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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

MARCH 1, 2001

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, March 1, 2001, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: Ward Pedley, Chairman
- Marty Warren
- Ruth Ann Mason
- Tim Miller
- Judy Dixon
- Gary Noffsinger,
- Planning Director
- Stewart Elliott
- Attorney

* * * * *

CHAIRMAN: Good evening. The Board of Adjustment will come to order. I would like to welcome everyone. Anyone wishing to speak tonight may do so. We ask that you step up to one of the podiums, state your name and be sworn in.

First item on the agenda is consider the minutes of the February 1, 2001 meeting. They're on file in the planning office.

Chair is ready for a motion to approve.

MS. DIXON: Move to approve.

MS. MASON: Second.

1 CHAIRMAN: We have a motion and a second.
2 All in favor raise your right hand.

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: It's unanimous.

5 Second item, please.

6 -----

7 CONDITIONAL USE PERMIT

8 ITEM 2

9 1 Executive Boulevard, in a B-4 zone (Map N-4)
10 Consider request for a Conditional Use Permit for
11 construction and operation of a marina facility for
12 docking of pleasure boats.
13 Reference: Zoning Ordinance, Article 8, Section
14 8.2K7, Article 18, Section 18-6(b)(2)(f)
15 Applicant: Executive Marina of Owensboro, Inc., John
16 V. Bays and David Howerton

17 MR. NOFFSINGER: Mr. Chairman, this
18 application has been reviewed by the Planning Staff.
19 It was advertised for public hearing at this time;
20 however, this application has not received approval
21 from the Corp of Engineers and Division of Water,
22 therefore the applicant is requesting that this item
23 be postponed until the April meeting of this board.

24 CHAIRMAN: The Chair is ready for a motion
25 for postponement.

MS. DIXON: Move to postpone.

MR. MILLER: Second.

CHAIRMAN: We have a motion and a second.

1 MS. MASON: This gentleman would like to
2 speak.

3 CHAIRMAN: Would you step up to the
4 podium, please.

5 MR. ELWOOD: Elwood.

6 (MR. ELWOOD SWORN BY ATTORNEY.)

7 MR. ELWOOD: The only question I have - -
8 I have no questions about the marina. I think it's a
9 good thing, but I have a question on will it cause
10 erosion of the banks at the VFW property or if not now
11 can we get some information from the Corp of Engineers
12 showing that it won't or would we have a recourse at a
13 later date if it does cause erosion to our property?

14 MR. NOFFSINGER: Excuse me, sir. At this
15 time the board is considering whether or not this item
16 should be postponed until the next meeting; therefore,
17 any questions you have they should pertain to whether
18 or not you would like to protest postponing the item
19 until the next meeting. I'm not sure - -I do
20 understand your question. I don't think we're ready
21 to give you an answer tonight and because this has not
22 been approved by the Division of Water or the Corp of
23 Engineers, I don't think that we're going to be able
24 to or the applicant can give you an answer to that
25 question tonight.

1 MR. ELWOOD: I'm just asking if we can get
2 some information even before the next meeting as to
3 what the Corp of Engineer if they approve it or
4 disapprove or what could happen at that property so we
5 can be prepared at the next meeting. I have no
6 opposition to the marina. Just protection for our
7 property if it should go in. Thank you.

8 CHAIRMAN: We have a motion and a second
9 for postponement. All in favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: That is unanimous.

12 ITEM 3

13 2900 Fairview Drive, in an A-U (Map N-56)
14 Consider request to amend a Conditional Use Permit for
15 a landscaping business approved on June 22, 1998, in
16 order to approve a revised site plan.
17 Reference: Zoning Ordinance, Article 8, Section 8.2H8
18 Applicant: James West

19 MR. NOFFSINGER: Mr. Chairman, this
20 Conditional Use Permit has been advertised for public
21 hearing at this time. All adjoining property owners
22 were notified. The Planning Staff has reviewed the
23 application and are prepared to comment on the
24 application tonight.

25 The request is an amended Conditional Use
Permit to allow a landscaping service business to
operate. The amendment includes a parking area that

1 will be located between the existing building and
2 Fairview Drive. The applicant is proposing to screen
3 that parking area with some shrubs from Fairview
4 Drive; however, the applicant is proposing that the
5 parking area be graveled and not paved. The applicant
6 is here tonight. Planning Staff is prepared to
7 comment. With that it's ready for your consideration.

8 CHAIRMAN: Anyone here wishing to speak on
9 behalf the the applicant?

10 MR. MALONE: Yes.

11 MR. ELLIOTT: State your name, please.

12 MR. MALONE: Phil Malone.

13 (MR. PHIL MALONE SWORN BY ATTORNEY.)

14 MR. MALONE: Mr. Chairman, Members of the
15 Board, this is an application for an amended
16 Conditional Use Permit and the reason we're here
17 tonight is because of the change in the site plan and
18 the relocation of the parking lot from the rear of the
19 building as originally proposed to the front of the
20 building.

21 As members of the board remember, we were
22 here last month in appealing the decision of the
23 building inspector which brought to the attention of
24 the board and the applicant that the parking
25 originally proposed in the rear of the building, which

1 at that time was to be graveled, had been relocated
2 and that there had been no approval for an amended
3 site plan. The board affirmed that decision. In
4 response to that we have filed this amended
5 application.

6 The site plan which is attached to our
7 application does show where the parking lot is now
8 presently located, it's been located there for over 18
9 months and it is graveled. It does show and let it be
10 proposed it would accommodate approximately ten
11 vehicles and the applicant's present use which is he
12 is engaged in a landscaping service which is a
13 commercial business that's defined in the Ordinance.
14 The definition of the landscaping business, which is
15 permitted in an A-U zone with a Conditional Use Permit
16 was adopted specifically to deal with the situation of
17 locating this business in this A-U zone. The reason
18 that the site plan was admitted was because the
19 applicant when he was constructing the business
20 incurred some drainage conditions, some sort of
21 drainage condition, so he moved the building back
22 further from Fairview Drive and also relocated the
23 parking lot from the rear to the front because
24 principally to provide additional security. He
25 realized that because if the parking were in the rear

1 that there would have to be extensive lighting back
2 there because it was very dark and he was concerned
3 about security. So there was some lighting proposed
4 in the front of the building. So it has been located
5 there.

6 We would submit to the board that, and we
7 assume Mr. Mischel is going to commend and recommend,
8 that the off-street parking area be paved.

9 Essentially I think that's the only question before
10 the board. We believe that there's no other reason
11 not to approve the amended site plan.

12 We would suggest to the board that it take
13 into consideration the fact that the guideline here
14 should be the ordinance which provides for the paving
15 of off-street parking areas where there's more than
16 five vehicles. That ordinance, which is in Article
17 13, provides that in all zones except an A-U zone, an
18 A-R zone or an E-X zone they have to be paved. So the
19 ordinance says that in an A-U zone an off-street
20 parking does not have to be paved and that's primarily
21 I believe to control dust.

22 We would submit that there has been no
23 complaints from any of the neighbors in the area.
24 Tonight I have to offer into the record an Affidavit
25 of Mr. Simon who does live next-door to the property,

1 is approximately 100 feet away. He would be the one
2 that would be - - approximately his residence is
3 closest to the parking area. He's been there for a
4 number of months. He states in his Affidavit he has
5 no objection to the way that the applicant has
6 operated the business. He sees that he has not
7 observed any excessive dust.

8 So we believe that this board should
9 consider that if it's being asked by the staff to
10 require this area to be paved that even though you
11 have that authority as the condition of approving this
12 site plan, it should consider are there any facts that
13 are going to be presented to you here tonight that
14 would require that that area be paved for the public
15 safety or health or welfare. That is your guide and
16 statutory principal.

17 Secondly, to require this area to be paved
18 is going to create I believe unnecessary and excessive
19 expense for the applicant. We will offer in the
20 record also that he's gotten estimates on having this
21 paved in areas from \$7,500 to \$9,500 to pave this
22 parking lot.

23 We'd also call to the board's attention
24 the fact that drainage in this community and county is
25 something of utmost importance. It's a significant

1 issue. It's now being confronted by this community.
2 Even though this small area, if it were paved,
3 probably won't really contribute to any faster
4 run-off. We would suggest to the board that it should
5 be aware that it would be we think arbitrary to
6 require this parking lot to be paved.

7 So for those reasons we would ask that the
8 board approve the amended site plan by bringing an
9 amended Conditional Use Permit, but not require the
10 parking area to be paved.

