

**OWENSBORO METROPOLITAN PLANNING COMMISSION****September 8, 2016**

The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, September 8, 2016, at City Hall, Commission Chambers, Owensboro, Kentucky; and the proceedings were as follows:

MEMBERS PRESENT: Fred Reeves, Chairman  
Larry Boswell, Vice Chairman  
Irvin Rogers  
Beverly McEnroe  
Manuel Ball  
Terra Knight, Attorney  
Brian Howard, Director  
John Kazlauskas  
Steve Frey  
Lewis Jean

\* \* \* \* \*

MR. CHAIRMAN: Call the Owensboro Metropolitan Planning Commission to order. And we start every meeting with a prayer and pledge to the flag. Beverly McEnroe will do that for us this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

MR. CHAIRMAN: The first item we want to discuss is the minutes of our last meeting. All of you should have received a copy in the mail and had a chance to review them. I would entertain a motion regarding the minutes, please.

Mr. Kazlauskas?

MR. KAZLAUSKAS: Make a motion to approve.

1           MR. CHAIRMAN: Motion by Mr. Kazlauskas. Do we  
2 have a second?

3           MS. MCENROE: Second.

4           MR. CHAIRMAN: Second by Ms. McEnroe. Questions  
5 or concerns about the motion?

6           All in favor, raise your right hand.

7           (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8           Opposed, like sign.

9           Minutes are approved.

10           We have several people in the audience tonight.  
11 Let me make a couple of comments for you. You may not  
12 have been to a Planning Commission meeting before, so I'll  
13 just kind of tell you how we operate so that you'll be  
14 able to participate if you would like. I know we have a  
15 couple of items this afternoon that there might be some  
16 opposition to, and we certainly welcome your point of  
17 view.

18           We will hear the application. Then we'll hear  
19 from the applicant. We will entertain questions from the  
20 commissioners. And if anyone would like to speak in  
21 support of the application or in opposition of the  
22 application, we ask that you come to one of the podiums  
23 and please be sworn in. We'll ask that you stand close to  
24 the mic so that you can be heard because our proceedings  
25 are recorded by our stenographer down front. We'll ask

1 that any questions or concerns you have, you address it to  
2 the chair; and I will pass those concerns on to the  
3 applicant or the appropriate person. We don't talk back  
4 and forth across the medium here.

5 Also, Commissioners, I'll remind you to please  
6 speak into the mic so that you can be heard also.

7 So with that, Mr. Howard, what do we have on the  
8 agenda?

9 MR. HOWARD: All right. For zoning changes, I  
10 will note that zoning changes heard here tonight will  
11 become final 21 days after the meeting unless an appeal is  
12 filed. If an appeal is filed, we will forward a record of  
13 the meeting on with all appropriate documentation to the  
14 appropriate legislative body for them to take final  
15 action.

16 -----

17 **ZONING CHANGES**

18 **ITEM 3**

19 3620 Edna Court, 2.0 acres

Consider zoning change:

20 From I-1 Light Industrial to R-3MF Multi-Family  
Residential

21 Applicant: Earl Hayden; O'Bryan Heirs c/o John M. Wright

22 MS. KNIGHT: Please state your name.

23 MR. HILL: Mike Hill.

24 (MIKE HILL SWORN BY ATTORNEY.)

25 **PLANNING STAFF RECOMMENDATIONS:**

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

3   **Conditions:**

4           1. Approval of a final development plan to  
5 demonstrate compliance with zoning ordinance requirements,  
6 including but not limited to parking, landscaping,  
7 building setbacks, access management, and signage.

8   **Findings of Fact:**

9           1. Staff recommends approval because the  
10 proposal is in compliance with the community's adopted  
11 Comprehensive Plan;

12           2. The subject property is located in an Urban  
13 Residential Plan Area where urban mid-density uses are  
14 appropriate in limited locations;

15           3. The use of the property as multifamily  
16 residential conforms to the criteria for Urban Residential  
17 development;

18           4. This proposal is a logical expansion of  
19 existing R-3MF zoning to the north;

20           5. At 2.0 acres, the proposal is not a  
21 significant increase in R-3MF zoning in the vicinity and  
22 should not overburden the capacity of roadways and other  
23 necessary urban services that are available in the  
24 affected area; and

25           6. Sanitary sewer service is available to the

1 subject property.

2 Staff requests that the staff report be entered  
3 into the record as Exhibit A.

4 MR. CHAIRMAN: Thank you.

5 Is anyone here representing the applicant?

6 Would you like to make any comments at this  
7 time?

8 Commissioners, do you have any questions  
9 regarding the application or the applicant?

10 Yes, Mr. Boswell?

11 MR. BOSWELL: Thank you, Mr. Chairman. Just one  
12 question. I know this is in the staff report, but it was  
13 mentioned that access to the site must be complaint with  
14 applicable sections of the zoning ordinance. If you take  
15 a look at the conceptual drawing, it does show one,  
16 apparently one, access off of Edna Court. Is it  
17 anticipated that's going to remain there on Edna Court?

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

20 MR. BAKER: Jason Baker.

21 (JASON BAKER SWORN BY ATTORNEY.)

22 MR. BAKER: The concept plan actually shows two  
23 access points: One being back toward the rear, off the end  
24 of the cul-de-sac there; and then one kind of up closer to  
25 the O'Bryan Boulevard, I believe it is.

1 MR. BOSWELL: Thank you. That answered my  
2 questions.

3 MR. CHAIRMAN: Mr. Howard, I assume that meets  
4 our requirements.

5 MR. HOWARD: It does. Edna Court is a local  
6 street, so there's not a spacing standard. They're  
7 basically limited to 40 percent of their frontage, so that  
8 would certainly be in compliance.

