

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 MARCH 1, 2018

3 The Owensboro Metropolitan Board of Adjustment
4 met in regular session at 5:30 p.m. on Thursday, March
5 1, 2018, at City Hall, Commission Chambers, Owensboro,
6 Kentucky, and the proceedings were as follows:

- 7 MEMBERS PRESENT: Judy Dixon, Chairman
- 8 Ruth Ann Mason, Secretary
- 9 Brian Howard, Director
- 10 Terra Knight, Attorney
- 11 Jerry Yeiser
- 12 Fred Reeves
- 13 Bill Glenn
- 14 Lewis Jean

15 * * * * *

16 CHAIRMAN: I call the Owensboro Metropolitan
17 Board of Adjustment March 1, 2018 meeting to order.

18 The first thing on the agenda will be the
19 prayer and pledge. Would you stand, please.

20 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

21 CHAIRMAN: The first item on the agenda is the
22 minutes of the February 1, 2018 meeting. All members
23 have received a copy and have had time to check them
24 over. So at this time I'll entertain a motion to
25 dispose of the item.

MS. MASON: Move to approve.

CHAIRMAN: Motion to approve by Ms. Mason.

MR. GLENN: Second.

1 CHAIRMAN: Second by Mr. Glenn. Any question
2 on the motion?

3 (NO RESPONSE)

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

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Mr. Howard.

8 -----

9 VARIANCE

10 ITEM 2

11 3500 Ashlawn Drive, zoned R-1A Single-Family
12 Residential

13 Consider a request for a Variance in order to
14 construct a detached accessory structure that exceeds
15 the square footage of the ground floor of the
16 principal structure on a lot less than half an acre in
17 size

18 References: Zoning Ordinance, Article 3,
19 Section 3-6(c)

20 Applicant: Robert F. Higdon

21 MR. REEVES: Madam Chair, I need to recuse
22 myself.

23 CHAIRMAN: So noted. Thank you.

24 MS. KNIGHT: Please state your name for the
25 record.

MR. PEDLEY: Trey Pedley.

(TREY PEDLEY SWORN BY ATTORNEY.)

MR. PEDLEY: The subject property is a 0.475
acre lot zoned R-1A Single-Family Residential and is

1 located at the southwest corner at the intersection
2 Ashlawn Drive and Standish Place.

3 As the site plan illustrates, the property has
4 a unique shape as it extends behind the neighboring
5 home at 3510 Ashlawn Drive.

6 The applicant proposes to construct a detached
7 garage, 5,145 square feet in size, exceeding the
8 square footage of the ground floor of the ground floor
9 of the principal structure on a lot less than half an
10 acre in size.

11 The site plan indicates that if approved the
12 proposed structure will be behind the two residential
13 homes that front Ashlawn Drive.

14 Granting this Variance request will not alter
15 the essential character of the general area as the
16 property will not exceed the maximum amount of lot
17 coverage. It will not cause a nuisance to the public
18 or adversely affect the public safety as all required
19 building setbacks from property lines and enclosed
20 structures will be maintained and because the proposed
21 structure will be to the rear of the residential
22 homes, lessening the visibility of the structure from
23 Ashlawn Drive; and will not cause an unreasonable
24 circumvention of the requirements of the zoning
25 regulations as the subject property lacks only 0.025

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1 acres from being allowed to construct the proposed
2 structure without the necessity of this variance
3 approval.

4 We would like to enter the Staff Report into
5 the record as Exhibit A.

6 CHAIRMAN: Thank you.

7 Is there anyone here representing the
8 applicant.

9 MR. HIGDON: Yes.

10 CHAIRMAN: Would you step up, please.

11 MS. KNIGHT: Please state your name for the
12 record.

13 MR. HIGDON: My name a Robert Higdon. I live
14 at 3500 Ashlawn Drive.

15 (ROBERT HIGDON SWORN BY ATTORNEY.)

16 MR. HIGDON: I'd like to build a building. I
17 started out at 146 or 147, but I'd like to cut it down
18 to 135 by 35, 12 foot ease with a 112 pitch, brick,
19 black tin roof to match the neighborhood. All I want
20 it for is to store my cars.

21 CHAIRMAN: Thank you, Mr. Higdon. You might
22 want to stay close in case we have questions.

23 Is there anyone that wishes to speak to this
24 item, either for or against?

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

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1 please.