11 Thank you and let me offer these into the
12 record, if I may.

13 MR. NOFFSINGER: I have a question of Mr.
14 Malone.

15 MR. MALONE: Yes.

16 MR. NOFFSINGER: Mr. Malone, looking at
17 the site plan it appears, and I'll clarify this for
18 the record, that the gravel as originally for the
19 parking area that was shown on your original site plan
20 includes a gravel area that exists today to the side
21 of the buildings and to the rear of the building; is
22 that correct?

23 MR. MALONE: That is correct.

24 MR. NOFFSINGER: So your application, you
25 are not asking that the parking of this area be moved

1 from rear to the front. You're in fact asking for an
2 additional graveled area to be approved by this board
3 that's in front of the building between Fairview Drive
4 and the building. So you already had an existing
5 gravel area that you originally designated on your
6 plan to be of vehicular use area, plus you're adding
7 an additional graveled area to the site that this
8 board has not approved.

9 MR. MALONE: If I understand your
10 question, the additional gravel area is in the front
11 of the building which is shown on the site plan
12 submitted with the application as being a designated
13 to where parking places would be for company vehicles.
14 They would be parked there overnight.

15 MR. NOFFSINGER: Do these company vehicles
16 use the area to the side of the building and to the
17 rear of the building?

18 MR. MALONE: Mr. West can address that,
19 but I believe that they use that only for going in and
20 out of the building. There are three bays on the side
21 of the building which faces I guess to the south. So
22 there would be access to the bays of the building for
23 repair or if they were going to the rear of the
24 building to pick up something, but there's not use for
25 overnight parking area.

1 MR. NOFFSINGER: I guess the point I'm
2 trying to make is that you are actually expanding the
3 vehicular use area, whether you call it parking area
4 or vehicular use area, storage lot, you're expanding
5 the vehicular use area on this property by adding
6 additional area in front of the building that was not
7 considered by this board with the original Conditional
8 Use Permit.

9 MR. MALONE: That is correct.

10 MR. NOFFSINGER: In terms of adding or the
11 parking area of the vehicular use area being graveled,
12 the Planning Staff would recommend that the vehicular
13 use area located between Fairview Drive and at least a
14 minimum the front edge of the building be paved which
15 would be in line with other new businesses and uses
16 within that area. It's not only for dust control
17 reasons, but also it is typical in character to other
18 developments that are required to pave within the
19 area.

20 Back some time ago the Planning Commission
21 made an amendment to the Zoning Ordinance to allow
22 this type of activity to occur in an agricultural zone
23 to accommodate this particular business, this
24 particular use. The Daviess County Fiscal Court
25 adopted that ordinance and made it official where the

1 applicant could come before this board to have this
2 Conditional Use Permit heard to have this particular
3 use of this site. This site is in an urban area.
4 It's in an urbanized area and other developments
5 typically enjoy the paved parking.

6 It is true that the Zoning Ordinance does
7 waive the paving requirement in agricultural zones;
8 however, going back to we are considering a
9 Conditional Use Permit which this board has the right
10 to place conditions upon that Conditional Use
11 Permit. If they grant it, that would be in keeping
12 with other developments and new developments in the
13 area. Thank you.

14 MR. MALONE: If I may respond very briefly
15 to that.

16 We recognize as I previously stated this
17 board does have the authority for approving
18 Conditional Use Permits for particular types of land
19 uses which are specified in the ordinance which is in
20 this case land use of landscaping business to add
21 additional conditions that may be greater than what's
22 required in the ordinance which would be the paving,
23 but we would submit this board must have some facts
24 that would support why it's necessary to protect or
25 enhance the public safety health and welfare.

1 We don't believe that there can be any
2 facts offered here in this case that says this small
3 area where it's located if it's not paved is going to
4 create dust or some other problem. It's going to
5 effect surrounding property owners or the public. So
6 for that reason we believe that even though that the
7 staff may feel like that it should be paved because it
8 may look better or it may be comparable to other
9 areas, there are other areas - - the property directly
10 adjacent to this is an I-2 zone.

11 The whole reason that we are here and had
12 to go through this long laborious process of getting a
13 Conditional Use Permit was because of the decision
14 initially of this board to approve this as an I-2
15 zone, but because as a compromise so as not to expand
16 an I-2 zone. It has now been permitted as a
17 Conditional Use Permit.

18 So we would just submit that this board
19 should waive the economic hardship on the applicant
20 and what need is going to be protected to the public.
21 So we would submit that. You should weigh that very
22 carefully.

23 MR. NOFFSINGER: In addition to the dust
24 control issue, I would also offer into the record that
25 from the public health, safety and welfare standpoint,

1 the continuance of this vehicular use area being
2 graveled does pose a threat to the motoring public in
3 terms of gravel being scattered along Fairview Drive
4 from vehicles that are using this facility.

5 MR. MALONE: Mr. Noffsinger, I assume Mr.
6 Mischel is going to, he's been out there twice to
7 inspect this property, is going to testify and that
8 will be evidence in the record. I believe that those
9 are the kind of facts this board should rely upon.
10 Thank you.

11 MR. NOFFSINGER: Mr. Mischel.

12 MR. ELLIOTT: State your name for the
13 record, please.

14 MR. MISCHEL: Jim Mischel.

15 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

16 MR. MISCHEL: I would like to hand out
17 just a site plan of the original drawing that was
18 handed in just to give everybody an idea. It's been
19 awhile since we've visited this situation. I would
20 like to put one in the record too.

21 Essentially I think we've been over some
22 of this. I'm not going to repeat everything. We do
23 believe that that area in the front if the parking is
24 located vehicular use area is located in the front
25 should be paved and landscaped. I also would like to

1 state that we would like to mention that that private
2 lane should not be used for any type. His business
3 should not be using that private lane and that there's
4 no outdoor storage.

5 Just to give a little background because
6 at first it didn't come in front of this board. It
7 went to the Planning Commission for rezoning and the
8 Planning Commission did approve a rezoning of this
9 property and it was sent to Daviess County Fiscal
10 Court for their consideration. They sent it back.
11 They turned it down and sent it back to the Planning
12 Commission.

13 At that time, that was in August of '97.
14 In November of '97, the Planning Commission, the
15 Daviess County Fiscal Court and the City of Owensboro
16 tried to come up with a solution that would
17 accommodate his business. They did so to allow
18 landscaping service business to be located A-U zone
19 with the Conditional Use Permit.

20 Now, they have stated that an A-U zone
21 does allow for gravel parking. That occurred May
22 1996. The ordinance was changed to allow for graveled
23 parking in an A-U zone, but I would like to hand out
24 the recommendation that that was based upon for the
25 reason I think that will show you that it really

1 doesn't apply to this situation.

2 Like I said that was approved. In May of
3 '96 it was brought up. I would like to read part of
4 that. There was a Staff Recommendation. This states,
5 "The proposed text amendments concerning off-street
6 parking, building setbacks, and other provisions are
7 attached hereto (Page A-1 through A-17). Staff
8 recommends their approval based on the following
9 findings." I would refer to Number 2 Findings of
10 Fact. "Large parking areas are not typically
11 associated with uses permitted in agricultural zones.
12 Where large parking areas do exist in agricultural
13 zones, they are not likely to be paved due to lack of
14 enforcement. The Board of Adjustment, in approving
15 any conditional uses that are permitted in
16 agricultural zones, has the authority to require paved
17 parking if deemed warranted."

18 Go to Page 2. I have highlighted there,
19 "Paving of parking areas in agricultural zones.
20 During the Daviess County Fiscal Court's review and
21 adoption of the bed-and-breakfast zoning regulations,
22 the Court expressed its desire that B&Bs with parking
23 areas serving five (5) or more vehicles not be
24 required to pave those areas, as is currently required
25 by regulation. Planning Staff pointed out that the

1 current paving requirement was not routinely enforced
2 in rural areas for any parking area. With that in
3 mind, staff proposes that paving not be required for
4 any parking areas in agricultural zones, finding that
5 the large parking areas are not typically associated
6 with uses permitted in agricultural zones; where large
7 parking areas do exist in agricultural zones, they are
8 not likely to be paved due to lack of enforcement;
9 and, the Board of Adjustment, in approving any
10 conditional uses that are permitted in agricultural
11 zones, has the authority to require paved parking if
12 deemed warranted."

13 I think at the time everybody was
14 concerned with the bed-and-breakfast, that they keep
15 their setting, rural setting on paving. Their idea
16 was not for commercial businesses not to pave. If
17 that was the case, I think they would have just
18 allowed landscaping services to be approved in an A-U
19 zone period, but they did so with Conditional Use
20 Permit require.

21 In that last sentence it says to require
22 paved if deemed warranted. I think that's why it was
23 put in there so if these businesses did go in A-U zone
24 it would be some form to pave and landscape outdoor
25 storage, answer all those questions.