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

11 Would anyone in the audience like to speak in  
12 support or opposition of this application? If so, please  
13 come to the stand.

14 MS. KNIGHT: Please state your name, sir.

15 MR. OVERALL: Cary Overall.

16 (CARY OVERALL SWORN BY ATTORNEY.)

17 MR. OVERALL: Me and my wife own Cheer Zone.  
18 I'm not a very good speaker, by the way. Sorry about  
19 that. Own Cheer Zone on 3644 Edna Court, which this  
20 property backs up to. Our thing is the safety factor.  
21 When we first built this 16 years ago, the whole area that  
22 we were around was not residential; and it's kind of crept  
23 into the residential area. With this going into  
24 residential, we have over 500 athletes -- we have school  
25 squads, new drivers that are with the school squads --

1 coming in and out of the property on a weekly basis. With  
2 the residences going there, we figure with the people  
3 coming back from work, it's going to be during our busy  
4 hours. Our busy hours are normally 4 to 8.

5 Sorry again. I'm not a real good speaker.

6 We're just really worried about how it's going  
7 to affect that. We have a lot of young drivers, a lot of  
8 17-year-olds. And it's going to create a lot of extra  
9 traffic.

10 We've also had -- and I know this doesn't  
11 necessarily affect here. We've had vandalism issues  
12 across the street. On Edna Court, everything was - -  
13 nothing residential. And across the street were  
14 residential. We've had vandalism problems through the  
15 past years; some people over there.

16 If it goes through -- which, I mean, it might --  
17 one thing that we're definitely against is moving project  
18 buffer boundaries from 20 feet to 10 feet because that  
19 just pushes everything so much closer to our property,  
20 which, again, is sort of a safety issue as far as - - we  
21 have a lot of young athletes that live in the neighborhood  
22 around there, that walk to the Cheer Zone. We also have  
23 people who park out in the streets, which will be right  
24 where they're pulling in and pulling out.

25 That's about all I have to say. Thank you.

1 MR. CHAIRMAN: Thank you, Mr. Overall.

2 Anybody have any questions for Mr. Overall?

3 Would anyone else like to speak?

4 MR. HAGAN: Yes, sir.

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

7 MR. HAGAN: Donnie Hagan.

8 (DONNIE HAGAN SWORN BY ATTORNEY.)

9 MR. HAGAN: I'm just thinking about myself. If  
10 you guys look, our property is across the street, at the  
11 end of the cul-de-sac, zoned light industrial. When you  
12 come in off Carter Road, everything's commercial to the  
13 left and the right all the way till you get to Edna Court.  
14 And the residential stuff kind of started there and went  
15 on when we bought it. We're going to be land-locked up in  
16 there, driving through four-plexes to get to our property.  
17 As far as a commercial piece of property, it's going to  
18 hurt me. My property will go down 20 percent. Who wants  
19 to drive in front of 32 apartment buildings to get to a  
20 commercial piece of property? If we had known that -- and  
21 I'm sure they're the same way; and either one of the two  
22 trucking companies right across the street will be the  
23 same way, because that's what both of them are, trucking  
24 companies -- we would have never went in there.

25 That's not a residential area. It wasn't



1 intended to be a residential area. It hasn't been a month  
2 ago I went down talking about possible professional zoning  
3 for my property, and I was told no. It's zoned  
4 professional to the side of us, right there to the side.  
5 And I was shot down before I ever even got started. When  
6 we built it, we wanted to change the setbacks a little  
7 bit, and we were told no on the setbacks. The rules just  
8 seem to be changing here.

9 It's not for the betterment of the businesses in  
10 there to go residential.

11 MR. CHAIRMAN: Which is your property, sir? I'm  
12 having a hard time --

13 MR. BAKER: All the way back in the corner. If  
14 you're looking at what I'm looking at up there, go down  
15 the street and to the left.

16 MR. CHAIRMAN: Is it where one is, here? It's  
17 next to the Overall property?

18 MR. HAGAN: 3645. All the way at the end of the  
19 cul-de-sac.

20 MR. CHAIRMAN: Yeah. Okay. I wanted to --

21 MR. HAGAN: So, you know, I'm just saying we're  
22 going from a light industrial piece of property in a light  
23 industrial neighborhood; and now we're going to throw up a  
24 bunch of four-plexes in there, eight-plexes.. You're  
25 killing - - you're killing my resale value, for sure. Who

1 wants to go in there now and drive by all the apartments  
2 and do any kind of commercial stuff? I'll probably lose  
3 my tenant that's in there.

4 If we had known this was coming in here at the  
5 beginning, nobody, none of us, would have bought back in  
6 there. You know, this is all laid out; and I've heard a  
7 lot of time was invested in this when it was all made 15  
8 years ago, whenever. All well-laid out. Commercial in  
9 one part. Professional. Business. Light industrial on  
10 another street.

11 It's not that the property can't sell. They're  
12 building a new building right across the street right now,  
13 another trucking place. So it's not like it's valueless  
14 unless it goes residential.

15 What will happen next is they'll move over to  
16 the other pieces over on the other side, on the business  
17 side of the street over there, in front of Jagoe's and in  
18 front of the doctor's office; and that'll all go  
19 residential, so...

20 It's killing me, and I'm hardly existing.

21 MR. CHAIRMAN: Now, you said that you went down  
22 to the office and talked about rezoning yours to  
23 professional?

24 MR. HAGAN: You know, I just -- they know in the  
25 office if they're going to support it or not support it.

1 And I had somebody wanting to buy my building. So I just  
2 went down, friendly -- I get along with them; don't have a  
3 problem with them -- and talking about professional. They  
4 said I couldn't go professional. And the street right  
5 behind me is professional. I don't see what the  
6 difference is jumping across the street to go residential  
7 in a commercial area or me just trying to go professional,  
8 which is still -- seems more logical to me to go  
9 professional in a business area.

