The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, December 2, 2004, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

CHAIRMAN:  Call the meeting to order.

Invite each one of you, if you so desire. We start the meeting with a prayer and pledge of allegiance. If you all so desire, we'd appreciate you joining us. Marty Warren will have the prayer this evening.

(PRAYER AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  Want to welcome all of you to the Owensboro Metropolitan Board of Adjustment this evening.
Each one of you that have anything to bring up to any item, please come to the speakers on each one of the podiums. Be sworn in by the attorney so we get it recorded on the record.

Everybody has a choice to express their opinions, until we start listening to the same thing over and over. Then we'll call you out of order.

With this we'll proceed with the first item this evening which is consideration of the minutes of the November meeting. They're on record and filed downstairs at the office. I don't think we've found anything in them to be added on to them.

MR. NOFFSINGER: No, sir.

CHAIRMAN: With that I'll entertain a motion to dispose of the minutes of the meeting.

MR. MILLER: Motion to approve the minutes.

CHAIRMAN: Is there a second?

MS. MASON: Second.

CHAIRMAN: A motion has been made and a second. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

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Ohio Valley Reporting
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ITEM 2

418, 420, 422 East Third Street, in a B-2 zone
Consider request for a Conditional Use Permit in
order to operate a rehabilitation facility on the
property to house seven residents.
Reference:  Zoning Ordinance, Article 8,
Section 8.2 C1
Applicant:  Owensboro Christian Church, Inc., Kenny
and Susan McPherson

MR. NOFFSINGER:  Mr. Chairman, the
Planning Staff has reviewed this application.  Found
the application to be in order.  The applicant has
stated that there will be three residents located in
the facility at 418 and 420 East Third Street and
there will be four men living in the home at 422 East
Third Street.  There are three addresses at this
location; however, one of the homes has two addresses.
It is likely a duplex, but the entire unit will house
a total of three men.  With that it's ready for your
consideration.

CHAIRMAN:  Do we have any opposition in
the office?

MR. NOFFSINGER:  I don't have anything of
record, no, sir.

CHAIRMAN:  Is there anyone that wants to
speak in opposition to this?

AUDIENCE:  Yes.
CHAIRMAN: With that we'll go ahead and let them start and then you can bring your oppositions later on.

State your name for the record.

MR. LAMAR: I'm David Lamar. I'm the attorney for Owensboro Christian Church.

(MR. DAVID LAMAR SWORN BY ATTORNEY.)

MR. LAMAR: With me tonight is David Mathews who is managing the program, operates the program. Also are three residents who have successfully completed the program. Then I have John Hitchell who sits here and David Simpson who are elders on the church board.

The first thing I would like to say is ten years ago we came before this board and asked for permission to start this program. It was granted. I told you at that time that I think that Owensboro Christian would operate a program that you would be proud of, that the city would be proud of. I think we have done that. David Mathews can speak in detail about what the program does and the fact that there have been absolutely no problems with the program whatsoever. I think it is a fact that the police have never ever even once been called to the facilities. They run a real tight shift.
I'd just like to introduce David Mathews to you. He can take it from there.

MR. MATHEWS: I'm David Mathews.

(MR. DAVID MATHEWS SWORN BY ATTORNEY.)

MR. MATHEWS: I'm David Mathews. I'm the program director at New Horizons. It's a ministry of Owensboro Christian Church.

We opened in December of 1994 after being approved by this board. We house men who come out of drug and alcohol treatment in a long-term housing plan. They learn how to be husbands, and fathers, and sons, and contributing citizens again rather than law breakers and dead beat non-child support men.

These guys come here and they learn how to get up and go to work every day. They learn how to pay bills. They learn how to do things that other people take for granted. These guys have to learn to do that without alcohol and drugs on a daily basis.

It's a disease that a lot of people turn their head the other way until it affects them indirectly or directly. We've had a major impact on this community in many, many families, areas. I could have filled this room tonight with parents, wives, mothers who have been impacted by these men.

We have been located there for ten years.
Our facility is upgrade as far as the community goes. We have never had a complaint from the first neighbor. We are staffed 24 hours a day. It's a very rigid program. There is no noise whatsoever in and out. The judges all work with our program. Probation and parole works with our program. In some ways we're being lumped in with some other programs that have come around on the block. We were not affiliated with any other program whatsoever.

We're only able to house nine residents at 320 Clay where we're at now. If we get these other two residences, we'll be able to house seven more. It allows us to treat 16 men instead of just 9. We stay on a waiting list all the time people wanting to get in. We're well-known in Frankfort at the Department of Substance Abuse. We're well-known throughout the state as a reputable program. I would like very much for us to have the opportunity to help more people.

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

MR. MILLER: Mr. Chairman, I have a question.

Mr. Mathews, you stated that you're staffed 24 hours a day. Could you explain what you mean by that?
MR. MATHEWS: I have staff on duty that is there, paid staff that comes in and work 8 or 10 or 12 hour shifts. There's somebody there all through the night. Somebody there during the day in an office who supervises the other residents to be sure they're in bed when they're suppose to be, they're up and gone to work when they're suppose to be, they're not doing things they're not suppose to be doing.

MR. MILLER: So are they on site? Is that what you're saying? There's someone on site 24 hours a day 7 days a week?

MR. MATHEWS: Yes, sir. And the other facilities in that neighborhood are not run that way at all.

Did you want to hear from a resident who did complete?

MR. NOFFSINGER: Excuse me. I'm somewhat confused.

When Mr. Miller mentions on site, meaning you will have someone at 418, 420, 422 Clay Street 24 hours a day or you will have someone on the clock 24 hours a day at 320? Their office is at 320 Clay Street at New Horizons.

