The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, January 4, 2001, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  C. A. Pantle, Chairman
                   Marty Warren
                   Ruth Ann Mason
                   Tim Miller
                   Judy Dixon
                   Bill Williams
                   Ward Pedley
                   Gary Noffsinger,
                   Planning Director
                   Stewart Elliott
                   Attorney

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CHAIRMAN: Call the meeting to order of the Owensboro Metropolitan Board of Adjustment.

The first item on the agenda tonight is the minutes of the last meeting. They're on record in the office. No corrections that we know of that need to be made. Anybody have any questions?

(NO RESPONSE)

MS. DIXON: Motion to approve.

MR. WILLIAMS: Second.

CHAIRMAN: Motion has been made to approve
and a second. All in favor say aye.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item on the agenda this evening is the election of the officers and I turn it over to our counsel, Mr. Elliott.

MR. ELLIOTT: In accordance with our bylaws, the first meeting in January we have the annual election of officers. So at this time the floor is now open for the nomination for the office of chairman.

MR. MILLER: I'd like to nominate Audie Pantle.

MR. WILLIAMS: Second.

MR. ELLIOTT: Are there any other nominations?

(NO RESPONSE)

MR. ELLIOTT: Do I have a motion that nomination cease.

MR. PEDLEY: I make a motion that the nomination cease.

MS. MASON: I second.

MR. ELLIOTT: Mr. Pantle has been nominated for chairman. All in favor of that signify by raising your hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MR. ELLIOTT: Mr. Pantle, you are our chairman.

Now we have nomination for office of vice chairman.

MR. WILLIAMS: I make a motion for Ward Pedley.

MR. MILLER: Second.

MR. PANTLE: Move the nomination cease to be elected by the commission.

MR. ELLIOTT: Have the motion that nomination cease to be elected by the commission. Do I have a second of the motion?

MR. WARREN: Second.

MR. ELLIOTT: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MR. ELLIOTT: Now we have the office of secretary. Do I have a nomination for office of secretary.

MR. PEDLEY: I nominate Ruth Ann Mason.

MR. ELLIOTT: Do I have a second to that?

MR. WARREN: Second.

MR. ELLIOTT: Are there any other nominations?
MR. PANTLE: Nomination cease to be elected by the commission.

MR. ELLIOTT: Is there a second to that motion?

MR. WARREN: Second.

MR. ELLIOTT: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MR. ELLIOTT: That concludes the election, Mr. Chairman.

CHAIRMAN: Thank you. We will try to proceed.

Let me set a few guidelines for our meeting this evening. Everyone here can have the opportunity to speak on any item. When you wish to speak, come to one of the microphones, be sworn in by counsel, state your name and then we'll proceed with that. If you have any questions, direct them to the Chair and we'll find out the answer. We won't have any arguments or conversations between people in the audience.

With that we'll proceed with Item Number 2, Gary.
ITEM 2

805 East Seventh Street, in a P-1 zone (Map N-4) (POSTPONED)
Consider request for a Conditional Use Permit for construction of a community based residential housing development containing 5 buildings with 64 beds.
Reference: Zoning Ordinance, Article 8, Section 8.2C1
Applicant: Wendell Foster Center

MR. NOFFSINGER: Mr. Chairman, this application was postponed from the last meeting.

There was some issues relating to the lot coverage on the property. Those issues have been resolved. The gross building area for this project will be approximately 47,418 square feet. The net building area will be 34,671 square feet. Now, the net area is based upon some inductions that are allowed in the Zoning Ordinance in counting the lot coverage for a particular piece of property. The maximum allowable lot coverage is 35 percent. The proposed development would have a lot coverage of 30.04 percent. The applicants are here tonight represented and a development plan has been filed with the Planning Commission to detail the site development characteristics of this property and that will be considered by the Planning Commission next Thursday.

With that said this item is in order and it's ready for your consideration.

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(270) 683-7383
CHAIRMAN: First, is there anyone in the audience wishing to speak in opposition of this item?

(NO RESPONSE)

CHAIRMAN: If not the applicant has the floor.

MR. ELLIOTT: State your name, please.

MR. COX: My name is Alvin Cox. I'm with Potter & Cox Architects in Louisville, Kentucky. I am speaking on behalf of Brenda Lowry and Jim Riney, and for the sake of brevity I will give --

MR. ELLIOTT: Let me swear you in.

(MR. ALVIN COX SWORN BY ATTORNEY.)

MR. COX: The proposed development is an effort to execute the beginning of a master plan for Wendell Foster Center and to in a significant attempt to create a new paradigm for the care of the mentally retarded development disabled patients that currently resides in two buildings on their current campus. We are through this design making a strong effort to bring this type of replacement facility into a residential scale creating a community based field to the project.

There will be essentially four areas, each containing 16 beds, and 1 young community building in the center that will service those clients of the
facility. I think that you can see from the scale of
the project that we are making an effort to respect
the residential character of the neighborhood as has
been the practice in other independent living houses
that we've developed on the site.

It is the eventual plan of the Wendell
Foster Campus to completely surround that site with
individual houses as had been started on other parts
of the campus with this corp community being in the
center of the campus.

I would be more than happy to answer any
questions that you all might have with specific regard
to the issues before you tonight.

CHAIRMAN: Thank you, Mr. Cox.

Any board members have any questions of
the applicant?

(NO RESPONSE)

CHAIRMAN: Do you have anything else you
need to add?

MR. COX: No, sir, other than I appreciate
this opportunity and want to thank both Gary and Jim
for the help that they've given us during this process
and Jim Riney and tell you what an extraordinary honor
it is for our firm to be associated with the Wendell
Foster Campus in this community. It is truly a model
facility not only in the State of Kentucky but across the nation. It's something that we value as I'm sure all of you all do. Thank you.

CHAIRMAN: Thank you. Chair will entertain a motion to dispose of the item.

