The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, January 4, 2007, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: C.A. Pantle, Chairman
Gary Noffsinger
Ward Pedley
Marty Warren
Sean Dysinger
Ruth Ann Mason
Judy Dixon
Clay Taylor
Stewart Elliott, Attorney
Madison Silvert, Attorney

CHAIRMAN: Let's call the meeting to order.

We're going to start a couple of minutes early.

First thing I want to welcome each one of you here. Tell you we start our meetings with a prayer and the pledge to allegiance. We'll invite you to join with us if you so desire. Madison will have our prayer this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: I want to welcome each one of you to the Owensboro Metropolitan Board of Adjustment this evening.

If you have anything you want to add to any
If you have an item or talk on it, please come to one of the podiums, state your name, be sworn in so we can have everything recorded here, please.

With that the first item we'll need to bring up is the minutes of the last meeting on December 7th. They're in the office. There's no problems or questions at this time. Anybody have anything they want to add?

(NO RESPONSE)

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

MS. DIXON: Move to approve.

MR. PEDLEY: 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.

The next item being this is the first of the year, the first thing we need to do is election at this time. I'll turn it over to our attorney to hold the elections.

MR. ELLIOTT: In accordance with our bylaws, we have an election of officers the first meeting in January for the year 2007. So at this time I'll open nominations for the office of chairman.
MS. MASON: I'll nominate Audie Pantle for chairman.

MR. DYSINGER: I second the nomination.

MR. ELLIOTT: Are there any other nominations?

MR. PEDLEY: I make a motion nomination cease.

MR. ELLIOTT: A motion that nomination cease.

All in favor.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MR. ELLIOTT: Mr. Pantle, you're now chairman. Now we have office of vice chairman. Do we have a nomination for vice chairman.

MR. PANTLE: I nominate Ward Pedley.

MR. DYSINGER: Second.

MR. PANTLE: Move he be elected by acclamation.

MR. ELLIOTT: All in favor.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MR. ELLIOTT: Now we have a vice chairman. Now we have the office of secretary.

MS. DIXON: I nominate Ruth Ann Mason.

MR. ELLIOTT: Do we have a second?

MR. DYSINGER: Second.

MR. PANTLE: Move nomination cease she be elected by acclamation.

MR. ELLIOTT: We have a motion that nomination
cease. All in favor.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MR. ELLIOTT: We now have secretary.

That concludes the elections, Mr. Chairman.

CHAIRMAN: Next item.

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CONDITIONAL USE PERMIT

ITEM 2

811 East Parrish Avenue
1000, 1020 Breckenridge Street
915, 1325 Triplett Street
1215, 1219, 1309 Pearl Street, zoned B-4, P-1

Consider request for a Conditional Use Permit in order to amend an existing conditional use permit for the operation of a general hospital and related health care facilities to construct an addition of 2,140 square feet on the second floor of the existing hospital building for surgery suites.

Reference: Zoning Ordinance, Article 8, Section 8.2C1
Applicant: Owensboro Medical Health System, Inc.

MR. NOFFSINGER: Mr. Chairman, this application has been advertised for public hearing at this time. All adjoining property owners have been notified. Becky Stone is here to read a brief Staff Report into the record.

MR. ELLIOTT: State your name, please.

MS. STONE: Becky Stone.

(MS. BECKY STONE SWORN BY ATTORNEY.)

MS. STONE: The properties identified on the application comprise the Owensboro Medical Health
System Campus and are approved under a final development plan which includes the hospital, parking facilities, and health care facilities including offices for health care professionals. The previous conditional use permits and final development plans have been approved for the properties.

The hospital use is conditionally permitted in the P-1 and B-4 zones. The applicant is requesting to amend the conditional use permit under which they are operating to include a surgical suite on the second floor of the existing hospital building. No other alterations on the site are proposed. An amendment to the previously approved final development plan has also been submitted. The footprint of the hospital building will not change. The first floor has been previously been designed to accommodate this second floor addition.

If approved special conditions should include approval of the revised final development plan.

CHAIRMAN: Any other comments from the Staff?

MR. NOFFSINGER: No, sir.

MR. WARREN: Mr. Chairman, I need to remove myself from this item, please, since it's my place of employment.

CHAIRMAN: So noted.
Any opposition filed in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Does the applicant have anything you would like to add at this time?

MR. ELLIOTT: State your name, please.

MR. ELLIOTT: Mike Sullivan.

(MR. MIKE SULLIVAN SWORN BY ATTORNEY.)

MR. SULLIVAN: Good evening. Mike Sullivan, attorney for the applicant.

I simply wanted to tell you all that the hospital is here represented by Bill Alton, administrative director of facilities to my right, and Jim Morris, construction manager right next to Bill. We are here to answer any questions you may have.

This is over what I call the old emergency room. It was on the west side of the hospital.

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

(NO RESPONSE)

CHAIRMAN: Staff have any additional comment?

MR. NOFFSINGER: No, sir.

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

MS. MASON: Mr. Chairman, I move for approval with the conditions of the approval of the revised
development plan. My findings are that the footprint of the hospital building won't change. The first floor was designed to accommodate this addition. It's a similar use that it originally was the conditional use permit was for.

CHAIRMAN: Is there a second to the motion?

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Any other comments from the Staff?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT - WITH THE DISQUALIFICATION OF MR. WARREN - RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 3

5 Plum Street, zoned R-4DT
Consider request for a Conditional Use Permit in order to construct a private boat dock in a floodway.
Reference: Zoning Ordinance, Article 18, Section 18-6(b)(2)(f)
Applicant: Brenda McAlister

MR. NOFFSINGER: Mr. Chairman, this
application has been reviewed by the Planning Staff.
It's found to be in order. It has been advertised for
public hearing at this time and all the adjoining
property owners have been notified.

Becky Stone has a Staff Report that she would
like to read and enter into the record.

MS. STONE: The property is located on the
river front and the applicant proposes to construct a
private boat dock.

The Zoning Ordinance requires a conditional
use permit for the construction of a boat dock in a
floodway. It also requires approval from the Army
Corp of Engineers, the Kentucky Division of Water, and
a statement from a licensed engineer that there will
be no impact on the floodway by the proposed project.
The applicant has submitted both approvals and an
engineer's letter with her application and meets the
requirements of the zoning ordinance to apply for a
conditional use permit for a private boat ramp.

Any special conditions would be subject to any
additional requirements of the Army Corp of Engineers
and the Kentucky Division of Water.

We would enter the Conditional Use Permit
Staff Report into the record as Exhibit B.

CHAIRMAN: Any other comments from the Staff?
MR. NOFFSINGER: No, sir.

CHAIRMAN: Is there any opposition filed in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is the applicant here wishing to add anything at this time?

APPLICANT REP: No.

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

MR. DYSINGER: Becky, just for the record. The letter from the engineer, does it indicate that there will not be a negative impact on the floodway?

MS. STONE: That's correct.

CHAIRMAN: Staff have any other comments at this time?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Entertain a motion to dispose of the item.

MR. DYSINGER: Mr. Chairman, move to approve given the findings that the applicant has the approval of the Corp of Engineers, Kentucky Division of Water, as well as a letter from a licensed engineer stating that there will be no impact on the floodway, and as there appears to be no opposition.

CHAIRMAN: Is there a second to the motion?
MS. DIXON: Second.

CHAIRMAN: Any other comments from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

VARIANCES

ITEM 4

4419 Wexford Crsg, zoned R-1C
Consider request for a Variance to reduce the front building setback from 25 feet to 24.18 feet in order to bring an existing residence into compliance.
Reference: Zoning Ordinance, Article 8, Section 8.57(c)
Applicant: Bill Jones Master Builder, Homes by Benny Clark

MR. NOFFSINGER: Mr. Chairman, this application has been reviewed by the Planning Staff. It's found to be in order. The application has been advertised for public hearing at this time and all adjoining property owners have been notified. The Staff has provided each board member with a Variance Staff Review which you have had time to
Give you a little history on this property.

The residence was constructed in 1997. That was prior to the OMPC issuing building permits in this development. This building permit was issued by the Daviess County Building Inspector at that time. However, apparently an error was made in locating the home on the lot. The home does encroach into the 25 foot setback.

The Staff has found that the encroachment would 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 a nuisance to the public; and will not allow an unreasonable circumvention of the zoning ordinance and regulations. We say that because the permit was issued for the construction of this building and the proper inspections were made at the facility. However, during that inspection process, the error was not caught. Such a small discrepancy that the way the street curves in that area it's certainly understandable how an error could be made.

It is also, if you drive along this street, the error is not noticeable. You would not, an inspector would not notice this encroachment unless
you actually did a survey to determine the proximity. With the errors that have been made, I think there was no willful violation here. I think it was just an honest mistake. In fact, that home has been there since 1997. We would recommend that you consider this variance favorably.

We do have one condition. That is if you approve this variance, grant it specific to the existing encroachment and does not extend to future building additions that may occur on the site.

MR. PEDLEY: Mr. Chairman, I disqualify myself on this item.

CHAIRMAN: So noted.

Is there any opposition in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is the applicant here that has any statements?

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: Entertain a motion to dispose of the item.

MR. WARREN: I make a motion that we grant this variance due to the findings that it will not
adversely affect the public health, safety or welfare;
it will not alter the essential character of the
general vicinity; it will not cause a hazard or a
nuisance to the public; and it will not allow an
unreasonable circumvention of the requirements of the
zoning regulations. I'd also like to add that the
condition being that this variance were granted to
this specific incident only and would not apply to
future building additions.

CHAIRMAN: Is there a second to the motion?

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT – WITH THE
DISQUALIFICATION OF MR. PEDLEY – RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 5

501, 601 Commerce Drive, zoned B-1
Consider a request for a Variance to waive the vehicular use area landscaping perimeter requirement and a Variance to waive the vehicular use area landscaping interior requirement.

Reference: Zoning Ordinance, Article 17, Sections 17.312, 17.32

Applicant: Kermit Speer, Bruce Speer, Gary Melvin

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

Becky Stone is here tonight to read a Variance Staff Review. Each member has received a copy of and she'd like to read that into the record.

MS. STONE: There are no special circumstances that do not generally apply to land in the general vicinity or in the same zone.

The subject property is located in a B-1 Neighborhood Business Center Zone. This zone was established to promote sound, consolidated neighborhood-oriented shopping facilities in newly developing urban areas. The subject property is subject to a development plan that was approved by the OMPC in October of 1992. At that time 252 parking spaces were shown on the development plan. The ordinance in effect at that time would have required 224 parking spaces. The pavement coverage indicated
100,000 square feet of vehicular use area. Five thousand square feet of interior landscaping (5% of the VUA area) was shown and approved on the final development plan. At the time of the development plan approval the 0.5 acre tract (501 Commerce Drive) adjacent to the street was not included and the plan indicated that this tract would be subject to development plan approval prior to development.

I would like to enter the Development Plan into the record. I think you all have a copy of that.