MR. MATHEWS: I understand the confusion. They will be on the clock and on site at 320 Clay
Street. It adjoins with those other properties. So while they're on duty on site at 320 Clay Street, they will also be in supervision of those adjoining properties.

MR. NOFFSINGER: That's the way I understood it, but I wasn't sure.

MR. MATHEWS: That wasn't clear.

MR. MILLER: Appreciate the clarification.

CHAIRMAN: Any other questions from the board members at this time?

(NO RESPONSE)

MR. ELLIOTT: State your name, please.

MR. HUNT: My name is Chris Hunt.

(MR. CHRIST HUNT SWORN BY ATTORNEY.)

MR. HUNT: In April of 1995 I moved to Owensboro. Came to New Horizons as a resident. Since then I have been employed by New Horizons for the last nine years. I've been clean and sober for ten years. I work for Daviess County Schools. I teach substance abuse awareness. I teach life skill awareness in all the middle and high schools. I have a family for the first time.

When I first came to New Horizons I was about $20,000 in debt in child support. I caught that up while I was at New Horizons because I was taught
how to get a job, how to take care of my responsibilities.

My children are a big part of my life. I'm a grandfather now. Recently my daughter just moved up here.

I can go on and on and talk about what New Horizons has done for me, but the best thing it has done is taught me how to be a responsible father. I never knew that until I arrived here.

Since then not only do I work in the Daviess County Schools now, I've spent five years working for Owensboro City schools doing the same thing. Teaching life skills, substance abuse awareness in middle and high schools. I'm very active in the community teaching substance abuse awareness, doing motivational speaking. If it was not for my stay at New Horizons, not only would I not have the opportunity to have my family, but I wouldn't have had the opportunity to impact the lives of the youth and the families since I've been in Owensboro.

I'd just like for you to consider us.

CHAIRMAN: Anyone have any questions of the gentleman at this time?

(NO RESPONSE)

MR. HUNT: Thank you.
MR. ELLIOTT: State your name, please.

MR. CLARK: My name is Steve Clark.

(MR. STEVE CLARK SWORN BY ATTORNEY.)

MR. CLARK: I moved in to New Horizon in 2000. I lived there for approximately 16 months. My story is a whole lot like Chris'. Methamphetamine had pretty much destroyed my life. I didn't know how to stay off it. I learned how to stay clean and sober there and learned how to be a member of the community, a good employee, and a son to my mother, a brother to my sisters. I just learned how to live basically.

When I moved there I was deeply in debt. Had been unemployed for years, except money that I got, you know, illegally. I learned how to be a good employee there and I've been employed now for four years. I'm also on staff at New Horizons. Have been there for three years. I can't say enough about what it's done for me. If it hadn't been for New Horizons I would not be here now. I'd be in jail or dead for sure. I'd like the opportunity to help more people with an expansion of New Horizons. Thank you.

CHAIRMAN: Any boards member have any questions?

(NO RESPONSE)

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MR. LAMAR: That's all we have, sir.

CHAIRMAN: Thank you.

The opposition have any questions or statements, please.

MR. ELLIOTT: State your name, please.

MR. MULLIGAN: My name is Ann Mulligan.

(MS. ANN MULLIGAN SWORN BY ATTORNEY.)

MS. MULLIGAN: I have a hand out. This is just an overview of the block in question. I want to tell you my story now.

Fifteen years ago I was driving to my mother's home on the east end of town down Fourth Street. They had tore down every house on Fourth Street and there was a condemnation notice on my grandmother's old house on the corner of Fourth and Clay. I thought, what a crying shame. You go off the bridge, you turn down Fourth and there's nothing but rundown and dilapidated houses.

At the time we stepped in and bought the house. Got it up enough to code to keep it from being torn down. Over the years we've fought meth problems, prostitutes, transvestites, you name it. I hope you all remember what Fourth Street and south of Fourth Street was like years ago.

Seven years ago I almost gave up and just
said, well, I'm moving out too. Then the city stepped in and developed these neighborhood alliances. I got involved and I realized that there was a lot of other home owners in that immediate area that was scared to get out of their house and had the same concerns. For some reason that neighborhood was just tugging at my heart's string. I didn't have the heart to leave it. So the neighborhood alliances were really supportive.

Kathy Shouse and Bob Bowerly and people that were on the original board would actually go to the drug houses and Kathy would confront the people herself. Then finally we got the police to align with us and steer us in the right direction of how to report things and handle things.

I'm all for the men in recovery. Our neighborhood alliance is an alliance in recovery. It's just amazing what we've been through. Now we're going in a good direction.

I just wanted to give you this handout more or less to see the block. I'm taking up a very small area of the block that we're talking about. Do you understand my drawing here?

CHAIRMAN: Yes, ma'am.

MS. MULLIGAN: Lighthouse Recovery is orange. New Horizons' current property is in blue.

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The McPherson's property that New Horizons is proposing is buy is stripped in blue. I just wanted to show you how much of this particular block this will take up.

Two and a half years ago the city, we were really squeaking, you know, squeaking really good with the grease and apparently we were really squeaking because the City of Owensboro came to Old Owensboro Neighborhood Alliance and asked for people, which I'm one of now. I'm on the board of the Old Germantown Redevelopment.

The thinking was that if you bring single families back downtown and do these beautification products, that all these projects that -- we got the old and plant seeds for new things to come in. It has really turned around.

I don't know if you've been downtown. In the last 18 months I can't hardly remember what it looked like before, but it was really sad. The drug problems were unbelievable.

We are on the same, we're in the same church. I guess just different pew. The recovery houses, I'm afraid they're just looking at their small picture whereas I'm really trying to -- I'm afraid they can't see the forest through the trees. We're in Ohio Valley Reporting (270) 683-7383
a recovery process ourself.

With this Germantown Redevelopment bringing people downtown really it's bringing the property values up. I think if the McPherson's just kind of held tight for awhile they could sell their property.