1 Also in 1996 the street classification,
2 Fairview Drive it was updated in the Zoning Ordinance
3 that shows Fairview Drive being updated from a major
4 collector to a minor arterial street.

5 Basically a collector, definition of a
6 collector is it's mainly serving a traffic generated
7 in that general vicinity, for those neighborhoods in
8 that vicinity. When they updated it to a minor
9 arterial, basically that says that it serves as a
10 traffic connection for the whole community and it's no
11 longer just for that vicinity. It's for the whole
12 community and it has upgraded. There's a lot of
13 traffic on the road. There's been a lot of
14 development and there will continue to be a lot of
15 development on that road. We feel like to keep more
16 in an urban setting, not the rural setting, as
17 important to proper paving these areas and landscape
18 at this time.

19 I think in closing basically we believe,
20 the staff believes that in this urban area with the
21 street classification being updated to a minor
22 arterial. I believe that it's important to go ahead
23 and pave these areas and to landscape it. The area
24 that is paved should drain properly if it's done
25 according to, you know, if it's engineered properly it

1 will drain.

2 I also have concerns about this area not
3 being used for outdoor storage and that private lane.
4 That's part of it. I've had some neighbors to call me
5 to say that this private lane has been used for leaves
6 to be taken up through the private lane onto an
7 applicant's property. I have not seen it myself, but
8 I think they might be here to discuss that problem.
9 That's all I have right now.

10 CHAIRMAN: Jim, I have a question of you.
11 Our original granting of the Conditional Use Permit
12 was that in there that the private lane would not be
13 used to serve that area.

14 MR. MISCHEL: Yes.

15 CHAIRMAN: That was in the original.

16 MR. MISCHEL: The private lane and the
17 outdoor storage. I handed out that site plan that
18 showed the parking in the rear. During the minutes or
19 during the meeting it was stated that the parking is
20 there in the rear. It didn't show it out front. That
21 was brought to our attention in the past. We went out
22 to check it to make sure it did and gravel parking is
23 there.

24 I don't think this board, I don't think
25 the staff, if the staff had known parking was going to

1 be in the front, we wouldn't have raised objections
2 then. We would have asked, you know, this type of
3 setting it's just not that rural. I think when this
4 law was changed in '96, it was more for like the rural
5 type setting, bed-and-breakfast, things of that
6 nature.

7 I would like to put this handout of the
8 Staff Recommendations into the record.

9 MR. MALONE: Mr. Chairman, may I make just
10 a brief rebuttal on that?

11 CHAIRMAN: Sure.

12 MR. MALONE: We would point out that on
13 the site plan attached to the application the parking
14 area is shown from the center or the edge of Fairview
15 Drive to the building is 110 feet and there is a
16 buffer between where the landscaping easement would go
17 and the highway. We would resubmit that there's been
18 no evidence to offer this evening to show that there's
19 any threat to the traveling public on Fairview Drive
20 from any gravel that may be scattered out on the
21 highway.

22 Secondly, there isn't any question that we
23 are, if I understand, that one of the conditions would
24 be that there will be landscaping as a buffer in the
25 front of the off-street parking area. The two

1 conditions Mr. Mischel referred to, which is the
2 restriction on no use of private drive for the access
3 to the rear of the property was the condition of the
4 original Conditional Use Permit and we assume that the
5 board would re-enact that as a part of this amended,
6 bringing those conditions forward.

7 We would also point out to the board that
8 the Staff Recommendations that Mr. Mischel referred to
9 that was apparently the rationale for changing the
10 ordinance and waiving the requirement for paving in an
11 A-U zone where they talk about large parking lot
12 doesn't usually occur in the agricultural zone. This
13 again is a good case. This is not a large parking
14 area, particularly the use of standard of five or more
15 and they use the example of the bed-and-breakfast.

16 So we have an unusual anomaly here if Mr.
17 West were operating a bed-and-breakfast at that
18 location and he had seven parking places for overnight
19 guests. It wouldn't be required to be paved because
20 he has a landscaping business where it's primarily his
21 own vehicles that are parked there overnight.

22 The staff is not saying, well, it should
23 be paved because it would be more like the other part
24 of the area. So that seems to me they're saying the
25 basis of the recommendation of the staff is that the

1 paving is for appearance for no other reason. We
2 submit for this board to require that even though it
3 may believe it is exercising good judgment is going to
4 be arbitrary because there's no fact to support that
5 and it's going to require an unjustified economic
6 hardship. We appreciate the board giving that serious
7 consideration. Thank you.

8 CHAIRMAN: Anyone wishing to speak in
9 opposition of this item?

10 MR. MISCHEL: I would like to make a
11 statement. I believe that that area is a pretty good
12 size parking area. If you take the front, the side
13 and the rear, I mean right now there exist gravel at
14 the rear, up the side and the front. When we say five
15 or more parking spaces, we're talking about vehicle
16 use area. Not just the parking spaces. We're talking
17 about the drive lanes, parking areas. When you take
18 all that in consideration what they have out there
19 right now, that is a pretty good size area.

20 Also when we put in there that it's
21 approved A-U zoned Conditional Use Permit, that's to
22 safeguard some of the area that's going into to
23 protect it with buffer, with paving. Like I said
24 there's areas that the area is going to grow and
25 develop more. You'll see these sites being paved and

1 landscaped. I think it's keeping within the
2 neighborhood.

3 CHAIRMAN: Yes, sir.

4 MR. ELLIOTT: State your name, please.

5 MR. CLARK: James Clark.

6 (MR. JAMES CLARK SWORN BY ATTORNEY.)

7 MR. CLARK: I just want to make a comment
8 that the parking out front, and I'm a landowner
9 adjoining Mr. West. I'm at 2868 Fairview Drive. My
10 property and his property adjoin down on the frontage
11 there on Fairview. My home is offset by I'm saying
12 approximately 800 feet off of Fairview Drive. As far
13 as seeing that it needed to be paved, I have no, you
14 know, advice on that. He's been a good neighbor.

15 Now, as far as, like I am saying, as far
16 as paving the front there I don't know see what the
17 purpose of that would help. Like I say I'm back and
18 there's no dust. Then Mr. Simon like he said is the
19 closest home to the property, the West property, he
20 had an Affidavit that said that he had no complaints.
21 I'm just saying as a neighbor and he's been a good
22 neighbor to us.

23 The usage of the road now, I mean if he
24 drove a vehicle back that road my only request was,
25 you know, drive slow. As far as anything else, I have

1 no complaints if they did use that road for any
2 reason. I have no complaints other than slowly drive
3 because of grandchildren and stuff playing on the road
4 and to hold down the dust on the private road.

5 That's all I can say. He's been a good
6 neighbor. He's made a ditch down through there. As
7 far as drainage between his property and mine right on
8 the line, it's helped significantly. It's done real
9 good on the drainage of that land in there. A lot of
10 times before and after, that property before was
11 really just swampy, but now that he's done what he's
12 done to revise the drainage and everything I think
13 he's done a darn good job.

14 On our behalf, my wife Nancy and I, I
15 don't think she - - I don't know if she's got anything
16 further to say than what I've said. We both voice our
17 own opinions, you know. With that I want to thank you
18 for your time.

19 CHAIRMAN: Thank you.

20 MR. ELLIOTT: State your name, please.

21 MRS. CLARK: Nancy Clark.

22 (MRS. NANCY CLARK SWORN BY ATTORNEY.)

23 MRS. CLARK: As far as Mr. West, he keeps
24 his trucks nice and neat, parked at an angle. They're
25 always clean and appropriate. They're never running

1 up and down the road. Usually in the summertime we've
2 been watching them, they go out early in the mornings
3 and they're gone. They're not running in and out of
4 there constantly. They come in early, leave out early
5 and come in late.

6 As far as the gravel on them, there's no
7 sense of paving. As far as you could see, there's
8 gravel on the highway. You go down any county road,
9 you're going to see that. It's going to come out.
10 The private lane gravel comes out onto the blacktop.
11 State garage, the gravel comes out on the blacktop.
12 So you're going to get that anywhere and everywhere.
13 As far as blacktopping it, I don't see any sense in
14 it.

15 Besides that'd probably just invite kids
16 from across the street to come and play on blacktop.
17 That's all I have to say. I have no complaints with
18 Mr. West.

19 CHAIRMAN: Anyone else wishing to speak on
20 this item in opposition?

21 MR. ELLIOTT: State your name, please.

22 MR. MCPHERSON: Virgil McPherson.

23 (MR. VIRGIL MCPHERSON SWORN BY ATTORNEY.)