2 MR. COTTRELL: My name is Roy Cottrell. I
3 live at 1220 Standish, right behind Bobby.

4 (ROY COTTRELL SWORN BY ATTORNEY.)

5 MR. COTTRELL: I'm kind of for it. I
6 understand what he's saying. He wants to keep
7 everything right. He's got with me and said he's
8 going to brick the place. So he's trying to take care
9 of it. He's not going to make a dump out of it. He's
10 going all out. So I approve it.

11 CHAIRMAN: Thank you.

12 MR. COTTRELL: I'm okay with it.

13 CHAIRMAN: Is there someone else?

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

16 MR. HAYDEN: Donald Hayden.

17 (DONALD HAYDEN SWORN BY ATTORNEY.)

18 MR. HAYDEN: I live at 3441 Ashlawn Drive.
19 I'm adjacent to the property that Robert is speaking
20 of here.

21 I really don't know the ordinance and that's
22 what I'm looking to this board to protect us as
23 citizens and residents of this subdivision. When I
24 moved out there, we had an ordinance we went by. I
25 don't know whether anything has been changed or not.

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1 If it is, I would like for you to present that to us
2 so I would be aware of this.

3 A building 140 feet long, 35 feet wide in our
4 quiet residential neighborhood, that doesn't sound
5 like that's an improvement that should be made. I
6 don't know what the restrictions are, but restrictions
7 in our neighborhood, he could not even get that on one
8 lot. I understand he has bought another lot so he
9 could place this building on two lots. 140 feet, he
10 says he wants to go back 135. Can you tell me, is
11 there a restriction on the length of a building,
12 outbuilding for residential property? I think of a
13 garage or an outbuilding would be not in this category
14 that he's describing.

15 I talked to Bobby last week. I went over to
16 talk him. I said, Bob, what are you going to do? He
17 said, I have vintage cars and I want them here at my
18 place. I said, Bob, is there any automotive work that
19 has to be done on these? Are these operational? To
20 me I don't know how many cars he's got, but if these
21 cars are all there in this one building, do you
22 consider that a business? 140 feet long, 35 feet
23 wide. I had a survey of my property done back when I
24 bought it in 1990 and I've got a setback in the front
25 of my property of 30 feet and it also shows on that

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1 map that I've got a 30 foot setback in the back. Now,
2 I don't know the ordinances and the laws of these
3 subdivisions because I look to you as the board to
4 protect us to make sure that no one comes in and
5 violates our rights and tries to create a right for
6 himself.

7 I'm sure Bobby means good, but I would know
8 this, if he went to sell that property and that
9 building is behind two houses, I think there would be
10 a problem, a real big problem. I'm not looking down
11 the road that far. Really, I'm up in years anyway. I
12 won't be around. But I've lived in this neighborhood
13 and I like the neighborhood. It's in the central part
14 of our city and well kept. I just don't want to see
15 anything here put on any of these lots that would take
16 away the rights of these citizens in that subdivision.

17 Now, if you could provide us with the laws on
18 this, I mean I would like to see it so I can review
19 them or is this going to be out of my hands and we
20 might have to take a step forward. I don't know. I
21 would like for you to address this, if you would, to
22 let us know what rights we have here with the
23 prevailing ordinances that has been attached to our
24 subdivision for many, many years. I'll relinquish at
25 this time until some other questions come up, and I

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1 might have some other questions.

2 CHAIRMAN: Thank you. Thank you. We'll see
3 if we can get you some answers.

4 Mr. Howard, would you like to address his
5 concerns?

6 MR. HOWARD: My assumption is when you refer
7 to ordinance you're talking about ones that would be
8 attached to the homes in that neighborhood, you're
9 talking about private deed restrictions, I believe.

10 MR. HAYDEN: Yes.

11 MR. HOWARD: Part of what the application for
12 a variance includes is a letter from an attorney.
13 Marty Jacobs was the attorney that provided a letter
14 of no deed restrictions. We require that for any
15 conditional use permit, any variance, any rezoning,
16 because this board cannot take action that would
17 violate a private restriction if those were in place.
18 We do not enforce those private deed restrictions, but
19 we need to make sure that they don't exist. So
20 Mr. Jacobs prepared a letter and submitted that as
21 part of Mr. Higdon's application. Says that there are
22 no private deed restrictions that this would violate.