10 MR. CHAIRMAN: But you weren't told that you  
11 couldn't make an application?

12 MR. HAGAN: No, I was not told I couldn't make  
13 an application, but I'll probably make one now. All  
14 right. That's all I've got to say.

15 MR. CHAIRMAN: Okay. Thank you. Mr. Hagan,  
16 right?

17 MR. HAGAN: Hagan.

18 MR. CHAIRMAN: Anybody have any questions of Mr.  
19 Hagan?

20 MR. BOSWELL: Yes, Mr. Chairman. I'm just  
21 curious for more information and everything else. When  
22 this was originally developed as Heritage Park, was it not  
23 originally developed for a mixed-use type, which would be  
24 industrial/commercial?

25 MR. HAGAN: Our street is all zoned -- Edna

1 Court is all zoned light industrial. The next street  
2 over, if I'm not mistaken, is all zoned B-4 business, one  
3 way or another. And the street -- so the main warehouses  
4 beside us is still light industrial, and the street behind  
5 us is all zoned professional.

6 So I'm assuming the plan is to keep the  
7 professionals and doctors, the daycares all on one street;  
8 the light industrial people all together on another  
9 street; the business people over closer to Carter Road  
10 where there's -- there was never any residential from the  
11 beginning where we're at, the other side of the street  
12 over, which makes more sense.

13 MR. BOSWELL: Thank you.

14 MR. HAGAN: Thank you.

15 THE CHAIRMAN: Mr. Howard, am I correct also  
16 that one of the co-applicants is the original owner to  
17 this property, Brian Ayers?

18 MR. HOWARD: I believe that's correct, yes.

19 THE CHAIRMAN: So this is one application by --  
20 the Haydens intend to buy or would like to buy the estate;  
21 is that right? So the developers of the entire  
22 development there are the ones that are selling the land,  
23 and with this intended purpose; is that correct?

24 MR. HOWARD: That's my understanding, yes.

25 MR. CHAIRMAN: Okay. Any other questions?

1 MR. BALL: I've got a question for staff.

2 THE CHAIRMAN: Yes, Mr. Ball?

3 MR. BALL: Based on what we're hearing here, you  
4 know, it was - - I'm sure it was rezoned as part of a  
5 larger development at one point in time. However,  
6 rezoning this to R-3ME is in compliance with the  
7 comprehensive plan, correct?

8 MR. HOWARD: That's right. And as Mr. Hagan was  
9 pointing out, and I didn't talk to him when he came in the  
10 office, but the comprehensive plan is a flexible document.  
11 It allows multiple zones to go in multiple plan areas in  
12 different ways. And it's all based on criteria. This one  
13 meets the criterion, you know, as documented in the staff  
14 report; and we recommend approval of it.

15 It's very possible that the P-1 -- and again, I  
16 don't have it in front of me; but sometimes the way it'll  
17 read is if there's a logical expansion along the same  
18 street. And in this instance, you know, the P-1 he's  
19 talking about is on a different street. They back up --  
20 they're not on the same street. That may be part of the  
21 criteria there that was looked at, so -- but there's a lot  
22 of flexibility to it.

23 MR. BALL: Thank you.

24 MR. CHAIRMAN: Any other questions?

25 MR. KAZLAUSKAS: Mr. Chairman?

1 MR. CHAIRMAN: Yes?

2 MR. KAZLAUSKAS: Going back and looking over  
3 this again, I'm just wondering if Staff can tell us what  
4 that means, two-story units. The impact that it's going  
5 to have on traffic out there has been brought to our  
6 attention. There's a lot of cars coming through there  
7 now; and with this additional property, it's certainly  
8 going to have an impact on the traffic in these  
9 cul-de-sacs. Just one road out through there, so...

10 MR. KAZLAUSKAS: I'm sorry. I'm concerned. I'm  
11 wondering if the Staff can enlighten us about future  
12 traffic problems in that area.

13 MR. HOWARD: Sure. I'll do my best. Based on  
14 the Institute of Traffic Engineers, the ITE Trip  
15 Generation Manual, the average number of trips per day  
16 produced by a multi-family residence is seven trips per  
17 day. So if you're looking here, there are eight  
18 four-plexes, which are 32 units. Average of seven trips  
19 per day -- that's going and coming combined -- per unit  
20 would be about 224 additional traffic trips per day that  
21 this site would generate. Just for comparison purposes, a  
22 single-family residence would generate typically, on  
23 average, ten trips per day. So this would be the  
24 equivalent of, say, 22, 23 single-family residences as far  
25 as trip generation production.

1 MR. CHAIRMAN: Does that address your concern,  
2 Mr. Kazlauskas, or at least give you the information you  
3 wanted? May not have addressed your concern.

4 MR. KAZLAUSKAS: I understand what he's saying  
5 about calculated trips per unit, but I'm just wondering  
6 about the way that these roads are laid out. The number  
7 of trips, is it going to cause problems in the future,  
8 traffic coming and going, especially with traffic coming  
9 down to the end of that cul-de-sac, as far as this  
10 gentleman -- both of these gentlemen back there. Because  
11 that's going to be heavily-trafficked. I mean,  
12 heavily-traveled road. And these units are certainly  
13 going to put additional cars and people on the streets.  
14 So I'm just wondering, are those roads capable of handling  
15 all that traffic?

16 MR. HOWARD: And I'll address that aspect, too.  
17 I would say yes. Edna Court, O'Bryan Boulevard -- I,  
18 again, don't have the plans in front of me, but I would  
19 venture to guess that Edna Court and O'Bryan Boulevard are  
20 both 34-foot streets with curb and gutter and sidewalk.  
21 Well, not a sidewalk in the industrial; but 34-foot  
22 streets, which would be more than adequate to accommodate  
23 an additional 225 trips per day. Those side streets can  
24 -- you know, they can handle a lot more traffic than that.