24 MR. MCPHERSON: As far as neighbors, we
25 don't have no complaint about it. Our complaint is

1 using the lot next to ours up there as a dumping area
2 for his trash. I have some pictures here to show you
3 here.

4 CHAIRMAN: Is that the only complaint you
5 have?

6 MR. McPHERSON: Yes, sir. That and
7 because you know what this brings on. This brings on,
8 you know, rats and stuff like that if that stuff stays
9 up there. That's, what, within 20 foot of my house.

10 MR. NOFFSINGER: I have a question of Mr.
11 McPherson, please.

12 Mr. McPherson, you have two pictures here
13 that show a large truck using a gravel drive. Would
14 you explain to the board the location of where that
15 picture is taken? Is that on the subject property?

16 MR. McPHERSON: This is next to my
17 property right here, within ten foot of where that
18 dumping is at.

19 MR. NOFFSINGER: This gravel lane that I
20 see, this gravel area, is this the private lane we've
21 been speaking about or is that a drive lane on his
22 property?

23 MR. McPHERSON: This is the private lane
24 here and that little spot there goes back to his
25 property.

1 MR. NOFFSINGER: So that would be - - is
2 it Fairview Heights Lane?

3 MR. McPHERSON: Right.

4 MR. NOFFSINGER: That appears they're
5 using with their vehicles which was a condition,
6 specific condition that that lane not be used.

7 MR. McPHERSON: Right.

8 MR. NOFFSINGER: Do you have any concerns
9 regarding the use of that lane by the business
10 vehicles?

11 MR. McPHERSON: Sure. It's a private
12 lane. It's not commercial lane. We have to take care
13 of that.

14 MR. NOFFSINGER: So you have two issues.
15 One, the use of that private lane; and then two, the
16 storage areas or over the storage areas.

17 MR. McPHERSON: I have no complaints about
18 his business down front.

19 CHAIRMAN: Do you have any more comments?

20 MR. McPHERSON: That's all I have.

21 CHAIRMAN: Thank you.

22 Anyone else wishing to speak?

23 Mr. West, I'd like to get you up.

24 MR. MALONE: I was going to say, Mr.

25 Chairman, may we look at that picture and Mr. West

1 will be glad to testify about it. If you do recall
2 for the board the last time we were here, I believe
3 Mr. McPherson did come forward with those complaints
4 and I believe the board after considering those that
5 that was something that's not specifically within this
6 board's responsibility; although the use of the lane
7 certainly is an issue and Mr. West will be glad to
8 address that.

9 Essentially what I think he will tell you
10 is that in the past he has used some fill material to
11 fill in some low areas in the back of that lot.
12 He'll be glad to testify to that if the board would
13 like to hear that, but we would remind the board that
14 I believe the last time you thought that was a matter
15 that really should be considered by some other body.
16 Mr. Clark can also verify that. The board wants to
17 hear Mr. West. We would like to look at the pictures
18 so he could try to address it.

19 CHAIRMAN: We would and I think the
20 neighbors would like to hear also from Mr. West.

21 MR. MALONE: Could you show us the picture
22 that's been introduced into evidence? The one that he
23 identified, I believe. The others have not been
24 identified. We don't know when or where they were
25 made.

1 (MR. MALONE AND MR. WEST REVIEW
2 PHOTOGRAPHS.)

3 MR. ELLIOTT: State your name, please.

4 MR. WEST: Jim West.

5 (MR. JIM WEST SWORN BY ATTORNEY.)

6 CHAIRMAN: Would you respond to the
7 neighbors concerns on the dust.

8 MR. WEST: Yes. When we're dumping up
9 there what we've been doing is approximately, what,
10 three acres up there. You drive up there the land is
11 flat and there's a big drop off right there and
12 there's a dip right there in front. There's a little
13 pond up there. We've been backfilling that. Like
14 we'll dump up there in probably two weeks. We'll go
15 up there with a tractor and push it down and level it
16 up. I've talked to the neighbors, the Clarks, and
17 told them exactly what we were doing.

18 The land was all grown up when we bought
19 that up there. Nothing but woods. Cleared all of
20 that off. We have done nothing but improvement on the
21 land. Since they brought it up to my attention about
22 the dumping up there, we haven't dumped up there. The
23 last load we took a load of leaves up there probably a
24 month, month and a half ago.

25 I told the guys to be sure not to dump up

1 there no more. What we were doing anyway was just
2 dumping. We would probably dump two to four loads a
3 week up there on top of the hill, push it down. I've
4 had the city come out there already to look at it.
5 They said what I was doing was nothing illegal at all.
6 I don't understand what the problem is, but as far as
7 to the neighbors, you know, he had a problem with it
8 so we quit doing it. It's not even an issue any
9 longer as far as I'm concerned.

10 I think the Clarks, you can talk to them,
11 what I was doing. There's a big dip down there. It's
12 close to their land. They've seen me on the tractor a
13 million times pushing it down and leveling it off.
14 That's what we've been doing. Once we get it filled
15 in, that's it. I mean that's all we're doing anyway
16 is just backfilling the low area by the pond.

17 CHAIRMAN: I notice you're parking your
18 utility trailers out in the front near the road.

19 MR. WEST: Yes.

20 CHAIRMAN: I have a problem with that.
21 Some of the neighbors across the road in Brookhill
22 Subdivision has a problem with that. You could park
23 those in the rear, couldn't you?

24 MR. WEST: Yes. Trailer, yes. It just
25 makes it easier to hook on to them getting out right

1 there.

2 CHAIRMAN: Any board members have any
3 questions of Mr. West?

4 (NO RESPONSE)

5 MR. ELLIOTT: You need to restate your
6 name.

7 MRS. CLARK: Nancy Clark.

8 My parents owned that piece of property
9 and we sold it to Mr. West. I've lived there I'm
10 going to say forever. Let's just put it that way.

11 When Mr. West bought that property from my
12 mother, like he said it was nothing but grown up with
13 blackberry bushes, thickets, you name it, everything.
14 Now it's very nice. I mean you want pictures, I can
15 go get you pictures showing you what it did look like
16 before Mr. West took it over. He does go up there and
17 he does dump out stuff to landfill it in order to make
18 the land. That property went down like that.

19 Most people don't know that's an old
20 abandoned coal mines back there. Most of that is
21 where it's coming from. How many of you all knew
22 that? He's filling that in and it's making it look
23 100 percent better than what it was when he bought it
24 four years ago or three years ago - I don't even know
25 how long now - before my mother died. He's doing a

1 super job.

2 As far as rats, I say the rat population
3 is coming from the I-1 section next to us, the one
4 next to it. If you look at that, you've got concrete
5 that's been out there for - - I've been there in the
6 new house for 20 years. It's been there forever.
7 Ever since Peters came there, ever since AT and
8 whatever it is next-door to us now. That's where your
9 rat population is coming from because that's never
10 been cleaned up.

11 Mr. West does keep his clean. I think you
12 need to check on those companies to see if they can't
13 do a little bit of clean up over there. Old abandoned
14 buses and everything else. Mr. West has filled in
15 that part. He mows it. He keeps it mowed constantly
16 and it's nice and it's neat. As far as trash burning,
17 you see everybody up and down there burning their
18 leaves, burning their wood when they cut down a tree
19 or whatever. Everybody is burning out that way.

20 I have to say Mr. West does keep that area
21 clean and he is backfilling that place in. It was a
22 very big ditch. Like I said I've got old pictures
23 when I lived up there in the old house. If you'd like
24 to see them, I can show you what the place used to
25 look like. Thank you.

1 CHAIRMAN: Thank you.

2 MR. WEST: As far as dumping up there,
3 probably nine months ago someone came from the city
4 out there, someone called, you know, and I took him up
5 there. I thought I was doing everything okay. I even
6 took him up there. He said, you're not doing anything
7 wrong. It's leaves and dirt. We're dumping and it's
8 probably three or four loads a week if that. Some
9 weeks not any.

10 CHAIRMAN: Anyone have any questions for
11 Mr. West?

12 MR. ELLIOTT: Restate your name.

13 MR. MCPHERSON: Virgil McPherson.

14 I have no problem with him filling that
15 ditch he's talking in if he fills it in with dirt, but
16 all you know, everybody here knows that you don't fill
17 in a ditch with grass and leaves.

18 CHAIRMAN: Thank you.

19 You have any more comments, Mr. Mischel?

20 MR. MISCHEL: I would just say again I
21 believe that road being updated to a minor arterial is
22 still important. If you take a road such as Southtown
23 Boulevard, Carter Road and J.R. Miller, that's the
24 same classification. That's a minor arterial as
25 Fairview Drive. A lot of traffic goes through there.