Let me show you -- my house was being condemned. This is my house now. It was on the front page of the Lifestyle of the Messenger-Inquirer. I don't have very much money in this house because I was able to buy it really cheap. It's got thousands of dollars worth of sweat equity in it. I was cured of a brain tumor and if I can run a paint brush, anybody can run a paint brush. I'm saying that this is a great opportunity for people to get into a home cheaply.

This duplex that the McPhersons own would be a great owner duplex. They could have their in-laws next door. The corner property could -- my lot is 36 by 50. Nobody in Owensboro has a lot 36 by 50. The corner property the McPhersons own has a beautiful yard. I don't have a yard. I'm saying that this neighborhood is changing for the better. We're really on a roll. I would just hate to see so much of this block being consumed by drug rehab when we're Ohio Valley Reporting (270) 683-7383
trying to rehab. We've been there and done that on the drug thing. We're on the same page too. We're trying to bring things up. I'm afraid this would be detrimental. It's a density issue. The crime, the prostitutes. You couldn't believe the problems we have faced in this neighborhood. One of the things we realized, the Chamber of Commerce said, don't you know that your precinct are the lowest voter turn out. So when we started going door to door we realized the reason the voter turn out was so low is people moved all the time. They weren't ever at the same address.

So we'd really like to encourage people to move downtown. Like tomorrow night we're going to the trolley hop. I just have to go out my front door and get on the trolley. I can walk to church. Dollar General Store has built a building. That shows that - - they're a publicly traded company. They wouldn't come downtown if they didn't think that things were on the upswing.

That's really all I have. I just don't want to be run out of my own neighborhood. It's a cool little neighborhood and I really want to help encourage people to join the neighborhood alliance and get back downtown. That's all I have.

CHAIRMAN: Any board member have any

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questions of Ms. Mulligan?

MR. MILLER: Yes, I have a question.

Ms. Mulligan, some of the unlawful events that have taken place over the years that you mentioned, can you contribute any of those directly to the New Horizons or Lighthouse Recovery program to those houses?

MS. MULLIGAN: No. I'm not complaining about their houses. I'm just saying that this neighborhood was -- we are going through a recovery process. To help us in that recovery process we really need you guys to help us keep the density down in these neighborhoods. Through the Neighborhood Alliance we've really been encouraging single family ownership. You need to drive through. It's just amazing these new houses that are being built.

I feel like I would be a hypocrite if on one side of all these streets -- here I'm saying, single-family, single-family, low density, low density, and then right behind me, you know, it'd be higher density. That's not what -- there's a fine line in this neighborhood. We're on the upswing now. It wouldn't take much to go back down, but the city is bearing utilities with some private investment money on Second going all the way up to Clay. Putting
decorative lighting and the decorative sidewalks all the way down through Clay Street, the next block down from this.

Keith Free with this Germantown Redevelopment has hundreds of thousands of dollars in federal money that he's secured. Private investments is going on all around here. To me all these investments are going on. The whole is just a lot bigger picture than just this one area that would be affected.

MR. DYSINGER: Mr. Chairman, may I ask a question?

So your objection isn't the fact that it's a rehabilitation center as much as it's a density issue? The amount of people and not necessarily the reason why they're there?

MS. MULLIGAN: My objection is to drug rehab facilities taking up this much of the block. I think it would reach a point -- I wish you'd tell me. It looks like to me there would be a point in time when my residential area would quit looking like a resident and look more like rehab. Instead of kids walking down the street you have exit signs and emergency exits where they've been brought up to code.

CHAIRMAN: Any other board members have
any comments or questions of her?

MR. NOFFSINGER: I just have an observation, if I might. Just to remind the board and Ms. Mulligan.

This property is zoned B-2 Central Business. It could be used for commercial activity or it could become a parking lot as what you have at Third and Crittenden Street, which is a very attractive parking lot. However, this board has heard from time to time again that parking lots adjoining residential areas are generally not that attractive because it brings people to congregate and you have activities that normally residential activities wouldn't like to see next door, but the property is zoned B-2 Central Business.

This even though it's classified as a rehab facility and there will be rehab work going on here and counseling, this is still structured as a residence. If you have a home that has four residents and then a home that has three, that's not out of line with the density you have in most residential structures or many residential structures. Any more with the family, what average family size of 2.1, 2.3 occupants per household, here we're looking at 4 and 3; although, in my household there's four. This may
be in terms of looking at the uses in that
neighborhood and promoting a residential use. This
might be more attractive than if you have a commercial
business there or another parking lot. I certainly
understand your concerns in terms of concentration of
this type of facility, but we do not have anything in
terms of a regulation or anything regulatory we can go
on to take a look at concentration of types of
facilities and say, no, this is too many or we need
more in this area. There's not anything like that
that we have to go on.

MS. MULLIGAN: Once a house is a rehab
facility, is it possible to be turned back into a
single-family residence without a lot of --

CHAIRMAN: If somebody buys it, yes.

MS. MULLIGAN: Say New Horizons gets a
conditional use permit, is that transferable?

CHAIRMAN: No, ma'am.

MR. NOFFSINGER: Well, except it is
transferable so long as they abide by the same
conditions and by the same information that's
submitted in the application. In other words,
everything they say they're going to do in this
application, they have to do or anyone else. So it
can be transferable. The conditional use permit, in
this particular case, and Mr. Elliott, correct me if
I'm wrong, is required because these residents, some
of them will be court ordered. If these residents
were not court ordered, then a conditional use permit
would not be required.

MR. ELLIOTT: You're right. I don't know
if all the residents are court ordered.

MR. NOFFSINGER: Some of these residents
are court ordered. Therefore, a conditional use
permit is required, but if they weren't, if there
weren't any of the residents, occupants court ordered,
then a conditional use permit likely would not be
required.