25 MR. KAZLAUSKAS: Okay. That's what I wanted to

1 know.

2 MR. CHAIRMAN: Mr. Overall, did you want to say  
3 something?

4 MR. OVERALL: Yeah. And again, I'm not -- I  
5 just want to reiterate. Being a dead-end street, we have  
6 roughly 500 people coming in weekly. Because we operate  
7 five days a week, that means that's a hundred trips for us  
8 in and out. Sometimes that's double that. You have  
9 parents coming in, dropping their kids off, and then  
10 coming back out. There's a lot of traffic already. With  
11 the cul-de-sac being a two-way street, there's one way in  
12 and one way out. And I just see it being a huge problem.  
13 With the new construction -- there's going to be the  
14 trucking company up in the corner -- that's going to  
15 create more backup, I think. I just hope this spot  
16 doesn't create huge traffic at the end and affect our  
17 customers as well.

18 MR. CHAIRMAN: Thank you, Mr. Overall.

19 MR. BALL: Mr. Chairman?

20 MR. CHAIRMAN: Yes, Mr. Ball?

21 MR. BALL: I've got another question. Is it  
22 possible that an industrial use could generate the same  
23 amount of traffic as this?

24 MR. HOWARD: Sure. And it would depend on the  
25 type of use. Certainly, you know, if you had a small



1 manufacturing operation that had numerous employees, then  
2 it could certainly generate two hundred and  
3 twenty-something trips a day as well. It could generate  
4 significantly more. If you have a small trucking firm and  
5 then an office in there and you have three staff, then,  
6 you know, you're not going to generate much traffic at  
7 all.

8 MR. BALL: Just depends on the use?

9 MR. HOWARD: Yeah, it definitely depends on the  
10 type of use that would go in there.

11 MR. BALL: Thank you.

12 MR. CHAIRMAN: Other questions?

13 Mr. Boswell?

14 MR. BOSWELL: Thank you, Mr. Chairman. I'm just  
15 curious, if this were approved, how long of a period are  
16 we talking about to build this out once it would be  
17 started? Is this something that would take a year, 18  
18 months, two years before you would reach that type of  
19 traffic volume?

20 MR. BAKER: I think, based on the phasing of the  
21 project, the plan is to build two buildings early on and  
22 two buildings later. But the intent would be with, as  
23 they fill up, to make sure that they would build them as  
24 they fill up, basically. So there will be only two  
25 buildings up front; and if the market bears, building the

1 next two buildings after that.

2 MR. BOSWELL: So it could -- depending what the  
3 market does, I mean, it could be a while before you see  
4 the type of traffic volume that we're talking about?

5 MR. BAKER: Yeah.

6 MR. BOSWELL: All right. Thank you.

7 MR. CHAIRMAN: Other questions?

8 Yes?

9 MR. OSBORNE: My name's Joel Osborne.

10 (JOEL OSBORNE SWORN BY THE ATTORNEY.)

11 MR. CHAIRMAN: Yes, Mr. Osborne?

12 MR. OSBORNE: The state being the Commonwealth  
13 of Kentucky herein, I would like to address the chairman  
14 regarding the procedure and submit this request for the  
15 legislative body to decide zoning map amendments.

16 My first concern is access to the law. If this  
17 request is subject to accordance of KRS, the Kentucky  
18 Revised Statutes, as quoted here, 100.211 and also  
19 100.347. I would like to make the request that those  
20 specific laws in full detail be made available and  
21 provided to anyone that comes to these meetings or any  
22 member of the public that requests a copy of those laws in  
23 writing. I've had some difficulty actually clarifying the  
24 language of the law and obtaining current copies in order  
25 to exercise my rights as a citizen. So that's my first

1 request.

2 Second request is -- I have okay vision, so the  
3 doctor tells me. I can't read the street names up here,  
4 or the business names. I don't know exactly where this  
5 zoning amendment is proposed and who's involved and what's  
6 at stake. Without that information, I think it's  
7 impossible to make a fair decision. Thank you.

8 MR. CHAIRMAN: Thank you.

9 MR. OSBORNE: One last statement. A request for  
10 motion to provide the law in its entirety, made available  
11 in print.

12 MR. CHAIRMAN: That information is available at  
13 our office anytime you want to.

14 MR. OSBORNE: I'd like to request that --  
15 where's your office?

16 MR. HOWARD: 200 East Third Street.

17 MR. OSBORNE: I'll be there tomorrow. Thank  
18 you.

19 MR. CHAIRMAN: Thank you.

20 Any other questions?

21 MS. KNIGHT: Mr. Chairman, I would also point  
22 out, if --

23 Forgive me; Mr. Osborne is your name?

24 MR. OSBORNE: Yes.

25 MS. KNIGHT: -- has Internet assess, all those

1 are available online. There's also a law library at the  
2 Judicial Center. All that information is available for  
3 free as well.

4 MR. OSBORNE: Due to some extenuating  
5 circumstances beyond my control, and possibly beyond the  
6 knowledge of this panel or commission, Internet access can  
7 be limited -- and the law library hours are extremely  
8 limited -- as well as the difficulty of getting through  
9 security, getting to the law library, and obtaining access  
10 to the laws, which has so many versions that are outdated.  
11 Without legal advice, of which it is subject to conflict  
12 of interest due to financial and economic concerns, an  
13 individual such as I really does not have a chance of  
14 justice.

15 So I'm here to request that we start with full  
16 access of complete details for law clarification for all  
17 citizens -- thank you -- regardless of your Internet  
18 access, your economic status, or any other limitation that  
19 is bestowed, or for any reason or disability that may or  
20 may not exist. Thank you.

