we come up that hill there and you cannot see out that
5 driveway. It is literally very dangerous coming out
6 there. That's the bigger danger. The barn causes no
7 problems to us. We can see down the road. We walk
8 down the road. There are numerous buildings. I know
9 some are grandfathered in. I can't tell you which
10 ones have been there how long. I see a lot of
11 buildings a lot closer than that. That's really about
12 all that I know.

13 CHAIRMAN: Thank you.

14 Anyone have any questions of her?

15 (NO RESPONSE)

16 MR. KAMUF: Mr. Chairman, that's pretty well
17 our case. If you have any questions, I'll try to
18 answer them for you.

19 CHAIRMAN: Any commissioners have any
20 questions or comments?

21 (NO RESPONSE)

22 CHAIRMAN: If not I'll entertain a motion.

23 Mr. Reeves.

24 MR. REEVES: I'm going to preference my motion
25 with a couple of comments.

1 I visited site on the morning of February 6,
2 2017 and drove numerous times to the site for both
3 east ant west. It's important to note that to observe
4 the property you must crest a hill from each
5 direction. I also was careful to make note when the
6 building first became visible from each direction as I
7 crested the hill. I also made sure I drove the site
8 when there was traffic coming both from the same
9 direction as I traveling, as well as traffic coming
10 towards me. Further, I drove east to Highway 140 and
11 observed the location of the barn after he provided a
12 picture of in proximity of the structure.

13 Having conducted an exhausted visit to the
14 site, therefore I move to approve this variance based
15 on the following facts with three conditions.

16 1. While it could adversely affect the public
17 health, safety or welfare because this is an
18 agriculture area where most buildings are set much
19 further back from the road than the subject building,
20 it's also a fact that this building sits on the top of
21 the hill and is very isolated from adjacent
22 properties.

23 2. Given that this is a very isolated area
24 along Highway 140 West and there are no neighbors in
25 close visual proximity, it would be difficult to find

1 exactly what the essential character of the area is
2 other than the remote and rural.

3 3. While it could be a quick distraction to
4 drivers, it becomes immediately visible to drivers
5 once they crest the hill from either east or west and
6 the road along the entire length of the subject
7 property is straight.

8 4. While there would have been adequate space
9 to locate the building to be compliant with the
10 setback requirement, there seemed to be some
11 confusion with the owner and the builder as to whether
12 or not the property was farm exempt, and there is no
13 evidence that the owner intended to not be in
14 compliance.

15 5. Several property owners testified at the
16 February 2017 meeting and at this meeting that they
17 supported the application by the property owners.

18 Further I add these Conditions:

19 1. The owner will install automatic dusk to
20 dawn lights on each corner of the building, and in
21 addition an automatic dusk to dawn light on the upper
22 area of the side of the building along the highway
23 midpoint of the building. The owner will work with
24 Planning Staff to ensure that the lights are properly
25 directed to call attention to the building's presence,

1 but not in the drivers eyes or to illuminate any
2 neighbors' property.

3 2. The owner will attach large illumination
4 strips mid-level on each corner of the building
5 fronting the road, in the event power is out and the
6 dusk to dawn lights are not lit. These illumination
7 strips must be approved by the OMPC Planning Staff.

8 4. The applicant must obtain all the permits
9 from the OMPC necessary to bring the building into
10 compliance.

11 CHAIRMAN: Mr. Shultz, can you come back up,
12 please.

13 MR. SHULTZ: Yes, ma'am.

14 CHAIRMAN: Do you understand the motion and
15 these conditions that Mr. Reeves has mentioned?

16 MR. SHULTZ: Yes. The electricity we were in
17 the process of putting lights on the end. That was
18 part of the bid. There's no problem with the other
19 stuff.

20 MR. REEVES: You understand the lights will be
21 on each four corners?

22 MR. SHULTZ: Yes, sir.

23 MR. REEVES: And they'll be dusk to dawn,
24 automatic dusk to dawn lights. Okay. Then large
25 illumination strips on each corner that fronts the

1 road. Okay?

2 MR. SHULTZ: Yes, sir.

3 CHAIRMAN: Thank you.

4 MR. KAMUF: We agree to those conditions.

5 CHAIRMAN: Is there a second to the motion?

6 MR. JEAN: Second to the motion.

7 CHAIRMAN: Any questions on the motion?

8 (NON RESPONSE)

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

11 (ALL BOARD MEMBERS PRESENT - WITH JERRY YEISER
12 BEING EXCUSED - RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimously. Thank
14 you.

15 I have one more motion.

16 MR. GLENN: Motion to adjourn.

17 CHAIRMAN: We have a motion to adjourn. Do I
18 have a second?

19 MS. MASON: Second.

20 CHAIRMAN: All in favor of the motion raise
21 your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries. We are adjourned.

24 -----

25

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

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and
4 for the State of Kentucky at Large, do hereby certify
5 that the foregoing Owensboro Metropolitan Board of
6 Adjustment meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 33 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 21st day of March, 2017.

18

19

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

22

23 COMMISSION EXPIRES: DECEMBER 16, 2018

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

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