OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

SEPTEMBER 6, 2007

The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, September 6, 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
Madison Silvert, Attorney

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CHAIRMAN: Want to call the Owensboro Metropolitan Board of Adjustment to order. Welcome each one of you and we start our agenda each evening with a prayer and the pledge to allegiance. We invite you all to join us if you so desire. Please join with us at this time. Madison will have our prayer this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Again, I want to welcome you all this evening to the Owensboro Metropolitan Board of Adjustment. Any of you all have any comments on any item, please come to one of the podiums and be sworn
in. Direct your questions, if you have questions, to
the chairman and we'll find out the answers you need.

With that we'll proceed with the first item
which is the minutes of the last meeting on August
2nd. They're in the office. I think they're correct.

Any additions added?

MR. NOFFSINGER: No.

CHAIRMAN: Entertain a motion to dispose of
the item.

MS. DIXON: Move to approve.

MS. MASON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

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CONDITIONAL USE PERMITS

ITEM 2

3905 Carter Road, zoned B-4
Consider request for a Conditional Use Permit to
install netting and inflatable bunkers on the tennis
courts to allow re-ball and paintball activities at an
existing swim club and recreational facility.
Reference: Zoning Ordinance, Article 8, Section
8.2K7/42
Applicant: Atlantis Swim and Sports Complex, Inc.;
Floyd D. Tapp

MR. SILVERT: State your name, please.
MR. HOWARD: Brian Howard.

(MR. HOWARD SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is currently zoned B-4 General Business. A zoning change for the subject property for the B-4 zoning was approved in March 1987. Several Final Development Plans and Conditional Use Permits have been approved for the property over the years with the most recent approval being a Conditional Use Permit for a picnic canopy in July 2006.

LAND USES IN SURROUNDING AREA

The property to the north and south is zoned B-4 General Business. The property to the east is zoned R-3MF Multi-Family Residential and R-1C Single-Family Residential. The property to the west is zoned I-1 Light Industrial.

ZONING ORDINANCE REQUIREMENTS

Parking for the site is addressed on the most recent development plan approved in July 2006 and the proposed use will not require additional changes to the development plan.

MR. HOWARD: We would like to enter the Staff Report into the record.

CHAIRMAN: Is there any objections filed in
MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone this evening wishing to object to this item?

(NO RESPONSE)

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

MR. SILVERT: State your name, please.

MR. TAPP: Floyd Darrin Tapp.

(MR. FLOYD DARRIN TAPP SWORN BY ATTORNEY.)

CHAIRMAN: Do you have anything you would like to add?

MR. TAPP: I do have one item that I had a question about. It was in regards to if this would be in violation of Section 17-3 of Owensboro Municipal Code. Did some research. With David Fowler's help he found, this letter is self-explanatory, that it would not be in violation of that code. If we could enter that.

CHAIRMAN: If you so desire.

MR. SILVERT: Just hand it to the court reporter.

MR. NOFFSINGER: Mr. Tapp, is that letter and section of the ordinance pertaining to the firing of a gun within the city limits?
MR. TAPP: Yes, sir.

MR. NOFFSINGER: Thank you.

CHAIRMAN: Does the office have any other comments?

MR. NOFFSINGER: No, sir.

MS. MASON: I have a question for you. The fencing that you're going to put around, how tall is that going to be?

MR. TAPP: It's going to be 12 foot tall and we're also going to put a netting on top to prevent it from going out and over into the neighborhood behind us.

MS. MASON: And the 12 foot tall fencing, what is that going to be exactly? Inflatable?

MR. TAPP: No. The netting is a specially engineered netting specifically for this purpose. It won't allow anything bigger than three millimeters to go through.

MS. MASON: That's around the perimeter?

MR. TAPP: The entire perimeter and on the top as well. What I'm fencing in is my existing tennis courts. They have what's called an omni turf Astroturf surface. We're going to put inflatable, soft inflatable bunkers inside of the tennis courts to use as the barricades.
CHAIRMAN: Any other board members have any questions of the applicant?