21 MR. CHAIRMAN: Thank you. That becomes part of  
22 the record, your request.

23 Do we have any other questions by the  
24 commissioners?

25 Any other questions or concerns from the

1 audience?

2 If not, then the chair will entertain a motion.

3 Mr. Ball?

4 MR. BALL: I'd like make a motion to approve  
5 based on Staff recommendations one through six and  
6 condition number one.

7 MR. CHAIRMAN: Have a motion by Mr. Ball. Do we  
8 have a second?

9 MR. BOSWELL: Second.

10 MR. CHAIRMAN: Second by Mr. Boswell. Questions  
11 or concerns about the motion?

12 All in favor of the motion, raise your right  
13 hand.

14 (ALL BOARD MEMBERS EXCEPT MR. JEAN. RESPONDED  
15 AYE.)

16 Opposed, like sign.

17 (LEWIS JEAN OPPOSED.)

18 MR. CHAIRMAN: The motion is passed.

19 RELATED ITEM 3a

20 3620 Edna Court, proposed R-3MF  
21 Consider a request for a Variance in order to reduce the  
22 project boundary buffer from 20 feet to 10 feet along the  
23 southern and western property lines.

24 Reference: Zoning Ordinance, Article 10, Section 10.432  
25 Applicant: Earl Hayden; O'Bryan Heirs c/o John M. Wright

24 MR. HILL: This application is related, as Mr.  
25 Howard attested, to the previous case that was just

1 discussed.

2 **CONSIDERATIONS:**

3           **SPECIAL CIRCUMSTANCES:** The subject property is  
4 a two-acre parcel that is proposed, as you know, to be  
5 rezoned to R-3MF to allow development as multi-family  
6 residential. The conceptual site plan that is on the  
7 screen currently, which was provided by the applicant,  
8 shows four two-story, eight-plex buildings for a total of  
9 32 proposed dwelling units. Article 10 of the zoning  
10 ordinance, which is related to Planned Residential  
11 Development Districts, or Development Projects, which this  
12 is considered one -- so Article 10 applies to this  
13 development. Specifically, within Article 10, Section  
14 10.432 requires a 20-foot project boundary buffer around  
15 the perimeter of all planned residential development  
16 projects. The street frontages in this case, Edna Court  
17 and O'Bryan Boulevard, are required by the zoning  
18 ordinance to have a 25-foot front building setback. The  
19 applicant's development plan -- excuse me -- conceptual  
20 plan complies with the front setback requirements along  
21 Edna and O'Bryan. But the plan does not comply with the  
22 20-foot project boundary buffer around the southern and  
23 western perimeters of this development.

24       So applicant is requesting a variance to reduce the  
25 project boundary buffer on those two property lines from

1 20 feet to 10 feet to allow replacement of the structures  
2 on the site.

3 And you can see on the site plan where the  
4 encroachments are on portions of the buildings.

5 The subject property is surrounded on three  
6 sides by nonresidential properties; I-1 zoning to the east  
7 and south, and B-3 zoning to the west. Typically,  
8 multi-family residential developments are adjacent to  
9 other residential developments where you would not have a  
10 requirement for a ten-foot perimeter landscape easement.  
11 In this case, since this property is located adjacent to  
12 business- and industrial-zoned properties, the zoning  
13 ordinance does require a ten-foot landscape easement,  
14 which would also include a six-foot tall solid element as  
15 well as a tree planted every 40 feet.

16 **HARDSHIP:** So Staff feels that there's no  
17 hardship in this case. The applicant could still  
18 theoretically provide a layout for the development in  
19 compliance with the building setback.

20 **APPLICANT'S ACTIONS:** Staff does not feel that  
21 the relief that is being sought is the result of the  
22 applicant's willful violations of any zoning ordinance  
23 requirements.

24 **FINDINGS:**

25 Staff believes that granting the variance will

1 not:

2 1. Adversely affect the public health, safety,  
3 or welfare because the applicant will provide a  
4 six-foot-tall solid element that will provide screening  
5 along the southern and western property lines.

6 2. Alter the essential character of the general  
7 vicinity because adjacent properties, some of which are  
8 currently vacant, are commercially and industrially zoned.

9 3: Will not cause a hazard or a nuisance to the  
10 public as the six-foot tall solid element will also  
11 improve security for the subject property as well as for  
12 adjacent properties.

13 4: Allow an unreasonable circumvention of the  
14 zoning ordinance regulations as the required landscape  
15 easement and screening element will still meet the intent  
16 of the required project boundary buffer.

17 **STAFF RECOMMENDATION:**

18 Staff recommends approval of the variance  
19 request subject to the following conditions:

20 **Conditions:**

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

24 2. Approval of a final development plan to  
25 demonstrate compliance with zoning ordinance requirements,



1 including but not limited to parking, landscaping,  
2 building setbacks, access management, and signage.

3 Staff requests that this staff report be entered  
4 into the record as Exhibit B.

5 THE CHAIRMAN: Thank you.

6 Anyone here representing the applicant?

7 Do you wish to make any comments at this time?

8 MR. BAKER: No.

9 THE CHAIRMAN: Commissioners, do you have any  
10 questions regarding this variance application?

11 Mr. Kazlauskas?

12 MR. KAZLAUSKAS: These don't come before us that  
13 often, and so I'm concerned about what specific need that  
14 the applicant has that this variance is being changed from  
15 20 to 10 feet.

16 MR. CHAIRMAN: Would the applicant like to  
17 address that, please?

18 MR. BAKER: The primary reason, when you go for  
19 development plan, normally you have -- or planning and  
20 development, there are other things that come about, such  
21 as, you know, reducing front setbacks, making various  
22 changes.

