

MADISON CITY BOARD OF ZONING APPEALS

Minutes

March 9, 2020

The Madison City Board of Zoning Appeals held a regular meeting on Monday, March 9, 2020 at 6:30 p.m. in City Hall. Scott Baldwin, chairman, presided over the meeting with the following board members present: Nancy Burkhardt, Bob Waller, and Rick Farris. Also present: Devon Sharpe, attorney; and Louann Waller, secretary. Absent: Brian Martin, Building Inspector; Brandon Taylor, board member.

Minutes:

There were no additions or corrections to the minutes of the previous meeting. R. Farris made the motion to approve minutes – seconded by B. Waller – roll call – all ayes.

Minutes stand approved as recorded and distributed.

Renewals:

- Glenna Hanks Wade – Conditional Use permit for a guest house.

Location: **620 W. Second St.**

Zoned: Historic District Residential (HDR)

One-Year Renewal

Renewal fee received; No complaints received

- John and Lori Heitz – Conditional Use permit for a restaurant.

Location: **842 W. Main St.**

Zoned: Specialty District (SD)

Two-Year Renewal

Renewal fee received; No complaints received

- Daniel Butler – Conditional Use permit for a dental office.

Location: **502 Jefferson St.**

Zoned: Historic District Residential (HDR)

Two-Year Renewal

Renewal fee received; No complaints received

- Bad Apple Mac's, LLC – Conditional Use permit for a restaurant.

Location: **605 W. Main St.**

Zoned: Specialty District (SD)

One-Year Renewal

Renewal fee received; No complaints received

- Sedam Contracting – Conditional Use permit for a location to accept dirt, concrete, asphalt for reuse/recycle; sales of stone, sand, landscaping products; and rental of construction equipment and supplies.

Location: **2910 Wilson Ave.**

Zoned: Light Industry (M-1)
One-Year Renewal

Renewal fee received; No complaints received

- Steve Buchanan – Conditional Use permit for a four (4) bay self-service carwash.

Location: **814 W. Third St.**

Zoned: Local Business (LB)
One-Year Renewal

Renewal fee received; No complaints received

B. Waller made the motion to approve renewals one (1) through six (6) – seconded by R. Farris – roll call – all ayes.

Renewal one (1) through six (6) approved as advertised.

- Aloda Hendren – Conditional Use permit for a mobile home to be utilized for residential use only.

Location: **3169 W. Black Rd.**

Zoned: Residential Agriculture (RA)

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One-Year Renewal

Renewal fee not received; No complaints

S. Baldwin made the motion instructing D. Sharpe to send Ms. Hendren a letter indicating if she pays renewal fee by the next BZA meeting her permit will be renewed. Otherwise she will have to reapply for a CUP. Motion seconded by N. Burkhardt – roll call – all ayes.

D. Sharpe to send Ms. Hendren a letter indicating if she pay renewal fee by the next BZA meeting her permit will be renewed. Otherwise she will have to reapply for a CUP.

- The White Barn Venue, LLC – Conditional Use permit for the operation of a rustic barn venue with an emphasis on weddings.

Location: **501 Thomas Hill Rd.**

Zoned: Residential Agriculture (RA)
One-Year Renewal

- David and Sharon Daghir – Conditional Use permit for cultural education classes – small groups of five to ten people for introductory classes to various arts, heritages and historical education – two (2) per month.

Location: **601 Jefferson St.**

Zoned: Historic District Residential (HDR)
One-Year Renewal

S. Baldwin said he understood the Mr. & Mrs. Daghir's son is quite ill right now and that the Daghirs are still deciding what to do with the business – possibility of changes.

S. Baldwin made the motion to table renewal until next regular BZA meeting to give Daghirs time to deal with their family emergency – seconded by N. Burkhardt – roll call – all ayes.

Application tabled.

At this time the board proceeded with Renewal # 8 – The White Barn Venue, LLC

S. Baldwin noted that the renewal fee has been received. He added that on the advice of D. Sharpe he was not to participate in the discussion because of comments made at a county meeting. The meeting was turned over to vice-chairman, N. Burkhardt.

N. Burkhardt opened the meeting to public comments.

Josh Hershberger Josh Hershberger representing The White Barn Venue, also with the Dews this evening. So just briefly I just want to remind the board that this issue was litigated all the way up to the Court of Appeals. Court of Appeals found that that decision denying their application last year was arbitrary and capricious, basically said that had been reviewed in 2016, the same decision should have been made in 2018. And absent any change in circumstances then that permit should be allowed going forward. So, I do have a copy of that decision here if you would like to see it but that would be our interpretation of the Court of Appeals Ruling.

The interveners were given a chance to appeal that to the Supreme Court. That was not done so that decision stands.

At this time I will have Mr. Dews –
How ya'all doing? We are here for renewal on that. We have followed the guidelines that laid out before us and we have done everything within our power to make sure all of the guidelines have been followed and what has been

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requested for us.

N. Burkhardt Does anybody have any questions on the board?
No response.
Thank you sir.
Is there anyone else to speak on this matter?

Audience member

Kathy Ayers
N. Burkhardt

I've got some packets.
State your name and address please.

Kathy Ayers

My name is Kathy Ayers and I live at 340 Thomas Hill Rd. And may I give you guys these to look at? (Ms. Ayers distributed packets to board members) I made copies of some of the comments that were made at the March 16 meeting regarding this venue and there have been some changes. In those comments Mr. Dews said that they were cleaning up the farm area and from there they will have a wedding venue to be used mainly on Fridays and Saturdays. They also say in there that, and I've highlighted the comments, they also say that parking attendants would be there all the time. I've witnessed many of those weddings and I've never seen a parking attendant. Mr. Dews has been there, but he is also inside and around and he's running his business.

He said that the sounds will be inside and if it's outside they will be done by, they will be concluded by 10:00. When this became a permit they said just 6:00 or 11:00. That was totally ignored and yet it's in the minutes of that meeting.

He said they would be shut down roughly five months out of the year. Well, now it's four months and I'm concerned that it may go more often than that.

The Court of Appeals, the Indiana State Court of Appeals was ruling on Judge Coy's decision in June of 2018. And Judge Coy ruled that they could, that this board needed to reverse that decision and give them a permit that would be good through March 31st. Now a year ago this board said no we have to follow Judge Coy's rule which was really just for three more weeks. And when I looked at the Ruling from Judge Coy in here he says – and you've got a copy of this – This court fails to see how a wedding where guests arrive by invitation only constitutes a public assembly. And that was the problem in 2018 whether it was private or public assembly. Well now we've moved into public assembly. They have a public event coming up at the end of August, I'm sorry, April. It advertises that, it's a great cause, don't have a problem with the cause, but it advertises that there will be live music, there will be an auction and there will be a cash bar. In a residential neighborhood. There was an event back on November 3rd and it advertised wine and open to the public. So now you're opening them to the public and at what point does it stop? Judge Coy clearly was concerned about the weddings and nothing was discussed or brought to his attention about public events.

I brought some of the Findings of Fact, not that we can do anything about this but there were four no's in those Findings of Fact. Four negative replies. And one negative reply should have ended it right there.

I don't want us to go forward and continue to have more and more things build in their neighborhood that the neighbors have to deal with because oh we should have done that back at that other meeting, we should have caught that. There needs to be some conditions on this Conditional Use permit that will

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protect the neighbors. I've been attending the zoning, buffer zone meetings and one of my fears is that this board will allow another commercial business to come up there because they used the discussion that I had a commercial business similar and so they wanted one. Well they're not similar. I have two to three cars on a weekend and we don't serve alcohol. They have 50 to 60 cars on a weekend and there's alcohol served. Those aren't similar. They might both be commercial businesses but that's about as far as it goes.

Last year when one of the neighbors pointed out that their windows rattled because of the music. Mr. Goley can't be here tonight and so – well anyway, _____ because of the music evidently Mr. Dews said he didn't believe that. Well of course he wouldn't believe it. He wasn't in that house. He was over where the music was being created. He was at his business. He doesn't live in that neighborhood and when there is noise in that neighborhood it is going to affect, it's not going to affect him, that's when he's working.

There was another discussion about the sound. And I can't find it right now, but he also said that this isn't going to be a party. It's not going to be a party atmosphere. Well, yes it is a party atmosphere. I mean it's a reception, it's a wedding reception. Any of us who has ever been to one, it's a party, it should be a party. It has food, it has dancing, it has alcohol, it has camaraderie, that's a party. But he stated in 2016 that it wouldn't be a party.

I'm concerned about the road. My main concern is about that road. On June 8th of last year there was a wedding at The Venue and I was having a baby shower for my daughter in my home. I had people coming to visit, family and friends. And I didn't have room in my driveway for everybody so Mr. Goley allowed some of them to park at his house and I was on the road more than I normally would have been shuttling them back and forth. There was a car that was out of gas also on Thomas Hill Road and any of you that have driven up that road that's pretty close to have a car off on the side of the road. Took them a long time to get their gas. And I'm coming back to the house and here comes a pickup truck, it was an extended cab and a standard bed towing an enclosed trailer that looked to be about maybe 24-ft. long. That's a pretty long piece of equipment. I stopped her and I said why did you come up this road? And she said because it's, we're one of the vendors, we're catering a wedding up here. And I said didn't the owners of that business tell you not to come up this road. Why did you come? She said GPS brought me. Well it seems to me that when they do these contracts with these weddings that they should tell their brides do not use the 1-mile of Thomas Hill Rd. that is a hill all the way. It is a hill from

the bottom to the top. That they should not be telling their vendors especially but even their guests and even their brides. And that should be in their contract. And they should have very clear directions for people to come otherwise because if they give them those directions then that's at least the alternative. That contract should say "do not use Thomas, the hill of of Thomas Road if you GPS tells you to do that." They can put that in that contract. It wouldn't be hard. And that would be an effort to show us that they are trying to cooperate.

I think that because of Mr. Goley's situation last year, we're already in no-man's land, we've discussed this a number of times. Mr. Courtney said last week all we have control of is the land use. Well, the land use spills over to other people's land use and the roads.

And the city won't come up because it's not their jurisdiction and county doesn't have a noise ordinance and if they did, it would probably be lower

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because sound carriers further in the country.

And it seems to me that this board should provide those neighbors at least four or five telephone numbers of people that work for the city or on the City Council or on this board that when they have a problem, and they're not going to call every weekend, but when they have a problem with noise that somebody will come up and at least validate what they are saying. The last year Mr. Dews didn't believe it and Mr. Goley said it happened. It's a he-said, he-said situation and there's got to be somebody that will at least come up and validate what's going on.

I would like for this board to have them not use the Thomas Hill Rd. address. And I know Mr. Hershberger made the point two years ago that if you put 160 Goins Rd. in or 501 Thomas Hill Rd. many times it brought you up that way. But if I've got an invitation to that wedding and they have given me directions not to use that road and I'm coming up that way from the east and I see Thomas Hill Rd. I'm going to say "hey, that's where we are going." And cut up that way. If they're using the legal address, because 501 is not a legal address for them, if they're using the legal address nobody is going to see Goins Rd. and come up that inadvertently.

And I also, because of my granddaughters, it's not just my business although it is hurting my business and I've had it for 21 years, I think you should be as

concerned about my business as you are about their business. But it is hurting my business and I can no longer tell people, which I did for years, there's not much traffic on that road because the days that they're coming, the days my guest are coming, there's lots of traffic on that road. But aside from that I have granddaughters, I have family, I have friends that come to visit me on the weekends and I'm worried that somebody may come around that corner too fast. I think I've told you this before but I had a pretty close call on that road and it was a young man that was all dressed up and he was in a little red car and he came around a blind curve and his eyes were "this" big when he saw me. He missed me by inches. Had he connected with me I believe I'd gone would have gone over the hill backwards. I went down to the bottom of the hill on that particular occasion, I turned around and drove back up to their parking lot and that car was there. So, that car did go to the wedding. There's people driving that road that don't know that road. I'm sure many of them think they're not going to pass anybody else as narrow as it is. It must be a one lane road. There's nothing wrong with that road when there's no excessive traffic on it. And that's what I'm here asking you to do is somehow protect us. Somehow protect the neighbors with the loud noises so they can at least have you guys validate what their problems are. Nobody wants a business in a neighborhood that causes them – where the customers can sue you and I was sued last year, not last year, the year before, and I wasn't doing anything. You have got to allow people to live on their property. One of the neighbors said he they were supposed to give them times of the weddings. He emailed and said what time will the wedding be and Mrs. Dews replied well they have it all day. Really? Their supposed to sit there all day long every weekend they've got events booked? But now they are going public and I put copies of those things on the back of the thing that you gave me. I do not believe if you're going to stand by Judge Coy's ruling and he doesn't see how it constitutes public assembly I don't see how you can allow public assembly in these events that they're planning on having.

N. Burkhardt

Anyone has any question for her, Ms. Ayers?

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I'd like to get the opinion of counsel what she's speaking of with the prior Litigation.

D. Sharpe

What part about it?

N. Burkhardt

Pretty much all of it to be honest with you.