MS. MULLIGAN: I just wanted to bring you
up to speed where we were at because the other day the
lady at the Messenger-Inquirer knocked on my door for
an interview. She said, it would be a lot easier for
them to come down here where there's already drug
rehab houses versus going into a residential
neighborhood. Then I thought, this is a residential
neighborhood. I thought, well, surely Owensboro
hadn't already started thinking along the lines that
we're not a residential area.

CHAIRMAN: Do you have anything else new
to add at this time?
MS. MULLIGAN: No.

CHAIRMAN: Does anyone else have any opposition or comment to bring in at this time, please?

(NO RESPONSE)

CHAIRMAN: Any board members have anything?

MS. MASON: I have a question for the applicant.

CHAIRMAN: Come back, please.

MS. MASON: Are you all planning to do any remodeling or any fixing up of the homes?

MR. MATHEWS: We will definitely fix up the exterior. When we took 320 Clay Street, we did the exterior and it looked better in the front and back than it did when we got it. With these two properties we will definitely upgrade the exterior and probably tear out most of the interior in both residences and rebuild in those.

MS. MASON: I didn't go, of course, inside, but I did drive by the outside.

MR. MATHEWS: Sure. Definitely. If you look at 320 Clay Street, you will notice that it looks as good or better than most properties in the block, except for this lady's. Hers is definitely the nicest.
looking property in the area, but other than hers we
look as good or better than any other properties in
the area.

CHAIRMAN: Is there anyone for or against
have anything else to add at this time?

Come forward, please. State your name at
the podium and be sworn in, please.

MR. ELLIOTT: State your name, please.

MS. CASSIDY: Violet Cassidy.

(MS. VIOLET CASSIDY SWORN BY ATTORNEY.)

MS. CASSIDY: I live in the neighborhood
also. My apology. I thought this was suppose to
start at 6:30.

We have the motel across the street. We
have the Dollar Store and just the immediate traffic.
The addition of another place, most people in there, I
think the letter said seven or eight, it's going to
make our streets quite busy. I don't get home until
about 5:30. I'm not really interested in getting home
and having additional people wondering around.

CHAIRMAN: I didn't understand your name.

MS. CASSIDY: Cassidy. Violet Cassidy.

CHAIRMAN: You're on 401?

MS. CASSIDY: I'm at 331 Crittenden.

CHAIRMAN: Thank you. Appreciate that.
MS. CASSIDY: Thank you.

CHAIRMAN: Anybody else have anything new for or against the application at this time?

(NO RESPONSE)

CHAIRMAN: Staff.

MR. NOFFSINGER: Mr. Chairman, if this application is approved, it should be approved with the condition that a development plan be submitted to planning office for approval because the parking for 422 will be on 418 and 420 East Third Street. So they will have to tie the parking down by the development plan for those three or actually two facilities by development plan.

CHAIRMAN: At this time does any other board member or staff have anything else to add?

(NO RESPONSE)

CHAIRMAN: Hearing none the chair entertain a motion to dispose for or against the item.

MR. PEDLEY: Mr. Chairman, I make a motion for approval based on findings it is compatible with the activities in the neighborhood. It will not have an adverse influence of the neighborhood. It meets the requirements of the zoning ordinance; with the condition that a development plan be submitted to the Planning Staff.
CHAIRMAN: Is there a second to the motion?

MR. DYSINGER: Second.

CHAIRMAN: Is there any other questions or comments from the board members or the staff?

MR. DYSINGER: I have a question, Mr. Chairman. Does that condition have to state for approval or is that inherent into the submission of a development plan?

MR. NOFFSINGER: It's fine.

CHAIRMAN: Thank you.

Does the applicant understand the conditions?

MR. LAMAR: Yes, we do. We were anticipating that would be a requirement and that's no problem.

CHAIRMAN: Thank you, sir.

Hearing no other comments or questions, all in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 3

710, 714 East Third Street, in an R-4DT zone
Consider request for a Conditional Use Permit in order to operate a type 1 child care center for 27 to
MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff. It's found to be in order.

This application came before the Board of Adjustment back some time ago; however, the board was not in a position to approve the permit because there was no on-site parking available at that time and what was available was limited and there was a shared driveway between this property and the adjoining property owned by Owensboro Grain.

The applicant has negotiated with the co-applicant, Owensboro Grain, to lease the adjoining property and create a parking area and drive off of Third Street to the property. With that it's ready for your consideration. This too, if approved, should be subject to a development plan to be submitted to the OMPC for consideration because we do have a leased area that will tie that leased area up and join with this day care property so that they have parking for many, many years.

CHAIRMAN: Was there any comments come to the office at this time?
MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone wishing to speak in opposition at this time?

(NO RESPONSE)

CHAIRMAN: Does the applicant want to come forward and present anything at this time?

State your name?

MR. WARD: Duane Ward.

(MR. DUANE WARD SWORN BY ATTORNEY.)

MR. WARD: You said something about the development plan. I believe we're already in the works for that. We also have the contract signed with Owensboro Grain so it will be a contract that states that we can use the property as long as we have a day care facility there. So we are already taking care of all the loose ends. That's the only thing I have. I just wanted to let you know that we are working on that already.

MS. MASON: I have a question.

What are your hours and days of operation?

MR. WARD: We're going to be open Monday through Friday and we're planning on being open from six in the morning to midnight. We're going to run two shifts is the plan.

MR. NOFFSINGER: You wish to make that a
part of your application in this consideration be
based upon those days and hours of operation?

MR. WARD: Yes. It should be on there, I
believe.

CHAIRMAN: Any board members have any
question of the applicant?