23 As far as the setbacks and all of that,
24 Mr. Higdon and Mr. Simmons, his surveyor, prepared a
25 plat that was submitted to our office which details

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1 the setback requirements. There's a public utility
2 easement in the rear and things like that. So all of
3 that has been documented on a site plan and plat that
4 has been prepared by a licensed surveyor.

5 So that information has been submitted to our
6 office and that's what we go by, is what a surveyor
7 prepares and what an attorney provides.

8 MR. HAYDEN: Can I ask another question?

9 CHAIRMAN: You want to come back to the
10 microphone so it will be on the record, please.

11 MR. HAYDEN: Do you have that survey available
12 that he has prepared? The reason I'm asking, is there
13 a setback in the back of this residence for building
14 structures to be built?

15 MR. HOWARD: So the residence at, and Trey
16 Pedley from our office is pulling something there for
17 you.

18 MR. HAYDEN: I'm going to be slow because I've
19 AMD and I can't read real fine print. I might have a
20 little problem here.

21 MR. HOWARD: Trey, do you have a copy of that
22 drawing that has the highlight. It just kind of
23 illustrates the two lots.

24 MR. PEDLEY: I think it's in the folder.

25 MR. HAYDEN: What's the length of the lot from

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1 the --

2 MR. PEDLEY: This is easier to read. It has
3 property lines highlighted.

4 MR. HOWARD: Trey, as I'm explaining, if you
5 don't mind to kind of point out.

6 So there are two lots right now; there have
7 always been two.

8 MR. HAYDEN: What is the distance here?

9 MR. PEDLEY: This is 150 feet. It's right on
10 Standish Place.

11 MR. HAYDEN: Here in the front. What's the
12 distance in front of these lots?

13 MR. PEDLEY: Combined would be 207.93.

14 MR. HAYDEN: 207. Okay. This is the back.
15 You have an easement. What is the easement; 10 feet?

16 MR. HOWARD: There's a 10 foot public utility
17 easement in the rear.

18 MR. HAYDEN: Is there a line for build back
19 off of that? What is your build back line for a
20 structure to be built?

21 MR. HOWARD: For an accessory structure to the
22 rear of residence?

23 MR. HAYDEN: Yes, to the rear of the
24 residence.

25 MR. HOWARD: It's 3 feet off the property

1 line.

2 MR. HAYDEN: Oh, is it 3 feet? I've got
3 marked 30.

4 MR. HOWARD: Now, on your property, I can't
5 speak to your property. I don't have a plat of it in
6 front us certainly. Every property may be different.
7 You may have a 30 feet easement in the back.

8 In this instance he has a 10 foot public
9 utility easement in the back and he has to stay 10
10 feet off that rear property line, but the side
11 property lines he can be 3 feet off based on the
12 ordinance.

13 MR. HAYDEN: I don't know how much ground he's
14 going to have between the house and the building, but
15 it can't be too much.

16 MR. HOWARD: Be about 23 feet.

17 MR. HAYDEN: 23 feet. That's a very small
18 amount.

19 MR. HOWARD: Between 3510 and --

20 MR. HAYDEN: For a subdivision that is well
21 known as the one we're talking about here. To put a
22 structure up in 23 feet from a residence that he's
23 going to build that lot, that building on. That to me
24 is a big problem. Not as much for me, but -- let me
25 ask it this way: Is there any restrictions or

1 limitations on buildings to be built in this
2 subdivision?

3 MR. HOWARD: Again, if I'm understanding your
4 question correctly, that would be a private deed
5 restriction that an attorney has stated that there are
6 none and we would not enforce anyway. That that would
7 be a private issue.

8 MR. HAYDEN: You're saying in that
9 neighborhood I could even build it on my lot, 150 foot
10 building and there would be no restrictions?

11 MR. HOWARD: We're here tonight for a variance
12 in order to receive approval to build this structure
13 on his property. You could go through a similar
14 process on yours. I'm just saying we're not aware --
15 we've been certified there aren't any private
16 restrictions that would prohibit this.

17 MR. HAYDEN: I'm not worried about my
18 property. I'm not going to build. I'm telling you my
19 understanding when I moved in the subdivision there's
20 limitations on the outbuildings you could build. You
21 could have a two-car garage with an addition, a little
22 bit to it. I don't know what those measurements would
23 be. That's just what I'm saying.

24 If this goes through or passes, you're saying
25 one attorney has already approved in this subdivision

1 there's no restrictions on any outbuilding can be
2 built by any property owner in that subdivision; is
3 that what I'm hearing?