- D. Sharpe I'll just read what the court said then.
"It's therefore the decision of the Madison City Board of Zoning Appeals in denying the application for Conditional Use permit filed by Bryan and Shelly Dews on behalf of The White Barn Venue is reversed. The Madison City Board of Zoning Appeals is ordered to issue to the Dews a Conditional Use permit for the operation of a rustic barn venue with an emphasis on weddings. The permit shall be for one year with an onset date of April 1, 2018 and expiration date of March 31, 2019. The Madison City Plan Commission shall notify the Dews in advance when their permit is about to expire. The Dews shall be allowed to seek renewal of their permit annually. The Madison City Board of Zoning Appeals is ordered to place two conditions on the issuance of the permit – annual renewals and conclude all events by 11:00 p.m."
- N. Burkhardt So in your opinion are events being finished by 11:00 p.m.? is that being adhered to?
- K. Ayers I believe it is. I don't know. The neighbors who live across the street from it. I don't know if they are. I'm guessing they probably are, maybe even a little earlier sometimes.
- N. Burkhardt And you say you're business is being hurt? I would think your business would do better with that wedding thing.
- K. Ayers Wouldn't you though?
- N. Burkhardt Yea.
- K. Ayers I have had just last fall one couple that stayed at my Bed & Breakfast. I had another couple that stayed at my Bed & Breakfast who had attended a wedding there in 2017 and were told not to stay at my Bed & Breakfast, so you would think so. And you would think since I have the opportunity to make sure money on it, then why would I be opposed to it? I'm opposed because of that road, I'm opposed because I don't want anything to happen to me, anything to happen to my neighbors, anything to happen to my guests, anything to happen to their guests, but especially not my family.
- N. Burkhardt And I agree with that.
Anybody else have any questions at all?
- J. Hershberger May I respond to your question?
- K. Ayers To K. Ayers – Do you have anything else to say to that?
Well I have a question for the attorney. So are you reading that that from now until the end of time the only two conditions are that they renew their permit every year and they have their events over by 11:00 and there's never going to be able to have a condition that the neighbors are protected by this board?
- D. Sharpe I think if you want to get a legal opinion, you need to hire an attorney.

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- K. Ayers I did that. Cost me thousands of dollars to get out of a lawsuit where I didn't break the law and it was proven that I didn't break the law. I'm tired of spending money on this. There was not a road study done when they first came up there and I truly feel that if the mayor the other night meant what he said this board should be in a position, he said we have a voice and we are heard. Listen to what I am saying about these public events.
Thank you.
- R. Farris I do have a couple of comments. So to Ms. Ayer's comments about getting a response to enforce noise ordinances, the county sheriff has publically stated that they will respond to calls from the buffer zone and in the county. I don't know if you are aware of that, but that is an option.
- K. Ayers They do respond to buffer zone. When I was sitting in the driveway across from the venue one night counting cars, Mr. Dews called the sheriff and the deputy came out and said he had a call that there was a suspicious vehicle sitting across from their business. Well they know my car and they know me, it wasn't a suspicious vehicle. So, yes, the sheriff came out on that but my neighbor's can speak to the fact that when they call about the noise there is no noise ordinance in the county and they will not send anyone. Now, if the sheriff is saying that they will start sending somebody when they get that call, that's a different story but that's not what they've said before because they don't have a noise ordinance.
- J. Hershberger May I respond?
- N. Burkhardt Sure.
- J. Hershberger Just a few thoughts. First of all it seems to me in summary is they're saying there was a substantial change of conditions in circumstances between 2016 as shared some of those minutes with you and 2018. But on page 20 of the Appellate Court's decision the Appellate Court said specifically –
"There was no substantial change of conditions or circumstances between the 2016 and 2018 determinations."
And so again the court did look at that issue and made a specific determination on it.
She also raised the issue of public assembly. And the Court of Appeals also upheld Judge Coy's decision that the particular use or condition that we filed under on the Schedule, they upheld that decision and sided that it wasn't public

assembly as the interveners had argued, rather than we file under the particular designation.

Also the last thing that Ms. Ayers mentioned was that she had been sued because she is a business owner on that road. I wanted to read just the public statement from the Settlement Agreement in that case and this was the public statement agreed to by all parties on a signed Agreement.

“A firearm was discharged near The White Barn Venue prior to a wedding ceremony on June 23, 2018. Fireworks were discharged on the Ison property located next to The White Barn Venue on June 23, 2018 during a wedding ceremony. The party responsible has apologized to the bride and groom as well as the owners of The White Barn Venue for disrupting the wedding and have agreed not to disrupt events at The Venue. Kathy Ayers, Chantel Ayers, Sherry Smith and Jennifer Ison did not fire guns near The White Barn Venue on June 23, 2018. Kathy Ayers, Chantel Ayers, Sherry Smith and Jennifer Ison did not Discharge fireworks during the wedding ceremony at The White Barn Venue on June 23, 2018. Kathy Ayers and Chantel Ayers measured decibel levels on June

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23, 2018 but Kathy Ayers, Chantel Ayers, Sherry Smith and Jennifer Ison did not photograph or video guests of The White Barn Venue on June 23, 2018.

_____ wishes to correct a statement attributed to him in a Madison Courier article on June 23, 2018. _____ Myers did not observe Kathy Ayers, Shantel Ayers, Sherry Smith or Jennifer Ison drive past The White Barn Venue on Goins Road, pull into and stop at the end of the driveway just across the road from The Venue, open the door of a vehicle and shoot a gun near The Barn Venue on June 23, 2018. Kathy Ayers, Shantel Ayers, Sherry Smith and Jennifer Ison have agreed to work with Bryan and Shelly Dews of The White Barn Venue in an effort to respect The White Barn Venue’s private property rights including and not intentionally disrupting events at The White Barn Venue. Bryan and Shelly Dews of The White Barn Venue have also agreed to work with Kathy Ayers, Shantel Ayers, Sherry Smith and Jennifer Ison in an attempt to respect the neighbors private property rights.

Some of the efforts of my clients are taking is notifying the neighbors of events prior to them taking place, placing signage at the bottom of the road, encouraging their attendees to take a different route, also talking to anybody that anybody that signs up for an event – please take these other roads, however it is a public road and they can’t keep everyone from going up that space.

So, in essence the Court had answered that specific statement that Mrs. Ayers had made and there was just one other part of this case that I wanted to read. The Court stated “Generally a Zoning Board should not repeatedly reconsider

determination denying a variance absent a change of conditions or circumstances. If it were otherwise there would be no finality to such proceedings. It is well established that res judicata which is a civil counterpart to double jeopardy. So if you're charged with a crime, you're found not guilty by a jury, you can't be brought up for the same crime. Res Judicata is the civil counterpart of that. "Applies for repeated application for Special Exceptions as well as for use of variances absent a change of circumstances or conditions." It concludes "Absent of change of conditions or circumstances, the BZA should reach consistent determinations." And that's what we're asking for you to do tonight.

N. Burkhardt

Thank you.

R. Farris

I have a question for counsel. So in the final Court ruling there were statements made that The White Barn Venue should have an emphasis on weddings and the events at the time were not considered public assembly because it was by private invitation only, but yet presented to us here tonight is a copy of what appears to be a public invitation for the wine down at The White Barn.

J. Hershberger

So in the 2018 application what was stated on that application is a rustic event venue and so there would be opportunity for weddings and for other events. So when we filed we're saying this is the general use of the property. That it is an event center and that we would have events here and that we would invite people to those events. Generally that would come in the form of an actual invitation to those individuals, but we didn't state in either 2016 or 2018 that we would never have events where individuals could come to them from the public. Does that answer the question?

R. Farris

I appreciate your response but my question is actually for Mr. Sharpe.

J. Hershberger

Okay.

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D. Sharpe

In his defense he is an attorney too. But, I actually tend to agree. I mean #2 in the Trial Court's Order says "The Board of Zoning Appeals ordered issues to the Dews a Conditional Use for the operation of a rustic barn venue with an emphasis on weddings." It's not exclusive to any type of an event. The only exclusive part of this says that all events conclude by 11:00 p.m. – in my opinion.

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- B. Waller I do.
- D. Sharpe Okay. I don't think it's a conflict.
 Sorry.
- Unknown audience
 Kathy Ayers That's okay.
 My name is Kathy Ayers. Mr. Hershberger just read the results of our lawsuit and he's right, that's exactly what happened, but we were exonerated of anything that we had been sued for and it costs us thousands of dollars each one of us because we were sued for something we did not do and they admitted we did not do it. That was my point is that that could happen. I was sitting in those driveways because Mr. Hershberger asked me if I knew if the cars were coming to or from the Venue and I said no. I admitted I did not know and Judge Coy put it in his ruling that even Mrs. Ayers admitted that she didn't know if those cars were coming from the Venue. So I had two officers of the court telling me that I didn't know that so I was going to find out. I was not disruptive. I sat there in my car quietly. People that came by to that wedding that I knew waved at me, other people that I didn't know waved at me. There was anything but here I am spending thousands of dollars to protect myself. But he is right, it was resolved. Thank you.
- N. Burkhardt Thank you.
 Anybody else have any questions or comments from the board? Anyone from the audience? Anymore comments?
- Audience Member
 Gary Smith My name is Gary Smith. I live at 151 Goins Rd. directly across from the White Barn and I do get a schedule for the events on the dates that the weddings are going to take place, but the first year I had times with the dates so I knew I was going to give them an hour of respect before the wedding and an hour of respect after the wedding, quiet time. I don't have times anymore I just get dates which I already know there is going to be a wedding every Saturday, that's a give-me. So really the list don't do me any good so if I don't have dates of when the actual wedding is going to take place it's hard for me to be respectful and not mow my grass or you know anything like that. With that being said the schedule is not doing any good. So I guess if they're having a wedding and I'm mowing my grass and I don't know what time the wedding is I'm going to have to mow my grass, you know.

N. Burkhardt So you're saying if you had times that would help you?

Gary Smith That would help. That would be, you know, help us being a little respectful if we knew if the wedding was at 4:30 or 2:30 or 6:30 rather than this day. Because of Saturdays throughout summer are you going to stay inside your house, and not doing anything, not mow your grass or anything all day long because there is a wedding next door? No. So you know, I need a time.

N. Burkhardt Okay.

Gary Smith And another thing – all the noise and the traffic, yea, those are issues. I mean I live across the road and the bass from the DJ's echoes in my house. It's disturbing but after three years, you know, I know that's probably not going to go away anytime real soon. But I do have a list of things that are coming up that I find I should mention. A couple of years ago they had a live band outside the barn, in the barnyard, not inside the barn, it was outside, very loud and I'm

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hearing that on April 25th of this year they're going to have another band, whether it's going to be outside, I do not know. But that's accelerating the noise level. They are going from a DJ in a barn to a band outside in the barnyard. They are also going from Saturday weddings to adding Sunday weddings on top of Saturday weddings and you got weddings Saturday and Sunday, you know, day to day, the whole weekend is covered.

And Mr. Dews is currently putting on very bright LED lights on his barn that really illuminate the countryside. He's only got them on one side now but I don't know if he intends on doing the entire barn but he might as well put a McDonalds in my backyard. I mean with all the lights and the noise and the traffic that's what it is going to be like. The light pollution is going to be out there.

So I hear the first year you all gave him a permit and there were certain restrictions put down. You said, you know, follow the rules, comes back in a year when we will reevaluate this and, you know, and see if you can go another year. Which you know we went through all of that going to the court and everything, but I feel like we give them a little bit and they're starting to take a little bit more and more each year with the live music, adding more events through the week, putting up more lights. I think they are just taking a little bit of advantage here and there's nobody out there keeping them in check. There needs to be some restrictions put on here.

That's all I've got.

N. Burkhardt

Anybody have any questions?

R. Farris

Mr. Smith have you ever contacted law enforcement?

Gary Smith

Yes, I have. My wife has. She's has called on at least two or three occasions and nobody's ever came out. I believe the person that answers the phone down there – she can probably tell you more, but – nobody ever came out. They'll tell you it's not in their jurisdiction.

B. Waller

And I understand what you're up against trying to mow the lawn and not wanting to affect them. I have a similar circumstance but in this case it is a cemetery so when they are setting up for a funeral I have to be aware of that also. I understand what you are up against.

Do you see them actually setting up?

Gary Smith

Yes. Yea, I pretty much know when they're going to have a wedding but I don't know what time of the wedding.

B. Waller

Exactly what time?

Gary Smith

No, no.

B. Waller

That's the same thing I go through.

J. Hershberger

May I respond?

It was simply an oversight that the times were not sent with that as well. Last year there was a list of events as well as times so basically would be maybe a 4:00 wedding or a 1:00 wedding, but my clients will go ahead and forward that to them.

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Gary Smith

I would like to reply to that.

I was told in an email that the times didn't matter because it was for the whole day in the email, so I was pretty much told just be respectful all day another words.

N. Burkhardt

I would think the times would have some bearing on what you could do, and you could mow your grass certainly any time. I know that you want to be

respectful and I commend you for that, but you know if you have to go on with your day, you have to go on with your day too. So, and I assume the times you've put are from what setup until they take down and 11:00 is the latest for?

J. Hershberger Right and that's the difficulty when they sign a contract they do have access to the Venue. However, when they are setting up we understand that they have to mow the lawn and that sort of thing. So hopefully by sending that 1:00 or 4:00 time that will assist again in trying to work together.