MR. MILLER: Mr. Chairman, based on the evidence given and Staff recommendation, I make a motion that the Conditional Use Permit be approved.

CHAIRMAN: You've heard the motion. Is there a second?

MS. MASON: Second.

CHAIRMAN: Any other discussion from any board member?

(NO RESPONSE)

CHAIRMAN: Hearing none all in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Proceed and good to have you with us.

Next item, please.

Related Item

ITEM 2A

805 East Seventh Street, in a P-1 zone (Map N-4) Consider request for a Variance to reduce the front yard setback from 25 feet from the property line to zero feet from the property line in order to construct an open sided canopy over the entrance driveway of a
proposed community based residential housing development.
Reference: Zoning Ordinance, Article 8, Section 8.5.12(c)
Applicant: Wendell Foster Center

MR. NOFFSINGER: Mr. Chairman, this variance request has been advertised for public hearing at this time. All adjoining property owners have been notified. The application is found to be in order and it is to reduce the setback along East Seventh Street to allow this canopy to project up to the property line. Staff has reviewed the proposal and found that, yes, there are special circumstances surrounding this development and it would create a hardship on the applicant in order to meet the zoning regulations. The findings are that it will not adversely affect the public health, safety or welfare; will not alter the essential character of the general vicinity; will not cause a hazard or nuisance to the public; and will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance.

This recommendation for approval comes with two conditions. That approval of the final development plan by the Owensboro Metropolitan Planning Commission, and two, that the canopy shall not be enclosed.

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CHAIRMAN: The applicant have anything they want to add?

MR. COX: No, sir.

CHAIRMAN: You understand the conditions and everything?

MR. COX: Yes, sir.

CHAIRMAN: Any board members have any questions

(NO RESPONSE)

CHAIRMAN: Chair will entertain a motion to dispose of the item?

MR. PEDLEY: Mr. Chairman, I make a motion that we grant this variance for reasons by the Staff's findings and the Staff recommendation with the conditions stated by Mr. Noffsinger to approve of the final development plan by OMPC and the canopy shall not be enclosed.

CHAIRMAN: You've heard the motion. Is there a second?

MS. DIXON: Second.

CHAIRMAN: A motion has been made and a second. Any other discussion on the item?

MR. NOFFSINGER: Yes, sir. I would like to add for the record that in reviewing the master plan of the Wendell Foster Center, there has been some
discussion in terms of the closure of East Seventh Street, in that area. We would anticipate that down the road that the Wendell Foster Center will be approaching the City of Owensboro and the Planning Commission to close East Seventh Street. At that time if they are successful in the closure, East Seventh Street would be kind of consolidated into the property and that variance issue would go away. This will allow the applicants to move forward with their master plan without the closure of the street.

CHAIRMAN: Any other questions or discussion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously. Next item, please.

ITEM 3

2311 West Ninth Street, in an R-4DT zone (Map N-2) Consider request for a Conditional Use Permit for construction of a 6.1' x 12' addition and an 8.5' x 12' addition to an existing church.

Reference: Zoning Ordinance, Article 8, Section 8.2B4 Applicant: Zion Baptist Church c/o Whaylon Coleman, Sr. Trustee

MR. NOFFSINGER: Mr. Chairman, this application has been advertised for public hearing at

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this time. All adjoining property owners have been notified. It has been reviewed by the Planning Staff. The application is in order and it's ready for your consideration.

CHAIRMAN: Is anyone wishing to speak in opposition of this item?

(NO RESPONSE)

CHAIRMAN: If not the applicant, do you have anything you want to add?

APPLICANT: No.

CHAIRMAN: Any board member have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Hearing none I'll entertain a motion to dispose of the item.

MR. WILLIAMS: Mr. Chairman, I make a motion we approve this Conditional Use Permit.

CHAIRMAN: Is there a second?

MR. PEDLEY: Second.

CHAIRMAN: Motion been made and a second. Any other discussion?

(NO RESPONSE)

CHAIRMAN: Hearing none all in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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Item 4

501 Ford Avenue, in an R-1A zone (Map N-9) (POSTPONED)
Consider request for a Variance to reduce the front
yard building setback along Ford Avenue from 35 feet
from the property line to 24.5 feet from the property
line and to reduce the side street yard building
setback along McCreary Avenue from 25 feet from the
property line to 11.7 feet from the property line.
Reference: Zoning Ordinance, Article 8.5.5(c)
Applicant: Mike E. Pike

Mr. Noffsinger: Mr. Chairman, this
application was postponed from the last meeting in
order to give the board members an opportunity to go
out and visit the site. At that meeting Staff
recommended that the variance along Ford Avenue be
approved to allow the covering of an existing porch,
but that that porch shall not be enclosed in the
future.

The second request by the applicant in
this application was for a variance to encroach upon
the setback and extend up to McCreary Avenue than the
setback allows. The applicant submitted pictures for
the record that in viewing those pictures it appeared
that the existing porch, screened in porch on the
subject property setback or it was not as close to
McCreary Avenue than a porch on the adjoining property.

In an on-site review, it does appear that the porch on the subject property is in line with the porch on the adjoining property and that the porch on that adjoining property does not come any closer than the one on the subject property.

With that Staff's position in terms of the variance request has not changed. It's ready for your consideration.

CHAIRMAN: Mr. Pike, anything you want to add on the application at this time?

MR. PIKE: Yes.

MR. ELLIOTT: State your name, please.

MR. PIKE: Michael Pike.

(MR. MICHAEL PIKE SWORN BY ATTORNEY.)

MR. PIKE: My wife, Amy, and I are here again tonight as home owners of the property at 501 Ford Avenue to request two variances for building setback line in order to make additions for our home. At the last meeting we surprised you with various exhibits and I will be referring to those exhibits again this evening.

It's our hope that in the last month the members of the board have had the opportunity to see
firsthand our property and those others which are for
reference in the exhibits. Hopefully you can see the
neon orange stake in our yard which represents a
setback line from McCreary Avenue if you approve our
variance request.