MR. MILLER: Gary, just want to make sure
the applicant understand that if those hours are read
in then, is it not true, that if he fails to continue
operation during those hours then the conditional use,
if approved, could be --

MR. NOFFSINGER: They would have to come
back before this board.

MS. DIXON: It's in there.

CHAIRMAN: You understand if you change 6
to 12 Monday through Friday and start on Saturday
you'll have to come back and ask for another
condition?

MR. WARD: Yes, we understand that.

CHAIRMAN: Just wanted to be sure.

MR. WARD: So if we do decide to do around
the clock child care then we would need to approach
you guys for a additional conditional use permit?

CHAIRMAN: Yes.

MR. WARD: At this time that's our plan,
to close at midnight. It could change depending on
the demand.

CHAIRMAN: Any other questions?
(NO RESPONSE)

CHAIRMAN: Anybody else have anything to
or against?
(NO RESPONSE)

CHAIRMAN: If not entertain a motion to
dispose of the item.

MR. DYSINGER: Move to approve the
Conditional Use Permit given that there appears to be
no opposition and it's compatible with the master
plan.

CHAIRMAN: Is there a second?

MS. MASON: Second.

CHAIRMAN: A motion has been made and a
second. Any other questions from the staff or board?
(NO RESPONSE)

CHAIRMAN: You all understand everything?

MR. WARD: Yes.

CHAIRMAN: All in favor raise your right
hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

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ITEM 4

5141 Windy Hollow Road, in an A-R zone
Consider request to amend a Conditional Use Permit
to construct two buildings for the purpose of
equipment storage at a maximum size of 60x80 feet.
One building will also include an 800 square foot
campground store and registration area.
Reference: Zoning Ordinance, Article 8, Section 8.2K
Applicant: Sharon and Devon Castle

MR. NOFFSINGER: Mr. Chairman, this
application has been reviewed by the Planning Staff.
Found to be in order and ready for consideration.
CHAIRMAN: Any comments filed in the
office?
MR. NOFFSINGER: No, sir.
CHAIRMAN: Is anyone wishing to object to
this item?
(NO RESPONSE)
CHAIRMAN: The applicant have anything
you'd like to bring forward at this time, please?
State your name for the record, please.
MS. CASTLE: Diane Castle.
(MS. DIANE CASTLE SWORN BY ATTORNEY.)
CHAIRMAN: I just wanted to let you know
that we have been there about nine years. About four
years we did put a new bathhouse in and we're slowly
trying to make it nice out there. It already is nice,
but just have a nice front entrance up there. It'd be

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nice to have something so we could not have dirt floor
to the garage. We appreciate to be able to do this
hopefully. That's all I have.

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

(NO RESPONSE)

CHAIRMAN: Staff have any comment?

Nothing else to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Will entertain a motion to
dispose of the item at this time, please.

MR. DYSINGER: Move to approve the
conditional use permit given that there appears to be
no opposition and appears to be compatible with the
master plan.

CHAIRMAN: Is there a second?

MS. DIXON: Second.

CHAIRMAN: Motion been made and a second.

Any other comments or questions from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to
add?

MR. NOFFSINGER: No, sir.

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

Ohio Valley Reporting
(270) 683-7383
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion passes.

Next item, please.

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VARIANCES

ITEM 5

3784 Pleasant Ridge Lane, in an A-U zone
Consider request for a Variance to reduce the front
yard setback from 30 feet to 10 feet in order to place
a manufactured home on the property.
Reference: Zoning Ordinance, Article 8,
Section 8.5.2(c)
Applicant: Clayton Homes, Tina J. Mattingly.

MR. NOFFSINGER: Mr. Chairman, the
Planning Staff has reviewed this application. It's
found to be in order. It's ready for consideration.

We have found based upon our staff report
that there are a number of residences in the area, in
the rural growth area of Pleasant Ridge that do
encroach upon the front building setback. These
addresses noted by the Staff are 4094, 4110, 4124,
4125 and 4133 Kentucky 764. There are no record of
permits issued for these structures; however, it
appears that many of these structures predate the
adopted zoning ordinance. With that it's ready for
your consideration.

CHAIRMAN: Any comments sent to the office
for or against?

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(270) 683-7383
Mr. Noffsinger: No, sir.

Chairman: Anyone wishing to speak in opposition of this item?

(NO RESPONSE)

Chairman: Does the applicant have anything he'd like to add at this time?

State your name, please.

Ms. Mattingly: Tina Mattingly.

(Ms. Tina Mattingly sworn by Attorney.)

Ms. Mattingly: I just wanted to say that we removed an old mobile home from this property. The new one is actually set back further from the road than the old one was by about 15 feet. As the application stated, there are many residences in that area and they're all just right on the road. Because of the way the land is set up, it would be very difficult to move this mobile home any other way to still fit on that property. I'm just asking for some consideration to be able to leave it like it is.

I talked to the neighbors and they don't really have a problem with it being there because the one that we removed was even closer to the road. They didn't express any problem with it. We would just like you to consider for us to leave it there.

Mr. Noffsinger: Ms. Mattingly, what would
be the circumstances if you were to move the home back further away from the road? Could you do that the way the property lays?

MS. MATTINGLY: The way the property is made it gets more narrow as you get toward the back of the property. I'm afraid moving it back would put it too close on the sides to the other properties that are on each side because I have property on both sides that are owned by other home owners.

MR. NOFFSINGER: Where is the septic system located on your property?

MS. MATTINGLY: It's behind where the current mobile home will be sitting. Approximately 15 feet, I guess, from the back of the mobile home.

MR. NOFFSINGER: So if you were to move this unit back further, you would be over your existing septic?

MS. MATTINGLY: Yes. We would have to move the septic tank also.

CHAIRMAN: Staff have anything else, questions?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board members have any questions or comments?