4 MR. HOWARD: I'm saying that the attorney on
5 this application stated that there are no private deed
6 restrictions that would prohibit the board from
7 approving this variance. I can't speak to the
8 situation for every lot out there in the neighborhood.
9 I don't know. I'm not an attorney. I didn't certify
10 it.

11 The kind of things you're mentioning, whether
12 it was a two-car garage and some neighborhoods have
13 requirements that everything must be 100 percent brick
14 or it can only be 80 percent brick and 20 percent
15 vinyl and limiting some; those are all private
16 restrictions that are beyond the scope of what the
17 Planning Commission or this board could approve or
18 enforce.

19 MR. HAYDEN: Let me say that if you approve
20 this variance, and this building was built and he has
21 his vintage cars in there, is he limited to the
22 number? Is he limited to what that building can be
23 used for? Is it strictly for storage or how much
24 storage, etcetera? Will there be a limitation on the
25 use of that building? Where I'm coming from, can that

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1 be converted to a business, commercial type business
2 building over a residential type building?

3 MR. HOWARD: It could not. This is an
4 accessory storage structure that's been proposed. If
5 someone were to -- 20 years from now someone were to
6 try to convert that to a commercial use of some sort,
7 it would be a zoning violation today. It would be a
8 zoning violation in the future as well. So, no, it
9 could not used for a business.

10 MR. HAYDEN: Okay. I'll yield to someone else
11 and then maybe I'll have some more later on.

12 CHAIRMAN: Thank you.

13 Is there someone else?

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

16 MR. ATHERTON: Randy Atherton. I live at 3521
17 Ashlawn Drive.

18 (RANDY ATHERTON SWORN BY ATTORNEY.)

19 MR. RANDY ATHERTON: I live in the residence
20 right across the street from the proposed change here.

21 I mean first off, everybody I've talked to,
22 I'm going to say up front that I haven't talked to
23 anybody that's in favor of this. A building of this
24 size and this structure in a residential neighborhood
25 there's no place for it for various reasons.

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1 Number one, like this gentleman here says,
2 it's I guess what you would call an executive type
3 neighborhood. There's a lot of older people that live
4 in the neighborhood. Lot of retired people, getting
5 ready to retire. We've got a lot of money invested in
6 our properties in that area and there's no doubt in my
7 mind that something like this, and the people I've
8 talked to, I mean it will affect the property values,
9 the houses in that neighborhood.

10 In light of that, people we've talked to, I
11 guess, in light of the alternatives, if it's not
12 approved, the only thing I would ask, and we would all
13 ask, is it be put in the approval in the minutes or
14 however you do it, that as he proposed, that it will
15 be a brick structure to match everything else in the
16 neighborhood, that it will look good. It will not
17 exceed the height of the house in front of it, which
18 we call the the Curtsinger house, which is 3510. It
19 would not exceed the height of that house to where
20 it's going to stand out in the neighborhood.

21 There again, we've been told the options of
22 what's going to happen if it's not approved. Just in
23 light of that, our proposal is that it be included in
24 the proposal, in the change or whatever it is that you
25 do with it, put those restrictions in that it has to

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1 be that way.

2 CHAIRMAN: Thank you.

3 Anybody have questions of Mr. Atherton?

4 (NO RESPONSE)

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

7 MR. CARL ATHERTON: Carl Atherton.

8 (CARL ATHERTON SWORN BY ATTORNEY.)

9 MR. CARL ATHERTON: I'm at 3511 which is
10 directly across from 3510.

11 Now, I'm not sure about the parliamentary law
12 you all have to follow, but I want to point out there
13 is a mistake on this map that's up on the screen and I
14 have a copy of.

15 It talks down at the bottom there it's 3501.
16 And 3501 is not on that side of the street. I'm not
17 sure if you need to make that change before you can
18 vote on it.

19 MR. HOWARD: I'm sure the surveyor transposed
20 those numbers. It was advertised correctly, but we'll
21 make note of that certainly.

22 MR. CARL ATHERTON: Again, I'm concerned about
23 my property value. As Mr. Hayden stated, this is
24 bound to affect the type of people that's going to
25 come in there and they're going to want a nice

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1 building. This subdivision was started back in the
2 1960s as an executive community to the Texas Gas
3 employees. You know, very nice neighborhood back
4 then, and it still is. Houses sell very quickly. Lot
5 of people wanting to be there.