In August of 2006, Jim Mischel, the Zoning Administrator, sent a violation to 601 Commerce Drive in response to a complaint that he received regarding the display area and outdoor storage in the parking lot and street right-of-way. The violation stated that the site was in violation of the Development Plan approved October 29, 1992. It also stated that the OMPC requires that the minimum amount of parking spaces be available for customers at all times and outdoor storage in the right-of-way is not permitted. The Notice of Violation also states that the property does not meet the requirements of the Owensboro Metropolitan Landscape Regulations, Article 17, Section 17.311, 17.312 and 17.32.

Since the violation was issued, the city and
county have amended the Zoning Ordinance to reduce the
number of parking spaces required for retail sales
establishments. This change reduced the amount of
parking required for this building from 224 to 166
spaces and gave the applicant the ability to revise
the development plan to show the new parking required
to identify the outdoor display area, to show that
outdoor display and storage will be located off of the
public right-of-way, to show the required landscaping,
and to show any outdoor storage to be screened. The
revised development plan also gives the applicant the
opportunity to include the 0.5 acre tract at 501
Commerce Drive in the final development plan for
approval.

The revised final development plan was
submitted without the required perimeter or interior
landscaping as required by Article 17 of the Zoning
Ordinance. Additionally, the Zoning Administrator
conveyed to the applicant's engineer that several
items that are placed on the site do not qualify as
outdoor display, but are in fact outdoor storage and
should be screened. That is the subject of the next
item on the agenda under Administrative Appeals.
There is no difference in this retail establishment
from other retail uses that are required to install
interior landscaping and perimeter vehicular use area landscaping along street rights-of-way within the urban service area. It is a requirement of the ordinance and would visually benefit the site as it does other similar types of sites within the urban service area. There is no special circumstance that demonstrates that this site should be exempt from landscaping requirements that are applied consistently to these types of developments. There is no reason to allow the interior or perimeter vehicular use area landscaping to be waived.

The strict application of the regulation does not deprive the applicant of reasonable use of the land or create an unnecessary hardship on the applicant.

The installation of the required landscaping is not an undue hardship on the applicant. All like sites in Owensboro, Whitesville and the urban service area have the same requirements. With the reduction of the amount of parking required at this site and the inclusion of the 501 Commerce Drive into the development plan, the applicant has more flexibility to determine the areas of outdoor display and to provide the appropriate amount of parking required at this site and the inclusion of the 501 Commerce Drive
into the development plan, and to provide the
appropriate landscaping requirements. The applicants'
argument that Commerce Drive serves only two
businesses does not eliminate the need for
landscaping. The public travels on the street to
access the business located there, whether there are
two businesses or fifty businesses. Commerce Drive is
a public street and as such, the site should be
landscaped along the public right-of-way boundary.
The applicants' arguments that they should not be
required to landscape because a large portion of their
business is based on outdoor display also falls short.
The parking space requirements have been reduced
recently giving Rural King more area to devote to
outdoor display without encroaching into required
parking, so it should be easier to provide the
landscaping under a revised development plan that has
a lesser parking requirement. The applicants'
argument that the outdoor display areas services as a
screen is not valid. Green type screening in the form
of a three foot high continuous element and a tree
every 40 linear feet would serve as a screen to the
outdoor display areas located on the site and benefit
the site aesthetically. The original complaint was
based on the amount of outdoor display located on the
lot and while the site is allowed to have designated outdoor display areas, the landscaping would serve to make the site more visually pleasing. The applicants state that the variance will preserve the public safety and welfare and will not alter the essential character of the neighborhood because there have not been complaints concerning the existing landscaping. The absence of a complaint is not sufficient or competent evidence to argue that this site is in any way different from other similar sites conducting retail businesses with outdoor display and does not provide factual evidence that the board can use to make a finding that the public safety and welfare are being preserved by the lack of landscaping. Additionally, the installation of the perimeter landscaping adjacent to the public right-of-way will help ensure that the outdoor display area stays within the site and does not spread to the right-of-way which was the case at the time of the notice of violation, protecting the public safety by keeping products off of the public right-of-way. We also disagree with the applicants' statement that the store functions as a home improvement center and would be like an industrial business which does not require interior landscaping. The Staff's opinion is that this is no a
retail store selling a wide variety of merchandise to
the general public and farming community and is not a
home improvement center.

Looking on their web site today the
departments that they list that they have products in
are automotive, clothing, collectables, domestics,
farm, hardware, home products, lawn and garden,
outdoor living, pet supplies, sporting goods, tools,
toys and gift certificates.

We also have a weekly on-line sales flyer that
we'll enter into the record that shows the variety of
products that are sold at the site.

The strict application will not cause undue
hardship on the applicant. The installation of
landscaping in a retail center is a required and
expected cost of conducting business on the site and
an exception for any retail establishment should not
be made unless there is some type of compelling
physical or topographical condition on the site that
prevents the installation of that requirement.

Otherwise, the Board will set a precedent to eliminate
landscaping because a business owner decides that they
do not want it. The elimination of landscaping
requirements on this site is an unreasonable
circumvention of the zoning ordinance and should not
We do not know if the circumstances from which relief is sought is a result of willful actions taken by the applicant. The previously approved development plan showed landscaping existing on this site. We do not know when the landscaping was removed or by whom. If it was removed by this applicant, it was done so in violation of the development plan and the Zoning Ordinance.

Granting this Variance may adversely affect the public health, safety or welfare, because it could allow display area to encroach on the public right-of-way, as was the case when the violation was sent out.

It may not alter the essential character of the general vicinity; it may not cause a hazard or a nuisance to the public, but it will allow an unreasonable circumvention of the requirements of the zoning regulations.

The Staff recommends denial. Regardless of the outcome of the appeal, a final development plan is still being approved by the OMPC. The plan must identify the fixed outdoor display area that cannot encroach into the required parking or landscaping.

We did have a call from a person who
identified themselves as an adjoining business owner who indicated that they thought the requirements of the Zoning Ordinance should be met. I think that Jim had a call also. I'll let him speak to that.

MR. ELLIOTT: State your name, please.

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: Let me give you a little history on this while we're here.

Becky has stated that we sent a letter out August 24th. Actually this case started back April 11th. I got a call in office. Kind of what started this whole thing was there was a lady that had an accident out in the parking lot, a wreck. Her husband called and stated that the cause of the accident was because of all this material sitting out there. It was just everywhere. She had a wreck where she didn't see someone come around.

April 11th I sent a letter to the owners kind of stating what the problem was and we needed to get together and kind of seek a solution on this.

So from April to August we were in dialog. Evidently in August I felt like it wasn't going anywhere. That's when I sent the official letter of violation out.
From August to this point we've had more discussions and finally they appealed this to the board.

Got a couple of hand-outs. I've got a copy of this development plan. I thought it would be good if everybody could take a look at it.

. We highlighted the green. This was the development plan that was approved in 1992. This would show you what was approved in '92, as far as the landscaping, the required landscaping, to give you an idea of what we're talking about. Those are the items they wish to get a variance from.

Historically, as far as zoning enforcement, I see a problem with this variance. We still get calls from people back I'd say 20, 25 years ago there used to be a few variances given on landscaping. I still hear about those. People say, how come that place wasn't landscaped? They've got a variance. Most people say, that's not right. Everybody ought to have to do the same thing. We still hear about that.

I feel like if this is granted you're going to see more of these variances down before.

I don't know if you have any questions on that landscaping. I do believe if this material had been off the right of way -- I don't know. I wasn't there
the day the accident happened. I can't tell you what
caused it or anything. The times I've been out there,
there's material at different locations. So I don't
know if that caused it or not.

It seems like the landscaping, if it was put
in, it would, kind of more define the area of traffic
flow.

I don't know if you have any questions at this
time.

MR. PEDLEY: Yes, I have a couple of
questions, Jim.

On existing landscaping, you're showing here,
this development plan was 1992. Was that landscaping
ever installed or do you know if it was or not?

MR. MISCHEL: I don't have any idea.

MR. PEDLEY: You don't know if it was
installed and removed.

MR. MISCHEL: No, sir, I don't.

MR. PEDLEY: But this plat was in 1992; is
that correct?

MR. MISCHEL: Yes.

MR. DYSINGER: But the landscaping is not
there now, the highlighted area?

MR. MISCHEL: That's right. There could be
one, but for all purposes it's not.
CHAIRMAN: Board members have any other questions of the Staff at this time?

MR. PEDLEY: I have one other question.

Back when the Zoning Ordinance was updated, we went from parking lots with 30,000 square feet or more that required interior landscaping, that was raised to 50,000 square feet. Has that been taken into consideration on this?

MS. STONE: This parking area shows 100,000 square feet of vehicular use area. So it would hit that 50,000. It's five percent over 50,000 and three percent over 30,000 now. So it would require the five 5 percent of landscaping at this time.

MR. PEDLEY: Even after the parking reduction still would?

MS. STONE: Yes. Their vehicular use area would still be over 50,000 square feet.

CHAIRMAN: Board have any other questions?

(NO RESPONSE)


MR. ELLIOTT: State your name, please.

MR. KAMUF: Charles Kamuf.

(MR. CHARLES KAMUF SWORN BY ATTORNEY.)

MR. KAMUF: I represent Rural King. We have a regional president here with us tonight, Don Davis.
We also have the manager of the Rural King, Mr. Greg Hart. He is here to testify.

Now, as far as parking, that's over. That's not an issue, is it? We've got 150. The ordinance requires 150 parking places. We've got 199. You didn't bring up something that's not on the agenda, did you? We meet all the requirements for the parking.

MR. MISCHEL: I think she had stated that we have changed the parking ratio, but we haven't seen your final plan either. Until that's filed, I can't really tell you if it meets it or not.

MR. KAMUF: According to the application that we have, that's not an issue here. In other words --

MS. STONE: Our only issue with the parking would be that the outdoor display area on your development plan would need to be identified and set so that it shows that required parking as available at all times.

MR. KAMUF: I understand. I misunderstood you.

I think most of you are familiar with Rural King. It's up on Highway 60. The area that you see, here's McDonald's. This area is Commerce Drive. Commerce Drive starts at McDonald's and comes all the
way back to the back and it ends in a big field in the
back behind Rural King.

We've owned that property since 1996. Mr. Davis is here to tell you that he's been the CEO of
that organization for 11, 12, 13 years, and that he had no knowledge whatsoever of any violation that was
occurred up there.

As you know, Stewart, in running a title
opinion, these development plans are not recorded in
the courthouse. If I run the title, I don't run into
that development plan.

It will be his testimony that they've been up
there since 1996 and that there has never ever been a
complaint of any of it. To the best of his knowledge
there has not been any violation or complaint made to
him. Certainly it's his opinion that there has not
been anything removed.

Prior to that I think there was a furniture
store up there prior to 1996.

In this particular area along the front, the
only violation that we have along the front is the
shrubs. We have the trees. The trees have been there
for years. So that's the plan that we see there.