N. Burkhardt You understand what they are saying about the lights? Of course I haven't been there so I don't know what the lights are that they are talking about.

Mr. Dews Yes ma'am. The outside lighting is the same lighting that we've had on the barn since we started.

N. Burkhardt There's nothing new?

Mr. Dews No, no. We did replace the one on one side. It was out so we replaced those. The lighting that we do have that's facing the Smith's, it is on a timer so it goes off after so many hours so it's not on all night long on that one so there hasn't been any changes on that _____.

B. Waller The lights you replaced, are they the same lumen output, same brilliance?

Mr. Dews Yes, and actually what they are is – my lighting is indirect so like on a barn, for lack of a better term like an eave that comes through here, my lights underneath that so the lights shine down. They do go out but the main focus is to go down.

B. Waller So they're under the eave?

Mr. Dews Yes ma'am, yes sir.

B. Waller Okay.

Mr. Dews Yep. And that's how – it was designed like that, you know because, you know we don't want light pollution of course and so a lot of lighting goes straight down on the barn.

B. Waller Thank you.

Mr. Dews You're welcome.

J. Hershberger And I do believe there are pictures of the Venue on the Facebook page that Shows the barn lighted in the evening.

Mr. Dews Yes, oh absolutely.

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And as far as the noise has been brought up – repeatedly. I just want to let you know that we are monitoring the noise level, every event, multiple times throughout the night, everything is documented. So, and we are within the Noise Ordinance of the City of Madison and that’s what was requested to be within.

N. Burkhardt

Any further comments?

Sherry Smith

My name is Sherry Smith. I live at 151 Goins Rd. The Noise Ordinance when you can hear it through your house when you’re sitting on a Saturday evening trying to watch t.v. and it’s coming through your walls, it don’t matter how loud it is. If it’s come through, it’s coming through. I’ve even mentioned, I mentioned a time or two to Mr. Dews about how loud it was especially when they had that band out there one night. It was ridiculous.

I’ve really enjoyed the last four or five months because it has been so peaceful and quiet at home and that’s the reason why we moved out there was for the peace and quiet. Well it’s getting ready to change. All these dates right here are when they are having an event/Venue. Now we’re starting to do them on Sundays, we’ve got them through the week a couple of them and it’s like my husband said, we’ve got to have some restrictions because they can’t expect us just to – When they’re actually saying their vows we will respect that time. We’ll stop what we’re doing and we’ll be quiet. I’m not that mean. But, I want a time when actually the wedding, when they’re going to say their vows is the time that I want. They can’t expect us to be quiet all day.

And the noise coming through the home, it’s very disruptive, very disruptive. And I have called the law. They won’t come out there. So you something’s got to be done. Our life is, it’s just not the same. It’s in a residential agriculture area. It shouldn’t be there to begin with. So, you know I’m going to back up Mrs. Ayers. I back up Mr. & Mrs. Goley because they know what we’re going through. They’re going through the same thing and that’s not right. So, and that’s all I’ve got to say.

N. Burkhardt

Thank you.

Audience Member
 Nancy Alexander

I’m Nancy Alexander from 328 Thomas Hill Rd. There’s been so many things said tonight. First on the lighting – what color is your roof on your new

building?

Mr. Dews

Silver.

Nancy Alexander

Silver. And any lighting that is out there you can see that silver roof on that building miles away. It's like have a lunar moon walker on the premises. Very bright. It reflects a lot of lighting. I don't know if he's added lighting or what but it is a lot difference with the second building.

The noise level is incredible. We're not as effected because we're further away. I do think that in the beginning there was no decibel level available and that's probably why, because there was no venue like that every considered in our residential area and not zoned commercial.

So we talked at the buffer meeting the other night and possibly the decibel level that they chose, which they chose the city level, well if you whisper in the

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city nobody hears you. You whisper in the country, you know, be careful what you say because noise travels. So maybe actually the decibel level is too loud so eliminate that, and I think that someone said at 10:00 instead of 11:00 so maybe cutting it off at 10:00 because after the music stops everybody leaves. There's two car doors. Hey, see you in church. Oh it was great. It was beautiful. All that going on.

I appreciate you with your cemetery. These people are every Saturday and Sunday. And beyond that you've got vendors coming in. You've got the tent people. I don't know if they'll have ten people anymore so if you're not that's – But sitting up and taking down tents and all the venue people in and out all week long pretty much. You have rehearsals. We got hit one night by a young man on the hill. Just got a ding. Had green paint on our car. But the hill is so crazy and treacherous. He went on. He kind of stopped for a minute, got out, goin on. By the time we could up and turn around and come back down he was gone. He was history. So I can't tell you, it's dangerous, very dangerous. And I'm thinking you guys have security and I think for us, for your people, for everyone a lot of events – I mean, it's it's like having the 4-H fairground in your backyard. Why would they not have the security people out at the road? Maybe if they have to secure, pay for the county to put a policeman at the bottom of Thomas Hill or when the event closes put one at the end of Goins and Thomas so they have to go left instead of right so they can have more direction. If someone was inebriated, we've had that discussion. We don't know. You know we see different things going on. What they're going to do

is just pass that on to their clients. So, but it would provide a safety and any major event, and this is not like thousands of people, but on our road it's a major event that they maybe couldn't do something like that to help ensure sure of the safety.

I probably had some other things but those are my major, major concerns. Thank you very much.

N. Burkhardt

Thank you.

Are there any further comments? Any questions from the board?

R. Farris

I do have a question for the Dews. Are you guys planning on having more events open to the public going forward?

Mr. Dews

Open to the public? Like, for, can you help me out a little bit on that one?

R. Farris

Events like the wine at The White Barn.

Mr. Dews

We actually only had about 50 people show up for the wine down at The White Barn. There was hardly very few people there. Are we going to have events like that? I don't know. I can't fore say if we will or if we won't. Would that be an issue?

J. Hershberger

Here's how I would answer the question. I would say that just as Judge Coy Ruled and the Court of Appeals confirmed that this is a rustic event venue focused on weddings. That's the majority of their events. There could perhaps be an event from time to time that would be open to the public, but that would not be the substantial of The White Barn Venues business. So similar to what you've seen presented to you tonight, perhaps the CASA event which would be an invitation event and then all of the other events are weddings or by invitation only. So we anticipate that would be The White Barn Venues business model going forward.

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N. Burkhardt

With the invitation only events, do you pack it at a certain amount? Of people.

Mr. Dews

What do you mean.

N. Burkhardt

While you were talking about the invitation only event, do you limit the number of people that are coming to those events?

J. Hershberger They are generally capped by the amount of people that can be in the barn. On average think we submitted evidence that it was somewhere around 150 – 160 guests. So generally the event would be limited by the number of people that would fit in the barn. It could be bigger. In some, no, however, the physical space limits those events to a certain number.

Mr. Dews The average wedding nowadays is only 150 people. That's what we've been Seeing also.

R. Ferris What does the Fire Marshall rating? On the capacity?

Mr. Dews I believe it is marked at 220 inside the building.

Mrs. Dews 206.

Mr. Dews 206. Excuse me. 206 inside the building.

R. Ferris I recall from a previous meeting that that came up that there was a Fire Marshall rating on the capacity of the facility.

B. Waller So that would be the max occupancy load?

Mr. Dews Inside.

B. Waller Inside.

Mr. Dews Yes sir. And it's posted.

N. Burkhardt Any further questions or comments from the board?

J. Hershberger If I could make just a final comment. Again I just want to reemphasize that my clients have attempted to work in good faith with this board and with the neighbors. Even tonight, you know, trying to make sure we get those dates to them. We are trying to work with them, respect their private property rights while still continuing the business. And again just the Order by Judge Coy that was affirmed by the Court of Appeals is that this permit would be issued for one year with an onset date of April 1, 2018, expiration March 31, 2019, could be renewed annually with two conditions. Again the annual renewal and then the 11:00 p.m. cut off time. So we're simply asking for renewal of that. Again the attempt is to be in substantial compliance with the city's ordinances and nothing has changed since the 2016 and 2018 ruling.

N. Burkhardt Thank you.

Mr. Dews Thank you.

Kathy Ayers Kathy Ayers, 340 Thomas Hill Rd. I would like to clarify one thing that Mr. Dews just said. He said that the public events would be an exception to the rule.

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That he said that would be the exception to the rule, that they wouldn't – How do you define that? What is the exception to the rule? Once a year? Once every two years? It seems like that needs to be determined so that we're not waiting and having this alcohol, these alcohol events every weekend or every day or on a Wednesday night or on a Thursday night or on a Monday night.
 Thank you.

J. Hershberger May I respond to that?

N. Burkhardt Sure.

J. Hershberger I think that the market forces have already indicated what The White Barn Venue's business model is and will continue to be. I mentioned that that event was not well attended and most of the events if not almost all of them other than that one are going to be by invitation only this year.

Nancy Alexander 328 Thomas Hill Rd. I have a question over what was just discussed. 206 inside the building I think is what was said. Okay. A lot of it is outside the building and maybe they have the Fire Marshall for inside the building, but are the emergency, I mean would you take a reservation for a thousand people because they could be outside? They have a fire pit out there and other things on the lawn. I mean what would their maximum number of people be? Is it held at 200? Is it held at that number or because that is inside the building and we had another 100 outside the building which is extra cars, so what would the determination be on that amount?

N. Burkhardt Anyone have an answer to that? What's the most you've had at a wedding? Has it been more than 206?

Mrs. Dews Two years ago we had 230.

N. Burkhardt Since then have you been under that?

Mrs. Dews Have been under 200.

Mr. Dews But not inside the barn.

B. Waller Counsel?

D. Sharpe Yes.

B. Waller Just in a little discussion here I think the board would like some time to review this. I know it could go as far as I believe it is 90 days, but I wouldn't look at that. I would say until the next meeting. But, I make a motion to take no action at this time and I guess if we were to meet it would have to be what, an executive session?

D. Sharpe Any discussion – executive sessions are limited for certain purposes, and with regard to the application at hand I don't, I don't know how that couldn't be a public meeting. I think if the board would like to move to table the renewal until the meeting to allow the time for the board to think about it and the permit still be valid during that time, I don't see an issue with that.

B. Waller But that would, that then would bar us that we could not meet.

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D. Sharpe Right.

B. Waller Not more than two people?

D. Sharpe Right.

B. Waller I would like to make that motion that we table this until our next meeting for time to further examine what we've received here tonight.

R. Farris I second that.

N. Burkhardt Roll call.

L. Waller Nancy Burkhardt Yes
 Bob Waller Yes
 Rick Farris Yes
 And for the record Scott will be abstaining.

Application Tabled.

Per S. Baldwin that concludes that piece of business.

J. Hershberger Could I ask for clarification? Just a question. So, just it is my understanding

that is tabled, however the permit is still active until the board makes a decision.

D. Sharpe Yes.

New Application:

- Indiana Apartment Holdings, LLC – Conditional Use permit for an apartment complex
Location: **2219, 2223, 2225, 2227 & 2213 Michigan Rd.**
Zoned: Medium Density Residential (R-8)

L. Waller confirmed that she had not received the applicant’s confirmation of certified mailing; spoke with the applicant and she said she did mail them, however, not received in the PC office. So, will need to table this application.

S. Baldwin made the motion to table application under next regular meeting – seconded by N. Burkhardt – roll call – all ayes.

Application tabled.

- Jim Pruett – Variance from Development Standards (Setback Variance) – Applicant requests a zero lot line setback from the west lot line so as to allow for construction of an addition to rear of structure.
Location: **214 W. Second St.** Zoned: Historic District Residential (HDR)
- Jim Pruett – Variance from Development Standards (Setback Variance) – Applicant requests a zero lot line setback from the east lot line so as to allow for construction of an addition to rear of structure.
Location: **216 W. Second St.** Zoned: Historic District Residential (HDR)

S. Baldwin noted that 214 & 216 W. Second St. are adjoining properties (common wall) so this actually applies to both properties. Said the board would consider this as one thing.

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Jim Pruett, 304 Jefferson St., said he purchased the property at 214 & 216 W. Second St. It is a brick federal building with a common wall and it originally had, or at one point, maybe not originally, but at some point had an addition on the back that was removed prior to him purchasing.

Mr. Pruett said basically his plan is to get this building cleaned up, turned out and headed in the right direction, put both sides up for sale individually with the hope that the purchaser will be a single family tenant, single family homes, attached single family residences.

Mr. Pruett explained that the property is currently being used as apartments. Have been in the process of cleaning it up. He does not want to apply for the building permit for the addition but what he would like to is advertise when he starts to market the property that have talked to this board and that there can be an addition on the back of both sides – 214 & 216 – individuals purchasers could do that with a zero lot line only on the adjoining wall between the two.

S. Baldwin said to Mr. Pruett that another words he didn't plan to build this right away, plan to advertise the permission has been granted to do so. Correct, per Mr. Pruett.

B. Waller said to the best his recollection haven't done that. L. Waller said that the board has not done that but a variance does go with the property so be it Mr. Pruett that owns it or he sells it, it does go with the property.

R. Farris asked the question if this needs to go before the Historic Board. Mr. Pruett answered that any addition downtown has to go through the appropriate boards and permit processes. Said he has not talked with the Historic Board as tonight is just for the zero clearance lot line at this point.