1 I think in the future it's going to be developed even
2 more. I think it's important for a minor arterial
3 street to be upgraded as far as paving.

4 CHAIRMAN: Any board members have any
5 questions?

6 (NO RESPONSE)

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

9 MR. NOFFSINGER: Mr. Chairman, before you
10 do that I would like to remind the board that whatever
11 the recommendation would be that you make sure you tie
12 any conditions to that recommendation that may have
13 been a part of the original approval and/or any new
14 conditions. You need to be specific on those
15 conditions.

16 MR. MILLER: Mr. Chairman, I just wonder
17 what Mr. Noffsinger is saying, I wonder if you could
18 run back through the conditions of the original
19 Conditional use Permit.

20 MR. NOFFSINGER: Would you like to do that
21 or would you like that and the staff's recommended
22 conditions and then go from there?

23 MR. MILLER: Yes.

24 MR. NOFFSINGER: With that staff would
25 recommend approval subject to the following

1 conditions:

2 (1) The private lane, which I believe is
3 Fairview Heights Lane, shall not be used in
4 conjunction with this business.

5 (2) Screening along the south property
6 line with evergreen trees five feet tall and planting
7 space 25 feet apart.

8 (3) No outdoor storage on the site.

9 (4) Vehicular use area shall be paved
10 from Fairview Drive to the front edge of the building.

11 (5) Installation of a minimum 3 foot high
12 continuous element and one tree per 40 feet along
13 Fairview Drive.

14 MR. MILLER: Mr. Chairman, Mr. Noffsinger
15 just saved me a lot of work. I make a motion that the
16 Conditional Use Permit be approved with the conditions
17 as set forth by staff.

18 MS. DIXON: Second.

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

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: That's unanimous.

23 Next item, Mr. Noffsinger.

24

25

1 ITEM 4

2 3825 Riverside Drive, in an R-1A zone (Map N-36)
3 Consider request for a Conditional Use Permit for
4 construction of a private boat dock and stairs to
5 descend to the Ohio River.

6 Reference: Zoning Ordinance, Article 18, Section
7 18-6(b)(2)

8 Applicant: David Howerton and Georgine Howerton

9 MR. NOFFSINGER: Mr. Chairman, this
10 application has been advertised for public hearing at
11 this time; however, we do have a request from the
12 applicant that the item be postponed due to this
13 application has not received approval from the Corp of
14 Engineers. It has not been approved by the Division
15 of Water. We recommend that you consider postponing
16 this item until the April meeting of the Board of
17 Adjustment.

18 MS. DIXON: Move to postpone.

19 MS. MASON: Second.

20 CHAIRMAN: We have a motion and a second
21 to postpone. All in favor raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: That's unanimous.

24 Next item, Mr. Noffsinger.

25 -----

 VARIANCES

26 ITEM 5

27 3313 Bryant Court, in an R-1B zone (Map N-23)

1 Consider request for a Variance to reduce the rear
2 yard building setback from 20 feet to 13 feet and 4
3 inches in order to construct a sunroom addition.
Reference: Zoning Ordinance, Article 8, Section
4 8.5.7(e)
Applicant: Steve and Rebecca Raymer

5 MR. NOFFSINGER: Mr. Chairman, this
6 application has been reviewed by the Planning Staff.
7 It's found to be in order. It has been advertised for
8 public hearing at this time and all adjoining property
9 owners have been notified. It is a request to
10 encroach upon the rear yard setback by about 7 feet.
11 This property is located in Owen Park Subdivision, a
12 plat of which was approved right around 1989, 1990.
13 It is a newer residential subdivision. Plan
14 development for the pattern of the lots was defined
15 and marketed as well as being a plan development.
16 Planning Staff is not aware of any setback
17 encroachments within the area. With that it's ready
18 for your consideration.

19 CHAIRMAN: Anyone here wishing to speak on
20 behalf of the applicant?

21 MR. ELLIOTT: State your name, please.

22 MR. RAYMER: Steve Raymer.

23 (MR. STEVE RAYMER SWORN BY ATTORNEY.)

24 MR. RAYMER: First off the address is 3313
25 Bryant Court. I brought this to the attention of the

1 variance board by phone. They re-advertised it and
2 corrected the address in the paper. All the neighbors
3 I've spoke with, they pointed out the address was
4 wrong and it's wrong again tonight. It is 3313 Bryant
5 Court.

6 We're asking for this. We just purchased
7 this house in July 2000. Have a really small rear
8 lawn. There's 25 feet from the back of the house to
9 the existing property line. The proposed room
10 addition won't cause any problem to any of my
11 neighbors. It will not encroach upon any utility
12 easements. The only utilities in the rear are
13 telephone. Electric, water, and gas, and sewer are
14 all in the front lot. The cable TV is on the side
15 lot.

16 We ask this board to consider - - this
17 particular street, Bryant Court, we have the smallest
18 lot. Most the lots there have, besides my next-door
19 neighbor, he's the same size as mine, but the rest of
20 the lots have a really deep lot. This one is very
21 short. The sunroom, there is seven sunroom additions
22 in this neighborhood. There is one particular sunroom
23 addition on Rodgers Court that only has a nine feet
24 from the back of the sunroom to the back lot. We ask
25 that you consider that. That's all I have to say.

1 CHAIRMAN: Thank you.

2 Anyone here wishing to speak in
3 opposition?

4 (NO RESPONSE)

5 CHAIRMAN: Staff have any comments?

6 MR. NOFFSINGER: Mr. Chairman, the
7 Planning Staff in review of this application could
8 find no setback encroachments on Bryant Court. Again,
9 this is a newer residential subdivision that was laid
10 out recently and laid out in line with the
11 requirements of the Zoning Ordinance and subdivision
12 regulations. Being that there are no other known
13 encroachments within this area, more particularly on
14 Bryant Court and being that we find no special
15 circumstances or no hardship, we would recommend that
16 it not be approved because it will allow unreasonable
17 circumvention and requirements of the zoning
18 regulations.

19 CHAIRMAN: Any board members have any
20 questions?

21 (NO RESPONSE)

22 CHAIRMAN: Chair is ready for a motion.

23 MS. DIXON: Mr. Chairman, move to deny
24 because it will allow an unreasonable circumvention
25 with the requirements of the Zoning Ordinance and

1 that there are no special circumstances and it would
2 not create a hardship.

3 CHAIRMAN: We have a motion for denial.

4 MR. WARREN: Second.

5 CHAIRMAN: We have a second. All in favor
6 of the motion raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: That is unanimous.

9 Next item.

10 ITEM 6

11 501 Ford Avenue, in an R-1A zone (Map N-9)
12 Consider request for a Variance to reduce the side
13 street yard building setback along McCreary Avenue
14 from 25 feet to 17 feet in order to construct an
15 addition.

16 Reference: Zoning Ordinance, Article 8, Section
17 8.5.5(c)

18 Applicant: Michael E. Pike

19 MR. CHAIRMAN: Mr. Chairman, this
20 application has been reviewed by the Planning Staff.
21 The application is found to be in order. It has been
22 advertised for public hearing at this time and all
23 adjoining property owners have been notified.

24 Mr. Chairman, this application was before
25 this board a couple of months ago. They were
26 requesting a much greater setback than they are
27 tonight. They are proposing an addition to the
28 property surrounding an existing covered porch. The

1 applicant is here tonight to present his case. With
2 that it's ready for your consideration.

3 CHAIRMAN: Anyone wishing to speak on
4 behalf of the applicant?

5 MR. ELLIOTT: State your name, please.

6 MR. PIKE: Michael Pike.

7 (MR. MICHAEL PIKE SWORN BY ATTORNEY.)

8 MR. PIKE: I believe that all of you are
9 familiar with our property from the past request for
10 variance.

11 Tonight we're asking to reduce the setback
12 along McCreary Avenue side to 17 feet to 25 feet.
13 What we have is an existing 8 foot screened in porch
14 on the side of the house that needs to be replaced. I
15 think at this time it extends 5 foot beyond the 25. I
16 think it's at 20 foot right now from the property
17 line. That house was built in 1934 before the zoning
18 ordinances went into effect that are in effect now.

19 We would very much like to build an
20 enclosed room there due to we don't feel like that
21 screened in porch is really a usable item in that
22 area. We have a high school there. We have a lot of
23 traffic. We have parents waiting for kids beside our
24 house in the afternoon with motors running, this and
25 that. You can't use it during the ball games and

1 things like that. There's a lot of noise.

2 We're wanting to build an enclosed space.

3 In order to build an enclosed space, what we had asked
4 for before was we were going to build a large room and
5 had a lot of options or whatever. Tonight we're back
6 asking what we feel like is a minimal usable space.