23 In this particular case, the need for it is  
24 basically dictated by the layout. Obviously, you change  
25 the layout, you change the need for it. And that's pretty

1 much the extent of it. In this particular case, the area  
2 will require that landscape buffer anyway, and it prevents  
3 you -- the buffer prevents you from putting buildings in  
4 those areas, but not anything else. So obviously it just  
5 changes the layout, the impact it will have on the plan.  
6 So, you know, it impacts the layout.

7 MR. KAZLAUSKAS: Okay. Thank you.

8 MR. CHAIRMAN: I think I have a question, too.  
9 So in effect, what you're saying is that without this  
10 variance, the buildings, particularly on the, I think,  
11 west side, would need to be smaller buildings; that they  
12 couldn't fit in the footprint with a 20-foot buffer?

13 MR. BAKER: Yeah, it could have that impact. Of  
14 course, we'd assume that all the buildings would be the  
15 same --

16 MR. CHAIRMAN: Sure.

17 MR. BAKER: -- for economic reasons and design  
18 reasons. There is -- we've made those assumptions. And  
19 what you see is kind of what we have. Of course, I could  
20 look at various things and maybe come up with something  
21 different. But what we have is we have a building that's  
22 already designed. It's already been built before, so  
23 we're trying to capitalize on that and taking that  
24 footprint and applying it to another lot. So, you know,  
25 that's our goal, is to build something --

1           MR. CHAIRMAN: I understand. So if you stayed  
2 that 20-foot buffer; in effect you would come to the east  
3 and would have to squeeze the parking lot?

4           MR. BAKER: Yeah. When you get to laying out a  
5 parking lot, the actual dimensions are all standardized  
6 dimensions. You have 18-foot deep parking spaces. So all  
7 of that layout is to meet a standard. And, you know, so  
8 you would have to modify that collection of parameters to  
9 adapt to whatever change you might make. And what we've  
10 done here is we've taken that -- my phone's ringing.  
11 Sorry.

12           What we've done here is taken that combination  
13 of standards and dimensions and the building size that is  
14 desirable and created a conceptual layout that you see  
15 here.

16           MR. CHAIRMAN: So the building being -- I mean,  
17 the lot being what it is, if the lot were ten feet wider  
18 all along this west side, you wouldn't need a variance; is  
19 that correct?

20           MR. BAKER: Correct.

21           MR. CHAIRMAN: If it were a different lot, then  
22 using the existing building plans you have would be  
23 sufficient?

24           MR. BAKER: Yeah.

25           MR. CHAIRMAN: And the parking sufficient?

1           MR. BAKER: And meeting the parking requirement,  
2 standard-wise as well as count-wise.

3           MR. CHAIRMAN: Okay. That answered my question.  
4 Thank you very much.

5           Mr. Kazlauskas?

6           MR. KAZLAUSKAS: Just to be sure, Mr. Chairman,  
7 -- and maybe the Staff can enlighten me on this -- the  
8 request for variance is not impacted by the number of  
9 required parking places for these buildings? I mean, if  
10 the 20-foot setback was enforced, they would still have  
11 enough room for the recommended parking places that they  
12 need for these four constructed buildings?

13          MR. HOWARD: If I'm following your question  
14 right, the end result at the end of the day, whatever they  
15 propose on the lot, whether the variance is approved or  
16 not, they have to meet the overall parking requirement.  
17 So I think as Mr. Baker was describing, the buildings, the  
18 way they're laid out now, encroaching that building  
19 setback. So they'll either have to narrow the buildings  
20 or modify the footprint of those in order to meet the  
21 requirements.

22           If they didn't change the parking layout, they  
23 made the buildings smaller, if they still met the overall  
24 parking requirement, it would still be approved.

25          MR. KAZLAUSKAS: I'm not making myself very

1 clear. Would they have enough space for the required  
2 parking?

3 MR. HOWARD: The parking layout they have shown  
4 --

5 MR. KAZLAUSKAS: Because they have to have a  
6 certain number of parking spots for each building, right?

7 MR. HOWARD: That's correct.

8 MR. KAZLAUSKAS: Without granting the variance,  
9 will they have enough parking to satisfy --

10 MR. HOWARD: Yes.

11 MR. KAZLAUSKAS: -- the criteria?

12 MR. HOWARD: Yes. They have enough space to  
13 provide the required parking.

14 MR. KAZLAUSKAS: That was my concern.

15 MR. HOWARD: Okay.

16 MR. KAZLAUSKAS: Sorry I didn't make it clear  
17 the first time.

18 MR. CHAIRMAN: Any other commissioners have  
19 questions?

20 Mr. Boswell?

21 MR. BOSWELL: Thank you, Mr. Chairman. I have  
22 just a curious question. If the variance is granted with  
23 the ten feet, let's just suppose in the future another  
24 developer wanted to put something on the west side, for  
25 example, and they wanted a variance for ten feet too.

1 Does that present a problem with those being so close  
2 together if both of them were granted variances?

3 MR. HOWARD: From a building codes perspective,  
4 no. As long as you maintain ten feet off the property  
5 line, you don't have to -- you would meet building code,  
6 fire rating, firewall rating requirements. So that would  
7 be the minimum, really, that you look for.

8 You could go closer, in theory. In an  
9 industrial zone/commercial zone, you can build up to the  
10 property line if you properly rate the walls. It becomes  
11 more costly; but as long as you maintain a minimum of ten  
12 on either side, you'll be fine.