6 I don't have a problem if we can put in the
7 stipulations that it's going to be brick, as
8 Mr. Higdon said. It's going to have, you know, the
9 roof line is less than the existing two houses that
10 are on the property, and the restriction that it's a
11 storage building. You can't work on cars without
12 having dirt and noise and everything else. I know
13 about all of that. Again, if there's some way that
14 your board can put those restrictions on. Again, I'm
15 not against having that building there, but it will
16 affect the property value. I'm not sure how you're
17 going to go about assuring that it's a nice looking
18 building. Thank you.

19 CHAIRMAN: Is there anyone else that wishes to
20 speak to this and then we'll see if we can get some
21 answers from Mr. Higdon.

22 (NO RESPONSE)

23 CHAIRMAN: Mr. Higdon, would you come back to
24 the microphone, please.

25 MR. HIGDON: I can't hardly hear you.

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1 CHAIRMAN: You've heard the concerns of your
2 neighbors.

3 MR. HIGDON: Right.

4 CHAIRMAN: Can you describe what you plan to
5 build in view of their concerns?

6 MR. HIGDON: It started out at 146 or 147 by
7 35. I want to drop it back to 135 to give Fred Reeves
8 10 more feet close to his property line. It's 135 by
9 35 by 12 foot ease with 112 pitch. It's going to be
10 brick and it's not going to look like no junk. You
11 can ask anybody that knows me. That man right there
12 knows me. That anything I've got is going to look at
13 the tops. The only objection I've got, if you all
14 don't pass it is, that I've got to tear down 3510 to
15 make my garage work, and then it's my understanding
16 that I can build, how tall did you say, Brian, 30 some
17 odd feet?

18 MR. HOWARD: In a residential zone it could be
19 36 feet.

20 MR. HIGDON: 36 feet tall. That's the only
21 objection I've got. If you all don't pass it, I'm
22 going to tear down 3510 and then I'm going to put it
23 the height that I want it, you know because I'll have
24 over half acre, if I put 3510 in with 3500.

25 That's the way the building will be. It will

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1 be brick to match the other houses. It will have a
2 black tin roof on it. That's the way it will be.

3 CHAIRMAN: And it won't exceed the height of
4 your other properties?

5 MR. HIGDON: It will not be any higher than my
6 house or 3510.

7 CHAIRMAN: And you plan on just storing your
8 vintage vehicles there?

9 MR. HIGDON: That's the only thing I want to
10 do. My wife and I are 69 years old. We've got 13
11 vintage cars and we want to put them in that. We've
12 got a building on Ninth Street. That's where all of
13 them but two of them are now.

14 CHAIRMAN: If they need work, they go
15 somewhere else?

16 MR. HIGDON: Do what?

17 CHAIRMAN: And if they have to be repaired,
18 they're taken somewhere else?

19 MR. HIGDON: They're in the shape that they're
20 not going to have to be repaired.

21 CHAIRMAN: Thank you.

22 Any question or any more questions of
23 Mr. Higdon?

24 Mr. Hayden.

25 MR. HAYDEN: Bobby said that if this is not

1 approved he will raise that property next to his home
2 he's presently living in and he build this building on
3 that property. Are you telling me or am I hearing
4 wrong that you would allow a building, an outbuilding
5 to be built on a residential lot in that subdivision?
6 Because that would be facing the street of Ashlawn
7 Drive. That's the only way he could put it. You
8 could not put the property from Standish back to the
9 other property, where the Curtsingers live. He would
10 have to bring the property out. So instead of having
11 a residential piece of property, you would be allowing
12 a building structure to be built facing Ashlawn Drive
13 in a subdivision, residential subdivision; is that
14 what I'm hearing? You said it would work that way? I
15 don't know.

16 MR. HOWARD: If he were to consolidate those
17 two lots, put them as one lot, tear down the structure
18 at 3510, he could put an accessory structure on that
19 one lot. It would be about three quarters of an acre.
20 The zoning ordinance would allow him to put a
21 structure on there. The combined footprint of both
22 not to exceed 50 percent of the total lot area and the
23 zoning ordinance would allow a structure to go up to
24 36 feet tall. So he would have to meet the 25 foot
25 setback along Ashlawn. He would have to meet a 10

1 feet side setback and would have to stay out of that
2 public utility easement in the rear, but otherwise,
3 yes, he could put a large structure on that property.