B. Waller said as he looked at it he thought it was one building with like a garden room on the back. Mr. Pruett said it could be a master bedroom depending on what they want to choose. If the two owners get together and decide what they want to do, how they want to handle that zero lot line. He believe that both property owners would have to agree how to do it.

J. Pruett noted that the drawing he submitted with his application was just for a visual.

S. Baldwin asked D. Sharpe if the board grants a variance for potential construction are there any legal issues that he could think of. No, per D. Sharpe.

R. Farris said in that process did that leave the type of construction wide open. D. Sharpe said no, this is the first step for the construction if Mr. Pruett or anybody else didn't have this approval they wouldn't even to the Historic Board because this is the first step. This board doesn't decide aesthetically anything, but if Mr. Pruett didn't have this approval he would actually be wasting his time to get drawings because he wouldn't have the approval to get there.

In answering N. Burkhardt, Mr. Pruett said he did not tear down what was previously there. It was torn down when he purchased the property – both sides – previously were zero lot lines.

L. Waller said she believed that Mr. Pruett was asking for zero lot line for the common wall only. Confirmed by Mr. Pruett.

Audience member, Amy Fischmer, 218 W. Second St. said she is next door to Mr. Pruett's property and her understanding was that he was looking to remove the easement that goes along with her property in order to have this to be built and she was here to contest if that is the case. She explained that she has an easement that goes across the back of that property. It is a 3-ft. easement that goes the entire width of Mr. Pruett's property that she was afraid any addition would interfere with her easement.

It will not, per Mr. Pruett. Mr. Pruett explained that the 3-ft. easement is 10-ft. south of the rear property line of his property so she has a 3-ft. easement that goes east and west across there. It's

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probably 30 – 40-ft. from the house itself, her easement. Ms. Fischmer agreed. She confirmed that it is 10-ft. off the back of Mr. Pruett's property line – is where it starts. (Plat map reviewed between Mr. Pruett, Ms. Fischer and board members.)

Ms. Fischmer expressed concern as to how the new landowners would know this (variance) information, what is going to told to them in the sales, what's going to be in the contracts or whatever specifies that they can't build past a certain post. D. Sharpe confirmed N. Burkhardt's statement that it would be specified in the land title. Ms. Fischmer said that her easement is not on Mr. Pruett's land title because she did get the deed and it said to refer to her deed. L. Waller stated that this board can put conditions on a variance and this is recorded at the courthouse. D. Sharpe noted that just as her easement is found, this variance would be found in a title search and beyond that if Mr. Pruett or a future landowner were to encroach on the use of that easement Ms. Fischmer would have very strong legal standing to refute that use.

No further questions or comments from board or audience members.

Findings of Fact

- Will approval of this application will be injurious to the public health, safety, morals, and general welfare of the community?

Yes	No	Why?
	N. Burkhardt	No I don't think it will be injurious to public health, safety, morals and general welfare to the community. There was previous buildings in those areas and they're going to take into account the easement on 218 W. Second St.
	B. Waller	I would agree. I don't see any way that this would be injurious to public health, safety, morals and general welfare of the community. With everything recorded I think it will be fine.
	R. Farris	I agree with the previous board members comments.
	S. Baldwin	I agree. I cannot see harm to the general welfare of the community by providing for enhancing an existing historic building.

- Will the use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner?

Yes	No	Why?
	N. Burkhardt	No I don't believe so. I think you're trying to improve the property.

B. Waller I don't think it will be. Any improvement will probably raise the value.
 R. Farris I agree as well. I think this is a positive action and it fits right in with the Comprehensive Plan that we abide by.
 S. Baldwin I believe since this is essentially a potential construction I'm not so certain at the moment this applies. Certainly in the future if somebody wants to build, this will come up, but I think it's met this time.

- The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

Yes No What are the practical difficulties?

N. Burkhardt I think it would result in practical difficulties. Just like as we see all the time downtown you're landlocked and the structures are built right next to each other, kind of like a row house. It would be a practical difficulty.

B. Waller This is one of those cases where the zero lot line isn't really as evident. It is part of the two existing buildings. It's not as if the owner wanted to move out and build and thus infringe on the other party's ability to build the other direction so I don't have a problem with this one.

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R. Farris I agree as well. I think for anybody that lives downtown and the possibility of new homeowners moving in and buying this property, having those types of limitations without the possibility of obtaining this type of variance does result in practical difficulties.

S. Baldwin Having gone by and looked at it, it's obvious and by testimony that there was something there in the past. You can see the old foundation on the rear of the buildings. I think there would be a practical difficulty in expanding on this property so I think that one is met.

- Is this request contrary to public interest?

Yes No Why?

N. Burkhardt No I don't believe so. As we've said before you're trying to improve the property and I think you've got the neighbors in mind with the easement, so I don't think so.

B. Waller In this case I don't think it is contrary. I think it passes the test.

R. Farris I can't come up with any reasons to say that it is contrary to public interest.

S. Baldwin Given the legal standing of the easement and that this will probably be included in a motion, I think that takes care of public interest. I think this one is met.

- Are there conditions peculiar to the property?

Yes No What are the peculiarities?

N. Burkhardt Yes. As we've said before the current structures are zero lot line now, so that's the peculiarity.
 B. Waller I would echo that comment.
 R. Farris I agree with previous comments.
 S. Baldwin I think that's an aptly explanation namely the two buildings are joined.

- Are the peculiarities to the property a result of the applicant?

Yes No Why/Explain

N. Burkhardt No because the buildings are currently there already.
 B. Waller I would agree.
 R. Farris I would agree as well.
 S. Baldwin Those buildings were built a long time ago. He didn't build them. That one is met.

- Will owner sustain an unnecessary and undue hardship?

Yes No What is/are the hardship(s)

N. Burkhardt Yea, he wouldn't be able to build there, so yes.
 B. Waller I'm not sure what the hardship would be. Certainly wouldn't be able to do necessarily the way they want to. I don't know if that's a hardship. But, I think in the spirit it meets the criteria. It's fine.
 R. Farris I agree with board member Waller comments. I think we are talking about the progress of the community that was built several hundred years ago and how do you apply making progress be it home renovations, additions to a community that has lived with zero lot lines for a long time. I think enforcement would result in hardships.
 S. Baldwin In my view this doesn't really seem to apply in this case because we're given a potential ability to build, so therefore I think this in my view is not really an issue. Therefore it's met.

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S. Baldwin made the motion to approve the zero lot line variance between the two properties at 214 and 216 W. Second St. and the variance will include that there has to be a reference to the existence of the easement. Motion seconded by B. Waller – roll call – all ayes.

Application approved for a zero lot line variance between the two properties of 214 & 216 W. Second St. with the variance referencing to the existence of an easement.

Variance considered in accordance with Madison City Zoning Ordinance, Section 11.35 – “Variances From Development Standards” and Section 11.37 “Supplementary Conditions and Safeguards.”

- Anthony Hall – Variance from Development Standards (Setback Variance) – Applicant request a 3-ft. setback from the north (side) lot line and a 3 ½-ft. setback from the east (front) property line so as to allow for construction of an accessory building.

Location: **2711 Lanier Dr.**

Zoned: Medium Density Residential (R-8)

Mr. & Mrs. Hall present. S. Baldwin said to Mrs. Hall that he understood they want to put a 24-ft. 24-ft. pole barn essentially in their front yard.

Mr. Hall explained that basically he wants a building where he can put his gardening equipment. He has two John Deere mowers, two tillers, and for a storage area basically.

N. Burkhardt asked Mr. Hall if there was any way he could put it farther from the road. He answered, no and explained that the way his house is situated doesn't meet the criteria that is being asked for – 70-ft. Mrs. Hall noted that the house has been there for about 60 years. She also pointed out that it is a triangular shape lot. N. Burkhardt said she had driven by there and thought it would be hard coming out from the road just north to see if going to turn left. Thought if had a structure it would be tough to see cars coming. Mrs. Hall said that actually it will not. Mr. Hall said there is a good 25-ft. in there before you get to the highway past where the building would be – it would be behind the driveway lights. Mrs. Hall said she had thought about that herself as she was backing out and she is well past where that would be before she even has to start to look. They back out, don't pull out forward.

S. Baldwin told Mr. & Mrs. Hall all they had given this board has a barely legible pencil drawing. Mrs. Hall said that was all she could come up with. Further S. Baldwin said he went to the library and looked on the GIS and used the measuring tool which in their backyard, according to the measuring tool which is not official, it looks like they have 30 to 35 square feet in the back. The big issue it seemed to him and the city - Mr. & Mrs. Hall told S. Baldwin that area is their garden area and their neighbor's driveway goes back along there and then on the other side it adjoins the other neighboring property fence line. There is no access to get back there without some major changes. Mr. Hall said neighbor lives in the second house down from Oak Hill entrance and that is her garage and her driveway. Her walkway goes around their property line.

Utilizing a picture, B. Waller asked Mr. & Mrs. Hall in the area of the wedge what is blocking so that they couldn't place the building in that location. N. Burkhardt suggested putting the building even with the house. From B. Waller's suggestion of where to locate the building Mr. Wall said he would have to drive through the yard to get to it. Mrs. Hall noted that they already have smaller sheds in the area. R. Farris said but they could put in a drive. The Hall's confirmed they had placed the smaller sheds in the current location. R. Farris noted that those sheds can be moved. B. Waller told the Hall's where they had placed the smaller sheds has created their problem.

B. Waller said he shared the concern of the traffic. S. Baldwin stated that is an extremely heavily traveled road and people go fast.

N. Burkhardt said her concern was if this board allows something like this then that is setting a precedence for all those people along there to putting something there, put in front yards. She thought there was where the safety issues comes in. Mrs. Hall said that other people along there has

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rectangular properties and more space and they already have a garage. R. Farris said he agreed with that. He drove it and thought visibility would be a concern.

No one in the audience spoke for or against.

Findings of Fact

- Will approval of this application will be injurious to the public health, safety, morals, and general welfare of the community?

Yes	No	Why?
N. Burkhardt		Yes. As I said before I do have an issue with it because I think it is hard visibility there. I drove it today about 4:30 and it's a major road so I think there is a safety issue there.
B. Waller		I would agree that I see it as a safety issue having driven it also, so yes, approval would be injurious.
R. Farris		I agree as well. I drove it and I tried to slowly approach and take time to look at it as you're approaching the intersection and I do think that the placement of a structure is going to inhibit visibility to a point where it is a safety concern.
S. Baldwin		I've driven by about half-dozen times trying to go by slow enough with the traffic that is along there and I'm in agreement there is an issue here with safety, visibility, and as Ms. Burkhardt pointed out, other people wanting the same privilege. I don't think that one is met.

- Will the use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner?

Yes	No	Why?
N. Burkhardt		No, I don't think that the area would be affected substantially.
B. Waller		I would agree with Mrs. Burkhardt.
R. Farris		I guess my definition of use of the area adjacent to the property would include use of the roads and I do think the area will be substantially affected with the placement of that structure.
S. Baldwin		Value of the area? We've had no evidence. Use? In my view that

possibly could be an adverse effect because of visibility issues for the neighbor, for anybody coming along there in all that heavy traffic. I tend to think that one is not met.

- The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

Yes	No	What are the practical difficulties?
N. Burkhardt		No I don't think so because I think you could put something back that would be within the Zoning Ordinance. You might have to move some things but I think you could put something back there.
B. Waller		I agree. I don't think that it's anything that can't be overcome so I don't see any practical difficulty.
R. Farris		I agree as well. I've had experience moving sheds and structures and building roads and driveways and I think there are better options on this property. I know economics may be a problem for the owners but that's not part of our decision making.
S. Baldwin		Practical difficulty? Well, they want to have a shed for their various things. They have a bizarrely shape lot but we don't really have a clear enough sketch, at least in my view, to show that they couldn't put something elsewhere. I tend

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to think that one is not met.

- Is this request contrary to public interest?

Yes	No	Why?
N. Burkhardt		I think it is contrary to public interest because back to the safety issue.
B. Waller		I believe the same that it is a safety issue so it would be contrary to public interest.
R. Farris		I agree as well. I think the key point here is safety.
S. Baldwin		This seems to be the big hanging point and I kind of agree that all the other board members have a good point.

- Are there conditions peculiar to the property?

Yes	No	What are the peculiarities?
N. Burkhardt		I think there are conditions peculiar to the property. I know that the owners have talked about the shape of the property, the triangular shape, but I think those are issues we could work around.
B. Waller		I would agree with Mrs. Burkhardt.

R. Farris I have nothing new to add so I agree with previous comments.
 S. Baldwin Strictly on this question, yes, it is a peculiarly shape property, it's triangular, it was laid out a long time ago. Yes, in my view those are peculiar conditions. Do they outweigh everything else? Well, no.

- Are the peculiarities to the property a result of the applicant?

Yes No Why/Explain

N. Burkhardt I think the shape of the property is not the result of the applicant, but I think the prior placement of other buildings are a result of the applicants.

B. Waller I would agree. If the other outbuildings being sheds were just moved some distance I think that this new shed would fit in. There's plenty of room for it.

R. Farris I agree as well. I think there are better options. They may cost a little bit more to pursue but I believe there is a better option.