I'd like to review these variance
requests. The first request involves the setback line
to Ford Avenue and the request is to reduce the
setback of the property line from 35 feet to 24.5
feet. Our existing setback is currently 27.9 feet
which can be seen on the provided site plan. We wish
to build a cover over the existing 3 foot by 6 foot
stoop, which is highlighted in green on that site
plan, in order to provide a shelter area for the front
entrance to our home. We don't feel that allowing
this variance for this purpose we will be out of
character for the neighborhood.

We have many homes in our immediate area
that have covered front stoops. As you can see on the
site plan, our new setback will still be greater than
that of the adjacent property at 513 Ford Avenue which
is 24.2 feet.

The second request involves a setback line
from McCreary Avenue. The request is to reduce the
setback from the property line of 25 feet to 11.7
feet.

I want to make it perfectly clear that with this request we are only asking for an additional 8 feet. I think there was some confusion about that the last time.

When you viewed the property you saw the screened porch on McCreary side of our home. It’s our intention to tear that screen porch off and replace it with a new room which will extend the additional eight feet toward McCreary Avenue.

The east wall of this room will be at the orange neon stake that you saw in the yard. This will leave 21 feet 9 inches to McCreary Street curb.

We feel there are precedence in our immediate area which are in keeping with our requests. The home, which is on a corner lot directly across Ford Avenue from our home, which is 516 Ford Avenue which is picture Exhibit C, is 19 feet 5 inches from the local street curb.

The other corner lot home across the street from us is 400 Ford Avenue which is photo Exhibit B. The home at 400 Ford Avenue is 19 feet 6 inches from the curb on St. Elizabeth Street. Both of these homes which are on corner lots like our home and back up to homes which face side streets like our home.
are over 2 foot closer to the curb on their side street than we would be if you grant this variance.

I'd like to stress the fact that these two homes are already 2 feet closer to the curb than our house will be. We're only asking for an additional 8 feet, and the additional 8 feet is less than what my close neighbor have been allowed.

It was evident from our observation that homes on corner lots in our immediate neighborhood have been given relief from the setback rules towards the side street of the property which the home does not face.

We feel that you will not be sitting a new precedence for our neighborhood by allowing our variance request. You will only be going along with precedence that are already established with properties on corner lots in our immediate area.

We feel that you will not be sitting a new precedence for homes that face McCreary Avenue because our property does not face McCreary Avenue. The only other home that borders McCreary Avenue that does not face McCreary is at the corner of McCreary and Griffith Avenue across from the library, and that home faces Griffith Avenue.

We'd like the board to know that we intend
to stay at 501 Ford Avenue. We don't ask for these variances so we can increase the value so we can sell the home. Unless unforeseen circumstances should arise, we plan on staying there as long as we physically are able to. We've put a lot of time, sweat equity into this home, the yard, the herb garden, and we only wish to enhance our home in the neighborhood with additions that will be in keeping with the architecture and style of existing properties.

We in no way feel that we are asking for anything that goes against the character of the neighborhood, nor do we feel like that we're asking for anything that our immediate neighbors don't have already. We've had no comments or complaints from any of our neighbors that have been notified about this and to our knowledge the board has not either. With all this in mind we ask that the board approve both of these variance requests.

CHAIRMAN: Does anyone on the board have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: I have one question. At the last meeting there was a question raised whether
or not this would be a one or a two-story addition. Have you -- I think you were undecided at that time.

MR. PIKE: We are still undecided at this point. We've considered both. We don't know what the difference in cost will be between a one and two-story. We haven't really made any long range plans due to the fact that we didn't know whether we could get this variance approved. So we haven't gone any further. Two-story is a possibility. You know, definitely one-story.

MR. NOFFSINGER: This addition, is this a porch addition or is this a brick building?

MR. PIKE: It will be a brick wall addition. Will look similar to the rest of the house. The porch will no longer be an issue.

MR. WILLIAMS: It's completely a closed in addition then?

MR. PIKE: Yes. It will be like part of the existing house will be.

MS. MASON: With windows and so forth?

MR. PIKE: With windows.

CHAIRMAN: The dimension of that room when finished will be 16.1 x 21.9?

MR. PIKE: Right. That's correct.

CHAIRMAN: You're not asking for 24 like
it kind of looks here in the addition? The room will be 16. The way the drawing shows it could be 24, but you're just wanting to go 16 foot?

MR. PIKE: Right. It goes 8 feet beyond the porch.

CHAIRMAN: Eight feet beyond the porch?

MR. PIKE: Correct. The 8 feet be be torn off and 16 feet put back.

CHAIRMAN: That's what I wanted to be sure of.

Board members have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Any other discussion?

(NO RESPONSE)

CHAIRMAN: Chair will entertain a motion to dispose of the item one way or the other.

MR. PEDLEY: Mr. Chairman, I have a few comments on that.

CHAIRMAN: Go ahead.

MR. PEDLEY: I did drive by your property. I saw the stake where you intend to build out to. I drove down McCreary all the way. All of those homes sit back considerable distance. I don't have any problem with Ford Avenue because most of those homes
they are out closer than you intend to be, but what
happens when we grant you this variance then it opens
it up for everyone down McCreary Avenue to come down
here before this board and then we are obligated to
give those people that variance. They will do the
same that you did. They will drive around and take
pictures and they'll take a picture of your property
and come down here and say, well, you gave the
variance on this. I think it does alter the essential
character of the general vicinity and by allowing you
to do it I think it obligates us to let anyone do it.
That's the problem I have with it. It's not exactly
what it does to your piece of property. It's what it
does to the general area of McCreary Avenue.

MR. PIKE: Will I be allowed to respond to
that?

CHAIRMAN: Do you have a statement, sir?

MR. PIKE: Yes, I do.