We are using the interior of the parking lot,
some of these areas that you see, for display items at
the present time. As far as my knowledge, in other words, we've notified all six property owners adjacent to it and we've never had any problem with McDonald's or any of the neighbors to the best of our knowledge.

As a matter of fact, the local manager is here to confirm that.

They get along with their neighbors. He will tell you that he's always got along with McDonald's. If anybody was going to complain about this, as far as the neighbors, it would be McDonald's who has their restaurant out front.

The red that you see there are trees that we have.

There are special conditions that we think that the Commerce Drive serves only for deliveries of Rural King. When you come to this particular area and come around to the end, the only place you come is a 10, 15 acre field back there, maybe a little larger. It dead ends in that particular point.

The remaining land to the rear is not developed. In the event that there would be a development where screening would be involved, we would certainly have no problem of doing that. There has not been any screening other than what we have at the present time since we purchased it. We did not
have any idea about a development plan that required
anything until we got this notice, whatever date that
Jim says in April, whatever date that they got it.

Strict application of this would deprive the
applicant of reasonable use of the land in that, and
this will be an explanation made by Mr. Davis, is that
Rural King is different than most other type of retail
stores in that their number one retail promotion is a
display. They use the display on outside and they
have it in the parking lot, which is allowed under the
Planning & Zoning Ordinance. There's not a question
about display because you can do that.

It's our contention that instead of being
where you have some of this outdoor interior
landscaping that you would require in here, we have
display items along there. It would not be necessary
to have the screening in these areas because the only
people that you would screen from would be the people
that use Commerce Drive, and nobody uses Commerce
Drive except the people that would get to the rear of
the building.

Now, that's the issue as far as the exterior.

Also, the calling confirmation conveyed
reproducing the interior for displays. The condition
is unique and I still think it's argumentative or we
can make a good argument about other retail stores such as Wal-Mart and those areas. They're not necessarily zoned industrial.

If we had this property zoned industrial, we would not be required to have any type of the interior or exterior landscaping.

The issue that we have at the present time is one of time. The gentleman that owned Rural King, there are three of them, as you'll see in your application. They've made a diligent effort since August of this year to sell the property. The reason they're trying to sell the property is that they intend to build another store here in Owensboro. It will have 10 to 15 more employees than they have at the present time.

They understand that if they build a new building they have to qualify under all existing screening regulations, but they did not know at the time that they purchased this property that there was any question about the screening. The screening that is there now is pretty well what was there when they purchased the property.

The development plan, as I explained to you, is not a recordable document. Mr. Davis will explain to you that he had no notice of any type of violation
until he got a call from Mr. Mischel.

We have the parking lot. We have three or four issues that the Staff wanted us to address. We addressed the park. I think we're required to have 150. On the development plan we'll show 199 parking places.

I think basically our argument is that we shouldn't have to qualify. We didn't in the past. We've used this area since 1996 in the same manner that we're using it today.

In any event, we're trying to sell the property. Why would we be required at this time. We have the property listed. We're trying to sell it. Whoever buys that property will certainly I don't think will be using the same area as Rural King. In the alternative we're asking for some time to finish the sale of this property.

Mr. Davis is here to give you some of his opinions and we also have the store manager who has been there, he's been there since the day it opened. So if you have questions about the screening or anything, this guy is the guy to ask because he's been there since the very day.

Mr. Davis.

MR. ELLIOTT: State your name, please.
MR. DAVIS: My name is Don Davis.

(MR. DON DAVIS SWORN BY ATTORNEY.)

MR. DAVIS: I want to make one correction. My title is actually CFO, so that it's recorded properly.

As Mr. Kamuf stated, I'm also the president of Rural King Distributing.

I do want to confirm what he had said in regards to we were not aware of the development agreement until the situation came up in August was when I first became aware of it.

We, again, purchased the property back in 1996 and that was just not a document provided during the sale of the property.

I do want to point out some clarification. I know it was discussed that we did not qualify as a home center. The departments have seen that we sell were brought up as part of that. Actually those department that was mentioned, over half of those are the same things that are sold in Home Depot and Lowe's. So those are categories that we certainly sell.

We are a unique business in regards to we're a hybrid of different types of retailers in regards to home center and then farm stores, which I don't believe you guys have other farm stores of our size or
of our nature here in the community.

As Mr. Kamuf pointed out, we are trying to sell the property and we're interested in trying to find another property here in the area. Owensboro has been a very good area to us. We like being in Owensboro and we think we're a good fit for the community. Because of that we became in a situation where we need to expand because of not having enough room inside of our location, let alone with regards to the outside with our displays.

Was also mentioned that the landscaping, that these requirements would maybe provide us a better opportunity to display our merchandise. That's actually incorrect in that fact that we did compromise and coming into compliance with the parking regulations. That required us to reduce our display area, which actually has impacted our sales.

Our outside display areas are very important to our business because of a customer, that be a farmer, landscaper or home builder comes in and needs those types of products. They want to be able to see them and actually feel them to be able to purchase them. So we've actually reduced our display area recently through this process in trying to come into compliance.
I also want to confirm that if we are able to expand and find a facility here, we're having a little bit of difficult time selling our property. It's over a million dollar property to be able to sale. But if we are able to expand, we will bring some additional jobs to the area also.

I believe that's all I can provide specifically on this issue. Are there any questions specifically for me you would like to ask?

(NO RESPONSE)

CHAIRMAN: Thank you.

MR. DAVIS: Thank you.

MR. ELLIOTT: State your name, please.

MR. HOWARD: Greg Howard.

(MR. GREG HOWARD SWORN BY ATTORNEY.)

MR. HOWARD: I've been employed at Rural King since 1996. I've been there since the first day that we opened the store.

We've always been good neighbors with the other businesses around us. Always tried to help each other out. To my knowledge we haven't had any complaints. Haven't heard of any complaints from anyone up until now. That's basically all I have to say. Any questions for me?

(NO RESPONSE)
MS. STONE: I just have a couple of points from Mr. Kamuf's testimony that I would like to clarify.

He's correct that development plans are not recorded as plats in the courthouse; however, there are land use restrictions recorded at the county court clerk's office. Land use restriction on a piece of property would indicate that there is a development plan on file and that can be found at the office of the Planning Commission. I believe Kentucky Revised Statutes made that a requirement in 1988. So that would have predated the 1992 development plan.

Then the other comment that I would make would be he mentioned that industrially zoned property would not be required to have interior landscaping. That is also correct. However, this use would not be a permitted use in an industrially zoned property.

MR. MISCHEL: I just have one comment.

I think this would be bad to do for one reason, the property right now they have for sale. Once this variance is given, it stays with the property. They might sell this in two or three months, but whoever comes in they won't have to landscape either. If this property is for sale, it looks like they could landscape and the cost on this
property would not be that much. The next tenant that comes in would be ready to go.

The variance does not go with them. If they leave the site, the variance stays with the site. It gets in compliance now or it won't be in compliance.

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

(NO RESPONSE)

CHAIRMAN: Mr. Kamuf, do you have anything else you want to add?

MR. KAMUF: No, except he's trying to be, Don is trying to be a good neighbor along with Greg. For us to put any of this additional landscaping in that we've never been required to do since 1996 when he owned it, would be null and void if we ever sold the property because, in other words, whatever landscaping that we're going to put in we'll have to put in at the new property. It will useless for us to put in there. If we had some sufficient time to work this out where we could get the property sold. It's been listed. It's been listed since the first time that they got in touch with me. We just think that this is the place to go where we've been doing something that we had no knowledge that we were in violation and that we -- it will not do any good.
I don't have any problem about a temporary, any type of temporary order where it would not run with the land. We're not necessarily requesting that it run with the land. In other words, we could have a condition in there that in the event that we sell the property, that the condition is null and void. We don't have any problem. What good would it do us to do this expensive landscaping and then come in in two weeks or two months and sell the property. It hasn't been a problem in the last ten years.

MR. MISCHEL: I don't believe we have what you would call a temporary variance or anything like that.

MR. NOFFSINGER: I have a question for Mr. Mischel.

How long have you been dealing with this issue?

MR. MISCHEL: Since last I'd say March, April. I sent a letter out April. It's been quite awhile.

MR. NOFFSINGER: And this is January '07.

Thank you.

MS. STONE: I think the definition of the Kentucky Revised Statute says that a Variance runs with the property. So I don't know how the board would be able to, and that's a question for our attorneys, I guess, make a decision in conflict with
the definition in KRS.

MR. ELLIOTT: It does run with the property, yes.

MS. MASON: So you're saying that cannot be, that cannot be a stipulation that we just do it temporary?

MR. ELLIOTT: Right.

MS. MASON: I knew you were shaking your head no earlier, but it wasn't said out loud.

MR. KAMUF: I talked to my client. If we could have a period of a year to sell the property and to start construction of the new one, in other words, once we sell this we've got to start construction on a new one. So if we could have a period of a year to correct whatever is required.

We have spent a great deal of money with the engineering firm to get most of the issue straightened out. These are two that we don't have straightened out yet. In other words, if we could have some additional time to get it straightened out, I think we could sell the property. I mean you just don't sell a piece of property for 1,500,000 or over a million dollars over a three or four month period.

The first thing that we did when they got me involved is put the property up and list the property
for sale.

MR. SILVERT: That might be considered in the appeal. Just throw that out. On the table right now is the variance.

MR. KAMUF: I didn't understand.

CHAIRMAN: State that again.

MR. SILVERT: I was saying what you proposed might be something that the board might consider in the appeal. The variance is what's on the table right now. Just wanted to straighten that out.

MR. NOFFSINGER: Madison, the appeal is on a different matter. That has to do with the outdoor storage and a whole other issue. This is about the landscaping.

CHAIRMAN: Board members have any questions or comments at this time?

MR. WARREN: Does this board have the power to even give them a year?

MR. NOFFSINGER: I think that's what the attorneys are saying. This variance is a variance and it runs with the land. We have been dealing with this issue since March. We couldn't get anywhere. We had to file a formal violation, I believe, in August of 2006.

I don't know what engineering has been going
on. I do know we have a lot of material stored all
over that parking lot. If there's been any movement,
it's been a reduction in those materials because
they've been sold. Now we're moving into spring and
we're going to be looking at a greenhouse. We're
going to be looking at fertilizers. This is an issue
that needs to be addressed. We've been trying to
address it since March. In terms of perimeter
landscaping, the perimeter landscaping, that issue is
not going anywhere whether it's Rural King or a new
owner. Because the perimeter landscaping is a
requirement and it is where it is.

Unless this parking lot is defined with
planted areas, you're going to continue to see
materials placed all over. So we've got to outline
where these display areas are. Because when we
started with this, we were looking at an entire
outdoor storage area saying it had to be screened.