(NO RESPONSE)
CHAIRMAN: Hearing nothing anyone else have anything else to add on?

(NO RESPONSE)

CHAIRMAN: If not entertain a motion to dispose of the item.

MS. DIXON: Move to approve the variance based upon findings that it will not adversely affect the public health; will not alter the essential character of the general vicinity; will not cause a hazard or a nuisance to the public; will not allow unreasonable circumvention of the requirements of the zoning regulations.

CHAIRMAN: Is there a second?

MR. MILLER: Second.

CHAIRMAN: Motion been made and second.

Staff have any other comments?

MR. NOFFSINGER: No. She did a fine job of describing it.

CHAIRMAN: Any other board members have any comments or questions at this time?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.
Next item, please.

ITEM 6

1741 Scherm Road, in a B-4 zone
Consider request for a Variance to reduce the amount
of interior landscaping on the property from the
required 6,805 square feet to 5,700 square feet.
Reference: Zoning Ordinance, Article 17,
Section 17.32
Applicant: Neel Properties, LLC

MR. NOFFSINGER: Mr. Chairman, Planning
Staff has reviewed this application. Found the
application to be in order.

The applicant is constructing a fueling
station at this location in conjunction with the
grocery store which already exist at the site, as many
of you are aware. Most of you or all of you are
aware. There are other shopping activities, retail
sales and office uses located on the property.

Since they are making an addition to the
property, we asked the applicant to take a look at
ways to increase the amount of interior landscaping
that will be located on this property. The applicant
has done what the Staff feel is a fair job in trying
to add additional interior landscaping.

The perimeter landscaping along Scherm
Road will remain as it is. They will be required to
provide three foot high continuous element and one
tree per 40 feet. They will be adding interior
landscape islands, some trees, green space within the interior areas of the parking lot. That will be about 1105 square feet shy of what's required.

Given the fact that they are making an effort to significantly increase the amount of landscaping in the area, and the fact that the existing fueling station is a permitted use in this zone, Staff feels that this variance warrants consideration by this board.

CHAIRMAN: Any comments filed with the office for or against?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone wishing to speak in opposition this evening?

AUDIENCE: Yes.

CHAIRMAN: Sir, let the applicant come first and then you can state your opposition.

The applicant, state your name for the record, please.

MR. NEEL: Rick Neel.

(MR. RICK NEEL SWORN BY ATTORNEY.)

MR. NEEL: My name is Rick Neel. We are submitting for application for the fueling station for one of our applicants or tenants in the center which is Foodland. Gary pretty has pretty well taken care
CHAIRMAN: Any board member have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Those that are opposed come forward at this time, please.

State your name for the record.

MR. SIMS: My name is Steve Sims.

(MR. STEVE SIMS SWORN BY ATTORNEY.)

MR. SIMS: I would like to thank the chairman and the board for this opportunity. I own and run a business at 1701 Scherm Road. We bought the business some five years ago. Understood that there were rules and regulations and variances and ordinances to be taken into consideration when we bought and maintain those as required.

All we are asking is that everyone else maintain a level playing field by your actions and with the response that you will have for this variance.

Again, I appreciate the time that you've put into this and the time that you've given to us to
come and speak before you. Thank you very much.

CHAIRMAN: Are you east or west?

MR. SIMS: I'm east of the shopping center.

CHAIRMAN: Thank you.

Any other questions of the gentleman speaking at this time from the board or staff?

(NO RESPONSE)

CHAIRMAN: Thank you.

State your name, please.

MR. EMMICK: Gary Emmick.

(MR. GARY EMMICK SWORN BY ATTORNEY.)

MR. EMMICK: We are the landlord for Sims here at their location. Basically just to reaffirm what they said. Feel like everybody should play on the same level of playing field. Just recently we supply locations around the City of Owensboro. We've had to just recently go out and replace a few shrubs.

CHAIRMAN: They improved it too. Thank you.

MR. EMMICK: I understand that. Just like to make sure everybody is on the same page.

CHAIRMAN: Thank you.

Any questions of this gentleman?

(NO RESPONSE)
CHAIRMAN: Thank you.

Anyone else have any comments? Come forward, please, ma'am.

MR. ELLIOTT: State your name, please.

MRS. SIMON: Jenny Simon.

(MRS. JENNY SIMON SWORN BY ATTORNEY.)

MRS. SIMON: I'm a resident property owner on Royal Drive which is three houses off Scherm Road. I can look out the front door and see Foodland. I think with the fueling station there it's going to cause a lot more traffic. There are three residential streets that go out on to Scherm Road. The traffic is really bad. Like here is Foodland, the three streets that come out are Royal, Queenway and Imperial Drive. Sometimes it is very, very hard to see. If we have another fueling station right there with more trucks, more traffic, I think it's really going to like hinder our neighborhood. It's also going to take away the neighborhood look and feel. I really think it's -- I don't know how to say this. I think a big store like that moving into a small store owner's path where that is their livelihood is kind of like the difference between free enterprise and greed. I think that this would not be a good thing for our neighborhood. Thanks for letting Ohio Valley Reporting (270) 683-7383
me stand here and say it.

CHAIRMAN: Any board member have questions of her?

(NO RESPONSE)

CHAIRMAN: Staff?

(NO RESPONSE)

CHAIRMAN: Thank you, ma'am.

Next please, sir.

MR. SIMON: My name is Ed Simon.

(MR. ED SIMON SWORN BY ATTORNEY.)

MR. SIMON: I'd just like to say along the lines of what the other people have already said. These two people are trying to make a living. Part of their living is the service station or gas station. I think Wyndall's already has two other pieces of property that have gas pumps with them now. I think they -- don't they have five pieces of property. Two of those already have I think. One on 25th Street and Fairview Drive.

Are they asking for just a variance on landscaping?