It's like I said before, when you look at
McCreary Avenue all the homes you're talking about
their front door faces McCreary Avenue. My home the
front door faces Ford Avenue, which in my mind makes
it a totally different animal than the other homes on
that street other than one which is down on the corner
of McCreary and Griffith Avenue. I contend that homes
that are on corner lots on Ford Avenue directly across
the street from me not 50 feet away have been allowed
to do what I want to do and are actually two feet
closer to their side streets than I want to come. I
don't think that in my mind the board would be
obligated to let someone build on to the front of
their home on McCreary and use my house as a reference
because my house doesn't face McCreary like those
homes do. You know, I don't see it the same way you
do I guess.

MR. PEDLEY: What these ordinances are for
is to protect us from one another.

MR. PIKE: I understand that.

MR. PEDLEY: You build yours out and maybe
your neighbor is not protesting this from the
opposition of it, but probably he doesn't like it
because in reality you're doing a certain amount of
damage to him. That's what we have to look at when we
sit here. That's what the ordinances are all about.
That's what the setbacks are all about. If we do
this, in reality we might as well throw the ordinances
out the door and the setbacks.

If any other board members have any
opinion, I would like to hear it.

MR. NOFFSINGER: I have a comment.
Mr. Pike, I'm not aware of any variance requests that have been approved within that area along Ford Avenue. Now, I can be incorrect. I'm just not aware of any that have been approved. I think what you're seeing there, there are some encroachments. Those encroachments and those homes were built prior to the adoption of the Zoning Ordinance. They have existed that way for a number of years, but I'm not aware of any allowances that have been made since the Zoning Ordinance has been adopted within that section of Ford Avenue. Now, Mr. Jim Mischel, the zoning administer, and the building inspector is here tonight. I'm not sure if he has anything he would like to add to that, if he has any information where I may be in error.

CHAIRMAN: Mr. Mischel, come forward and be sworn in, please.

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

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I am zoning administrator for the city, for the planning office.

Off the top of my head, I don't know of any permits that have been issued or variances issued
in this area for houses on corner lots. I'm trying to think of all the streets going up and down McCreary, Littlewood. I can't think of any. I think Mr. Noffsinger is probably correct. Most of those houses have been there for a number of years. They were probably there prior to the adoption of the ordinance. I don't believe we've had any permits since that.

CHAIRMAN: Most of those have been grandfathered in because of the age of the development in that area.

MR. MISCHEL: That's correct.

CHAIRMAN: Any other questions or comments?

(NO RESPONSE)

CHAIRMAN: Do you have anything else you want to add, Mr. Pike?

MR. PIKE: I think I've explained it as well as I could.

CHAIRMAN: I appreciate it.

Any other board member have any comments?

(NO RESPONSE)

CHAIRMAN: Staff have anything else they want to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Chair will entertain a motion.
MR. PEDLEY: Mr. Chairman, I make a motion to approve covering the existing porch facing Ford Avenue, and the front porch facing Ford Avenue shall not be enclosed.

I make a motion for denial of the variance on McCreary for reason that it will alter the essential character of the general vicinity of McCreary Avenue.

CHAIRMAN: You've heard the motion. Is there a second?

MR. WILLIAMS: Second.

CHAIRMAN: Any other discussion or comments?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion that the Ford Avenue variance be granted, and McCreary Avenue be denied raise your right hand?

MR. WARREN: Say that again.

CHAIRMAN: All in favor -- the motion states that Ford Avenue variance be granted and McCreary Avenue variance be denied.

MS. MASON: Can we split up those motions?

CHAIRMAN: There's one motion and a second. If you want to split the motion and second we will make it two separate motions. We can do that or...
we can keep it as it is. He'll have to withdraw the second and the motion. You can withdraw the motion if the motionee and the secondee so desires.

MR. ELLIOTT: There is a possibility that somebody may want to vote to deny them both or approve one. Split the motion if you'd like of Ford Avenue.

MR. PEDLEY: I withdraw my motion.

MR. WILLIAMS: I withdraw my second.

CHAIRMAN: Now the floor is open for a motion. Let's take the Ford Avenue one first.

MR. PEDLEY: Make a motion for approval for the Ford Avenue existing porch and the front porch facing Ford Avenue shall not be enclosed.

CHAIRMAN: Is there a second?

MR. MILLER: Second.

CHAIRMAN: Any discussion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: That's unanimous.

Now we'll entertain a motion on the McCreary Avenue.

MR. PEDLEY: Make a motion to deny the variance on McCreary Avenue for reason it will alter
the essential character of the general vicinity of McCreary Avenue.

CHAIRMAN: You've heard the motion. Is there a second?

MR. WILLIAMS: Second.

CHAIRMAN: We have a second. Any other discussion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(C.A. PANTLE, JR., JUDY DIXON, BILL WILLIAMS AND WARD PEDLEY RESPONDED AYE.)

CHAIRMAN: Opposed like sign.

(MARTY WARREN, RUTH ANN MASON AND TIM MILLER RESPONDED NAY.)

CHAIRMAN: Three to four, motion is denied.

Next item, sir.

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ADMINISTRATIVE APPEAL

ITEM 5

2900 Fairview Drive, in an A-U zone (Map N-56) Consider request for an administrative review concerning compliance with the conditions and site plan for the conditional use permit and variance granted for landscaping services to be conducted on the subject property. Approval granted on January 22, 1998.

Ohio Valley Reporting
(270) 683-7383
MR. NOFFSINGER: Mr. Chairman, this appeal has been advertised for public hearing at this time and all parties of record have been notified. Mr. Jim Mischel, the zoning administrator for the City of Owensboro and the County of Daviess, is here tonight to speak on behalf of the Planning Staff and to make a brief presentation.

CHAIRMAN: Mr. Mischel, you come forward and state your name for the record, please.

MR. MISCHEL: My name is Jim Mischel, Zoning Administrator for the Planning Office.