Well, the applicants argue now that these are
outdoor display areas? So we bought that. We
understand that and saying, you don't have to screen
those, but you still need to meet their interior
perimeter landscaping requirements that all other
corporate citizens in this community are expected to
follow. They're on the approved development plan.
I don't know what reasons there are to justify a variance simply because, hey, we're getting ready to move. We've got our land up for sale. We're looking to go someplace else. You're still going to have parking requirements for a new facility as well as interior landscaping.

MR. DYSINGER: Gary, just so I understand. The screening is not an issue here. On Commerce, I guess, would be the big issue.

MR. NOFFSINGER: That would be your perimeter landscaping along Commerce Drive and interior landscaping. Screening would be an issue that will be discussed on the next item, the appeal.

MR. MISCHEL: I feel like you've got an approved development plan since 1992. It needs to be complied with. For them to maybe pass it onto somebody else, they just need to put it in now. Then whoever buys this property will be in compliance. It's got to go in. You might as well do it now as later and pass it onto somebody else, which we might be here again.

MR. KAMUF: Gary, in answer to your question. You heard what the gentleman talked about. He talked about that he had been there since 1996 and he said there hadn't been any change whatsoever in the
property. It's been that way evidently since 1992 whenever the property was originally there. What problem is it to give a little more reasonable time to allow him -- he's not trying to circumvent. He didn't do anything willful. What he has done, he bought a piece of property. The man has told you he didn't -- evidently the title didn't show that there was a development plan. Now, there might be. I haven't run titles in the last several years.

What problem is it to give him a reasonable period of time to get it straightened out or sell the property?

MR. NOFFSINGER: Charlie, I think we've been reasonable. We have been trying to work this issue out since March of 2006. Almost one year. Here we are today. This has been -- we've worked with you for several months.

We have areas where material is being stored in the right of way. We have areas where materials are being stored not only in the right of way, but along interior landscaped areas. We've had one accident out there that we're responding to, yes, a complaint. We've got the job to make sure that we force this, enforce the ordinance in a consistent manner.
In 1992 we have a plan here by Hale, Riney & Gilmore that says these areas existed. I don't know what happened to them. Staff is not pointing the blame. Just like in the Staff Report. We said, we don't know if willful violation or not. We're not here to decide that. It's an issue of should the variance be granted and what's the justification. The timing of it, you know, how much time do you give?

MS. STONE: The board has an application before it on a variance and they need to act on approving or denying that application that's before them tonight.

MR. DYSINGER: Mr. Chairman, if I could.

Mr. Kamuf, the issue of willfulness. From 1996, if nobody knew what was suppose to be done, I guess you could make an argument there. However, Staff makes an excellent point. The issue came up originally with all the parties that are in this room in March. I haven't heard a response to that from you or your client in terms of why has it taken a year to get to this point to even officially ask for a delay?

MR. KAMUF: He can answer that.

MR. DYSINGER: That would be great.

MR. ELLIOTT: State your name, please.

MR. DAVIS: Don Davis.
The reason for the time, and this might be a misunderstanding on my part, but the issue that was brought to us that seemed to be the significant issue was the parking. We have made significant progress on that parking. Again, we've lost sales in order to keep getting compliance with that issue.

I did not realize that the landscaping was an issue. You say it was on the original document. I'm sure it was. But I understood, my interpretation was, the issue was the parking was the issue.

I feel like the impression is being given that there's been no progress made since March. In fact, in your Staff Report it said there has been progress. I apologize if there wasn't progress quick enough again. We like being in this area. We're not trying to cause a problem.

The issue in regards to the -- if I could make another comment besides addressing your question.

MR. DYSINGER: Please.

MR. DAVIS: In regards to this being temporary, we don't know what the use is going to be down the road. The next people could be in a situation where they want the landscaping in a different area. They might want different landscaping than we do. We are in agreement, we understand that
with new property we have to come into compliance with
that. We're just trying to get to the point of
getting to that.

I think with the paper locally, you guys saw
that, actually one of the owners of our company was
quoted in the paper. That we're looking for a new
property some months back. We've been investigating
that since.

MS. MASON: I think the ordinance states that
you have to put the landscaping in the areas where
it's shown here on the -- am I correct in that? That
no matter what's there, what business is there, you
still have to put landscaping where it is.

MR. DAVIS: This will, again, cause additional
hardship on our business because, if I understand what
I've been shown now on the original, there will be
areas that we're currently using for display that,
again, will have to be taken out, if the landscaping
requires the display can't be put with that
landscaping?

CHAIRMAN: In other words, you're over-built
on a small location?

MR. DAVIS: We are very much so, yes, sir.

MR. MISCHEL: Revising their development plan
for new parking standard they would meet the
ordinance. They would meet the parking and they would meet the landscaping. They have room to put all of that.

MR. DYSINGER: Can anybody tell me, either side actually, with the minimum parking required and then, is it 5 percent landscaping, Becky, that's required?

MS. STONE: Yes.

MR. DYSINGER: And the five percent landscaping. Can anybody tell me how much room that would leave for display? Either party,

MS. STONE: Perhaps their surveyor or engineer could. I couldn't do that off the top of my head.

MR. PEDLEY: I think it's on the plat 1951 square feet interior landscaping.

MR. DYSINGER: But doesn't this plat reflect a higher parking requirement than what is in place today?

MR. MISCHEL: I believe when they're finished they're going to end up still with more parking required. So they could use some of that. They could dedicate that.

It seems like they're even going to have a little bit more parking than we require under the new standards.
MS. STONE: They estimated their required parking at 150 spaces or calculated, I guess, based on their retail area less some storage areas that the Zoning Ordinance allows you to discount. The 166 spaces that I had in my Staff Report was just on the gross square footage.

They're saying they need 150 and they're providing 199. So there's an excess of 49 spaces that could be used to accommodate some interior landscaping outside of their display area.

MR. PEDLEY: Becky, excuse me. I stand corrected on this site for variance application. It states existing interior landscaping 3,937 square feet.

MS. STONE: On the original development plan?

MR. PEDLEY: Yes.

MR. NOFFSINGER: Proposed plan in the application.

MS. STONE: In the application.

MR. DYSINGER: So how many square feet are left over for display?

Sir, if you can respond to that, that would be great.

MR. DAVIS: I'm sorry, I cannot. I don't know the exact square footage.
MR. DYSINGER: Do you know how much square footage you're using currently for display?

MR. DAVIS: I'm afraid we have not measured that by square footage.

MR. DYSINGER: I'll take a ball park.

MR. DAVIS: Can I make another comment, please?

In regards to the parking spaces that there obviously is a buffer there, if I could use that word. It was pointed out that we are in a slower selling season. You're correct, in the spring our outside display area will grow some. Those 40 some spaces is what we intend on using for. I do not believe that we have the room to do the landscaping and for us to have displays with meeting the parking requirements.

MR. DYSINGER: Keeping in mind that the required landscaping only amounts to five percent of the total area.

MR. DAVIS: I understand that.

MS. STONE: If they're going to use that 40 spaces for outdoor display, that needs to be designated on their final development plan regardless of what happens here tonight. That display area needs to be fixed on the plan so that we can assure that there's always required parking.
MR. DYSINGER: Not to get too far away from my point.

If they designate it as display area for busy season, like Mr. Davis is talking about now and that stuff is gone, can they use it for parking or would that cause an issue later? You can't call it parking and then use it for display.

MS. STONE: Right.

MR. DYSINGER: Can they call it display and use it for parking?

MS. STONE: Yes.

MR. DYSINGER: Just out of curiosity actually.

CHAIRMAN: A question. When you put the greenhouse and the fertilizer and all your plants out there and then when you bring another load of tractors and park those in the parking lot, how much is left then? I go by that place every day.

MR. DAVIS: Our understanding is that we will have to have 150 parking spaces after that. It's going to require us to operate different over this next time frame until we can find a building or land because we can't have the same amount of merchandise we did last year spring and be able to comply with that.

CHAIRMAN: You won't be able to park all your
tractors out in the parking lot and get by there.

MR. DAVIS: We won't be able to have as many tractors, you're correct, and other merchandise.

CHAIRMAN: In the spring of the year, they're all over.

Any other questions from the board?

MR. ELLIOTT: State your name.

MR. WEAVER: Dave Weaver, Bryant Engineering.

(MR. DAVE WEAVER SWORN BY ATTORNEY.)

MR. WEAVER: I'm David Weaver. I'm with Bryant Engineering.

We've submitted a final development plan that's currently being held.

Currently the subject property is about 4.7 acres. The designated outdoor display area that we currently have is somewhere between one and a half and two acres. We have 44 parking spaces beyond what's required by the Zoning Ordinance. Then we have 150 required and 199 available. Theoretically we could use the space allotted to that 49 parking spaces for additional outdoor display which would be roughly another acre of outdoor display we could add to the subject property.

Of course, that's ball park numbers without physically calculating that.
MR. DYSINGER: You said you had two acres total outdoor or outdoor display?

MR. WEAVER: That's an estimation you understand. Basically just an estimate on what we've got currently submitted with planning. It looks to be about an acre and a half to two acres of outdoor display that we're currently using.

MR. DYSINGER: And then maybe another acre when you use the other 49.

MR. WEAVER: Yes, approximately.

MR. NOFFSINGER: I have a question for Mr. Weaver.

Mr. Weaver, when you're talking about the amount of display area, does that include all of the equipment and tractors and whatnot that's lined up along the entrance now or are you speaking of what's shown on this plan or what's actually out there on the lot now?

MR. WEAVER: Gary, I can't see what plan you're looking at? Are you looking at a plan that we submitted?

MR. NOFFSINGER: Yes, sir. Yes.

MR. WEAVER: The plan that we submitted we surveyed in the actual limits of where items are for sale of outdoor display. So that would include, to my
knowledge I believe that includes all of the tractors
and mulch.

MR. NOFFSINGER: Well, there are tractors
lined up along the front drive aisle in front of the
store where you show painted islands.

MR. WEAVER: Is that the area that would be in
the northern corner, Gary, where we've got the outdoor
display area?

MR. NOFFSINGER: Yes, sir. Number 28 maybe,
56, where you have the number of parking spaces shown.
Perhaps in those areas. Are you looking at the site
plan that you prepared?

MR. WEAVER: Yes.

MR. NOFFSINGER: Right in front of Family
Dollar and then right in front of the store you have
painted islands. I think you have tractors there.

MR. WEAVER: You're correct. I don't believe
we are showing that as outdoor display in that general
area.

I think Rural King does have some outdoor
display on the walk and they may have some up closer
to the building that we didn't block off in our
overall display area.

MR. NOFFSINGER: I guess these areas that
you're showing as painted islands that would not be
parking areas. Are those going to be display areas or -- that's typically where you'd find the interior landscaping. If it's just a painted area and you're not going to display or it becomes a painted area where you're not using it for anything.

MR. WEAVER: That would be a question for Mr. Davis or the manager of Rural King because I'm not sure that painted area would be big enough to really display much.

MR. NOFFSINGER: Right. I know that right now there are tractors in some of those areas and other items. That's typically where your interior landscaping would go, and that's not shown on this plan as a display area.