4 MR. HAYDEN: What is the width of that
5 property at 3510?

6 MR. HOWARD: 102.93.

7 MR. HAYDEN: Okay. I have to do some figuring
8 here. Something is wrong here. Have a subdivision
9 and have one lot in that subdivision without a house
10 on it because another man buys a piece of property.
11 Half of these buildings have been built. He raises
12 one and then he wouldn't be required to put another
13 house on it. Like I say, I don't know the ordinance
14 laws. I don't know the laws of the property in the
15 subdivision. You're taking away a right of people in
16 that subdivision to deny a house or to remove a house
17 and deny a residence to be rebuilt, but allow an
18 accessory building to be built. That would be to me
19 deterioration of a subdivision rather than protecting
20 our rights as residents of that subdivision. At least
21 something is wrong with me? Maybe I need to proceed
22 and go get a little help with this. Do you have
23 several hearing on this or what?

24 MR. HOWARD: Typically on a variance
25 application, conditional use permit, rezoning, any of

1 those, the board hears testimony and then a decision
2 is made. State law requires one public hearing and
3 that's taking place tonight.

4 MR. HAYDEN: And how soon will you rule on
5 this?

6 CHAIRMAN: We could rule tonight.

7 MR. HAYDEN: Really you do us a disservice
8 because you didn't put this information to our letter
9 to tell us that we need legal counsel. It might not
10 do us any good, but I think we do need legal counsel,
11 but I think we should have been advised of that. I
12 would ask you to not rule on it tonight personally.
13 At least give us a few more days, at least a few more
14 days on this and let a contact be made to you. I hope
15 you honor that. I just request that. Thank you.

16 CHAIRMAN: Does anybody on the board have a
17 question or a comment for either Mr. Hayden, Mr.
18 Higdon or the Athertons?

19 MR. GLENN: I just want to clarify one thing
20 for Mr. Higdon or a couple of things.

21 I believe I heard you tell this before. The
22 building is strictly to store these vehicles, these
23 vintage vehicles; mechanical work and all of that type
24 of garage --

25 MR. HAYDEN: I hire all my mechanic work done.

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1 I don't do none of it. I'm talking like zero. Don't
2 even change my own oil.

3 MR. GLENN: Okay. And the building itself is
4 going to be brick?

5 MR. HAYDEN: It will be brick veneered all the
6 way around to the top of it in the gable ends. It
7 will have a black tin roof to match the neighboring
8 roofs on the houses. It's going to have black gutter
9 down-spouts on it. I don't want anything to stick out
10 like a sore thumb.

11 MR. GLENN: Thank you.

12 CHAIRMAN: Anyone else have any questions?

13 MS. MASON: I have a question. Maybe I
14 missing it on the drawing.

15 How are you going to access the garage?

16 MR. HIGDON: 3500.

17 MR. HOWARD: There's an existing driveway off
18 of Standish Place.

19 MS. MASON: I see concrete drive. I see that.
20 I'm sorry.

21 MR. HIGDON: Same driveway that I use.

22 MS. MASON: I was looking in the front trying
23 to figure it out, but I see it there on Standish.

24 MR. HOWARD: It's on the side.

25 CHAIRMAN: Anyone else have a question of

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1 Mr. Higdon, or Mr. Hayden, or the Athertons, the two
2 Athertons?

3 Yes, sir.

4 MR. RANDY ATHERTON: Randy Atherton.

5 There again, I don't like it, but the bottom
6 line is we don't want the house tore down either.
7 That's what we've been told is going to happen if it's
8 not approved. That's a way worse situation than if
9 this thing passes. If there is no other alternative
10 to that, and if that's the way it is, then I guess our
11 standpoint is, you know, it's the best option of the
12 two.

13 CHAIRMAN: Thank you.

14 Anyone else have a question?

15 (NO RESPONSE)

16 CHAIRMAN: Hearing none is the board ready to
17 dispose of this item?

18 MR. GLENN: I'll make a motion.

19 CHAIRMAN: Mr. Glenn.

20 MR. GLENN: I'd like to make a motion, and I
21 want to make sure I make this right.

22 I would make a motion that we approve this
23 application based on the statements of Mr. Higdon and
24 how he's going to build that building, based on these
25 findings that we have here in our report, that it

1 won't adversely affect the public health or alter the
2 essential character of the neighborhood in the
3 vicinity; it's not going to cause a hazard or
4 nuisance, and it's not going to allow a hazard or
5 unreasonable circumvention of any requirements on the
6 zoning regulations.