On January 22, 1998, James West applied for a Conditional Use Permit, just a little background information.

Applied for a Conditional Use Permit to operate a landscaping service business. On that night the Board approved that Conditional Use Permit with certain conditions. He has been operating at that location since then.

Some time ago we received a complaint that Mr. West was not in compliance with the conditions that was set forth at that meeting. I went out there to take a look at it and I'd say the major concern was
an outdoor storage and the landscaping. The landscaping that was suppose to be done was suppose to be some pine trees as a buffer between neighbors and the parking areas. A point in doing my inspection I came back and called Mr. West and we talked about it. He had agreed to go ahead and do the landscaping, to do everything except for the parking areas. He did. I have been out there. The pine trees have been put in all the way down the boundary line and everything. I'd say the conflict comes into the parking areas.

I went on and gave Mr. West a notice on that, on the violation and he's applied for Administrative Appeal on my decision.

I've got some handouts here I'd like to show you. First I'm going to show you some pictures we took. These pictures do have snow, the ground is covered in snow, but underneath that snow it's got the gravel parking out front, but it will show you where they're parking the vehicles. One of the pictures it shows some of the gravel. You will see where we took picture of the pine trees showing that he has put those in. So that is in compliance.

MR. WARREN: This is the front of the building?

MR. MISCHEL: Yes. Where the vehicles
are, that's the front of it. There are some vehicles
and I think there's a trailer with says Evergreen
Landscaping on it.

Also would like to give a handout of — that night Mr. West had turned in a drawing for his
Conditional Use Permit and Variance. A site plan is
required at these meetings so the Staff and the board
has an accurate description of what's going to be done
at that site. I'd like to put one in the record. I'd
probably like to go on and put the pictures into the
record too.

The first page shows the drawing that was
turned in. The second page of the minutes of the
meeting, one page of the minutes. As you can see on
that drawing, the parking I've highlighted in yellow
it shows ten parking spaces to the rear of the
building. There is no parking on this drawing shown
on the front.

On the second page, at that meeting that
night Mr. Malone was representing Mr. West and on the
second page you will see where Mr. Malone — — I've
just highlighted parts of it. It says, "As you will
see, the parking spaces will be in back there." So we
assumed that the parking, all parking would be in the
rear.
Now, if we had known at that meeting, prior to the meeting or at that meeting that the parking was going to be in the front, the Staff assumed that the parking would be in the rear so we had no comments. That was fine with us. The way it was shown we didn't have any problems with it, but if we had known that the parking was going to be in front we would have concerns and we would have made or proposed that any parking in the front would be paved and landscaped.

Reasons you have a residential subdivision across the road from this. Fairview Drive is fairly well traveled. There are businesses starting to come in that area that we, you know, in the future we will be enforcing the paving and landscaping requirement for any type of business. So we would have those concerns, that any parking in the front would meet the paving and landscaping requirements, but at that time we didn't see that. We didn't have any concerns about it. At this time that's all I have to say. If you have any questions I might come back later.

CHAIRMAN: Any board member have any questions of Mr. Mischel?

MR. NOFFSINGER: I just have a point of clarification for the record. Mr. Mischel, you are
stating that the applicant has complied, has recently
complied with the conditions to the Conditional Use
Permit; however, the question, the only remaining
issue would be the parking area, and the location of
that parking area is not in compliance with the site
plan that was approved by the Board of Adjustment on
January 22, 1998, for the variance request and the
Conditional Use Permit?

MR. MISCHEL: That's correct. The drawing
turned in by the applicant shows the parking in the
rear and the staff believe that's where it was and I
believe that was voted on that night, to allow this
Conditional Use Permit to occur.

MR. NOFFSINGER: And the applicant was
represented by counsel which stated that the parking
spaces would be to the rear of the building, will be
in the back?

MR. MISCHEL: Yes, sir.

MR. NOFFSINGER: Thank you.

CHAIRMAN: Any board member have any
questions of the staff?

(NO RESPONSE)

CHAIRMAN: Mr. Malone.

MR. ELLIOTT: State your name for the
record, please.
MR. MALONE: Phil Malone.

(MR. PHIL MALONE SWORN BY ATTORNEY.)

MR. MALONE: Does everyone have the site plan in front of them because I think it's easier to kind of understand the layout of this property because it is a very unusual and irregular tract?

As Mr. Mischel stated, Mr. West owns and operates the Evergreen Lawn Care service which is a landscaping and lawn maintenance business. He owns the entire four acre tract. The area that is of concern is only the half acre portion of the tract which is what I think is commonly referred to as a flag tract; that is the long, narrow portion that goes down that has the frontage on Fairview Drive. To kind of orient you to the site plan, that was filed with the application for the Conditional Use Permit back in 1997. It has really two different scales. The first scale shows the entire four acre tract and the adjoining property owners' tracts to show you what the existing properties were at that time. Then the other portion on the right is a different scale just showing the narrow 83 foot section of that flat to kind of get you oriented.

This property has a rather laborious zoning history to it because initially when Mr. West
bought this property it was zoned R-1. The property immediately to the north is zoned I-2, heavy industrial. Because of the existing definitions for the type of business that he planned to conduct in 1997, the landscaping type business was not permitted within an R-1 or even an A-U zone. So he applied for an I-1 light industrial zoning, rezoning, so that he could on just half acre of the front of the flag there's narrow on Fairview Drive so that he could build an accessory type metal storage building where he basically operates his business.

That zoning application was approved by the Owensboro Metropolitan Planning Commission. The Daviess Fiscal Court however remanded that back to the Owensboro Planning Commission because of some objections and concerns of the property owners immediately to the south who had some concerns that if this property was zoned I-1 that that -- they didn't agree with the Staff's conclusion, that was a logical expansion of the adjacent industrial zone. So therefore they were concerned that -- they had no objection to the type of business that Mr. West was going to be operating there, but they were concerned that if Mr. West ever sold his business that that property would then be zoned I-1. So the Staff I
think came up with a very ingenuous solution to the problem. They essentially came up with a new definition for horticultural services that could be allowed in agricultural A-U zone. That definition essentially says that this type of business used can be located in an A-U zone if it is conditionally permitted. So that then required Mr. West to come to the Board of Adjustment and apply for his Conditional Use Permit; and in fact, that was approved.