MR. WEAVER: It could be that we didn't fully define that as the display area if they have a tractor or two in that general vicinity. I'm not really for sure.

MR. NOFFSINGER: Thank you.

MR. WEAVER: Any other questions?

(NO RESPONSE)

MR. PEDLEY: I would like to get Mr. Mischel back up one more time.

Has there been a revised final development plan submitted for approval?
MR. MISCHEL: There was one submitted to our office and we had some comments on it. It's just kind of in limbo right now.

We have made some statements on that, that they needed to tie down display areas, show exactly where they're going. At this time that hasn't been turned back in to us. I guess they're waiting.

MR. PEDLEY: So the site plan for the variance application is not correct?

MR. NOFFSINGER: Have they officially submitted an application for a final development plan or are we just looking at a review copy?

MR. MISCHEL: This is a review copy. I talked to Brian today and he sent comments back.

MR. NOFFSINGER: Did we receive an application for a final development plan and filing fee?

MR. WEAVER: That is correct. We have submitted a final development plan that when we submitted it at that time I believe I got a call from Jim. Of course, this is early November. At that time I believe what we were told by, I don't know if Jim called or Brian called, but someone called and said that that needed to be held. We needed to submit a variance to address the outdoor display areas and the landscaping issues.
MR. MISCHEL: Brian is holding that and in our discussions we talked about display areas have to be more defined and that's where we're at.

MR. WEAVER: Today we have not received a mark up. Obviously we would work with the Planning Staff to fully define the outdoor display areas when this landscaping issue gets beyond.

MR. PEDLEY: What I'm reading on this site plan that I think we need in the record. "In the event that the landscaping variance is not obtained by the Board of Adjustment, the owner shall be required to establish 1,951 square feet of interior landscaping, plant 23 interior trees, establish 550 linear feet of perimeter landscaping, plant 5 perimeter trees."

Are those numbers correct or are they to be adjusted?

MR. MISCHEL: We haven't reviewed. I would say it has to be as what's -- we have not reviewed that yet. Brian has that in his office. I would think tonight -- I can't tell you if those figures are right or not. It would have to be in compliance with the landscaping ordinance.

MR. PEDLEY: We need to ask for the new site plan to be filed for required landscaping and
buffering and outdoor display areas.

MS. MASON: This site plan is for the variance.

MR. PEDLEY: We're here on a variance. We don't want to give a variance based on this site plan that's not correct is what I'm saying.

MR. MISCHEL: Not using those figures.

MR. PEDLEY: So we're asking for a new outdoor display and site plan.

MR. MISCHEL: I would say it just has to comply with the landscape ordinance or as per the development plan. They're going to amend their development plan.

MR. DYSINGER: But these numbers here that --

MR. MISCHEL: Those are their numbers.

MR. DYSINGER: Based on this plan, the one in the application?

MR. MISCHEL: The engineer came up with.

MR. DYSINGER: So the one in the application is what we're looking at moving forward, as opposed to this one that's from 1992?

MS. STONE: Yes.

MR. NOFFSINGER: If I might add. The one from 1992 also shows a half acre parcel that was to be developed at a later date subject to final development
plan approval, which there hasn't been any plan submitted for that. However, it has been improved without outdoor display, vehicular use areas, parking areas. That's also, that lot is also a part of this variance request because the site plan in the application shows what they intend to do with that property. However, in '92 they weren't going to use it.

MR. DYSINGER: Okay.

MS. STONE: The final development plan that was submitted also includes that tract. If the variance is denied, then their final development plan will be submitted showing landscaping as required under the current ordinance and their outdoor display areas will be shown and will be based on the vehicular use area that's remaining, the perimeter landscaping. If the variance is approved, you've waived all of that landscaping. So their final development plan would not show any landscaping or interior landscaping. That's why one of the conditions is the final development plan, you know, must be addressed regardless of the decision.

MR. WEAVER: Can I interject. Would the final development plan be a good mechanism to address a timetable related to the landscaping? That we could
put a note on the final development plan stating when
the landscaping needed to be in place and that would
give Rural King time to be able to dispose of the
properties and move on?

MR. MISCHEL: I don't believe we have a time
mechanism in our ordinance.

MR. WEAVER: Typically what you would do is
the developer would post a landscaping bond and then
put it in whenever it became time for them, whatever
they chose. I'm not sure what the time frame is on a
bond form.

MR. NOFFSINGER: David, I think the Staff's
position on this would be that how much time are we
going to give? We've been dealing with this since
March. We've got an issue that we're responding to a
complaint. There was an accident in the parking lot.
We're responding to a complaint. We have a violation
out there. We're trying to correct that violation.
There's several things that need to happen. One is an
amended development plan. The other is landscaping
needs to be installed.

Yes, at some point it's going to have to be
installed and when is that date. We've been working
since March and now under official violation since
August. I don't know that any of us know what that
date is going to be, but until we get a handle on the landscaping and get that installed and get some organization out there on that site, we're going to continue to experience what we've experienced in the past. That is the growth of these display areas in that parking lot. I don't think that anyone that's been out there I think could see that there are visibility issues in that parking lot and navigating that parking lot. We're trying to address this not only from an aesthetic point of view, but also a public safety point of view.

MR. MISCHEL: I started back in March on this. I don't know many telephone calls, how many discussions. I honestly believe that if it wasn't for this Notice of Violation we wouldn't be here tonight. I still would be making phone calls. Still having discussions. It's been doing that since March and I don't think it's --

MR. KAMUF: Jim, the issue on the interior and perimeter outdoor screening did not become an issue until after I was involved in the case. I guess we talked. You and I have talked and met for a month or so. The key issue at that time, wait until the parking ordinance is changed. The ordinance was changed in November, was it not?
MR. MISCHEL: Well, it's always been an issue.

MR. KAMUF: The parking was the only issue that we had. After we got the parking issue resolved, then that's when the issue came in about the perimeter of the interior landscaping.

MR. MISCHEL: We talked about it in March and April in discussions and officially was written out in August. It's on your violation of landscaping.

MR. KAMUF: We've had it since August, as far as the violation.

MR. MISCHEL: You've had it since before then. We've been working in good faith.

MR. KAMUF: I understand that. Once I started working with you, in other words, that didn't become an issue until August, as far as the landscaping.

MR. NOFFSINGER: No, sir. What Mr. Mischel is saying, he's been working on that issue since March. It was put down in writing in the form of a violation in August. It's been an issue since March.

MR. KAMUF: It wasn't an issue the first part when I got involved. The only issue at that time that we talked about was the parking. He said, get the parking straightened out. We waited. There wasn't any sense in doing anything until the ordinance was changed. When was that changed?
MR. MISCHEL: I think mainly that was your all's main interest was the parking. We had a lot of interest, but I think all you all wanted to talk about was the parking at the beginning. I had landscaping in and parking and the outdoor storage. I kind of had all of them.

MR. KAMUF: When was the ordinance changed on parking?

MS. STONE: It went to the Planning Commission in October. So it was probably December or late November.

MR. KAMUF: November or December.

MR. NOFFSINGER: October, November. It wasn't December.

MR. KAMUF: It wasn't approved by the legislative body until after that time. You all approved it --

MR. NOFFSINGER: It was approved by the legislative bodies by November.

MR. KAMUF: Yes.

MR. NOFFSINGER: Regardless of that issue, Mr. Kamuf, you still had a violation and you still had the responsibility to correct that violation. It was in your best interest to hold off for the parking requirements to be reduced. I don't think Mr. Mischel
was requesting that you hold off on that, but you saw that as certainly to your advantage.

You know, here we are today. We've accepted that. How much longer are we going to put it off?

MS. STONE: Waiting for the parking reduction did not prevent you from putting in perimeter landscaping. That would have been in the same location regardless of what your parking count would have been.

MR. DYSINGER: Jim, would you tell me one more time. What started all of this in March? We've talked a lot about parking. What instigated this whole thing in March? Was it the phone call about the --

MR. MISCHEL: Accident.

MR. DYSINGER: That's what started this whole thing was a safety issue.

MR. MISCHEL: We went out there to check it. We had another call too about the storage items and everything. Going out there and looking up the address, as we do normally when we check out a site, there was a development plan.

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

(NO RESPONSE)
CHAIRMAN: Mr. Kamuf, do you have anything new to add?

MR. KAMUF: No, Mr. Chairman.

CHAIRMAN: Does Staff have anything else new to add?

(NO RESPONSE)

MR. PEDLEY: Is Chair ready for a motion?

CHAIRMAN: I so am.

MR. PEDLEY: I want to make a motion to deny the variance based on the Findings 1) it may adversely affect the public health, safety and welfare. Based on the purpose of landscaping is to promote the aesthetic appeal of the neighborhood and to promote public health, safety through reduction of noise, pollution and likewise. Landscaping promotes environmental conditions.

Two, it may cause a hazard or nuisance to the public by allowing vehicles to travel through unpaved and non-vehicle use areas onto streets. I have seen that happen up there.

Three, it will allow an unreasonable circumvention of the requirements of the zoning regulation because the strict application will not cause an undue hardship on the applicant and may set a precedent for others to follow to eliminate
With that the applicant will file a development plan showing landscaping and outdoor display according to the ordinances.

CHAIRMAN: Is there a second to the motion?

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously. Next item, please.

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ADMINISTRATIVE APPEAL

ITEM 6

501, 601 Commerce Drive, zoned B-1
Consider a request for an Administrative Appeal to appeal the Zoning Administrator's interpretation that the tractor trailer, pallets stacked with unwrapped products, bundled cardboard and empty pallets constitute outdoor storage and must be screened with a 6' high continuous wall or fence.
Reference: Zoning Ordinance, Article 8, Section 8.5.14(k), Article 17, Table 17.311(5a)
Applicant: Kermit Speer, Bruce Speer, Gary Melvin
MR. NOFFSINGER: Mr. Chairman, Mr. Mischel is here to present his findings regarding this case.

MR. MISCHEL: Jim Mischel.

I would like to pass around some photos and maybe you all just pass down the line and everybody take a look at. I'll give everybody a minute.

MR. KAMUF: May I ask a question, Mr. Chairman?

CHAIRMAN: Yes, sir.

MR. KAMUF: Are these photographs that you're passing, are they from the four violations that we have?

MR. MISCHEL: There's a series of photos and I think I gave you a copy of all of them.

MR. KAMUF: The four?

MR. MISCHEL: There was probably 20 of them all together.

MR. KAMUF: Those are not in issue. There's only four in issue.

MR. MISCHEL: I'm just giving them some background.

MR. KAMUF: Okay.

CHAIRMAN: Jim, while we're looking at them go ahead.
MR. MISCHEL: These photographs that you are looking at right now, if you go by strict interpretation of the code and if you go under 8.5 site development requirements, it does state that all outdoor areas under Section K, that these items could be displayed. It says for the access open to the public display of operation vehicles or other finished products for retail.