7 Also, that he meet the conditions of obtaining
8 all building permits, electrical and HVAC permits,
9 inspections and certificates of occupancy and
10 compliance.

11 MS. KNIGHT: I would suggest, you referenced
12 this, but just to be specific; adding a condition to
13 the motion concerning the dimension of the building
14 that Mr. Higdon stated, the pitch of the roof, the
15 brick veneer and the black tin roof, if you could add
16 those to the motion and then we'd have Mr. Higdon put
17 on the record that he does agree.

18 MR. HIGDON: That's the way it's going to be
19 built.

20 CHAIRMAN: If you'd like to step up here so
21 that we can get that on record.

22 MR. HIGDON: It's going to be a black tin
23 roof, black gutters and down spots, and the brick to
24 match the house that we live in at 3510, and it's
25 going to brick. There's going to be no vinyl.

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1 CHAIRMAN: And the pitch of the roof.

2 MR. HIGDON: 112.

3 MS. KNIGHT: You agree to those conditions?

4 MR. HIGDON: I fully agree to them because
5 that's what I want. I also want to back it up to 135
6 foot instead of 146 or 147.

7 MS. KNIGHT: And you agree to that as well?

8 MR. HIGDON: That's exactly right.

9 MR. GLENN: Then I would add that into my
10 motion that the building size be 135 by 35 foot. It's
11 going to have a 112 roof pitch. It is going to be
12 brick veneer with a black metal roof.

13 MR. HIGDON: That's right.

14 CHAIRMAN: Thank you.

15 Do I have a second to the motion?

16 CHAIRMAN: Yes, sir. Question on the motion
17 by Mr. Hayden.

18 MR. HAYDEN: I would like to request, again,
19 that you defer this vote tonight because we were not
20 advised that this vote was going to take place
21 tonight. The letter stated that it was strictly a
22 hearing for a variance. It didn't state any decision
23 would be decided on, and I would like to request that
24 you defer your voting until a later date so I can
25 refer to counsel to assist me on some things here. I

1 told you, I'm not fully aware of all of the laws in
2 these subdivisions, etcetera, but I would like you to
3 honor me with that and delay this voting tonight so I
4 can check with some legal counsel. Thank you.

5 MR. HIGDON: I would like to say something
6 else.

7 Robert Higdon. I swear for it to be the
8 truth. I would like to ask Mr. Hayden, would he
9 rather have this garage behind the house hid or the
10 3510 be tore down and my garage put there? That's all
11 I would like to ask him. Because that is legal.

12 CHAIRMAN: Mr. Hayden.

13 MR. HAYDEN: To answer that question, neither.
14 I would rather the building not be built. I would
15 rather the house not be tore down. You remove a house
16 in a subdivision from a lot, you deteriorate that
17 subdivision. He can come up with a lot of different
18 answers, but when you leave an empty lot in a
19 subdivision, something has happened. When you come
20 back and tear it down and are allowed by our board to
21 rebuild an accessory building structure that doesn't
22 even resemble a home, you have a lot in a subdivision
23 that you have taken away the primary purpose of that
24 have subdivision to allow an accessory building to be
25 built, that relates to a house that purchased that

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1 property for that purpose. That does not fit with
2 the, I don't think would fit with any subdivision in
3 my thinking. If you've got one, I would like to see
4 it. Where a property has been torn down and an
5 accessory building has been built to face a street,
6 and that's what he would have to do. That's why I
7 would like for you to allow me a little time. You
8 might come out ahead anyway. I would like to have a
9 little time to meet with counsel. Thank you.

10 MS. KNIGHT: Mr. Hayden, just to address your
11 concern about the notice. State law does require that
12 we provide written notice, which those are the letters
13 there were sent out on February 14th to all the
14 adjoining landowners. Those notices were provided.
15 This board meets once a month and at our hearings
16 that's what they're for, to present evidence, make
17 decisions on application. This board does have the
18 authority to approve or deny. They can postpone.
19 There's been a motion made to go ahead and approve.

20 Also just for your information, there is an
21 appeal process. There is information about that
22 appeal process on the back table right behind you as
23 you walk out the door. So just for your information.

24 MR. HAYDEN: Thank you. I was not aware of
25 that as I mentioned earlier. I'm not aware of any of

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1 the laws relating to these subdivisions and that would
2 be relating to any state laws that you abide by in
3 making your decisions. Thank you.