S. Baldwin Peculiarities to the property? No. The property was laid out that way and they bought it, they didn't do that.

- Will owner sustain an unnecessary and undue hardship?

Yes No What is/are the hardship(s)

N. Burkhardt I'm sure there is an economic hardship moving buildings so I'll just say "yes" to that.

B. Waller I don't know if it's unnecessary. I think it's what needs to be done. I don't know if it's an undue hardship. I'm going to say no.

R. Farris I'll say no as well. I don't believe that there's any unnecessary or undue hardship. There is a practical way to achieve what they desire and that is to build an additional storage structure, but it's just the placement of choice right now does not meet variance standards.

S. Baldwin Will they sustain an undue hardship? Unnecessary? If we are here to ensure in this case that visibility along that road is unimpeded because of the nature of that road then I don't know that that would be an undue hardship because by virtue of living along a heavily traveled road you are subject to certain requirements to maintain safety. I don't think that one is met.

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S. Baldwin noted that the board had two choices – could vote to table giving the applicants more opportunity to come up with a different plan that may need a variance, or could entertain a motion to approve or deny.

Mrs. Hall asked what would be the minimum requirement of a setback from the highway? They obviously cannot do the full setback so would have to have a variance. From N. Burkhardt's question of how far back does the house sit, S. Baldwin advised that according to the GIS measuring tool it is about – assume the right-of-way is where the power poles are which he thought would be a good guess. L. Waller recommended going with the right-of-way on ThinkMap and then measuring from the center of the road. S. Baldwin said that is something he's had many questions about because knows what the computer said but there is at least one case on Jefferson St. where is that be true then everybody along there have their living rooms in the state right-of-way. L. Waller said that is common for downtown. S. Baldwin by just going off the telephone lines the house is roughly 30 – 33-ft. Mrs. Hall said she thought it to be closer to 40-ft. because 33-ft. is what they measured for the front corner of where the building would be placed – 33-ft. from center line – their house is a bit father than that but not a lot.

S. Baldwin said he personally, when this is the only document the board has that shows - - would truly appreciate it if there was a sketch, measured, drawn something. Mrs. Hall said that was too hard to do. S. Baldwin made recommendations for this.

Mrs. Hall again asked the board members what would be the minimum variance from center line. She remembered being told it is 70-ft. from the center of the road but the house is a lot closer than that. She added that when the board talks about safety issue and visibility around it for traffic, so what did they think, how far back would they have to go to satisfy their requirement? D. Sharpe advised that in light of the applicant's questions thought this would be a good opportunity to table, get more information, meet with Louann, discuss some options that may be more appropriate for presentation to the board. It sounds like applicants are open to amending so if they wanted to do that he thought was the more appropriate remedy tonight. Didn't think going off the cuff on measuring was appropriate. S. Baldwin said he agreed wholeheartedly. Mrs. Hall told the board members if any of them would like to walk their property and tell them how to make these changes you're talking about I welcome you to come. Would entertain any practical suggestions.

S. Baldwin made the motion to table application until the next regular meeting – seconded by N. Burkhardt – roll call – all ayes.

Application tabled until the next regular BZA meeting.

Tabled Application:

- Terry Sparks – Variance from Development Standards (Setbacks) for construction of an accessory building (garage) 50-in. from east and south property lines.

Location: **128 Fairmount Dr.**

Zoned: Medium Density Residential (R-8)

S. Baldwin This has been changed somewhat from the last time you were here so if you would come up and talk to this.

Mr. Sparks Sure. Terry Sparks, 128 Fairmount.

So the last time the proposed addition was running east and west and you asked me to get you a bird's eye view so I went back to the architect and when he drew that up I realized I didn't like the way it was using up all my grass. So it's the same size building that's now running north and south and it's just attached to the existing garage, so it's not any larger, it's not any smaller. I'm actually off of the south boundary about nine (9) or ten (10) feet. I'm kind of measuring kind of from an invisible line there, but I just

S. Baldwin Excuse me sir. This is the one you're proposing, right? This is your amendment?
Mr. Sparks Yes sir.
So for aesthetic purposes I would like to just maintain the new addition wall in line on the same plane with the existing wall. So really I think maybe the only variance is on

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that east border. The south border if it is a variance, it might be a variance of a foot or two.

S. Baldwin Well you show your south to be 9-ft. from the wall, but is that your lot line where the wall is?

Mr. Sparks No, the lot line is actually that - -

S. Baldwin That diagonal?

Mr. Sparks That diagonal line is actually the lot line that the surveyor surveyed.

S. Baldwin So you're actually within probably farther than 10-ft.

Mr. Sparks I think I might be, yes. I can't swear to it, but - -

S. Baldwin So you're asking for a 50-in. - - you want to put your 1 ½ story masonry garage in line with your one-story masonry garage 50-in. from your fence which is on your lot line.

Mr. Sparks Yes sir.

S. Baldwin And how tall is that building going to be?

Mr. Sparks It think the south end is going to be the 1 ½ story and I believe it was 21 to the peak.

S. Baldwin So it's less than 25-ft.?

Mr. Sparks I think so. I think the Building Inspector looked at it.

L. Waller The Building Inspector, who is not able to be with us this evening, but he did look at the construction plans and his determination was that it was below, I believe it was 24-ft. peak and therefore he felt like the 10-ft. setback was applicable.

S. Baldwin Okay. Thank you.

N. Burkhardt So this is for your own personal use? You're not going to sell anything, have people come over?

Mr. Sparks That is correct. It's for pottery that I do as I retire plus I have a classic car that I'm wanting to park in there, get it out of the hanger at the airport.

S. Baldwin And I notice here that you've provided us with a much better map.

Mr. Sparks Yes sir.

S. Baldwin Drawing – and so that would be to the west, your land begins to drop off quite dramatically.

Mr. Sparks It drops off about 25-ft. from the porch down to the Wells driveway that's at the foot. And it's terraced with gardens in the front. I'm calling the front the west side.

S. Baldwin Board members have any other questions or comments?

B. Waller The existing one-story masonry garage, do you remember when that was built?

Mr. Sparks I'm thinking 25 years ago sir. I think I've lived there maybe 30 years and I put it in a couple of years after we moved in.

B. Waller There was something said like 1993.

Mr. Sparks Okay, that was 27 years ago then.
 B. Waller And was there a permit done on it?
 Mr. Sparks I'm sure it was. I'd hired a contractor, Mike Pruett, the older Pruett, once is Michael and one is Mike and I get them confused, but the dad built that for me and he took care of all that stuff, the building permits and setbacks.
 B. Waller And the setback on the backside of that to your line is about how far?
 Mr. Sparks I'm thinking it's about 3 ½-ft. I measured from the outside of the wall in and that's 3.6 ft. and then I found a stake, which is the property line, and it's about 6-ft. – like if this the back of the wall the stake is, not 6-ft. it's 6-in. off of the stake.
 S. Baldwin So you're saying your wall is 6-ft. inside your lot line?
 Mr. Sparks Yes sir, yes sir.
 N. Burkhardt And you're going to make this look like the existing structure you have next to it?
 Mr. Sparks Yes. Same brick, same style. It's going to look like a carriage house. Other than the garage door it's not going to look like a garage. It's going to look like a carriage house, but it's actually going to be for hobbies.
 S. Baldwin Any other questions from board members, comments?
 B. Waller I was just going to – Louann? If this was done in 1993 the setback on each side would have been what at that time?
 L. Waller I would suppose it would be 10-ft, however that has no bearing on this application.
 B. Waller Well I guess for the purposes of the way I'm looking at it I think it does have a bearing.

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L. Waller Okay.
 B. Waller I mean after all if this is going to line up with the other building for aesthetics and the existing isn't 10-ft. off by allowing it to line up this one isn't 10-ft. off the line. So that's why I think it matters.
 L. Waller Correct. But that would have come under the 1981 Zoning Ordinance and I believe that that setback would have been the same requirement of 10-ft.
 B. Waller Okay.
 R. Farris So what if you were to look at other design options and move than building to the required setback? Have you looked at that? Does that - -
 Mr. Sparks Well, I think I would be in the same boat that I was in the first time I came down. It would be moved down sitting in the backyard and it just wouldn't be feasible.
 R. Farris Have you looked at building a smaller structure?
 Mr. Sparks This is the size that I'm needing for what I'm planning on putting in there. It's a one-bay garage, it is a room for pottery, furnace and then there's a third room for finishing wood projects that I do in my other garage.
 S. Baldwin Any other questions, comments from board members?
 R. Farris And what the dimensions of the structure again?
 Mr. Sparks The new addition is 44-ft., one-inch north to south and 22-ft. 7-in. each to west.
 S. Baldwin Any other questions or comments from board members? Okay.
 Mr. Sparks Thank you.

S. Baldwin You wish to speak sir?

Audience Member

Merritt Alcorn I have a question for Mr. Sparks.

S. Baldwin Come up to the podium please.

Mr. Alcorn Me?

S. Baldwin Yes.

Mr. Alcorn Oh, sorry.

S. Baldwin And address the board please.

Mr. Alcorn I'm Merritt Alcorn, 148 Fairmount Drive and I wanted to ask Mr. Sparks a question before I make my comments, a couple of questions.

S. Baldwin You can ask and we'll have him come up and respond.

Mr. Alcorn Okay.

There's been reference I think today and the previous meeting to a kiln or furnace being in the building for pottery and I was wondering if he could be more descriptive about that as to what type of structure we're talking about, what type of furnace this is and how it's going to be installed in the building. Is there going to be an exhaust? I think those are questions I would have.

Another question I had is does he have an easement of view for the Ohio river?

S. Baldwin Mr. Sparks would you come up and answer?

Mr. Sparks It's an electric kiln, I think it's probably 14-in. in diameter on the inside, the outside is – the walls are probably about 6-in. thick so lets say the outside is 36-in. in diameter and probably sits 4-ft. high. I don't think an exhaust is required. Believe me if it I can put one in. That's easily done.

S. Baldwin A kiln is just a heating chamber, correct?

Mr. Sparks Yes. And it's electric.

S. Baldwin So you put your potter in there.

Mr. Sparks Yes. You put your green ware in that, you turn it up and cook it.

S. Baldwin And so you're saying that a kiln typically doesn't have a chimney that exhausts noxious fumes or something like that?

Mr. Sparks Aw, probably depends on how they are powered whether it be gas or you know the Indians used to use wood, but with an electric kiln I don't know if it needs any exhaust. If it does, that's not an issue. I have exhaust fans in my wood garage that sucks the dust and everything out.

S. Baldwin I suspect the issue is more if it does have a chimney that's going to send stinking fumes

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onto Mr. Alcorn's property and I think that's probably what the issue is here.

Mr. Sparks I'm not aware of – like the place on Main St. that used to do ceramics, I don't there is a smell associated.

B. Waller The old Steinhardt building?

Mr. Sparks In the old – yea, Steinhardt-Hanson building.
B. Waller I'll be honest, I've seen a lot of electric kilns. I've never seen one with a furnace –
Excuse me, with a vent to it.
Mr. Sparks Well, if you had to put a vent in it it would be kind of like an oven vent.
B. Waller Yea.
Mr. Sparks Because the lid comes off of the furnace to put the green ware in.
B. Waller Sure. But I'm only going from my limited experience from seeing that one and school
and all and they were all electric.
Mr. Sparks Right. Yes.
And the second question was – Do I have an easement? I have a – the front of my
building, or the front of my home, which is the west, is overlooking the Ohio River
valley and when I bought the property from Dottie Croxton who bought it from the
Meyer's family that had the Meyer's manufacturing who bought it from Druscilla
Cravens, Druscilla Cravens when she bought that property she had the right to cut
down any trees that would block her view of the Ohio River so if that's what you're
talking about - -
Mr. Alcorn Yes.
Mr. Sparks I do have the right.
Mr. Alcorn That's what I was asking.
Mr. Sparks Okay, right. I do have the right to have my neighbors cut down any trees that blocks my
view of the Ohio River because, you know, that's probably why 90% of the people live
on Fairmount to have a view of the river.
B. Waller You called that what? An easement of view?
Mr. Sparks I don't know.
Mr. Alcorn I used the term. I'm not, I mean - -
B. Waller I've never heard of that. Something new but I get the idea. The mechanics behind it.

Audience Member

Susan Sparks If I might, I'm Susan Sparks.
S. Baldwin Yes.
Mrs. Sparks I'm related to him.
We have not only cutting trees but also not building structures you know that would
block our view down below, but that's a direct view to the Ohio River and that's the
front of our house.
S. Baldwin So another words that direct, in your case, facing due south.
Mrs. Sparks I'm terrible with directions.
Mr. Sparks Due west.
S. Baldwin Due west.
Mrs. Sparks But, again, that's the front of our house that's designed, you know, for the view of the
river, so that's where - - and it's written in the deeds.
N. Burkhardt So is there anywhere behind to east where your new proposed structure would that
obstruct anyone else's view?
Mrs. Sparks I can't imagine that it would.
Mr. Sparks Aw, Mr. Alcorn's house, by using the Google maps, is about 175-ft. away from my
southeast corner and I am not going to block his view because I'm not on his property in
any way, shape or form. Right now any view that is blocked by the new structure is
already blocked by the existing structure. And Patty Wells who is my neighbor to the
south, using the Google maps again, I scaled that out, it's about 140-ft. so there's a big

difference between. These are big lots that my neighbors have, a lot bigger than mine. So, I'm trying to get mine set up there. And we cannot put it in the front because of the view of the river plus the steep drop off.