So we're saying go by strict interpretation, these items could be displayed. We don't have a problem with that. The only problem we would have would be on the -- there are four pictures I think here. I think that's what we're addressing here.

MR. NOFFSINGER: Point of clarification for the record, Mr. Mischel. You stated that you do not have a problem with these. You don't have a problem with these items being categorized as display. However, you do take issue in some cases with the placement or where these items are placed on the property.

MR. MISCHEL: Yes. I mean it's going to have to be a dedicated space for display.

MR. NOFFSINGER: And not inside the public right-of-way.

MR. MISCHEL: Not on public right-of-way.
MR. NOFFSINGER: Or landscaping.

MR. MISCHEL: Or landscape areas.

MS. MASON: Some of the pictures that we have seen along here are not displayed in the correct --

MR. MISCHEL: We're talking about the items.

MR. NOFFSINGER: What he's showing there --

MS. MASON: The items can be displayed. They just may not be in the right area.

MR. NOFFSINGER: Right. These are not, the items he has shown you in these colored photos are not at issue under this appeal. Is that a correct statement?

MR. MISCHEL: Yes. These four here, I'm going to put one in the record. These four items here we have talked with them and we do take issue with these four. I've numbered them. If you take a look at them.

This first one is a storage trailer. The storage trailer on picture Number 1, items are stored inside that. So we don't think that's a display itself. That should not be there is what we're saying.

Picture Number 2 show pallets on the side and around back. There's some cardboard that has been bound together. There's some empty barrels there.
Also stacks of pallets. Looks like plastic wrapped around some black. We believe this it bulk items. You can't even tell what it is. In our opinion, it's not displayed because if you walked up to it you don't know what you're looking at. It's just bundled up.

Picture Number 3 is a better picture of all that material in black plastic. We believe the pallets are not displayed. We believe these items ought to be behind a fence.

Number 4, again, we don't believe that's display. That's more of storage item and should be within a fenced area.

A lot of these other items, like I said I'm not saying where they're at is okay. It's just the items are displayed.

It shouldn't be on public right-of-way. It shouldn't in a landscaped area. It should be within a development plan it will have defined space where display is.

MR. DYSINGER: But that's not an issue right now as much as it's -- you guys are working on that now, correct?

MR. MISCHEL: It's a matter of this Administrative Appeal is what we're talking about here.
MR. DYSINGER: Those four pictures.

MR. MISCHEL: Now, I'm not saying just those four. In the future it might be something else. These are typical of what we're looking at.

MS. MASON: If this trailer was closed up, that still is not allowed?

MR. MISCHEL: That's right because it's storage. It's not a displayed item.

MS. MASON: The fact that it's open they're trying to show it as a display.

MR. MISCHEL: I think they just store stuff inside it and bring it out.

MS. MASON: Okay.

MR. MISCHEL: I believe these four pictures here is what we're talking about here.

MR. NOFFSINGER: You're saying that these items should be stored inside a 6 foot high, maybe taller, privacy fence or chain-link with some type of screening material?

MR. MISCHEL: We thought, you know, most of this, except for this trailer, is occurring around the side and the back. We thought maybe installing, screening a fence around the back side will keep those items back there and dedicate the front of it to the display area and show it on the development plan.
CHAIRMAN: Any questions of the Staff at this time?

MR. NOFFSINGER: No.

CHAIRMAN: Any board members have any questions?

(NO RESPONSE)

CHAIRMAN: Mr. Kamuf.

MR. KAMUF: Let's talk about the trailer first.

The trailer located on this front that we see here is part of an outdoor display area open to the general public. The applicant utilizes the trailer and its covering for straw. Inside that trailer is straw, I was out there today, which is being marketed for sale inside the trailer.

As illustrated in the picture, steps have been taken to construct. You see a step going up to the area. The reason for that is so that they can take the straw out and show it to the public.

Number 2, the pallets with wrapped material. That's the one we have on the right. The applicant has pallets on the subject property with marketable finished products wrapped in plastic. That's what we see here.

Typically the applicant unwraps one pallet of
each bulk at a time. However, it's not uncommon for
the applicant to sell a complete pallet, as we see
here. The applicant contends that these wrapped items
are for sales as they could be purchased as individual
bags or by the pallet.

Number 3, the other two. This is the one on
the bundle of cardboard that we see here and the other
one on the left. The applicant contends that it's not
uncommon for any retail store to have bundled
cardboard and empty pallets awaiting removal from the
site at any given time. These items are not being
stored but simply awaiting removal from the site.

We have taken 18 different pictures in
Owensboro of other areas. We took these all within a
period of one hour. The reason that makes an
important point is because two hours later it will
look different. Let me introduce these.

The first exhibit is Exhibit Number 2. It's
bundled cardboard behind Save-A-Lot. That's the same
reason that this is bundled is because within the next
24 hours it will taken away or there will be more
cardboard.

I'll just pass these around.

Empty pallets at K-Mart on Parrish Avenue.
The same situation that we have here. These are empty
pallets. What are the pallets going to be used for?

They bring in goods. They take the pallets off.

That's exactly what we have in this exhibit that we see here.

The next exhibit that we have pallets containing mulch, landscaping material at the K-Mart.

If you see this one on K-Mart, it has a fence around it, but it doesn't have a 6 foot fence as they're going to require us to do.

Exhibit Number 5, bundled cardboard at Hobby Lobby. Same situation as we see the cardboard here.

These pictures were taken within an hour. We could have taken a thousand of them.

These violations are standard in Owensboro, if there is a violation. We're saying it's not. These are temporary items that are there until they can be removed that afternoon or in the morning by a truck.

This one here, the bundle that you see in front of Hobby Lobby.

Here is another one that you see at Home Depot. Pallets containing mulch, landscaping material. That's what this one here is. It is for sale. Empty pallets at Home Depot.

Number 8, pallets containing mulch, landscaping material at Home Depot.
Pallets containing mulch, landscaping material at Home Depot.

Here's another one. This is bundled cardboard at the Target. All of these were taken in the last three weeks.

Now we're going to get to some stuff. You've been waiting for Wal-Mart. I could have another 25, but here's Wal-Mart, Exhibit Number 11. Bundled cardboard, Wal-Mart on Frederica Street. That is being what? It's sitting there because they're getting ready to take it off the next morning. Empty pallets, Wal-Mart on Frederica Street. Bundled cardboard, Wal-Mart. Here is pallets. Look at this one here. We have a few pallets. Wal-Mart must have several dozen.

Exhibit Number 15, bundled tires. Just as we have a bundle here. You see tires that are bundled where they're taken out one at a time out of a bundle. Here's another one at Wal-Mart. Empty pallets.

Wal-Mart kind of outdid Lowe's, but here is some on Lowe's. Pallets containing mulch, landscaping material at Lowe's.

Empty pallets at Lowe's.

Bundled cardboard at Lowe's.
Right down the road here is Carpet Unlimited out in front, in front of their building with pallets. Here's a nursery. I think this is on Burlew Boulevard. Pallets containing mulch, containing materials, Integrity Nursery. This is on one of the busiest streets that we have in town. On the corner of Breckenridge and Old Hartford Road. Pallets containing landscaping material at the Marathon service station on Breckenridge. Here is bundled cardboard at K-Mart. This is the K-Mart on Frederica. Here's another one. You can see that they have it fenced in, but it's not where you can't see through it. All we're asking is the same treatment that everybody else in town is getting as far as these. The only issue would be of any difference on any of these would be the truck. Mr. Davis is here and he will explain about the trucks. Do you have any questions about those? I think they're pretty well self-explanatory. Is there any difference in pallets here? Any difference in materials containing mulch for resale or
cardboard than those? They were all taken within a period of one hour. We've got to be reasonable about this. If you've got temporary things that are going to be removed right away, certainly you don't have to put them in a screened storage area. Because most of those are not screened in a storage area.

MR. PEDLEY: Can you tell us what zone that Lowe's, Home Depot, Wal-Mart and all of those are in? We have a B-1 zone that we're talking about. What are the zones that you --

MR. KAMUF: You know that the service station out -- I can go over each one of them with you and that will be okay, if they want to.

MR. MISCHEL: I think there's a lot of violations out there. Every day you're going to have a violation. Not only in code, but police work and everything else.

Typically on the same token you're saying you want to be treated like everybody else. That's what a lot of people think about your landscaping. They put landscaping in and you didn't. Why aren't they treated the same way as we are?

Lowe's, Home Depot, Wal-Mart, if you go by, a lot of those places do have solid fencing.

MR. KAMUF: They didn't in those photographs.
MR. MISCHEL: If you go out there, you'll see some screening where they keep a lot of product. Again, that's enforcement thing. They let it spill out, but they do have solid fencing. You go to Lowe's they keep their products --

MR. KAMUF: Jim, why would you be so definite in trying to get those people to take cardboard and pallets out and require that to be in a storage area with screening around it? Why is that such an issue where they're going to be removed the next day?

MR. MISCHEL: I don't know that they're going to be removed the next day.

MR. KAMUF: All over town, they're not stored up.

MR. MISCHEL: That doesn't mean everybody is going to remove it the next day. Some people do and some people don't. In this case, it's impossible to throw a blanket over the whole town and say, everybody come in compliance? We had complaints at this site here.

MR. KAMUF: That's not the issue on this. You didn't have a complaint about this.

MR. MISCHEL: When we go to see about the complaint, we go out there and look at the site and here is what we find. We find landscaping and storage
and things like that.

We did after talking with you and everything, we said that some of those items should be displayed and that's why we're saying that they should be allowed.

It's not what I want or I'm determining to get. It's just what the ordinance is.

MR. KAMUF: Are you saying that those three are in violation and the rest of them in the county are not in violation? Are those pictures, are they wrong?

MR. MISCHEL: No. I said there's probably a lot of violations out there. I didn't say the rest of the county doesn't have none. I said there's a lot of violations in the county.

I guess it's like a speeding ticket. Why am I getting a speeding ticket if somebody else is speeding? You deal with the one that you're dealing with.

MR. KAMUF: Are you going to enforce all of those violations tomorrow?

MR. MISCHEL: Probably not tomorrow.

MR. NOFFSINGER: But they are made a matter of public record and Mr. Mischel will be pursuing that I can assure you.
Some of those case are -- you mentioned K-Mart, Save-A-Lot. Those are grandfathered uses. Have been there for years prior to the adoption of the Zoning Ordinance. There's not anything that Mr. Mischel can do.

MR. KAMUF: That new Wal-Mart is not.

MR. NOFFSINGER: I said some of those, Mr. Kamuf. I mentioned Save-A-Lot and K-Mart. Those are two. Those we can't do anything on, but the others Mr. Mischel will. They've been brought to his attention and he will have to do it.

One of the differences here at this particular location is it's highly visible from not just Commerce Drive from US 60 bypass. People coming in and out of town, visitors into town and people that live here can see that site quite frequently.

Now, some of those pictures there that you're pointing to had pallets with items stacked on it. Well, I guess they're displayed areas because you're receiving the benefit of the display areas out in front.