13 MR. BOSWELL: Second question that I've got is  
14 associated with a little bit of confusion on this variance  
15 request. On Page 164 1/2, there's a question associated  
16 to hardship that requests an answer as "no" if  
17 restrictions of a regulation -- would restrictions of a  
18 regulation deprive the applicant of the reasonable use of  
19 the land or create an unnecessary hardship on the  
20 applicant? If the application is denied, the applicant  
21 could redesign the development to comply with the project  
22 boundary buffer regulations. So it says there's no  
23 hardship.

24 But then over on Page 160A, on the right-hand  
25 upper part of the comment section, the very last thing on

1. there says, "The applicant further contends that the  
2 strict application of the zoning ordinance would deprive  
3 him of reasonable use of the land and would create  
4 unnecessary hardship."

5 So I guess my question is, will it create a  
6 hardship or will it not create a hardship? Because it  
7 seems like they're conflicting statements.

8 MR. CHAIRMAN: Do you want to answer that one,  
9 Mr. Howard? I think I understand the answer, but I'm not  
10 sure --

11 MR. HOWARD: Yeah. And I don't want to speak  
12 for the applicant. Because I think Mr. Boswell is  
13 pointing out two different spots in the application. As  
14 you'll see in our staff report, we said that, no, it would  
15 not create a hardship; that there would be sufficient room  
16 on there, again, if they alter the size of the building to  
17 meet the requirements. But Mr. Baker can potentially  
18 better answer that as far as what they presented in their  
19 application.

20 MR. BAKER: I'm not here to speak for him. I'm  
21 here to speak about, you know, the layout itself.

22 With regard to the layout, again, it's a tight  
23 layout with regard to parking counts and overall  
24 dimensions. Otherwise, we wouldn't have this in here  
25 before you. So anything that confines that will likely

1 impact what can happen on there, so...

2 MR. CHAIRMAN: Did I not understand you to say,  
3 though, that if this variance were not granted, there's  
4 the potential that the building would have to be  
5 redesigned; so therefore, that is --

6 MR. BAKER: That's correct.

7 MR. CHAIRMAN: That's why I think he's saying  
8 it's a hardship. Staff says it is not a hardship.

9 MR. BAKER: I'm sorry. That's what I was  
10 getting at.

11 MR. CHAIRMAN: Mr. Howard, is that accurate?

12 MR. HOWARD: Yes.

13 MR. BOSWELL: Thank you.

14 Mr. Frey?

15 MR. FREY: I'd like to ask a question of Mr.  
16 Overall.

17 MR. CHAIRMAN: Sure.

18 MR. FREY: Knowing now the vote didn't go in  
19 your favor -- we would love to vote yes for everybody.  
20 Knowing that there is a six-foot solid buffer, does 20  
21 feet or 10 feet affect you that much?

22 MR. OVERALL: I think so, only because we're on  
23 both sides of the two empty lands. So if we go ten foot,  
24 that would be ten foot -- for a two story building --  
25 closer to our parking lot, closer to us. We already have



1 a problem, when it snows really bad, getting things  
2 cleaned off. There's no sun. If we go ten feet over on  
3 the other empty side, that's 20 feet, or ten feet on each  
4 side, that we're just kind of encased. You know, I think  
5 it will affect us. I really do.

6 MR. FREY: Believe me, we would love to vote yes  
7 for everybody.

8 MR. OVERALL: I appreciate it, yeah.

9 MR. FREY: Thank you.

10 MR. CHAIRMAN: Thank you, Mr. Frey.

11 Anybody else? Any other commissioners have a  
12 question?

13 Anyone in the audience have any questions or  
14 comments that they would like to make in addition?

15 If not, then the Chair will entertain a motion.

16 Yes, Mr. Rogers?

17 MR. ROGERS: Mr. Chairman, I make a motion for  
18 approval granting the variance with the findings of facts  
19 one through four and the two conditions.

20 MR. CHAIRMAN: Okay. We have a motion from Mr.  
21 Rogers. Do we have a second?

22 MR. BALL: Second.

23 MR. CHAIRMAN: Second by Mr. Ball.

24 MR. CHAIRMAN: Questions or concerns about the  
25 motion?

1 All in favor, raise your right hand.

2 (ALL BOARD MEMBER EXCEPT MR. FREY RESPONDED  
3 AYE.)

4 Opposed, like sign.

5 (MR. FREY OPPOSED.)

6 MR. CHAIRMAN: Had one opposition.

7 **ITEM 4**

8 329, 333 & 335 West Parrish Avenue, 0.496 acres  
9 Consider zoning change:  
10 From R-4DT Inner-City Residential to P-1 Professional  
11 Service  
12 Applicant: Owensboro Rental Properties, LLC,

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

12 MS. EVANS: Melissa Evans.

13 (MELISSA EVANS SWORN BY ATTORNEY.)

14 **PLANNING STAFF RECOMMENDATIONS:**

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

17 **Conditions:**

18 1. The existing residential driveway between  
19 333 and 335 West Parrish Avenue shall be closed and  
20 returned to grass with the required sidewalk and curb and  
21 gutter replaced; and,

22 2. Assess to the property shall be limited to  
23 the existing public alley only. No additional access to  
24 West Parrish Avenue shall be permitted.

25 **Findings of Fact:**

1           1. Staff recommends approval because the  
2 proposal is in compliance with the community's adopted  
3 Comprehensive Plan;

4           2. The subject property is located in a Central  
5 Residential Plan Area where professional/service uses are  
6 appropriate in limited locations;

7           3. The proposed use as an accounting office  
8 conforms to the criteria for nonresidential development;

9           4. The proposal is an expansion of existing B-4  
10 General Business zoning to the east;

11           5. At 0.496, plus or minus, acres, the proposal  
12 should not overburden the capacity of roadways and other  
13 necessary urban services that are available in the  
14 affected area.