7 We're asking that we build a 11 foot addition which
8 once you take out for brick and insulation and stuff
9 and whatever, it give us about a 10 foot room.

10 In that 10 foot area we do have a
11 fireplace from the living room that sticks out into
12 that area about 18 inches. So if we want to be able
13 to put any type of furniture and still walk by, you
14 know, 10 foot would really be a minimum inside area we
15 would need. We don't feel like there would be a
16 hindrance to anyone in the neighborhood.

17 Our lot is such a size that we cannot go
18 build to the back. We don't have as deep a lot as
19 most the surrounding homes. So that's the only way we
20 can go as far as that. We don't feel like it's
21 feasible or cost efficient to build an enclosed space
22 back on the existing footer because it wouldn't be a
23 usable room and we don't feel like that building a
24 screened porch is cost efficient either. We do feel
25 like that it would create a hardship on us if we can't

1 use this variance.

2 CHAIRMAN: Any board members have any
3 questions of Mr. Pike?

4 (NO RESPONSE)

5 CHAIRMAN: Thank you, Mr. Pike.
6 Anyone wishing to speak in opposition of
7 this item?

8 MR. ELLIOTT: State your name, please.

9 MR. MEHLBAUER: Tony Melbauer.

10 (MR. TONY MEHLBAUER SWORN BY ATTORNEY.)

11 MR. MEHLBAUER: I'm not here to speak in
12 opposition to the Pikes. I live across the street
13 from them on Ford Avenue, 412 Ford Avenue.

14 I'd just like to offer my support to the
15 Pikes. They take very good care of their property.
16 Their sunroom that they have now is in bad shape of
17 repair. Myself, our house has an enclosed room on the
18 side. The properties along McCreary and Ford Avenue
19 all very much different than most and I think that it
20 makes a nice cozy neighborhood. I'm certain that the
21 Pikes would build an addition which would help with
22 the neighborhood as far as the looks go. I'm just
23 here to offer my support. Thank you.

24 CHAIRMAN: Thank you.

25 Any board members have any questions?

1 (NO RESPONSE)

2 CHAIRMAN: Chair is ready for a motion.

3 MR. MILLER: Mr. Chairman, motion to
4 approved based on the fact the strict application of
5 the regulations would deprive the applicant reasonable
6 use of his property and will not allow unreasonable
7 circumvention of the requirements of the zoning
8 regulations.

9 MS. DIXON: Second.

10 CHAIRMAN: We have a motion and a second.

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

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: It's unanimous.

14 Mr. Noffsinger, next item.

15 ITEM 7

16 1717 Freeman Avenue, in an R-1A zone (Map N-9)
17 Consider request for a Variance to reduce the side
18 yard building setbacks from 10 feet to 7.5 feet in
19 order to construct a new single-family residence.
Reference: Zoning Ordinance, Article 8,
Section 8.5.5(d)
Applicant: Homes by Benny Clark, Inc.

20 MR. NOFFSINGER: Mr. Chairman, this
21 variance application has been advertised for public
22 hearing at this time. Adjoining property owners have
23 been notified. Planning Staff has reviewed the
24 application and found the application to be in order.
25 The applicant is here and ready to speak and with that

1 I'll say no more.

2 MR. ELLIOTT: State your name, please.

3 MR. CLARK: Benny Clark.

4 (MR. BENNY CLARK SWORN BY ATTORNEY.)

5 MR. CLARK: Tonight I come before you to
6 ask for this variance, two and a half foot on each
7 side yard, to allow me to build a larger home,
8 approximately four foot in width. I'm asking for five
9 foot as you see on the application. Most of the homes
10 that I build, and I've been building for about 20
11 years here in Owensboro, are 40 foot wide. I brought
12 some renderings of homes and character that I build.

13 The existing lot would only allow me at
14 this particular time to build a product 36 foot wide.
15 I'm asking for the additional two and a half foot on
16 each side to be able to allow me to build a little
17 more compatible product.

18 In asking for this and looking at the
19 immediate neighbors on both sides, immediately to the
20 north off of Griffith Avenue I have a home with a
21 detached garage. This particular garage is 24 inches
22 from the property line. The overhang which overhangs
23 about 18 inches is within 6 inches of the property
24 line. I have some exhibits here.

25 The home on the north side, for example,

1 the home next to it, the existing home, there's only
2 30 inches between his property line and the next
3 property line which I hold up here and I'll be glad to
4 give this for review. That is a lot closer than what
5 I'm asking for because even after my product would be
6 built, I would still have 13 foot after the product is
7 built between me and the existing neighbor on the
8 north side. Then I would have approximately 13 to 14
9 foot on the south side and 10 foot on the north side.
10 Looking up and down the street, there is several homes
11 that have probably three to five foot side yards. I
12 still would basically have seven and a half foot on
13 the property line as well as the neighbor who has six
14 and a half foot. My request tonight is just to build
15 a little more larger product.

16 The character of my homes are in keeping
17 with the tradition of the neighborhood. I think that
18 it would only enhance the value of the neighborhood to
19 be able to allow me to build a product 40 foot wide
20 instead of 36 foot wide. I build a lot of what I call
21 empty-nester homes which requires a little larger
22 hallway, three foot doors, accessibility. Forty foot
23 allows me to do that and that is my request tonight.

24 Would you be interested in viewing these?

25 MR. ELLIOTT: Show the commissioners and

1 then put them in the record, Benny.

2 (MR. CLARK HANDS OUT MATERIAL.)

3 MR. CLARK: The collateral material that I
4 just handed the chairman is a blow-up shot of the
5 neighbor's home on the north side which shows that
6 there would still be an additional 13 foot, and I
7 wrote that on there, after the structure is built.
8 Then one particular handout shows the north side
9 neighbor's garage which is two foot off its property
10 line. The three cutter renderings are a sample of a
11 home that we propose that we probably would build and
12 the architecture of that particular house.

13 That's all I have, Mr. Chairman.

14 CHAIRMAN: Thank you, Mr. Clark.

15 Anyone else wishing to speak for Mr. Clark
16 on this item?

17 MR. ELLIOTT: State your name, please.

18 MS. BULLOCK: My name is Loni Bullock.

19 (MS. LONI BULLOCK SWORN BY ATTORNEY.)

20 MS. BULLOCK: I've recently purchased a
21 home at 1811 Freeman Avenue. I'm doing extensive
22 remodeling in that home. It's not my primary
23 residence. I'm renting it to my daughter. However,
24 I'm also not just a homeowner in that area, but I'm
25 also a real estate professional in Owensboro. I feel

1 I have qualified knowledge of market values of homes.

2 I wish the lot was next-door to my little
3 home. I'd love to have Benny Clark build a new home
4 next to me.

5 When we were talking about the space
6 between the homes, the home on the north side of 1811
7 Freeman is less than ten feet away from my house. I
8 mean they look right into my daughter's living room.
9 I think that just the nature of that neighborhood
10 calls for the homes being close.

11 Also I have an quite extensive knowledge
12 of the homes that Benny builds. I've not only sold a
13 lot of his new construction homes, but I've also lived
14 in Benny Clark homes. I know that what he's going to
15 build on that lot is going to be of quality product
16 and it can do nothing but increase the value of the
17 rest of the homes in that neighborhood and I think
18 that's what we all want. If I could say anything to
19 the other neighbors I would say, you know, yea Benny
20 Clark because he's going to help the values of our
21 neighborhood. Thank you.

22 CHAIRMAN: Anyone else wishing to speak on
23 Mr. Clark's behalf?

24 (NO RESPONSE)

25 CHAIRMAN: Anyone wishing to speak in

1 opposition?

2 MR. ELLIOTT: State your name, please.

3 MR. WELLS: Bobby Wells.

4 (MR. BOBBY WELLS SWORN BY ATTORNEY.)

5 MR. WELLS: I'm a resident at 1723 Freeman
6 Avenue, the house on the south side of the lot. We
7 moved in there about approximately a year ago. I wish
8 that I could have afforded to buy the lot and we could
9 have avoided all of this right now anyway.

10 I strongly oppose the variance of seven
11 and a half feet. I believe that the laws were
12 established for a reason. The zoning laws say that
13 they're suppose to be ten feet of setback. I just
14 don't see why we should go against the laws and go
15 seven and a half feet.

16 I feel that the extra distance between the
17 houses, for one thing the windows. I don't know if
18 you can tell from the pictures, but the whole side of
19 our house facing the lot has large windows across the
20 side. I think it's inevitable that a house is going
21 to be built on the lot. I don't think there's any
22 question about that. We can't really argue. He owns
23 it.