4 CHAIRMAN: We have a motion on the floor. Do
5 I have a second?

6 MR. YEISER: Second.

7 CHAIRMAN: Second by Mr. Yeiser. Are there
8 any questions on the motion?

9 (NO RESPONSE)

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

12 (ALL BOARD MEMBERS PRESENT - WITH FRED REEVES
13 RECUSING HIMSELF - RESPONDED AYE.)

14 CHAIRMAN: Motion carries. Thank you.

15 -----

16 ADMINISTRATIVE APPEAL

17 ITEM 3

18 901 East Ninth Street, zoned R-4DT Inner City
Residential

19 Consider a request for an Administrative Appeal to
relocate a non-conforming use on the subject property
20 by replacing the existing structure with a new
structure in a different location.

21 References: Zoning Ordinance, Article 4, Section 4.3
Applicant: Roy and Donna Gorman

22

23 MR. HOWARD: Fred is back with us at this
24 point.

25 So this application, we had one of these last

1 month or the month before. This is a similar thing.
2 This is an Administrative Appeal. So basically they
3 have a structure on the property right now that
4 predates the zoning ordinance. It's old. I believe
5 it was built in the '50s or whatever. They would like
6 to relocate it on the property. Put a new structure
7 on there and relocate the location. It's zoned
8 residential. It's a car lot right now. So based on
9 the zoning ordinance this the most advantageous avenue
10 for them to follow. I believe that they looked at the
11 potential of rezoning and doing some other things, but
12 just based on the size of the lot and the
13 configuration and buffers and all of that, rezone
14 wouldn't really work. Certainly a case could be made
15 that commercial zoning is more appropriate because
16 it's been used for that for so long, but based on the
17 logistics zoning ordinance-wise it doesn't really
18 work.

19 So they've requested to be able to relocate
20 the structure on the property. You all as a board may
21 take action on this tonight. If you believe that the
22 proposed relocation is in accordance with good
23 Planning and Zoning ordinance requirements, you can
24 vote yes. If you believe that this is not a good
25 idea, they shouldn't be allowed to relocate it, you

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1 vote no. Findings of fact are not required as part of
2 an Administrative Appeal. Of course, our Staff is
3 here and I know the applicants are here. If anybody
4 has any questions, we can answer those.

5 CHAIRMAN: And this is one of those items that
6 you couldn't sign off on?

7 MR. HOWARD: Right. We can't because they're
8 moving location of the structure. If they were
9 replacing -- I think it was kind of an odd size. If
10 they were taking the one that was there down and
11 putting something the exact same size up and the exact
12 same location, we could have permitted that through
13 the building office, but since it's being relocated on
14 the property and whatnot, we can't do it
15 administratively. It takes the approval of this board
16 to do so.

17 CHAIRMAN: Thank you.

18 Do either of you want to address this and then
19 we'll move on?

20 MS. GORMAN: I'm Donna Gorman with Gorman Auto
21 Sales.

22 (DONNA GORMAN SWORN BY ATTORNEY.)

23 MS. GORMAN: We had some water damage on the
24 building that was there and the insurance company
25 wouldn't insure it anymore so we had to remove the

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1 building, and we got another building to replace it.
2 Trey has a drawing on it, don't you.

3 MR. PEDLEY: It's on the screen.

4 MS. GORMAN: We were just going to move it
5 over just a little bit from where the other one was.
6 Basically this is what created what we're doing now.

7 CHAIRMAN: Thank you. We'll see what we can
8 do.

9 Any questions of Ms. Gorman?

10 (NO RESPONSE)

11 CHAIRMAN: I'll entertain a motion.

12 Mr. Jean.

13 MR. JEAN: Motion to approve based on the
14 Staff Report and with the two special conditions.

15 CHAIRMAN: We have a motion.

16 MS. MASON: Second.

17 CHAIRMAN: Second by Mrs. Mason. Any
18 questions on the motion?

19 (NO RESPONSE)

20 CHAIRMAN: All in favor raise your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries.

23 One more.

24 MR. GLENN: Motion to adjourn.

25 CHAIRMAN: Motion to adjourn by Mr. Glenn. Is

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1 there a second?

2 MS. MASON: Second.

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

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: We are adjourned.

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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 30th day of March, 2018.

18

19

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

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23 COMMISSION EXPIRES: DECEMBER 16, 2018

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25

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