MR. NOFFSINGER: Yes, sir. It's interior landscaping. The perimeter landscaping will meet the requirements, meaning the perimeter along Scherm Road will be screened with three foot high scrub row of
trees. Then there also as a part of this expansion being required to add interior landscaping and islands and other areas on the property. They're asking for allowance to put the landscaping in about 1100 square feet shy of what the ordinance requires. Right now they don't have any interior landscaping to my knowledge. If they do have any, it's right along the perimeter along Scherm Road. With this they'll be adding what looks to be about 5500 square feet of interior landscaping.

Now, the applicant's engineer is here to prepare the plan. I don't have those exact figures, but I can tell you in the areas on these plans, I'd be glad to give you a copy of one of these plans. You can see where they're adding islands with trees right along the front of the stores.

The drive aisle, if you have the stores, then you have the drive aisle. Where parking starts they will be cutting out some parking areas pavement and adding interior landscaping islands there with trees to dress it up. That's the only issue this board is considering tonight. It's not whether or not they can have a fueling station here, if it's proper or if we have too many. This board does not consider that because it's permitted in that zone and they have
a right to install this fueling station. They may
very well be able to meet their interior landscaping
requirement, the additional 1100 square feet that they
need. They can likely meet it to the rear of the
building. In that case, it's probably not going to do
at least the public along Scherm Road and where the
public is actually to receive the benefit that
interior landscaping any good. That's for the board
to decide through this public hearing and hearing the
evidence.

MR. SIMON: Is there also, has it already
been considered about the parking spaces? You
mentioned parking spaces. With so many square feet of
building are you required to have a certain number of
parking spaces?

MR. NOFFSINGER: Yes, sir.

MR. SIMON: Will the fuel pumps be counted
as taking up so many parking spaces?

MR. NOFFSINGER: No. They're going to
park right at the fuel pump. It's not calculated at a
different classification. It would be counted with
the stores that are already in there, but to give you
an idea, parking space is required 193. Total parking
provided 193. So they're right at the required
amount.
MR. SIMON: Is that right now or is that with the - -

MR. NOFFSINGER: That's with the fueling station and all uses considered.

MR. SIMON: So they will meet the requirement.

CHAIRMAN: They'll meet all the requirements at this time except shy a little bit of the landscaping.

MR. SIMON: I guess that's all.

Does it matter if a person is opposed to it or not?

CHAIRMAN: That's what you're stating now, isn't it?

MR. DYSGINGER: Sure it does, sir. Let me interrupt real quick.

Mr. Noffsinger, are you saying that if they were to use up parking spaces to meet the landscaping requirement they would end up violating the parking space requirement. Is that what you guys just said pretty much? They can't give up any more parking spaces to meet interior landscaping because they're already at the minimum amount.

MR. NOFFSINGER: There are other areas which would get it. They are making an effort to add
that interior landscaping in areas where it will meet
the intent of the ordinance. It's not to say they
should be given a variance, but that's one
consideration in this. You know, we realize in
working with property owners that with existing
developments if they want to expand they can't always
come in to complete compliance with the zoning
ordinance. In many cases, they wouldn't be able to
expand at all. Parking, they have to meet the
required number of parking spaces or they couldn't
expand, but there are many cases where landscaping is
negotiated. For example, the fuel station next-door
and the video store next-door to that is pretty much
wide open access with no landscaping. If they wanted
to add on, do something different, we would be having
the same talks with those owners in terms of improving
the site. That's what we're doing here. They're just
not coming into complete compliance. So they're
asking for the variance on that interior landscaping.

MR. DYSINGER: Part of the problem here,
and this may be a question for the applicant. I don't
know. If it is, I'm sure you'll correct me.

Part of the problem here is that this site
was designed before the ordinance took affect so it's
an odd shape anyway. I mean it's difficult to --
without going out back where it makes no difference anyway.

MR. NOFFSINGER: Mr. Riney is wanting to talk.

CHAIRMAN: Mr. Riney, do you have any comments at this time to help us?

MR. ELLIOTT: State your name, please.

MR. RINEY: Jim Riney.

(MR. JIM RINEY SWORN BY ATTORNEY.)

MR. RINEY: I'm not wanting to talk, Mr. Noffsinger, but I thought I may have a little history that might help the board.

The original development plan for this site, Shawnee Park Shopping Center, was prepared in 1967. I think that goes to the heart of the issue of what you all are speculating on. The development in the plan occurred prior to the requirements for landscaping and so forth.

Basically the site, as we see it today in terms of pavement and parking area, is the same as what was prepared back in 1967. Through the years there have been some expansions, as you all have touched upon tonight. Through those expansions parking has been adjusted. Some landscaping has been added. That brought us to where we are tonight. We
still have a site that even though it's grandfathered in, Planning Staff tries to go ahead and get some of the parking and some of the requirements to be satisfied in each expansion.

As we stated earlier, I suspect that all of the properties along that area there of Scherm Road are short on parking requirements. Even the other two businesses that were mentioned. We did go back in. We looked at areas where we could have parking that would do some good for the area for traffic control as well as for the esthetics for the neighborhood. Yes, there are some areas around the rear that you could put some bushes and some ground cover, but it served no functional purpose. I won't say it's a waste of money, but it's not going to accomplish the intent of the zoning ordinance. As I said, the landscaping ordinance came after this was developed. We're just trying to meet the intent of the regulation and still keep it something that's functional with traffic and the esthetics of the neighborhood.

CHAIRMAN: Do we have any questions for Jim?

MR. PEDLEY: Jim, is there any interior landscaping being added now?

MR. RINEY: Yes, sir. Within the plan.
there are some islands up near the store front that are being added as well as some -- if you look at the plans, some triangular areas at the south end of the parking bay. Then there's interior landscaping that's added kind of as a buffer to the adjoiners on the east side. I may have missed one.