MR. KAMUF: Then that's a display area.

MR. NOFFSINGER: I think Mr. Mischel might have stated that perhaps that one is. We're looking at examples. This particular area is certainly not
shown as a display area on your development plan.

MR. KAMUF: Are you going to say that crates where they are removed every day and is a temporary item that's right there on the property is going to be removed the next day, that that is a violation of some Zoning Ordinance?

MR. NOFFSINGER: Yes, Mr. Kamuf, it may very well. If it's here today and gone tomorrow, that's one thing. But if it's here for several days and they're stacked up. You know, what is the schedule? I'd like to know the schedule on removal of this cardboard and pallets because from what I can tell that's a daily occurrence and it seems not to change much. I may be in error. Maybe this is an unusual day.

MR. MISCHEL: Do they remove these every single day?

MR. KAMUF: I can't answer that.

MR. NOFFSINGER: That's what was stated. They're removed on a daily basis. That's a lot of pallets.

MR. DAVIS: Those are removed as we have trucks come in. It depends on the season. We will have trucks every day sometime in the busy times of years. There are other times where it's every two
days. This is a higher volume store and so we have
more trucks here and they're removed each time a truck
comes. Does that answer your question?

MR. NOFFSINGER: Yes, sir.

MR. MISCHEL: I would encourage Mr. Kamuf and
the representatives of Rural King to come to the
office tomorrow. I'll be glad to show them about
Lowe's, Home Depot, and Wal-Mart where they've been
cited in the past for storage. It is a continual
problem. I can cite them and they can come into
compliance and they might be out of compliance in a
month, six months or whatever, but I would welcome you
all to come tomorrow and we'll sit down and just look.

MR. DAVIS: I'm unable to do that. I drove
four hours to be here tonight.

MR. MISCHEL: We'll make copies and send them
to you. I would welcome you to come down and take a
look at that just to show you that we are trying to be
consistent.

MR. DAVIS: Can I make some comments about
some of these pictures, please?

In regards to the trailer there, the first
picture here on the left-hand side of the board there,
that is a straw trailer. That is all that's in that.
That is sold on a regular basis. That inventory turns
on a regular basis. We're constantly replenishing that merchandise.

It is not storage where merchandise, all kinds of different merchandise is stored. I thought that was one of the comments that was made. In that trailer right there, that is just straw.

I want to address specifically, and you would only know this if you're in our business, or Wal-Mart, Home Depot, Lowe's. This merchandise right here, I will guarantee the city or the county does not want Rural King or any other group to unwrap multiple pallets of that merchandise because that merchandise will just fall off the pallets. That's the reason that we have one pallet at a time.

There was also a comment made. We sell several full skids or pallets of that merchandise. This mulch is terrible merchandise to handle and it will get much messier if we're required to unwrap every pallet that we have.

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

The issue of the straw truck. Are customers allowed to enter the straw truck and look at the straw?

MR. DAVIS: They are allowed to. I can't say
that that's happens all the time. Customers want to
go in and review the bales and see what kind of bales
they want, then they might. I can't say every
customer wants to do that. Yes, they're allowed to do
that.

MR. DYSINGER: It is open for that.

MR. DAVIS: Yes, sir.

MR. MISCHEL: Let me say that I think our
office if these pallets, the pallets I'm talking about
in the back, were put out that day, I don't know if
there's a pallet company that comes by --

MR. DAVIS: Sorry to interrupt. We bring them
back to Mantune, Illinois and they're disposed of
there. They're reused or disposed there. That's the
same with the cardboard. All of our stores do the
exact same thing. Not just the Owensboro location.

MR. MISCHEL: I would think if those pallets
are put out that day and they're taken and that
cardboard is bundled up, rolled up in the back and
somebody is there to pick it up, that's one thing.
For these items to be stored there for many days or
weeks, that's a different item. I don't know if
you're telling me that they're taken away every day,
that might be a different story.

MR. DAVIS: I would again repeat. I did not
say every day. When we have trucks, which is
sometimes every day, sometimes it's every two days,
based on the volume of the store and the volume of the
season. I would be very surprised if you could find
instances where we have the same pallets, the same
cardboard there for weeks, which is what you stated.

MR. MISCHEL: I think our solution to Mr. Kamuf was to put a fence so far in the back to screen
it from the public view. For items that might be there. Pallet with white plastic around them, I don't
know how long it has been sitting there. I'm sure you
don't either. If it's been sitting there for a long
time, maybe just until --

MR. DAVIS: But this is displayed merchandise.
Not storage merchandise.

MR. MISCHEL: Well, that's where we differ. I say it's display if they took the plastic off, the
white plastic, you could see what it was. Mulch --

MR. DAVIS: Again, you don't want us to do
that. I'm just being honest with you.

MR. MISCHEL: I'm just saying --

MR. DAVIS: If you look, and I would hope you
agree. If you look at the majority of our
merchandise, it is uncovered there. I think there are
very few instances where it's covered like that.
That's specifically because of the type of product and the fact that we're trying to keep it cleaner and neater than if we unwrap it.

MR. MISCHEL: I think the difference is if anybody got out of the car and walked around back and looked at that pallet, I wouldn't know what was in there, as far as display.

MR. DAVIS: I completely disagree. In regards to customers that buy that merchandise on a regular basis, they know exactly what that merchandise is.

MR. MISCHEL: Then they don't really need the display. They just come inside and say, I want this.

MR. DAVIS: We don't have that inside.

CHAIRMAN: Okay. We're arguing over nothing. The same thing over and over.

Jim, have you got anything new to add?

MR. MISCHEL: No.

CHAIRMAN: Have you got anything new to add?

MR. DAVIS: No, sir.

CHAIRMAN: Mr. Kamuf, you got anything new?

MR. KAMUF: That's it.

CHAIRMAN: Does the board have any questions or comments at this time?

MR. DYSINGER: I've got a couple.

First off legally. The pictures that we're
dealing with, is it possible to take them apart?

Meaning can we state that, yes, this is in fact a display, but this is not, or do we have to take all four of these issues?

MR. ELLIOTT: You can take one at a time.

MR. DYSINGER: That's it for right now.

CHAIRMAN: Does Staff have anything else to add?

MR. NOFFSINGER: I do have one question of Mr. Davis.

On picture Number 2 or item Number 2, that's the pallets that are wrapped with the mulch. Are those pallets located on your property?

MR. DAVIS: I am not sure the answer to that question. This is behind our facility I believe so I'm not sure exactly where it's located in regards to the property line.

MR. NOFFSINGER: The reason I ask that question, it appears to me that those pallets are not even located on your property. Because looking at this site plan it may or may not be. If they're not located on your property, that's another issue because then it becomes off-site. Perhaps those pallets we're looking at -- I think we've already addressed in terms of outdoor display the merchandise that's contained on
that, in that manner. Since these are off-site, I'm
not sure that we really should be considering that as
a particular area or a particular use that you're
considering.

MR. DAVIS: Is your issue where they are
located? Because we've stated from the start we are
truly -- you might not believe it. We're trying to be
good neighbors. I would agree that if that's stored
on someone else's property, we need to move it. I
have no problem with that.

MR. NOFFSINGER: Sure. I'm not sure -- I
guess it would be where they're located because if
they're not located on this property, it's not even an
issue here.

I guess what we're considering is that
particular arrangement of pallets, merchandise. What
is that? Is that display or is that storage?

MR. DAVIS: That is merchandise for sale. I
don't want to cause a problem and continue to repeat.

MR. NOFFSINGER: Thank you.

MR. DYSINGER: Gary, is Staff stating that
they don't believe that it's even an issue because it
may not be on the property? Is that what you guys are
saying at this point or not?

MR. NOFFSINGER: I think the real issue here
in looking at these pictures would become the trailer, the pallets, empty pallets, and the cardboard. If you look at this picture with the trailer, tractor-trailer, you've got some cardboard next to it, and then you've got some drums that I think is merchandise for resale and you've got some water tanks and whatnot. Those items I think they're saying those are display items, but many of those items are within their interior landscaping area and some likely on right of way. I think we need to clarify what we're considering as storage. I think it's 1) the trailer, 2) the cardboard, and 3) the pallets.

Is that the issue?

MR. DYSINGER: You mean the pallets that are empty waiting to be, according to the appellate, taken away or the pallets with merchandise on them?

MR. NOFFSINGER: No. Not the pallets with merchandise on it.

MR. DYSINGER: Is it the Staff's opinion that the pallets that we see with merchandise on them are not on the appellate's property and therefore shouldn't be considered?

MR. NOFFSINGER: Well, that's my opinion.

MR. DYSINGER: Is that Staff's opinion?

MR. NOFFSINGER: Well, that's Staff's opinion.
However, we don't know that. We're not certain, but they appear to be out there in the corn field.

CHAIRMAN: In other words, we're not considering Number 4.

MR. NOFFSINGER: Here is what I'm getting at, and maybe clarify it.

If the applicant is saying that the pallets with the mulch are display items, then they need to be in an area that's defined on their development plan as display area.

MR. DYSINGER: Which we don't have anyway.

MR. NOFFSINGER: At this point we don't, but I think we will. I can understand that.

However if they were to say, well, the cart of empty pallets and the pallets with cardboard are going to be in a display area, therefore they're on display, then we wouldn't buy that. If they're saying that these items, the mulch are within a display area that's approved on their development plan, then I think that's satisfactory. Because that's what you're seeing in some of these other pictures and that's what you see on the front of their property.

MS. MASON: Could the trailer be in a display area that's on the site plan?

MR. NOFFSINGER: That's a good question.
That's a tractor-trailer that's used for storage.

They are storing, in my mind, they are storing items within that area. I think it's questionable. I think that's a decision that the board is going to have to make in terms of, you know, what it is. At this point I'm going to support my staff and say that's storage.

I think that's within the board's judgment in terms of the way they've described the use of this and the way it's set up as to whether or not you believe that's storage or that's display.

MR. KAMUF: Mr. Chairman, one thing. This might help.

When we met with the Staff about all those other pictures, they said we're in violation. We showed them this provision of the ordinance and they agreed to it. They just didn't agree to it as to those four pictures.

Here is this what the ordinance says. "It is the applicant's contention that the existing outdoor display meets these requirements." Here they are.

"All outdoor areas or yards that are used for storage or manufactured products, materials to be used in manufacturing, wholesale commodities, automobile, junk yards, salvage and scrap iron yards not including areas for employ or customer parking nor areas that
are open to the public for the permitted display of operational vehicles or other finished products."

I don't think there's any question that those things are on pallets. We're not trying to say -- talk about the location. We're just saying when you have those type of items for what? For finished products for retail. That it's a display item under this provision of the statute of the ordinance. I mean that's quite clear, I think. You understand?

MR. NOFFSINGER: No.

MR. KAMUF: Here's the ordinance.

MR. NOFFSINGER: Is that in your application or what are you reading from?