N. Burkhardt But there's no way to rotate it like 90-degrees and head it more west coming in towards

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your house or are you taking much yard or?
Mr. Sparks Yea. That's the way it was the last month I was here. I had it rotate 90-degrees.
N. Burkhardt Right.
Mr. Sparks and it was sitting, it was sitting right on top of the house almost. This way I'm losing very little grass or yard.
S. Baldwin This is your original plan here.
Mr. Sparks Okay. Yes.
Mr. Alcorn Can I look at it for a second?
S. Baldwin Yes.
Mrs. Sparks We talked about a pie shape, peculiar shaped lot, our lot is peculiar in that it is narrow and lot but almost half of it is the drop-off and you have the dimensions of the drop-off, what is it? About 25-ft.?
Mr. Sparks It's about a 25-ft. drop down about a 70-ft. length.
N. Burkhardt Yea. In fact when I looked on the GIS it wasn't even a straight line on the south side. It kind of went in and then it went in even further. So is this the true survey line here that we know of?
Mrs. Sparks That's the survey line.
Mr. Sparks This is the survey line. Now the surveying was done about six (6) years ago. I did not have a survey when the existing garage was there. We were just going off of fence lines. That was old wood fence lines, so that's - -
R. Farris So it appears to me from the drawings that you could alter the orientation and meet the minimum setbacks. It may not, it may not be straight in line with your other structures.
Mr. Sparks The only way I could alter the location and meet the setbacks is it would be sitting right in the middle of my driveway. And it would probably make my existing garage nonusable because it would block my going into the garage.
N. Burkhardt So you wouldn't have enough area to turn around?
Mr. Sparks Right. And it would probably block one (1) of the garage doors to where I couldn't even pull a car in.
B. Waller So that would be pulling in from south to north?
Mr. Sparks If I may, can I?
B. Waller Sure.
S. Baldwin Sure.
Mr. Sparks I have a garage door here and a garage door here, and then I have a garage door right here so if I had to bring this thing in I'm afraid that this front edge, you know, I'd be sitting something like this and - -

B. Waller I appreciate the clarification. Thank you sir.

Mr. Sparks Yes.

N. Burkhardt So it's not just aesthetical why you moved it then?

Mr. Sparks That's true.

S. Baldwin Are there any other questions or comments from board members? Anybody from the public like to speak again?

Mr. Alcorn Druscilla Cravens owned the mansion and all of this land originally, and I refer to the mansion as being the big large house back on the bluff line. In her later years Ms. Dru severed off that front lot that we're talking about here today. She did that for retirement purposes. She constructed, at the time, a French chateau house. You can still see that chateau house. It's the original stone structure that you guys have probably looked at. And it was intended to be a place of retirement for her. That was how that lot and structure came into existence. I was a little guy probably at that point, but my father was Ms. Dru's doctor that made house calls at that house and knew of the reason why that happened and knew of the chateau and why it was constructed in the manner and in the place that it was. So, all subsequent owners took that property with knowledge of what it was. It is what It is.

I regret that the Spark's view or plan for the lot doesn't meet with Ms. Dru but that's what brings us here today.

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I have always thought that as an owner of my property, or our property, Carolyn is not able to be here tonight by the way. I apologize for that. She had another commitment. That we would follow something along Mrs. Dru's line because our bluff house is basically essentially on the bluff in line with the Cravens home and we like Mrs. Sparks said, we have a large lot. I think it's somewhere in the neighborhood of 220-230-ft. of frontage on Fairmount Dr. and it's probably the only undeveloped frontage that I'm aware of on Fairmount Dr. and I think it's valuable not only to me but also to the City of Madison. I think that frontage allows for probably multiple potential lots. I've been approached over the years by developers and relators about the property. I do not at point in my life chose to make that severance and make that development, but I'm here to defend it. My right to do so.

And my question about the view of easement is that all of us that live on Fairmount Dr. covenant our land and our view that we have. My description of our place, and I imagine the Sparks would agree with me on this point, it's like living in a state park. It's beautiful. And I love that and, you know, I think in the future if development occurs there, those lots of Fairmount Dr. will have value.

And so I want to take the criteria first of all and kind of go with that little history

involved as to how we got to this point. I want to just a moment and kind of go through the ordinance as I understand it. And I will say, as you folks I think already know, I had Devon's job for about eight (8) years, so I'm going to make some comments about setbacks here that's based upon my knowledge as an attorney for the Zoning Board in the past. And I think it is injurious to the health and safety of the community. I think -- I want to show a couple of photographs and Devon do you -- I've put a line for exhibit on the back. Do you want me to just mark these as I hand them to the board?

D. Sharpe You can probably just do them as one (1) would probably be fine unless you want to Address them individually.

Mr. Alcorn I may, it might be best to do them individually because they are of different topics.

D. Sharpe That's fine.

Mr. Alcorn So could I just start out with maybe an "A?"

D. Sharpe An "A" is fine.

Mr. Alcorn Alright. I don't have that many.

But on the question of injurious, I want to show you a photograph of the existing building that is right on the property line. They're about 3-ft. off I guess. And you will notice above this building some electrical lines. That's in "A." I'm going to hand these to you in a minutes. I apologize.

In "B."

S. Baldwin So what do the electrical lines have to do with this issue?

Mr. Alcorn Injurious to the health. I'm going to get there.

S. Baldwin Okay.

Mr. Alcorn Give me a chance.

Okay "B" is showing the source of the line coming off the electrical pole. This line runs basically down the property line to a pole that sits right here on my property and then goes, parts of it go on to, one of the leads goes to the Well's property.

What I would say about setbacks would be that one (1) of the intentions of setbacks besides aesthetics and protecting and allowing for maintenance to existing buildings, is that it also allows for utilities to run on those setbacks. That's one of the functions of setbacks. And, you know, on the hilltop we still are blessed with setbacks. Downtown they don't have that and as you guys know, it's a nightmare from time to time about utilities. The reason I am raising this is because Duke Energy has requirements about these lines. I'm now going to hand you these exhibits -- A, B and C. Duke Energy has requirements regarding the lines and buildings. And the clearance

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that is required over a roof that's not accessible by pedestrians and - - There's been no testimony here today about whether or not this is going in compliance with Duke Energy or not and I think that's an important issue and as instructed I can't see how this building, at 24-ft. is not going to be interfering with that utility.

S. Baldwin Well on the other hand if it doesn't and they have to raise the lines or whatever, won't that be on their expense, their problem?

Mr. Alcorn There's been no, there's been nothing offered on how they're going to deal with that issue.

S. Baldwin Wouldn't that be found in the building permit application?

Mr. Alcorn I don't think so. I think it's something they need to answer for you because if it's not going to be in compliance with, you know, if they're not going to be in compliance with Duke Energy's requirements then I think there needs to be a plan proposed as to how they are going to get in compliance.

But if they didn't have – my point is that if you, if you had a setback that was enforced here there would be no issue on the electrical which was probably why the electrical was run the way it was run down the property line. That's the way most utilities are.

S. Baldwin Most utilities are run down the property line aren't they?

Mr. Alcorn And that's the reason why they are because there are setbacks that will allow for a reasonable amount of maintenance and you know not create a hazard of the possible line being interfered with. Like I said this line runs to another person's property, another person's part, it's not the Sparks I don't think. In any event I wanted to raise that.

The second utility issue I want to raise has to do with a water line that and I believe I show in Exhibit "C." May I approach and just look at - -?

S. Baldwin Certainly.

Mr. Alcorn I'm looking at Exhibit "C" and in "C" there is a gate that appears right here. This is our property. There is a water line that was given, or was installed to the Well's property which is back here and we, Carolyn and I, granted the Wells an easement to come across our line, across our property and down here between the road and the fence so that they could reroute their water line. During the Armstrong administration Terry tapped into the line and ran it through this gate. Now where he's proposing to build this building is going to be apparently on top of the line that he has tapped into the water line that's on my property. So, I don't know what the plan is there. I don't know - - there's not been any explanation as to how he's dealing with either the water or the electric here.

I want to show you one (1) other exhibit on that point. There's exhibit "D" and this exhibit shows a couple of things. One – I think this is the water line or, you know, or the spigot for it, off of it, but it also shows you what we're dealing with here in terms of space. And this is the actual distance that exists between that fence and this existing building.

N. Burkhardt Can a person get in between there?

Mr. Alcorn Aww, our dog could.

N. Burkhardt I mean, was this constructed before this wall?

Mr. Alcorn Yes.

N. Burkhardt Or after?

Mr. Alcorn It was constructed before the wall.

N. Burkhardt I think I could get in there.

B. Waller That certainly looks like enough room to fit in there.

Mr. Alcorn I think you can squeeze through there. As to whether or not you could actually do

anything once you got through there I'm not sure. Another words, could you put up scaffolding to get to a second floor?

B. Waller Now we're looking at things that may or may not come to light. Things that have to be done.

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S. Baldwin It would also seem to me to be their problem.
Mr. Alcorn It is except that that is the purpose of setback is to allow a comfortable amount of space between the building so that you're not on somebody else's probably and I would tell you that the maintenance on the fence was at least part of the time they had to be on our property. There's no other option. I don't know whether it's 6-in. off, the fence is 6-in. off the line or not. I think it is on the line and I'll show you why.

N. Burkhardt Is this the fence we talked about earlier that had been there for how long?
Mrs. Sparks 27 years.
S. Baldwin The fence has been there for 27 years?
Mr. Alcorn No, not the fence.
S. Baldwin The stone wall is what we are talking about.
Mr. Alcorn It's a brick wall.
S. Baldwin A brick wall, excuse me.
Mr. Alcorn And I don't think it's been there 27 years, but you can see the marker right here. I'm going to circle it and it's pushed out, I think it was pushed out at the time the fence was built.

B. Waller You're saying the survey marker?
Mr. Alcorn Yea, that's the survey marker that I circled.
N. Burkhardt So who owns this fence, the fence, this white thing? That's what we're calling a fence?
Mr. Alcorn Which fence are you referring to?
N. Burkhardt I'm calling this the fence. The white thing.
Mr. Alcorn There are two (2) fences. There is a brick wall that's on Sparks's property.
B. Waller Right.
N. Burkhardt That's the wall.
Mr. Alcorn That's the Spark's property.
N. Burkhardt Okay.
Mr. Alcorn And then the white fence is the Well's property.
N. Burkhardt Okay.
B. Waller I noticed, if I may, I noticed on I think this is "D." On the electrical hook-up is there some of form of emergency, and I'm going to ask Mr. Sparks, is that an emergency generator hook-up or something?

Mr. Sparks I'm sorry. May I come up and look at this?
B. Waller Sure.
Mr. Sparks Okay.
B. Waller This is yours?

Mr. Sparks Yes. That's on the back of the existing garage. I have a portable generator that when I lose power I pull it in to my yard and I hook it in there. I walk through that gap daily.

If I might, if I might show you on your diagram with an ink pen, there is a pole right here, electrical pole. The pole that feeds that is not on the property line. For some reason the pole that feeds that is right here. So the electrical line goes this way across my property.

B. Waller Not across the easement?

Mr. Sparks Not on the easement.

If I can address the water.

Mr. Alcorn Could I finish my presentation?

S. Baldwin Just a minute sir.

Mr. Alcorn Scott, the point of order here? Could I finish my presentation and then Mr. Sparks can have his opportunity?

B. Waller Well a member of the board asked me to step up and clarify something.

Mr. Alcorn I understand, but if - -

S. Baldwin We'll let him continue.

Mr. Sparks When I bought the house the water meter was right here which meant the water

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company had repaired any leaks on my property. I came home one (1) day and the water company had moved the meter, unbeknownst to me, out here on the property line. Okay. I was disappointed because that means it's another 50-ft. of line that is my responsibility. Then I got a notice from Mr. Alcorn, he said he didn't want it on the property line, I had to put it on my property. So, I had to pay the water meter here. I did not ask for it to be moved there. I prefer for it to be down here. The meter is here. I had plans on moving the water because the last thing I want to do is have a leak underneath the garage and have to tear up the garage floor. So, I'm planning on doing that.

B. Waller Thank you.

Mr. Sparks And then I'll let him finish and then will talk about some other things if you want to.

S. Baldwin Okay.

Okay, Mr. Alcorn?

R. Farris I would like to see one of our Exhibits.

S. Baldwin Okay, Mr. Alcorn.

Mr. Alcorn So the second point has to do with the decrease in value and I think I'm at Exhibits "E" and "F" at this point.

B. Waller How is there a decrease in value?

Mr. Alcorn I'm sorry?

B. Waller You said there's a decrease in value?
Mr. Alcorn I said yes. The next point in your, I'm going following your criteria and it has to do with the fact of property value. And so "E" is a shot that I took from my property looking west and it's on the back Scott. I don't know -- That's looking west and you will see, that through, you can see the river and trees and that shot is taken approximately in line with where the Spark's house is if you just came straight across into my yard where the house would be probably located. So my point is that at least the first house, which is probably the one that would be effected if you developed the frontage of Fairmount Dr., would have a river view. It would be, you know, somewhat indirect but it is still a river view. I think there was a house across the street that has similar type of view. It would definitely would add, in my opinion, value to the lot. And I have lived on Fairmount Dr. for more than 40 years. I have also practiced law in the area of estates and real estate and familiar with property values in our community, and I think that this - - If the Sparks move forward with this project any obstruction at all to that view is going to effect value.