24 He can build a house there, but the real
25 question is the law says ten feet setback. I think

1 it'll depreciate the value of our home closer to his
2 house is to ours. I don't think two wrongs make a
3 right. You know, they talk about the distances of
4 the other houses on the street and how they're ten
5 feet between one and eight feet between the other. I
6 still think the bottom line is what the zoning law say
7 is ten feet. I really believe, I'm not an expert, but
8 I believe that more distance between my home and his
9 home would, you know, the value of my house would
10 decrease.

11 Also as far as the spaces in-between the
12 houses, I think this lot is, you know, kids and dogs
13 and people walk their dogs through the lot to cut
14 through to the alley to the library. I think the more
15 distance we leave between these two houses is better
16 for the neighborhood as a whole. It's not just me.
17 Of course, it does affect me more than anyone. On the
18 other side there's a garage.

19 The Rineys it wouldn't effect their view,
20 but on my side it would greatly effect it. I believe
21 that the neighborhood as a whole would benefit from as
22 much space as possible between these two homes. I
23 strongly oppose it and I believe that the law should
24 stand of ten feet. Thank you.

25 CHAIRMAN: Anyone else wishing to speak in

1 opposition?

2 MR. ELLIOTT: State your name, please.

3 MS. GORDON: Ruth Gordon.

4 (MS. RUTH GORDON SWORN BY ATTORNEY.)

5 MS. GORDON: I didn't realize the permits
6 or whatever, that he was just wanting to change the
7 variance. I'm here to oppose a house being built on
8 that lot.

9 I live on lower Freeman Avenue and we've
10 owned our house for 20 years. I feel our street is
11 unique with this distinctive and charming older homes.
12 With no ill-feelings towards Mr. Clark, the neighbors
13 represent here do not want to see a new home built on
14 1717 Freeman Avenue. I realize there's no permit or
15 ordinance that we could provide to prevent Mr. Clark
16 from building on this lot.

17 My argument is about esthetics. Green
18 space within the city boundaries and the character of
19 our neighborhood and our street. A new home built on
20 1717 Freeman will forever change the complexion of our
21 neighborhood and would also be detrimental to the
22 looks and possible resale value of the house
23 next-door. There have been many miscues and missteps
24 regarding Planning & Zoning. Thank you.

25 CHAIRMAN: Thank you. Anyone else?

1 MR. ELLIOTT: State your name, please.

2 MS. WILLIS: Christine Willis.

3 (MRS. CHRISTINE WILLIS SWORN BY ATTORNEY.)

4 MS. WILLIS: I live on 1708 McCreary.

5 Benny Clark's plans call for a driveway coming off of
6 the alley right behind our house. I'm here to argue
7 that with the two and a half feet variance, no
8 variance that the law is simply not buildable.

9 From either my side or the Freeman's side
10 is way too much congestion. We're talking a distance
11 from here to that wall that there be five driveways on
12 the alley side and four driveways on the Freeman side.
13 There's not enough space if they don't get the
14 variance to even plant any trees at all to kind of
15 keep with the character of the neighborhood.

16 In defense of the people who aren't here,
17 there's many people - I have a petition right here -
18 that don't want to see a house built for the reasons
19 that Ruth stated and Bobby stated. The value of the
20 neighborhood, the character of the neighborhood and
21 the amount of congestion it would cause either on the
22 Freeman side or on the alley side.

23 In that regard we would like to see the
24 variance at least apply. Ideally, the lot not even
25 being buildable.

1 In conclusion, character, congestion and
2 value of the property are our concerns. Thank you.

3 CHAIRMAN: Thank you. Anyone else?

4 MR. ELLIOTT: State your name, please.

5 MR. McFARLAND: My name is Steve
6 McFarland. I live at 1718 Freeman Avenue.

7 (MR. STEVE McFARLAND SWORN BY ATTORNEY.)

8 MR. McFARLAND: We live at 1718 Freeman
9 Avenue which is immediately across the street from
10 what is now the vacant lot.

11 I understand the situation of person
12 having the right to do what the law allows, but I do
13 feel like that Planning & Zoning needs to look very
14 closely at the congestion situation both on the
15 Freeman Avenue side and also on the alley behind.
16 Another driveway on Freeman at that point would be a
17 real problem. We have much transient traffic through
18 there. The alley behind the property is not really
19 worthy to handle even more traffic than there is right
20 now. So I would ask you to take a look at the traffic
21 issue on this property. Thank you.

22 CHAIRMAN: Thank you. Anyone else wishing
23 to speak?

24 (NO RESPONSE)

25 CHAIRMAN: Mr. Clark, do you have

1 additional comments?

2 MR. CLARK: Yes.

3 First of all the house to the south which
4 Mr. Wells owns is only six foot to six and a half foot
5 to the property line which is basically a
6 non-conforming structure. Again, the garage to the
7 north is a non-conforming structure because it's 24
8 inches off the line.

9 Driveway is not an issue. The variance
10 request is not relevant to the alley.

11 Yes, I have a home plan that is very
12 compatible as a sample and I can put this on file, but
13 basically the bottom, your left-hand corner shows rear
14 low garage which there's ample ways to back out of the
15 garage, turn around on the lot to drive out the single
16 lane alley. The front shows a porch and structure
17 which if we had a back low garage we would not have a
18 curve cut and still two additional parking spaces on
19 Freeman which I know that is sacred to the people that
20 live on that street. So I'm very much aware of the
21 existing homes and issues and parking. I just want to
22 tell the board that I have taken that in to full
23 consideration. So at this time that's my final
24 comments.

25 CHAIRMAN: Thank you.

1 Any board members have any questions?

2 (NO RESPONSE)

3 CHAIRMAN: Chair is ready for a motion.

4 (PAUSING)

5 CHAIRMAN: I need a motion one way or the
6 other.

7 MR. WARREN: Motion to grant the variance
8 based on the considerations that there are special
9 circumstances. There are many other encroachments
10 upon the variance and it would be unfair to uphold
11 those encroachments and deny the landowner full use of
12 this property and that it will not adversely affect
13 the public health and safety or welfare. I don't
14 think that it will alter the essential character of
15 the general vicinity and cause a hardship or nuisance
16 to the public.

17 CHAIRMAN: We have a motion for approval
18 of the variance.

19 MR. MILLER: Second.

20 CHAIRMAN: We have a second. All in favor
21 of the motion raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: That is unanimous.

24 Next item.

25

1 ITEM 8

2 5495 Ruidoso Loop, in a MHP zone (Map N-31)
3 Consider request for Variance to reduce the platted
4 front yard building setback from 15 feet (10 feet per
5 Zoning Ordinance) to 7 feet in order to place a
6 manufactured home.

7 Reference: Zoning Ordinance, Article 11, Section
8 11.35

9 Applicant: Brian and Kara Rice

10 MR. NOFFSINGER: Mr. Chairman, this
11 application has been reviewed by the Planning Staff.
12 The application is in order. It has been advertised
13 for public hearing at this time and all adjoining
14 property owners have been notified.

15 This is a variance request that's in the
16 Colony Mobile Estates which is the manufactured
17 housing subdivision. The manufactured home that has
18 been placed on the property was originally and was
19 already sitting there. It was placed there into the
20 setback line and a public utility easement. The
21 public utility easement has been reduced by plat and
22 the applicant is here tonight asking for a variance
23 from the front building setback line. With that it's
24 ready for your consideration.

25 CHAIRMAN: Anyone wishing to speak on
26 behalf of the applicant?

27 MR. ELLIOTT: State your name, please.

28 MR. MARKSBERRY: James Marksberry.

1 (MR. JAMES MARKSBERRY SWORN BY ATTORNEY.)

2 MR. MARKSBERRY: Brian and Kara Rice
3 purchased the piece of property from Hometown Realty.
4 They sell lots in that subdivision. They bought a lot
5 that already had previous and existing manufactured
6 home. It was the same size as the one that our
7 company, Home Folks Housing, put on this lot. They
8 just purchased the home from us. They purchased the
9 lot from Hometown Realty.

10 When we went out there to install the
11 home, our guys should have been aware. You know, they
12 measure from the fence back. If you look at the plat
13 on this property, it goes into a curve. After we
14 placed the home, we were the ones that discovered that
15 the home was placed and encroaching on a utility
16 easement.

17 Brian and Kara Rice not aware what all
18 needed to be done. We kind of stepped in because we
19 felt the right thing needed to be done. You know, the
20 home either needed to be taken off there or ask for a
21 variance.