Now, I think the issue is the interpretation that Mr. Mischel is making on the Conditional Use Permit that was granted by the board. We believe that his interpretation is wrong because essentially he's adding another condition to the Conditional Use Permit that was not expressly added by the Board of Adjustments. There were essentially four conditions that were set forth in the Conditional Use Permit and they are, and I'll just read them to you, The Conditional Use Permit was approved, conditioned upon: 1) Access being limited to Fairview Drive; 2) No access to the existing private driveway, and that is shared by a number of residents. That's referred to on the site plan as the 20 foot private drive. 3) Screening with evergreen trees five feet tall at planting space 25 feet apart along the south property.
1 line; 4) No outdoor storage on site.

Now, the concern of the neighbors was

mainly that there would be adequate screening and that

there be no outdoor storage of equipment. That was

stated and proposed by the applicant, Mr. West, that

he would screen this property on the south side and

that he would also would not have any outdoor storage

of equipment.

We admit that he was dilatory in getting

his planting done. It was an oversight. It has been
done and that's no longer an issue. We contend that

Mr. Mischel is interpreting the site plan as a new

expressed condition at the time that the application

for the Conditional Use Permit was submitted. It was

originally proposed that that's where the parking

would go. After the construction started, Mr. West

and his contractor discovered that the area that would

be from where the parking area that's shown on the

site plan toward Fairview Drive was much lower and had

a drainage problem that they had not anticipated.

That necessitated somewhat of a change to move the

building further back. They came in with a great deal

of fill material for the foundation of the building

and also back in the area where it's indicated as

parking. At that time the building had to be moved

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back.

So for two reasons after the application was submitted, Mr. West had to change the location of his parking. The second reason in addition to the drainage problem was his concerns for security. He realized that this area back in here was not going to be well lit and because of the concern that some of the neighbors had for lighting he decided that instead of putting more lights back there, the logical and simple thing to do was to have the parking between his building and Fairview Drive. The orientation of the building is that's really the side of the building and the opening to the building as shown on the site plan there.

Mr. West does not attempt to circumvent or mislead the Staff or mislead the Board of Adjustment. He incurred these conditions and he did not interpret the Conditional Use Permit as restricting his parking to the rear.

This area now has been graveled. It is more than within the parameters allowed off street parking allowing this gravel area to be used for off-street parking. It is consistent with the Zoning Ordinance for off-street parking. This is an unincorporated area and it's in the county. It's an
A-U zone. I believe the Zoning Ordinance specifically says that if it's an A-U zoning it does not have to be paved. So Mr. West was not trying to mislead the Staff. He submits that now to restrict his parking and prohibit him from using that area, to require him to go back and remove a considerable amount of gravel and to then go rebuild a new parking area in the back, is going to be somewhat of an economic hardship for him.

We would submit that if the board believes that the site plan was intended to be a condition, even though it was not expressed that way, and that the parking is going to be placed on the front, that there has to be any modification to that Conditional Use Permit we would request that the board modify that. Otherwise, I think the only requirement would be that maybe there may be some landscaping buffering there on Fairview Drive that's consistent with the landscape article.

For those reasons we would submit that Mr. Mischel had made an error in interpreting the Conditional Use Permit and that we ask this board to overrule his decision and to allow this parking to be placed where it is right now as shown in the pictures that have been submitted in the record.
Mr. West is here and will be available to answer any questions that may come up or if there's any other questions that I can answer I'll be glad to answer them at this time.

CHAIRMAN: Mr. Malone, let me ask, I want to be sure that I heard you correctly. You said that Mr. West when he started building moved the building site from the original plan and changed the location; is that correct?

MR. MALONE: That is correct. I believe, and we were discussing that and trying to recall. We believe that that occurred because --

CHAIRMAN: From what you've submitted?

MR. MALONE: What we submitted is the original site plan. That's the only one that's been submitted to this board.

CHAIRMAN: But you have changed, deviated from this plan?

MR. MALONE: It's my understanding that the building has been moved back and that it's further away from Fairview Drive than shown on here. We were trying to recall. We believe that there was a question that came up after the Conditional Use Permit that maybe that the building was too close to Fairview Drive in an A-U zone, but we can't recall specifically
whether that was a comment from the Staff that came up after the hearing, but anyway the building has been moved west from where it is shown. So it's further from Fairview Drive than is shown on this site plan.

CHAIRMAN: Thank you.

Any board member have any questions or comments?

MR. WILLIAMS: Phil, how far back was it moved?

MR. MALONE: Mr. West can speak to that, Mr. Williams, but we believe that it is 120 feet back from the paved area of Fairview Drive. This site plan shows that that's a 60 foot right-of-way and I'm assuming there's a 20 foot paved area. It's at least 110 feet from the edge of Fairview right-of-way.

MR. NOFFSINGER: So that's 110 feet from the property line?

MR. MALONE: That would be correct. Mr. West can speak to that, Mr. Noffsinger, if you need something more specific on that.

MR. NOFFSINGER: That's fine. Thank you.

MR. MALONE: Maybe Mr. Mischel has some more information because he has inspected that so he may have some comment on that.
CHAIRMAN: Any board member have anything to ask Mr. Malone or Mr. West?

MR. WARREN: Mr. Malone, what was the fourth condition on that Conditional Use Permit?

MR. MALONE: The fourth condition was that there be no outdoor storage on the site.

MR. WARREN: No outdoor storage?

MR. MALONE: Right.

MR. WARREN: Are the vehicles that are parked on there, are they company vehicles?