MR. PEDLEY: It's in the Zoning Ordinance.

MR. NOFFSINGER: I don't have the Zoning Ordinance.

MR. KAMUF: It's 8-9(k). It has a quote around it, if you notice. Then it says, "are open to public for permitted display of operational vehicles or finished product for retail."

This is a finished product for retail.

MR. NOFFSINGER: What's that now? What is this?

MR. KAMUF: I'm saying every one of them.

MR. NOFFSINGER: You're saying those empty
pallets are finished products for retail?

MR. KAMUF: We're talking about here.

MR. NOFFSINGER: No. We gave you that one.

MR. KAMUF: Okay. Then on the trailer. In other words, the trailer is there. Why is the trailer is? So people can walk up. It has an access point going to it, where you have steps going up to it. Is that not for retail sale?

MR. NOFFSINGER: Does that factor in to your square footage of your building?

MR. KAMUF: You'd have to talk with those guys about square footage. I don't know.

MR. NOFFSINGER: I've stated my position on that one, Charlie. I'm unclear on it. I'm going to support Staff's position on it. The board has to make a judgment call there. That's why you're appealing it.

MR. WEAVER: The trailer was not counted in the building square footage, but if the Staff would like us to and address the comments in the final development plan, we certainly could. We'd have sufficient parking to cover the retail square footage.

MR. DYSINGER: I would hope that as the guy putting together the new development plan, you've listened very closely to everything that was said here
tonight because I don't want to do this again.

MR. MISCHEL: I don't think on this trailer if
the Board sees it as a display item instead of doing
it, it would just be counted as part of their display.
Their square footage and display would be included in
that.

MR. KAMUF: That's fine. We have no problem.
MR. MISCHEL: We're saying we think it's a
storage item. Like Gary said, that's an item for you
all to discuss and decide on. I would think it would
go either way.

MR. DYSINGER: Is there anything in the
ordinance, and I'm embarrassed to have not brought my
book tonight and I apologize for that. Is there
anything in the paragraph that was just read that
would reflect on the empty pallets and the bundled
cardboard? Is there any direction in the ordinance
regarding, I guess, trash or refuse - for lack of a
better word - waiting to be hauled away?

MR. MISCHEL: Not in this section here.

MR. DYSINGER: Mr. Kamuf, can you reference
anything in the ordinance that saying -- other than
saying that everybody else does it, is there anything
in ordinance that says that --

MR. KAMUF: I can't answer that. I don't
The items that you see here. On the pallets, this one here and this one down here, those are behind the building. The trucks pull in behind the building and they take those out daily or every couple of days or pretty quick after that. These pallets along with this cardboard, that doesn't stay in front. Bring in a truck, take away the pallets, take away the cardboard.

MS. MASON: But isn't that area at the bypass? People see it when they're going down the bypass.

MR. NOFFSINGER: Yes.

MR. KAMUF: I'm sure they can. If it's there temporarily. How do you work that out? Somebody takes a low end and they automatically have to take the bundle of paper or a bundle of --

MS. MASON: Well, a lot of businesses they do. They break up the cardboard and put it in the dumpster. Now, I understand this sort of business with pallets, you know. I just know from my experience, I guess I could say.

MR. KAMUF: We're talking about retail items. I think that would be just about an impossibility, other than --

MS. MASON: I'm talking about the pallets and
the cardboard is what I'm talking about.

MR. KAMUF: That's what I'm talking about.

How do you remove those within 24 hours every day?
Jim Mischel won't have anything to do but enforce
those ordinances.

I'm asking. Is it two or three days? Is two
days too long to have storage behind so another truck
could come in and take it away?

MR. NOFFSINGER: Charlie, I think it's hit on
the storage. That's what we're dealing with. The
other piece of property that's zoned B-1, which is a
neighborhood business center that requires a
development plan and your development plan has been
approved clearly shows that you're not going to have
any outdoor storage in that area.

MR. KAMUF: Is it outdoor storage?

MR. NOFFSINGER: On each and every development
plan that comes in, Planning Staff, we address outdoor
storage areas among many other things.

MR. KAMUF: Sure.

MR. NOFFSINGER: That's what we have to
address here. You're not showing any areas for
outdoor storage. However, that's what this area is
being used for. It's a storage area of items to be
stored awaiting removal. You stated yourself it's
storage. I think that's what we're -- it's not a
display, then it becomes storage. If it's not
storage, what is it? This board can't alter, they
can't do anything about these other sites. They can't
alter what the zoning ordinance says. They have to
make a determination as to whether or not Jim made the
right appropriate decision. That is classifying these
as outdoor storage areas. If they're not, then what
are these areas?

MR. KAMUF: It's a pick-up point. They pick
it up. They drive a truck in. They drop off
something and they pick it up and take the item away.
Is that storage? I don't think so.

MR. DYSINGER: Mr. Kamuf, when they come in
and pick up these pallets and so forth, do other
pallets come in with merchandise on them?

MR. DAVIS: I'm sorry, your question was?

MR. DYSINGER: When they come in with the
truck to pick up the empty pallets, they come in with
more pallets of merchandise on them.

MR. DAVIS: Yes, sir.

MR. DYSINGER: The merchandise is taken off
and the pallets are put back in the same spot.

MR. DAVIS: Yes.

MR. DYSINGER: So even though they're picked
up -- I worked in retail for a lot of years. I'm not unsympathic to your problem here.

In essence there is always pallets stacked up there and always bundled cardboard. It may not be the exact same pallets and bundled cardboard as yesterday, but --

MR. DAVIS: I can't say that there are always. There will be the majority of the time some type of material.

MR. DYSINGER: In that area?

MR. DAVIS: Yes.

MR. DYSINGER: Thank you, sir.

CHAIRMAN: Does anyone got any new information?

MR. HOWARD: Greg Howard.

On the pallet issue, those pallets do flow. We're continually getting trucks. I mean if you drive by there you may think they sit there for days and days at a time, but they do not. They do get loaded back on the trucks and they're taken out on a regular basis and more may be stacked back there for another truck at a later time.

CHAIRMAN: Thank you.

Does the board have any other questions or comments?
Chairman: Staff have any new information?

Mr. Noffsinger: No, sir.

Chairman: Mr. Kamuf, have you any new information?

Mr. Kamuf: I wish I did, but no.

Chairman: Waiting for the board to make a decision.

Mr. Dysinger: What's the best way to do this in terms of taking them? I'll state right now that I do think that some of these issues are storage and some of them aren't display. I can't vote on this appeal all the items at one time. How is the best way to handle that?

Chairman: Mr. Attorney, answer his question, please.

Mr. Elliott: I think that you need to determine which one the Zoning Administrator is correct on. Item Number 1, Item 2, Item 3. And which one you disagree with, as far as --

Mr. Dysinger: Before we make a motion.

Mr. Elliott: Yes.

Chairman: Do we include that in his motion?

Mr. Elliott: Yes.

Mr. Dysinger: Included in the motion?
MR. ELLIOTT: Yes.

MR. SILVERT: And I think you need to be clear since the numbering on the appeal is different than the numbering on the other exhibits. That you identify which one you're using the numbers for.

MR. NOFFSINGER: I recommend you go with what's in the application.

CHAIRMAN: Excluding Number 2. That's back in the corn field.

MS. MASON: We still have to deal with it, don't we, since it's part of the application?

MR. MISCHIEL: I don't think we deal with it because that item might show up on their property. You would either approve it as a display area or not. They could tomorrow move it back over. I would think you consider it.

MR. DYSINGER: It's either storage or it's display. That's what's at issue. Whether the item pictured is storage or display; is that correct?

MR. ELLIOTT: Right.

MR. DYSINGER: Mr. Chairman, I move to uphold the appellant on Item 1 of the trailer. I believe it is a display area. Giving the findings that it's open to the public and the merchandise is clearly for sale.

I further move that Items 2 and 3 and 4 are
outdoor storage. On Item 2, given the finding that there is no signage and no other indication of what the merchandise is or what it would sell for.

On Items 3 and 4, given the finding that the testimony we heard states that the areas used for storage of refuge until it could be hauled away. That's my definition of storage.

CHAIRMAN: Is there a second?

MR. PEDLEY: Second.

CHAIRMAN: A motion has made and a second.

Board members have any other comments or questions?

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

MR. DYSINGER: I would like to say one thing. On the issue of signage on merchandise that's on display, it doesn't matter if somebody comes in and knows what it is because it's the business that they're in. It seems to me it's more important what a reasonable person would understand. Looking at the merchandise display, it's difficult to tell what it is, what it's for sale for, that sort of thing. I just want to make that determination of the motion. I just wanted that in the record.

MR. PEDLEY: I'd like to clarify one thing.
The items in the application 1, 2, 3 and 4 are different than the numbers--

MR. DYSINGER: We stated that the application photos.

MR. TAYLOR: If I disagree with one point that he has, I'm going to disagree with his whole motion, correct?

MR. NOFFSINGER: Correct.

MR. TAYLOR: It's not going to be an individual basis. It's saying that he thinks one is display and two, three and four are storage. So if I just disagree with one of those, I disagree with the whole motion?

MR. DYSINGER: I believe that's correct.

MR. ELLIOTT: Yes.

CHAIRMAN: Our legal counsel has advised us. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT - MARTY WARREN, SEAN DYSINGER, RUTH ANN MASON, C.A. PANTLE, WARD PEDLEY AND JUDY DIXON - RESPONDED AYE.)

CHAIRMAN: All opposed.

(BOARD MEMBER CLAY TAYLOR RESPONDED NAY.)

CHAIRMAN: Motion carries.

MR. KAMUF: Mr. Chairman, may I ask one question?
Sean, your issue was if it had a sign out there for sale, it would have made a difference as far as your opinion?

MR. DYSINGER: I think based on the testimony that we heard, it's display. Again, I want to state that there's no display area that I know of that's been designated. We're just trying to deal with things based on this application. Is this a display of goods for sale or is it storage? Given that, I think in the future when there's display areas and non-display areas, I think that will all change, but given that, if a reasonable person or, for instance, a person driving by on the bypass looks down and there's signage and there's a price and so on and so forth, it's a reasonable assumption that that is a display for sale. If there is no signage, you can't tell what it is and, Mr. Davis, you stated that somebody who buys that product could come in and know exactly what it is. I have no doubt of that. However, if a reasonable person off the street can't tell what it is, it's probably storage and not a display. That's the reasoning behind the motion that I made. If that helps you guys going forward, all the better.

MR. NOFFSINGER: Mr. Dysinger, you're not saying in any way that if they would put a sign on
pallets or cardboard saying "cardboard or pallets for sale," that that would in any way change what your --

MR. DYSINGER: No. Again, in the record, as you guys are moving forward on your process and designating display area and storage area, it will make, I hope, most of this mute.

CHAIRMAN: I'll entertain one final motion.

MS. DIXON: Move to adjourn.

MS. MASON: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

I, LYNNETTE KOLLER FUCHS, 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 102 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the

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