22 I went back and asked our field guy about
23 checking that. They did check from the curve and they
24 measured roughly over. You'll see at one corner of
25 the home was in compliance, but the way it curved he

1 failed to catch that corner. So we just stepped in
2 and, you know, had been assisting the Rices with
3 getting the proper engineering, going through the
4 proper channels to get this thing so it's right.
5 They've already purchased the lot. They've already
6 purchased the home from us. It would create a
7 hardship on them if they had to move this home and
8 replace it someplace. I'll be more than happy to
9 answer any questions.

10 CHAIRMAN: Any board members have any
11 questions?

12 MR. MILLER: I do. Did I understand you
13 to say that the mobile home that was there is the same
14 size as the new one that's been placed there?

15 MR. MARKSBERRY: Yes, sir.

16 MR. MILLER: So it was also seven feet,
17 exactly the same place?

18 MR. MARKSBERRY: Yes. I don't think
19 Hometown Realty when they sold them the lot, I think
20 they in good faith thought this home could fit on
21 there.

22 CHAIRMAN: Thank you for now.

23 Jim, do you have any comments on this?

24 MR. MISCHER: Jim Mischel.

25 I believe not only this but I think we've

1 seen some other problems in this same area with some
2 homes that have been placed out there.

3 We have taken over the permitting process
4 and inspection process recently. We've been made
5 aware there are some problems. There's been some
6 confusion and we've tried to clear that up with some
7 meetings. Some of the confusion I think is when you
8 have what we call a single-wide mobile home, they are
9 governed by the State of Kentucky. They have to be
10 approved by the state for placement. When that
11 happens the State Manufactured Housing, they inspect
12 these units.

13 We still need to do inspection for
14 setbacks, but we're not always informed of these. We
15 need to - - when you get into a residential zoning
16 ordinance does require that we check some these. They
17 have foundations and we check them, but even this, if
18 there is no foundation required we still need to do a
19 setback inspection. On this one we wasn't called for
20 a setback inspection. I guess we feel we've got
21 another one. As these units move off, they need to
22 comply. We've got a subdivision out here with
23 subdivision regulations. It's been plated. It's been
24 recorded at the courthouse. I guess we feel like that
25 sometime we're going to have to step in and try to get

1 these into compliance. As one has taken off we need
2 to ensure the next one goes back adheres to these plat
3 setbacks that are recorded at the courthouse and I
4 guess not ignore and just place one on there the same
5 size even though it's wrong.

6 Trying to work with these as they come in
7 to assure that the problem we have a lot of times by
8 the time they get to us the homes are already on the
9 lot. They come in or they go to the electric company
10 and get their electricity turned on and the electric
11 company makes them aware they can't do that kind of
12 inspection and that's when they show up at our door.
13 They've got their loans made and they've got their
14 payments booklet. They're ready to start making
15 payments and we're just now getting involved. I think
16 it's important for all manufactured homes dealers or
17 whatever to direct these people. The first step, the
18 first step should be I guess with us to ensure that
19 these units will fit on the lot. I think that's not
20 been taken first. We're the last step instead of the
21 first step.

22 CHAIRMAN: Thank you, Jim.

23 Anyone here wishing to speak in opposition
24 of this item?

25 MR. MARKSBERRY: I'd just like to rebuttal

1 on that if you don't mind.

2 CHAIRMAN: Please step up.

3 MR. MARKSBERRY: Jim is right. We do
4 require all of our customers to get a permit before we
5 place the home on any location. We did Doe Ridge
6 Subdivision out here by Bon Harbor and I think Jim
7 will state that I mean we're very much in compliance
8 with that. We will not take a house out not unless
9 we've got a permit to place it, but on the single
10 wides he's made a good point there.

11 On the sectional homes they require a
12 foundation and they do come out and check the setback
13 lines on the foundations before they're put in, but
14 because the single wide manufactured units do not
15 require that, they are not. If you go back and
16 research this thing, the other people got a permit.
17 We went out there and placed the home. They got
18 electrical permit. They came out and did the
19 electrical inspection and turned the power on.
20 They're living in the home. They're moving on with
21 their life, and then we're the ones that found the
22 mistake on this thing.

23 All we're trying to do is get the right
24 thing done for them. Jim is absolutely right. There
25 ought to be something to set forth when a single wide

1 is placed in their jurisdiction that a setback be
2 required on it. I'm all in favor of that.

3 CHAIRMAN: Thank you.

4 Chair is ready for a motion.

5 MS. DIXON: Move to deny based upon the
6 fact that it would allow unreasonable circumvention
7 with the requirements of the zoning regulations and
8 that there are no special circumstances.

9 CHAIRMAN: We have a motion for denial.

10 MR. MILLER: Second.

11 CHAIRMAN: We have a second. All in favor
12 raise your right hand.

13 (TIM MILLER AND JUDY DIXON RESPONDS AYE.)

14 CHAIRMAN: All opposed.

15 (WARD PEDLEY, RUTH ANN MASON, MARTY WARREN
16 RESPONDED NAY.)

17 CHAIRMAN: Motion fails.

18 MR. ELLIOTT: We need to have a motion for
19 approval then.

20 CHAIRMAN: We need one for approval.

21 MR. ELLIOTT: With a finding. It's not
22 automatically approved because it was denied. I think
23 the correct procedure would be - -

24 MS. MASON: I make a motion for approval
25 that it will not adversely affect the public health,

1 safety or welfare and it will not alter the essential
2 character of the general vicinity and it will not
3 cause a hazard or nuisance to the public.

4 CHAIRMAN: We have a motion for approval.

5 MR. WARREN: Second.

6 CHAIRMAN: We have a second. All in favor
7 of the motion raise your right hand.

8 (MARTY WARREN, RUTH ANN MASON AND WARD
9 PEDLEY RESPONDED AYE.)

10 CHAIRMAN: All opposed.

11 (TIM MILLER AND JUDY DIXON RESPONDED NAY.)

12 CHAIRMAN: Three to two, motion passes.

13 ITEM 9

14 1019 West First Street, in an R-4DT zone (Map N-3)
15 Consider request for a Variance to reduce the side
16 street yard building setback along Maple Street from
25 feet to 12.5 feet in order to build a single-family
residence.

17 Reference: Zoning Ordinance, Article 8, Section
8.5.11(c)

18 Applicant: Michael Wayne Pickrell

19 MR. NOFFSINGER: Mr. Chairman, this
20 application has been reviewed by the Planning Staff
21 and found to be in order. Has been advertised for
22 public hearing at this time. All adjoining property
23 owners have been notified. This is a 40 foot wide
24 lot. It is a corner lot on the northeast intersection
25 of West First and Maple Street. The reduction in the

1 setback would be necessary in order for any type of
2 structure, residential structure to be placed on this
3 vacant property and the applicant has proposed a home
4 that's approximately 22 feet wide. It will meet the
5 five foot side yard to the east; however, they do need
6 the variance down to about 12.7 feet in order to
7 construct - - excuse me. 12.5 feet in order to
8 construct a home on the property. With that it's
9 ready for your consideration.

10 CHAIRMAN: Anyone here representing the
11 applicant?

12 MR. ELLIOTT: State your name, please.

13 MR. PICKRELL: Michael Pickrell.

14 (MR. MICHAEL PICKRELL SWORN BY ATTORNEY.)

15 MR. PICKRELL: I've lived there for nine
16 years and there was a trailer on that corner, 70 by 14
17 with attached carport. I torn it down and we would
18 like to build a house there. If you grant us
19 permission for the variance, it would be greatly
20 appreciated. It would only benefit the neighborhood.
21 Thank you.

22 CHAIRMAN: Any board members have any
23 questions of Mr. Pickrell?

24 (NO RESPONSE)

25 CHAIRMAN: Thank you.

1 Anyone wishing to speak in opposition of
2 the item?

3 (NO RESPONSE)

4 CHAIRMAN: Chair is ready for a motion.

5 MS. DIXON: Move for approval based upon
6 findings 1 through 4 in the Staff Review.

7 CHAIRMAN: We have a motion for approval.

8 MR. WARREN: Second.

9 CHAIRMAN: We've got a second. All in
10 favor of the motion raise your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: It is unanimous.

13 I need one more motion.

14 MS. DIXON: Move to adjourn.

15 MS. MASON: Second.

16 CHAIRMAN: All in favor raise your right
17 hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: We are adjourned.

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

3 I, LYNNETTE KOLLER, Notary Public in and for
4 the State of Kentucky at Large, do hereby certify that
5 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 65 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this
17 the 24th day of March, 2001.

18

19

LYNNETTE KOLLER, NOTARY PUBLIC
OHIO VALLEY REPORTING SERVICE
202 WEST THIRD STREET, SUITE 2
21 OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES:
23 DECEMBER 19, 2002

24 COUNTY OF RESIDENCE:
25 DAVIESS COUNTY, KENTUCKY