MR. MALONE: That's correct. At the present time I believe there are seven company vehicles and they're the only ones. This business does not offer a walk-in service to the public so these would be company owned vehicles and these vehicles are not taken home at night. I believe, Jim, am I correct, there is maybe seven vehicles in total and five parked there in the evening?

MR. WEST: Seven vehicles.

MR. MALONE: Seven vehicles there parked at night.

MR. WARREN: I notice that Mr. Mischel has a picture of a trailer that has the Evergreen Lawn Service logo on the back of the trailer and it's parked out front as well?
MR. MALONE: I assume that's temporary, but let me ask Mr. West. Mr. West, will be glad to answer that question, but I believe he says that that was a temporary, just at the moment that picture was taken. That's not a frequent thing.

CHAIRMAN: Mr. Malone, in the statement that night his employees will take these vehicles home in the evening. That's Mr. West's statement.

MR. MALONE: If that was the statement he made at the time, that was what was planned at that time, Mr. Chairman.

CHAIRMAN: That was one of the conditions, wasn't it?

MR. MALONE: Well, I'm not trying to belabor the point, but --

CHAIRMAN: Just want to be sure we understand it.

MR. MALONE: Right. We did not interpret that the discussion of the location of the parking was going to be and as was going to be intended to be restricted, could never be changed.

The statements that I made, were made on the record, it was made based upon the plans that were in effect at that time. The discussion of the location of the parking I believe was intended to
inform the board at that time of the use of that area because of the concern of the neighbors for lighting and the fact that there may be equipment stored there. So that was basically said at that time, that was the proposed use for that area behind the building. We believe that parking in front of the building if it has any effect at all on the adjacent neighbor, who I understand has no complaints, would be less offensive to the eye than having an area in the back. You can see from the site plan there are two neighbors that are effected. We understand they have no objection to the parking as it now exists and has been since the building was built which was about 18 months.

CHAIRMAN: Any other questions of Mr. Malone?

(NO RESPONSE)

CHAIRMAN: Jim.

MR. MISCHEL: I believe even if the area in front was paved and landscaped Mr. West will still receive some relief. His original intent was to rezone this property to I-1 light industrial. If that had occurred in the front and the rear, all vehicular use areas would have to be paved, and that was his original intent was to rezone that property to I-1. We're just asking that the front as a condition shown
on his plan that he did not have parking out front.
If it is, you know, in that area we believe it should
be paved.

MR. NOFFSINGER: Mr. Chairman, just to
respond to some of the comments that Mr. Malone made.
The site plan for a Conditional Use Permit was an
essential part of the application. That is the plan
that this board approves and is the plan and you're to
develop the property as approved on that plan. This
board may set conditions to the approval of the
Conditional Use Permit above and beyond what you
submitted in your application. The Planning Staff,
the reason this was written as it is is that we're not
contending with the parking that he's in violation of
the conditions of the Conditional Use Permit. That
spoke to the landscaping that was recently installed
and he's corrected that and has met that condition, or
so I'm told.

The issue now is that he is not in
compliance with the site plan that was approved by
this board and as presented to this board. Now, there
are two options. You either come into compliance with
the site plan that was approved with the Conditional
Use Permit or you submit an application to redo your
Conditional Use Permit to modify the parking area.

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Those are the two options, but we're not contending that he's in violation of the condition. We're contending that he's in violation of the Conditional Use Permit as approved by this board.

MR. MALONE: Mr. Noffsinger, if I understand you're saying that the site plan is essentially the same as a preliminary development plan and that becomes an expressed condition of the Conditional Use Permit even though it's not stated that way; is that correct?

CHAIRMAN: You are correct.

MR. NOFFSINGER: Except I would add that it's more in the form of a final development plan as opposed to a preliminary plan. It is a final development plan that shows how you are going to develop that property. It's not in detail as you would see a final development plan, but the way the property is going to be developed and the character of that property. The essential part of the application for the Conditional Use Permit is the site plan. From that it generates comments from the public, from adjoining property owners, and it gives this board the idea and they have an understanding as to how the property is going to develop and then they make their decision to approve or to deny or modify the
Conditional Use Permit based upon the application that
you've submitted and they have an opportunity to add
conditions in addition to what's shown in the
application.

Now, Stewart, you may want to speak to
that if I stated it incorrect.

MR. ELLIOTT: No. I agree with what
you've said.

MR. NOFFSINGER: That's the reason for a
Conditional Use Permit.

CHAIRMAN: Mr. Malone, all applications
come in for variances and Conditional Use Permits have
development plans or plans with them and we work off
them or refer to them. That's the reason I questioned
you on your statement that you varied from the
original plan which is improper.

MR. MALONE: Well, Mr. Chairman, again Mr.
West was not trying to circumvent the conditions as it
was set forth in the Conditional Use Permit.

Obviously, the parking in the rear was of no major
concern that was expressed and raised at the time
either by the Staff or by the neighbors or that would
have been made an expressed condition. We're not here
to debate whether or not the Staff is interpreting
correctly, but I think you'll have to agree, Mr.
Noffsinger, that the Conditional Use Article of the Zoning Ordinance does not set forth in detail the interpretation that's apparently the practice that's been followed by the board in terms of the way that the site plan is interpreted to be an expressed condition. That it cannot be varied without coming back for a modification of that Conditional Use Permit. If that's been the practice of this board, we're not going to challenge that. We're here to comply with the Conditional Use Permit. We would ask the board if that is the practice and interpretation it's making of the Zoning Ordinance, that the Conditional Use Permit be modified to allow off-site or off-street vehicular use in the side of the building rather than in the rear of the building, but we would disagree that this should be a paved area.