S. Baldwin Do you have actual evidence of that? You know we have to have besides just your Opinion.

Mr. Alcorn Well, I'm just - -
S. Baldwin That was what the - -
Mr. Alcorn I understand and I'm just telling you that we all have established that that's a covenanted view and I think it will have an impact on the value.

Exhibit "F" is a closer shot and it does - - this is right at their wall there and shows you where - - I just stepped forward to the wall to show you what you would be looking at. So you point is that the construction is going to affect any possible future development.

R. Farris Yes.
Mr. Alcorn Of the lots that you may or may not segregate and sell off.
R. Farris Which is going to effect the current value of my property. And the - - also what I am saying is that if they moved it back to the property line 10-ft. then that would help, you know, that would at least be the minimum impact if they chose to go forward with this project.
Mr. Alcorn

S. Baldwin From what I see here are a whole bunch of trees and no possibility of an easement of view so even if they didn't build the building you still can't see the river.

Mr. Alcorn Well I think you can see the river #1.
S. Baldwin Can barely see it.
Mr. Alcorn Alright well let me finish. Sorry. I think you can see the river and I think also most of

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those trees belong to the Wells' and I think that the Wells and the property owner to our east, another the bluff people all have understandings about maintaining easements and I think there would be. I think there would be an easement of view there.

B. Waller But none of those people are here this evening.
Mr. Alcorn I don't know Patty is not here. I can't speak to that, but I think she - - I can speak to the easement of view and I don't think the Wells' would object. Those trees, as you can see Scott, are not, you know, kept trees or trees that are cultivated. They are basically some scrub and brush that has grown up and just hasn't been trimmed. So I don't think it would be an issue.

B. Waller Would it be safe to say that you feel that this land up here, going back to the original owner, should be shepherded through time a certain way which doesn't match up with the applicant's request?

Mr. Alcorn Well, I do but I don't have any control over that. I mean I do personally feel that way, but obviously it's their land, you know, and I guess those are their choices, you know, but I think it goes to another one of your criteria, but yea, if you're asking my personal view Mr. Waller I would say I wish it had been maintained as a French chateau, absolutely.

B. Waller Well in some of your other statements, testimony it seemed like that was the overriding consideration here that this was supposed to remain a chateau and the area open. There are things that are not as easy for us to define as being under our purview.

Mr. Alcorn I don't think it is under your purview, I really don't. I acknowledge that and why I'm here is to sum up, I mean, really, is, first of all I do think there is definitely view issue here to the extent that I can be protected by you guys by making them stay on the setback line that will give me the maximum protection that I'm entitled to under the law. Okay? I can't ask for more than that. I mean, you know, to your point, gee, you know, it's not up to me to dictate what happens on somebody else's property, but I can ask the City of Madison to protect me and I'm asking, I'm asking at least for that point to protect me.

The second point is that I think that this idea of this small amount of space between the wall and the new structure is a crazy idea, okay, on a lot of counts. And I don't know how you're going to get at it. I don't know how you're going to maintain it. And I think it has implications for me, okay, because like I cited before, when the wall needed to be maintained they had to come on my property. I can't imagine how they're going to get, how they're going to build this thing first of all without being on my property, but I just don't think, again, back to the city and its obligation, I just don't think it's a great idea to put structures on, you know, that close and the problem here is you have this existing wall that already takes up a decent amount of space and now you're going to create a 50-in. area for them, you know, between the two buildings and I just see it fraught with problems down the road, you know.

S. Baldwin That's their problem, isn't it?

Mr. Alcorn No.

S. Baldwin I mean if they have to do maintenance won't you be out there watching to make sure they won't be on your property?

Mr. Alcorn Well Scott it doesn't work that way #1 in reality, ok, I'll tell you. But #2, you know, I don't think it is all of their problem. Again I think, you know, it's infringing on me. I, I, the city has told me that I have 10-ft. I don't have 10-ft. but there is a 10-ft. restriction that I can count on and so I think by closing that down, you know, what if there is a house next door? Do you see what I'm saying? That's going to be, that's really what I'm thinking about.

B. Waller What if what house?
Mr. Alcorn If I, if that lot is developed, the lot that I am talking about that would be immediately east of where this is happening.
B. Waller Okay.

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Mr. Alcorn If that develops then I think that, you know, jamming that building up next to a wall is going to create a problem for whoever would live there.
B. Waller Well they would have to offset and that's something that we've seen before. To me –
Mr. Alcorn What do you mean?
B. Waller Well you're saying it would create a problem for them. You're thinking that the setback they'd have to have from the property line might be 10-ft.?
Mr. Alcorn It's a 10-ft. setback, yea, yea.
B. Waller So it would still be there. If they're sitting at their requested distance and the other party is 10-ft. off the actual property line there's plenty of room in looking at that.
Mr. Alcorn Okay so if we're 10-ft. off your property line then why is it that the Sparks can't be 10-ft. off the property line? Why would that be?
B. Waller Well we can look at that.
Mr. Alcorn Okay.
B. Waller But right now I think the issues are that Duke Energy issue. I'm sure that Mr. Sparks would probably have them look at that and then any issues with the water lines. But the rest of it to me seems to be more of how I feel the property should be shepherded through time and how everybody else feels, but they're not here. We don't anybody talking to us.
Mr. Alcorn That's really not my point. I'm sorry I said that. I don't mean that. I meant, I gave you the history to try to explain that the same option that Ms. Cravens used is the same option that I down the road could use, okay? That's - - I told you that history to tell you that to give you some background to also address one of the criteria that you have to look at and that is what we'll get to in a minute. But I do think – I'm not -- #2 I think. #3 is particular conditions exist and I don't think, I guess to your point there aren't any particular conditions, okay? I mean the property was acquired. Everybody knew what it was. There was nothing unusual about it at all. It's a half-acre lot basically and you know everybody knew what the zoning restrictions were at the time. So, there's nothing unusual or particular about it. The Sparks purchased it with, you know, full knowledge and, you know, the ordinances were what they were at that time. And I think the setbacks were the same.

And Louann I have a question. Were there any ever any variances that you could find for either the front garage or the wall?

L. Waller I did not find anything Merritt.

Mr. Alcorn Okay.

L. Waller Did not.

Mr. Alcorn And the only reason I think that's important Mr. Waller to your point that you made is I really don't think - - I agree that that probably doesn't have any bearing on this application but to your point I don't think it should have any bearing on the board. Another words I don't think you should be able to bootstrap your way into a variance by saying "gee I want to line up with the building that I never got a variance for." So, I don't think there's been any showing that there's something peculiar about the conditions.

And #4 is there's no unnecessary hardship shown at all. I think, you know, some of the board members have asked could this be a smaller building. The only testimony I heard here was he wanted to be, wanted to have a pottery kiln and a garage for a classy car. In order to do that he's proposing to build 44-ft. x 22 ½-ft. building and two-story. You know that's - -

S. Baldwin He says a 1 ½ story.

Mr. Alcorn I'm sorry. It's 24-ft.

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S. Baldwin 24-ft. high.

Mr. Alcorn Yea, it's 24-ft. high.

S. Baldwin Which is less than the 25-ft.

Mr. Alcorn Okay. There's two - - I don't agree it's not - - I mean the building plans show two-story. It's a two-story building. And my point is that you don't have to build a two-story building to house kiln that is described as being approximately 30-in. in diameter and 4-ft. in height.

B. Waller I think the applicant is doing different things on different levels. I believe that he's doing the kiln and his pottery work down below, and that his wife is doing something separate on the upper floor.

Mr. Alcorn Okay. But, yea, I mean there's no - - I mean this isn't - - I mean they have a very beautiful house and they have a place to live. It's a very habitable place. It's a remarkable place. This is not an undue hardship on the applicant to meet the city's setback requirements. That's what we're talking about here. And I think they could meet those. I think, you know, the suggestions that have been made by the board here is it consider a different design, a different location, they could move it in to their yard. Does it interfered with the plan? You know this is a residential area. I mean this is essentially a house that is being built. You know it's two stories so it's gonna have approximately 2,300 square feet. And so I think it is, you know, pushing the limits of the

plan on about a half-acre lot to be locating two (2) houses on there.

And I think as you already spoke tonight in another manner, I think it's a precedence, you know, eroding of these setbacks here. _____ can be a precedence and you guys had an earlier application and I'm sure you've had many more for people wanting to come in and put accessory buildings on their property and basically use the setback for that purpose. And I think to protect the Comprehensive Plan it's important to respect the setbacks unless there is some absolutely compelling reason that has to be shown that this lot is really a crazy lot that they didn't have anything to do with. I mean the Sparks created all of the structures that are on this lot besides the stone structure. I mean they put themselves into this spot and you know it's their land usage plan and I don't think that I should have to give up what the city has said is the setbacks so that they can, you know, because you know their plan doesn't fit it.

S. Baldwin: You lived on your property when they built the original existing one-story masonry garage and you lived there when they built the stone, or excuse me, the brick wall. Did you file complaints with the Building Dept. of anybody at the time?

Mr. Alcorn: No I didn't and I didn't and I will tell you - -

S. Baldwin: And why not?

Mr. Alcorn: I will tell you that the garage is a hazard and its been a hazard for a while or ever since it was built. And I did not object because I wanted to get along with these people, okay? And we're now back here, you know, third structure on our line basically.

N. Burkhardt: So why has it been a hazard?

Mr. Alcorn: Well, if you look at it - - did you go up there Ms. Burkhardt?

N. Burkhardt: Yes.

Mr. Alcorn: It does - - I don't - - I do not get a view of the eastbound traffic until I get like all the way out to the edge of my driveway. Another words there is no way for me to look down the road and see what's coming. So I have to, you have to go all the way to the end of the driveway and look, and the problem is that Fairmount Drive has a sharp curve in it as it comes eastbound and it's also coming up hill and if someone is moving at a pretty good rate of speed, which sometimes happens on our street, they are on you immediately. So if you don't have any, if you don't have the availability to see ahead of time before you get to the end of the driveway it's _____.

I'm not asking the board to do anything about that. I understand it, you know, Scott you're perfectly right, I should have stood down here and raised "H" about it. I didn't, okay? But you know I do think I'm here today and I'm asking that this not, this not be

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S. Baldwin: continued.
Could you, you pretty well had your say. Could you sum up your objections in about a minute?

Mr. Alcorn Well I think, I mean what I'm objecting is that, why I'm objecting is because I feel like it is injurious to the health because they are interfering with the setback and not allowing for utilities. I think it does affect value of the property because it is - - any structure to the extent that we can minimize interference with the view, I am asking that it be minimized. I don't think there has to be a realtor to testify that views of the Ohio River from Fairmount are valuable. Ha. I think that's - - I think the market supports that and I would support that based on my prior knowledge. There's no particular condition, Mr. Chairman, that exists that requires a variance here. I mean this was - - it is basically a normal lot. It has some irregular lines but certainly plenty of space on it. And there's certainly no necessity or hardship, that's unnecessary hardship. It requires an unnecessary hardship. There is nothing unnecessary or hard about this, hardship about this. And you know I also, like I said, I think it interferes with the city plan and creates a problem for this board down the road because you're going to continue to get requests like you did earlier tonight from people who are going to want to continue to invade the setback lines and it's going to put more and more pressure on you if you do not respect the setback lines and I think it effects the city plan in that way.

S. Baldwin Okay, thank you.
Any questions, comments from board members?

B. Waller Do you want the Sparks to sum it up?

Mr. Sparks Yea, I want to make a couple of comments and then I'll let my wife finish.
I called it a two-story. When I got to looking at the blueprints, the architect calls it a story and a half so it's basically the attic space is the second story.

I remember when the first garage was made I went to Merritt. He had no issues with it. He said I only have one (1) request. There is a lot of bushes out there right along Fairmount. I don't have a problem with you putting that garage there if you'll cut those bushes out because it blocks my view. We cut the bushes out and we've kept them cut out.

I find it's odd that this is a cottage, that it was meant to be a cottage, and it should have been passed down through the generations. This house had been changed two (2) or three (3) times before I bought it. He want me not to build where I need to build in order to maintain his dollar value when he goes to develop his land that he thinks should be kept. I mean that doesn't make sense to me. He want to maintain that this is the way it as originally built and I'm not going to develop this, but I might later.

So, I called the utilities today to see about if lines needed to be moved, needed to be buried. They're coming out this week to look at that in anticipation of getting an - - just want to get the ball rolling in case it did get approved tonight.

And I've never been in his yard looking through my yard at the river view. I think my house would block it, the view that he has so I don't think is going to be any kind of a detriment to his view on future developments.

Mrs. Sparks Just a couple of things that struck me. First of all as Terry has already explained, electrical lines will be dealt with, water lines have been dealt with twice since we've

been there and each time we've gone along with the water company's wishes and with Merritt's wishes at our expense.