On your plan they're shown as unshaded areas. I see five islands that are just south of the store, Mr. Pedley, with trees and the curb. Then there's landscaping that's added at the proposed fueling station area to help soften the impact as well as a couple of areas over near the entrance where we have some traffic control. It's also something that's visible from the street from the neighborhood.

MR. PEDLEY: So you've used all the available spaces without taking out parking spaces?

MR. RINEY: Yes, sir, we feel we have. Just to address that for the record. The parking spaces, there have been some parking spaces added in order to be sure that we comply as was stated earlier as you look at the plan based on the current use. 193 plus parking places are required and we are able to provide 193 parking spaces on site. So we do meet that requirement.

MS. MASON: I have a question. I've been
on that property ump-teen million times. I don't remember the back of the property. Is there a fence back there?

MR. RINEY: No, ma'am. There's a cable back there, but there's not a fence or a visual barrier.

MS. MASON: But you're saying no landscaping was put in the back. Would the landscaping in the back maybe benefit the adjoining property in the back?

MR. RINEY: Well, to the rear of that are apartments and a parking area back there.

MS. MASON: I haven't driven to the back of it. I'm always in the front of it.

MR. RINEY: The rear is where they have deliveries and so forth, big tractor-trailers. So they have to have room to maneuver. Most likely the landscaping would need to be up against the building which is not going to provide much space. If you put landscaping along the property line next to the adjoining parking lot, it would force parking area, the dumpster and so forth, out into the travelway for the delivery trucks and the tractor-trailers.

CHAIRMAN: Back of the property on behind it, the area in the back that owns the apartments they
back all the way up to the cable there on one side and
the trucks are on the other side.

MR. RINEY: That's correct. The picture
I'm trying to print is you've got two parking lots
backing up to each other along a common property line.
You're exactly right.

CHAIRMAN: Hard surface on both sides.

MR. RINEY: Yes, sir.

CHAIRMAN: Any other questions of him?

(NO RESPONSE)

CHAIRMAN: Anyone have anything else to
add at this time that is new?

MR. SIMON: Just a question, if I can.

Did I understand that the gas pumps and gas islands or
whatever are counted as parking spaces?

CHAIRMAN: No.

MR. SIMON: They're not counted as parking
spaces.

CHAIRMAN: No, sir. They have landscaping
on each end of it.

MR. SIMON: Is the proposed fueling
station in relation to Scherm Road being on the north,
the apartments being -- the apartments on the north
of Scherm Road being south and Mr. Sims being on the
east, where is the --
CHAIRMAN: Come up here and look at this map, please, sir.

(MR. SIMON APPROACHES BOARD.)

-- (INAUDIBLE CONVERSATIONS) --

CHAIRMAN: Does that answer your question, sir?

MR. SIMON: I think so, yes.

CHAIRMAN: Anything else to add?

MR. SIMON: I've just got one more question. Mr. Noffsinger said that the only consideration this board is giving here is to do with landscaping. As a business, they already have the right to put pumps there. If they wanted to put pumps there, ten years ago they would have put pumps there.

Thank you.

CHAIRMAN: Any board member have any other comments or questions?

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. DYSINGER: I have one question real quick.

Are the parking spaces behind the building, are those counted in your minimum parking space requirement? You are including those in that number?

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MR. RINEY: Yes.

CHAIRMAN: Thank you.

Any other comments?

MR. SIMON: How can you park in the back of the store with delivery trucks? I've been back there several times.

MR. RINEY: There is an area where they can park some vehicles.

CHAIRMAN: From the dumpster west.

MR. RINEY: Right. Between dumpster location. We looked even further west at some parking spaces and that started to cramp the traffic movement for delivery trucks, but there is an area where you can fit some parking back there. Be primarily employee parking. Obviously, your patrons and customers are not going to go back there. It's too far to walk. Get the employees from the side of the building and out front, the furtherest point out front and get them back to the rear where you have more room for your customers.

MR. SIMON: Talking about screen the northwest side around the back?

MR. RINEY: Yes. Along the northwest side, that's correct.

CHAIRMAN: I think we've pretty well
covered the item at this time. Entertain a motion to
dispose for or against.

    MS. DIXON: Mr. Chairman, move to approve
the granting of the variance because it will not
affect the public health, safety or welfare; will not
change the essential character of the general
vicinity; will not cause a hazard or a nuisance to the
public; and will not allow an unreasonable
circumvention of the requirements of the zoning
regulation.

    CHAIRMAN: Is there a second?
    MR. WARREN: Second.
    CHAIRMAN: Any other board members have
any other comments or questions?
    (NO RESPONSE)
    CHAIRMAN: Staff have anything else?
    MR. NOFFSINGER: No, sir.
    CHAIRMAN: The applicant, do you
understand?
    MR. NEEL: Yes.
    CHAIRMAN: Do you have anything else to
add?
    MR. NEEL: No.
    CHAIRMAN: With that all in favor raise
your right hand.
(SIX BOARD MEMBERS - MARTY WARREN, RUTH ANN MASON, C.A. PANTLE, JUDY DIXON, TIM MILLER AND WARD PEDLEY - RESPONDED AYE.)

CHAIRMAN: All opposed.

(ONE BOARD MEMBER - SEAN DYSINGER - RESPONDED NAY.)

CHAIRMAN: Six for and one against. The motion carries.

Want to wish everyone a Merry Christmas and prosperous and healthy New Year.

I need one final motion.

MS. DIXON: Move to adjourn.

MR. DYSINGER: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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Ohio Valley Reporting
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I, LYNNETTE 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 53 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this the 15th day of December, 2004.

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

COMMISSION EXPIRES:
DECEMBER 19, 2006

COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

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