I believe that Article 13 says that "All zones except A-U do not have to be paved." If this board procedurally wants to proceed in that way, we'll be glad to comply with submitting another Conditional Use Permit. We'd like to avoid having to do that. I believe all the interested parties are here tonight and I don't know procedurally whether or not you can consider this based upon the facts that have been stated and the representation that the applicant make.
We could ask for a modification of the Conditional Use Permit to allow the parking to be placed in the front and that the gravel area that's there be retained as parking area and that any other requirements of a vehicle use area in an A-U zone and any landscaping requirement to be complied with.

CHAIRMAN: One question of our counsel. They'd have to submit an application be advertised before we can consider any changes?

MR. ELLIOTT: That would be my opinion. They'd have to do that. They'd have to come before this board by way of application. I think it joins residential which requires public notice to the adjacent property owners.

MR. NOFFSINGER: All adjoining property owners would be notified.

MR. ELLIOTT: So, yes, it would have to come by way of application before the board.

CHAIRMAN: What we need to consider right now is whether the board upholds Mr. Mischel's Administrative Review, whether he was correct in his assessing of the situation.

Any board member have any questions?

(NO RESPONSE)

CHAIRMAN: Mr. West you want to add

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anything?

MR. WEST: No.

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Any board members have any questions?

(NO RESPONSE)

CHAIRMAN: Mr. Malone, you have anything else to add?

MR. MALONE: No, I don't, Mr. Chairman.

CHAIRMAN: Does anyone else in the audience wish to speak on the item?

MR. McPHERSON: Yes.

CHAIRMAN: Come forward, sir. State your name for the record and be sworn in, please.

MR. McPHERSON: I'm Virgil McPherson. I live at 2909 Pleasant Heights Lane.

(MR. McPHERSON SWORN BY ATTORNEY.)

MR. McPHERSON: My complaint, I was the one that complained. I hope Mr. West don't get mad at me. I'd like to have him as a neighbor.

Two years in a row I've complained about grass, leaves. He hauls his trash and leaves up on that property next to me. Year before last there was
smoke going day and night up there where he was
burning and nobody attending it. This year it was the
same thing. He cleaned it up last year and then this
year same thing happen again. He just dumping his
grass and leaves that he gets up there on that
property and that's not a commercial property. That's
a private lane coming up through there and it can't be
used as a commercial driveway.

CHAIRMAN: Anything else you want to add?

MR. McPHERSON: No.

CHAIRMAN: Thank you, sir.

Anyone else have any comments, pro or con?

(NO RESPONSE)

MR. MALONE: Mr. Chairman, may we respond
to that?

CHAIRMAN: Yes, sir, briefly.

MR. MALONE: Tonight was the first time
that we were aware that Mr. McPherson who if you look
at the site plan I believe lives right at the back of
the property on the I guess it would be the north side
of the private drive. After discussing his complaint	onight, because I understand he has no concern or
complaint about the fact that the parking is in the
front rather than the rear because if anything that
puts the parking further away from him than it was
originally proposed. His concern has to do with, I believe, an incident where there was some brush that had been cleared off by Mr. West on the rear of the area which at one time was being considered as the home site. I believe he did burn some brush there. He acknowledge that there was a complaint filed and he responded to that when someone from the city came out to investigate that. He can speak to that again tonight.

As far as the area that he referred to as dumping, I believe that that is refers to as a low spot on the lot that he had been using to try to fill up with dirt and other materials. So I'd be glad to let Mr. West respond to that. He certainly wants to be a good neighbor. Again, he's going to comply with the ordinances in terms of that this is not being used as a commercial dump. He takes most of his trimmings and cuttings from his lawn maintenance to the landfill. I think he can tell you how much his expenses are for that. I'll be glad to let Mr. West respond to that if this board wants to consider that; although, I don't think that issue is before the board.

CHAIRMAN: I don't think that issue is pertaining to the Administrative Appeal.
What's the board's pleasure on upholding or how you want to rule on the Administrative Appeal?

MS. DIXON: Mr. Chairman, I move to support the review of our Staff and to deny the appeal.

CHAIRMAN: You've heard the motion. Is there a second?

MR. MILLER: Second.

CHAIRMAN: A motion has been made and a second. Any other discussion or comments from the board?

(NO RESPONSE)

MR. MALONE: Excuse me, Mr. Chairman. Could you repeat the motion again?

CHAIRMAN: Motion has been made to uphold the Staff's review and deny the appeal of his decision, support his decision. Okay?

MR. MALONE: Thank you.

CHAIRMAN: Any other comments?

(NO RESPONSE)

CHAIRMAN: If not all in favor of upholding the Staff's review raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

MR. MALONE: Mr. Chairman, may I have one
point of clarification?

CHAIRMAN: Yes, sir.

MR. MALONE: In the interim between tonight and when Mr. West would proceed with an application for a modified Conditional Use Permit, am I correct that he can continue to use that area that's now being used for parking? I know this decision wouldn't become final for 30 days. We don't at this time want to take issue with that in terms of any further appeal. We want to address this straight forward by filing an application. So we would ask the board that he be permitted to continue to use that on a temporary basis until we can file an application for an amended Conditional Use Permit.

MR. ELLIOTT: Thirty 30 days is the appeal time so this decision doesn't become final until the appeal time runs out.

CHAIRMAN: He'll have that 30 days.

MR. ELLIOTT: It'll be 30 days.

MR. MALONE: Fine. We just want to clarify that.

CHAIRMAN: Thank you.

Any other items of business come before the board?

MR. NOFFSINGER: No, sir
CHAIRMAN: Hearing none entertain a motion to adjourn.

MS. MASON: Motion to adjourn.

MR. MILLER: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Meeting adjourned. Thank you.
STATE OF KENTUCKY)  
)  SS: REPORTER'S CERTIFICATE  
COUNTY OF DAVIESS)  

I, LYNETTE KOLLER, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Board of Adjustment meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 54 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this the 15th day of January, 2001.

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

COMMISSION EXPIRES:  
DECEMBER 19, 2002

COUNTY OF RESIDENCE:  
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