15           We would like to enter the Staff report into the  
16 record as Exhibit C.

17           MR. CHAIRMAN: Thank you.

18           Is anyone here representing the applicant?

19           Do you wish to make any comments?

20           Commissioners, do you have any questions about  
21 this application?

22           Anyone in the audience like to speak about the  
23 application?

24           If not, then the Chair will entertain a motion.

25           Mr. Frey?

1           MR. FREY: Mr. Chairman, I would like to make a  
2 motion for approval based on staff recommendations and  
3 findings of fact one through five and conditions one  
4 through two.

5           MR. CHAIRMAN: We have a motion by Mr. Frey. Do  
6 we have a second?

7           Have a second by Mr. Kazlauskas. Questions or  
8 concerns about the motion?

9           All in favor, raise your right hand.

10          (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11          MR. CHAIRMAN: Opposed, like sign.

12          Motion is passed.

13          -----

14                               **MINOR SUBDIVISION PLATS**

15          ITEM 5

16          9244, 9250 Old Hartford Road, 9.041 acres  
17          Consider approval of a minor subdivision plat  
18          Applicant: Nancy Fulcher

19          MR. HOWARD: Mr. Chairman and Commissioners,  
20 this applicant comes before you requesting exceptions.  
21 It's one that I can't sign in-house. There's an existing  
22 parcel that is under ten acres. There's an existing home  
23 on it. What they're proposing to -- basically, they're  
24 building a lot, a nine-tenths of an acre lot, more or  
25 less, around the existing home, which will leave a little  
over eight acres left in the remainder. They've made

1 notations on the plat that this property won't be further  
2 subdivided without meeting the requirements of subdivision  
3 regulation.

4 They're not really attempting to maximize the number  
5 of lots. They're just creating a lot around an existing  
6 home. It would allow for one additional building site;  
7 but on an overall parcel that's over nine acres, we feel  
8 that's reasonable. So we would recommend that you  
9 consider it for approval.

10 MR. CHAIRMAN: Any questions by the Board?

11 Questions by anyone in the audience?

12 Yes, sir?

13 MS. KNIGHT: Please state your name for the  
14 record.

15 MR. HAYDEN: Keavin Hayden.

16 (KEAVIN HAYDEN SWORN BY ATTORNEY.)

17 MR. HAYDEN: Yes. These two particular  
18 properties are -- Ms. Fulcher is an elderly lady. I'm  
19 representing her as a listing agent.

20 On the tract, the larger tract, the eight acres,  
21 there's actually also an existing dwelling on there  
22 currently. So what she had, she had a situation where we  
23 have the smaller tract, where Mr. Howard said the existing  
24 home was. That was her home. But there was another home  
25 on top, on the larger tract, already there.

1           So when we went to market it, we were faced with  
2 trying to sell two different dwellings that were located  
3 on one property. And that was -- that's why we sought the  
4 division.

5           MR. CHAIRMAN: Any questions?

6           Thank you for that information. It's helpful.

7           If not, the Chair will entertain a motion.

8           MR. JEAN: Motion to approve.

9           MR. CHAIRMAN: Mr. Jean, motion to approve. Do  
10 we have a second?

11           Second by Ms. McEnroe. Questions or concerns  
12 about the motion?

13           All in favor, raise your right hand.

14           (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15           MR. CHAIRMAN: Opposed, like sign.

16           The application is approved.

17           Okay. All of you should have received the  
18 financial statements in the mail to review. So I'd ask  
19 you if you have any questions or concerns about the  
20 financial statements?

21           If not, then the Chair will entertain a motion.

22           Mr. Frey?

23           MR. FREY: Motion to approve.

24           MR. CHAIRMAN: Motion by Mr. Frey. Second?

25           MS. MCENROE: Second.

1 MR. CHAIRMAN: Second by Ms. McEnroe. Questions  
2 or concerns about the motion?

3 All in favor, raise your right hand.

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 MR. CHAIRMAN: Opposed, like sign.

6 Financial statements are approved.

7 Comments by the Chairman: Just very briefly,  
8 and I say this, I think, to benefit the people in the  
9 audience. I'm very, very pleased with the way this  
10 committee approached these applications tonight. You're  
11 very diligent in asking questions, trying to be fair to  
12 all parties involved. I know each of you've worked hard  
13 to make sure that everyone has a fair hearing, that  
14 nobody's concern is ignored or is not considered fully;  
15 and I think you're to be commended for that. And I  
16 appreciate, as a chairman, that you do your job so  
17 diligently in that regard. So I want to thank you for how  
18 well you listen to everyone in the audience. Just my  
19 appreciation.

20 Any other planning commissioners have any  
21 comments?

22 Mr. Howard?

23 MR. HOWARD: I don't have any comments.

24 MR. CHAIRMAN: No comments from Mr. Howard, so  
25 we've got one more item for motion, I believe.

1 MR. BALL: Motion to adjourn.

2 MR. CHAIRMAN: Motion to adjourn by Mr. Ball.

3 Second by Mr. Boswell. All in favor, raise your right  
4 hand.

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 MR. CHAIRMAN: Opposed, like sign.

7 We're out of here. Thank you.

8 (The meeting adjourned at 6:17 p.m.)

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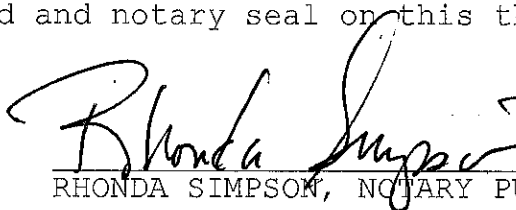
1 STATE OF KENTUCKY )

SS: REPORTER'S CERTIFICATE

2 COUNTY OF DAVIESS )

3  
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 4th  
17 day of October 2016:



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

22 COMMISSION EXPIRES: AUGUST 17, 2019  
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24  
25