We're talking about six-feet. I don't think six-feet will affect the view. Basically, if I'm

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understanding correctly, Mr. Alcorn is asking you to deny the variance in the event he decides later to develop property and to sell it. Doing this project improves our value. Merritt's argument is that it may decrease his value. I don't know that you're here to weigh whose value is being protected, you know, and his is a future value while ours is now.

There were a lot of comments about you can't get in to repair the building, you know, with that. We've had our garage reroofed twice in these recent storms. We had the roof blown off and we had to replace the roof on the house and the garage. And then in the next storm a tree fell down right over our garage and came through it all. That was able to be repaired without any problem.

And most importantly what we're putting in here, we're not asking to build a pole barn that might affect Mr. Alcorn's property value or to put in a temporary structure. We're talking about putting in a brick building that is in keeping with the rest of the property.

He talks about a French chateau. My understanding was that that was a little studio that Mrs. Cravens went out and marked the four (4) points on and was built. The Meyer's added on to it. The next people that were in there redid some things and we've tried to maintain an attractive looking piece of property.

He talked about the size of the lot that we should be able to do what we wanted to on it, but again as we've pointed out, half the lot is on a hillside, well maybe not exactly half but most of it is, so I don't see where there's anything that should bar the board's view from granting this variance. I think it improves the appearance of the property. It doesn't detract from anything.

And even the houses were to be developed on Mr. Alcorn's property down the line some time. Based on the quality of the construction we use local contractors, you know, the quality of the construction I think if you have an opportunity to go by or perhaps you already have you will agree that it's well built. It's not something that is going to be an eyesore.

So, we're hoping that you will agree to grant the variance. We're talking about six-feet if the numbers are correct.

S. Baldwin Thank you.
S. Baldwin You're welcome.
Mr. Alcorn Mr. Alcorn you've - - please make it brief.
S. Baldwin I understand. I've been here late before.
Mr. Alcorn We're not doing that again.
Mr. Alcorn Was trying to make a joke.
S. Baldwin Okay first of all the ordinance directs to the property value of the adjacent property. And if I learned anything from that fight over The White Barn it's not enough just to have an opinion, you have to have facts, you have to have appraisal, you have to have something from somebody that indicates in a situation like this your values will be adversely affected and especially since this is a potential that you could divide up your yard into many different shapes and if you decide in the future to divide it so I think the burden of proof that your property will be adversely affected is pretty heavy on you that you'd better have something to back up what you're saying.
B. Waller I would like to add - - I'm not trying to tag team.
S. Baldwin Go ahead.
B. Waller But if you were to decide to divide up the property and allow others to be built, wouldn't you be effecting other people that don't want to do that?
Mr. Alcorn I don't know who it would be affecting? There's no one else who would be affected by

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that.
B. Waller By your opinion though.
Mr. Alcorn Well, I mean it's kind of like what Terry was saying earlier when he was making the argument that I was not affected by the view. I don't think, just the way the houses are arranged I don't think anybody would be affected by development in terms of view.
B. Waller I'm not talking about view.
Mr. Alcorn View.
B. Waller You have these grand properties including yours, beautiful properties, suddenly now you build smaller homes in there.
Mr. Alcorn Yea, yea.
B. Waller That's a major effect.
Mr. Alcorn I guess that's an issue but what I'm trying to - -
B. Waller But that was put forth by you.
Mr. Alcorn Yes. But what I'm trying to address - - you guy keep referring to the future. I'm not talking about future, I'm talking about the current development value of those lots. Another words if Carolyn and I someday decided to move and put our whole place on the market we wouldn't necessarily have to develop it. Do you see what I'm saying? But, we could in our value, and this is what I'm trying to address which is what I think the current value today, that includes developmental lots along Fairmount and if you

put structures on what I would described as that, my west line which would be close to development of the most westerly lot, if it was developed on Fairmount then that's going to effect the property value.

S. Baldwin You've gone over that quite extensively.

Mr. Alcorn Yea, but, okay, I just wanted to point out that it's not a future property value. It's the current value, that house as it exists.

I did not ever give anyone any, either of the Sparks permission to come on to my property and tie in to an easement that I had given to the Wells. That did not happen. And - -

S. Baldwin Do you anything else pertaining to this specific - -

Mr. Alcorn Well.

S. Baldwin It seems to me your strongest argument was about undue hardship.

Mr. Alcorn Well, I mean, yea in the last point I did have was - -

S. Baldwin You've made your points quite well.

Mr. Alcorn I didn't - -

S. Baldwin Do you have anything additional to add?

Mr. Alcorn I just felt like the concern that Susan was talking about, about their space situation was because they had developed the lot in their way so it wasn't somebody else that did it, they did it.

S. Baldwin Okay, thank you.

It's about 22 after 9:00 do you all wish to continue?

N. Burkhardt Sure.

R. Farris Lets get it done.

S. Baldwin Okay, anybody else from the board have any comments or questions? I think people in the audience have made their points.

At this point we can either go on to Findings of Fact or if you on the board think it would be wise to table this - -

N. Burkhardt Keep going.

R. Farris Keep going.

S. Baldwin Okay, well, let's do our Findings of Fact and please explain your reasoning.

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- Will approval of this application will be injurious to the public health, safety, morals, and general welfare of the community?

Yes No Why?

N. Burkhardt I don't find it injurious to the public health, safety, morals and general welfare. The application are going to talk to Duke Energy, they are going to work on the water line. Safety? I don't see where this building was effect safety at all, and the general welfare of the community, I just don't see anything injurious about it.

B. Waller I don't think it's going to be injurious at all. Obviously if they're going to build up higher then Duke will have to come into the _____ at some point to be sure it's not going to interfered with the lines. It's going to increase the value of that property which I would think would also boost the value of neighboring properties. So, no, I don't think it's injurious at all.

R. Farris I agree as well. I, from all of the comments made here tonight and from just my perspective in looking at this I can't see any reason to think that it is going to be injurious to any of those things listed.

S. Baldwin Public health? Certainly not. Public morals? No. To the general welfare? No To the safety? There are no safety issues here. I think that one is met.

- Will the use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner?

Yes No Why?

N. Burkhardt Again I say no because of the word substantial. I just don't see it a substantially adverse manner. You have limited views of the river by those pictures, I mean small views. So that's where substantially comes in for me. And I just don't think so.

B. Waller I couldn't have framed that better. I would agree with what Ms. Burkhardt said.

R. Farris I can't add anything in addition either.

S. Baldwin I asked several times if there was any objective proof, any appraisal, any data from similar situations. There was none. There was an opinion based on certainly, as said, his experience, but in my view there has to be proof when it comes to, or at least a compelling proof that says that Mr. Alcorn's property will decrease in value. And I just personally can't see it because it's such a, it's such an advantageously located property with a house that has such a great view. So, I think that that one is met.

- The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

Yes No What are the practical difficulties?

N. Burkhardt I agree with that. Strict application will result in practical difficulties. The house, or the location of the home it says built on the lot was built in the early 1900's and then in front of that you've got terracing views _____ land, and in the back you just don't have a lot of property there. I think the property line,

the survey line is not a straight line and I just think it would be practical difficulties.

B. Waller And I don't want to belabor the point but I agree, again, with her opinion on this.

R. Farris I'm going to say no because I believe that there are other options that won't

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create such practical difficulties.

S. Baldwin So just to be clear you think that criterion is not met?

R. Farris That's correct.

S. Baldwin Okay.

The practical difficulty is there's an existing house, a good portion of that land drops off and really can't be built on, there was an existing garage there that was put in many years ago apparently to no objection, and so effectively the house was built and according to testimony added onto over the years with apparently no objection and so that leaves the useable portion of that property really kind of limited what's left. So I think that would be a practical difficulty.

- Is this request contrary to public interest?

Yes **No** **Why?**

N. Burkhardt No I don't think it contrary interest. I think that they think their property they have they are willing to do what they can to make it fit in what they already have and to take care of it and use proper materials that are already existing with the structures they have.

B. Waller I can't find any way it would be contrary to public interest. There may be a couple of private interests that it would be contrary, but I can't find a public

R. Farris I agree with Mr. Waller's comments.

S. Baldwin And I would agree with Mr. Waller that the public at large I don't see any conflicts there.

- Are there conditions peculiar to the property?

Yes **No** **What are the peculiarities?**

N. Burkhardt Um, I believe there are conditions peculiar to the property and I think it goes back to #3 with the practical difficulties and the way the structures are set and the property lines.

B. Waller I would agree with what she has to say. Looking at the front slope, the amount of property that is only used for decorative purposes, a home of this design as

grand as it is, tends to attract people that may want to be able to do other things. I know I'm not coming out saying that right, but they can afford the hobbies and things like that, they would need the rooms in my opinion. Are the conditions - - give me a minutes. I think there are conditions that are peculiar.

S. Baldwin

If you would like a minute to think over - -

B. Waller

Nope. I'm done.

R. Farris

I do believe there are conditions that are peculiar to the property.

S. Baldwin

Could you elaborate a little, please?

R. Farris

I think the configuration of the lot lines, the fact that part of the yard is terraced, those are peculiarities to that property.

S. Baldwin

Okay.

I think there are a number – certainly it's the shape, the location, that only a portion of the property is usable and the rest drops off severely. The property itself is located in a very affluent and desirable part of Madison where people do tend to build very lovely homes. And in addition, like I said before, there is an existing one-story garage, there is a wall, there is a house which has been added onto, even though there seems to be no legal requirements that historical things be maintained. That leaves not a very large area to do with his property what he wishes to do which is something that everybody wants. So, I think that all of this coupled together makes a peculiar condition in this case.

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- Are the peculiarities to the property a result of the applicant?

Yes

No

Why/Explain

N. Burkhardt

No. The size of the lot is not a result of theirs, _____ when they bought the property, along with the front terracing and little backyard.

B. Waller

If you're just talking about the property itself and nothing else that was added by the applicant, I would say that it's not a result of the applicant. They did build a garage and at that time probably, we all want to be forward thinking, maybe would have thought of making it bigger at that time to add the hobbies but we tend to get these hobbies later in life too. That's the other side of that. So are the peculiarities of the property a result of the applicant? I really can't find that it is.

R. Farris

I agree as well. I think as Mr. Waller stated it, if we're applying our reasoning to the property itself, I don't believe that any of the peculiar conditions are a result of the applicant.

S. Baldwin

Aw, and I would tend to agree. He bought a house which was there. Other additions were made, so I think in this case that this one is met. It was not not because, primarily because of anything he did. I think that one is met.

- Will owner sustain an unnecessary and undue hardship?

Yes	No	What is/are the hardship(s)
N. Burkhardt		Yes I believe the undue hardship from what they have currently it would be tough to put the proposed building within the setbacks with the existing layout of the current garage.
B. Waller		This is one of the hard ones. Unnecessary and undue hardship? Well they wouldn't be able to pursue their hobby. If they were to reshape the room or change the direction they are going to lose a large portion of their yard, I believe green space would be taken up also. I'm going to say yes.
S. Baldwin		So you think that one is met?
B. Waller		Yes.
S. Baldwin		Okay.
R. Farris		I'm going to say no. We're talking about six (6) to seven (7) feet. I think they could shorten the building, abide by the setback and still have plenty of room to pursue their hobbies.
S. Baldwin		Unnecessary and undue hardship? The first proposal was like "this" which was not viable. The second proposal essentially keeps this new building in line with an existing one which was built apparently many, many years ago and never complained about and never any issues raised. Where this building to be moved 10-ft. from that eastern line that would be a 6-ft. chop into it which would certainly be 6-ft. from what's already there of the existing building. So, were the building to be located somewhere else on this property with its proposed use I can see difficulties there. So in my view I think this one is met.
S. Baldwin		Well, we've gone through our Findings of Fact. I would entertain a motion to approve or deny this variance.
B. Waller		I make a motion that this variance be granted.
S. Baldwin		Do we have a second?
N. Burkhardt		Second.
S. Baldwin		Okay – roll call
L. Waller		Rick Farris No
		Scott Baldwin Yes
		Bob Waller Yes
		Nancy Burkhardt Yes

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S. Baldwin Okay that concludes that business.

Variance application approved as applied.

Business – Old or New:

L. Waller stated that Lucas Soule had paid his past due Conditional Use permit fee. However, still had not received the CUP renewal fee from Harold Perry, Jr. D. Sharpe advised that he had sent Mr. Perry a letter with the green certified card being received – was not signed by Mr. Perry, signed by Louann Hill signed for it at the residence we have for Mr. Perry.

S. Baldwin made the motion to instruct the Building Inspector to hand deliver a notice that the Conditional Use permit is expired and if he pays his fee by our next regular meeting that it will be renewed and if not he will have to reapply for a Conditional Use permit. Motion seconded by N. Burkhardt – all ayes.

Building Inspector to hand deliver a notice that the Conditional Use permit is expired and if he pays his fee by our next regular meeting that it will be renewed and if not he will have to reapply for a Conditional Use permit.

No further business to be brought before the board.

N. Burkhardt made the motion to adjourn – seconded by B. Waller.

Meeting adjourned at 9:40 p.m.

BY ORDER OF THE MADISON CITY BOARD OF ZONING APPEALS

Scott Baldwin, Chairman

Louann Waller, Secretary