(NO RESPONSE)

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

MR. PEDLEY: Mr. Chairman, I make a motion to approve based on it meets the requirements of the zoning ordinance. It's compatible with the present activities and it will not adversely effect the neighborhood.

CHAIRMAN: Is there a second?

MR. TAYLOR: Second.

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

(NO RESPONSE)

CHAIRMAN: Or from the office?

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.

ITEM 3

2767 Veach Road, zoned B-4
Consider request for a Conditional Use Permit to
operate an infant daycare seven days a week from 6:00 a.m. to midnight, for a maximum of 11 infants.
Reference: Zoning Ordinance, Article 8, Section 8.2B3
Applicant: Antoinette Brown; Lee Kassinger

ZONING HISTORY

Two Conditional Use Permits have been approved for the subject property. The most recent increased the number of children under care to 96 in September 2005 for the 4,860 square foot building shown on the site plan. The applicant now proposes to acquire 350 square feet in a separate building on the property to operate an infant daycare for a maximum of 11 children.

LAND USES IN SURROUNDING AREA

The property to the north, east and south is all zoned B-4 General Business. The property to the west is partially zoned B-4 General Business and partially zoned R-3MF Multi-Family Residential. Land uses in the vicinity include a shopping center, retail stores, pet grooming facility, medical laboratory and residential uses.

ZONING ORDINANCE REQUIREMENTS

1. Two parking spaces plus one per 10 children for the existing and proposed day cares.

2. One parking space per 300 square feet for the remaining commercial space on the property.
MR. HOWARD: The site plan submitted with the application does address those requirements. We would like to enter the Staff Report into the record.

CHAIRMAN: Is there any opposition filed in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone in the audience wishing to object to this item?

(NO RESPONSE)

CHAIRMAN: Is the applicant here?

(NO RESPONSE)

CHAIRMAN: Does the office have anything else to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Does any board members have any other questions or comments?

MR. DYSINGER: I just want to know, maybe the Staff knows. Is this an expansion of the hours, the current operating hours?

MR. NOFFSINGER: Yes, sir. I believe it would be, and then it's an expansion into the adjoining building as well, a portion of the adjoining building.

MR. DYSINGER: Do you know what the current operating hours are?
MR. NOFFSINGER: No, sir, I do not.

MR. DYSINGER: But you don't have any objections in the office?

MR. NOFFSINGER: No, sir. It is commercial. It's B-4 General Business zone. It's little strip center. There shouldn't be any issues. We have been aware and working with the Economic Development Corporation about the need for additional daycare in this community. Not just first shift, but second and third shifts, there's just not that many daycares and facilities providing child care on the second and third shifts. Many of these daycares are starting to answer that need in the community and I think that's what you're seeing here.

CHAIRMAN: Any other comments or questions from the board?

(NO RESPONSE)

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

MS. DIXON: Move to approve based upon findings of fact that it fills a need in the community, it's compatible with other land uses in the area and is a logical expansion of the existing business.

CHAIRMAN: Is there a second?
MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Anything else from the Staff?

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, sir.

ITEM 4

1100 West Fifth Street, zoned R-1T
Consider request to amend a previously approved Conditional Use Permit in order to construct a 10'x40' building addition to an existing church facility for storage and classroom space.
Reference: Zoning Ordinance, Article 8, Section 8.2B4
Applicant: The Church of the Living God

ZONING HISTORY

OMPC records show that three Conditional Use Permits have been approved for the subject property. The most recent approval was for a 10'x40' building addition for the church in April of 2006. However, the Conditional Use Permit expired one year after approval since the applicant did not apply for a building permit to complete the work as approved. An
amended final development plan was approved by the
OMPC reflecting the building addition in April 2006
and is still valid. The final development plan shows
the planned addition and ties parking on a separate
lot to the church use in order to meet the required
parking for the church.

LAND USES IN SURROUNDING AREA

Land uses to the west and south are
single-family residential homes, while the property to
the east is a commercial use. Land uses to the north
are occupied by a city park to the west of Maple
Street and a restaurant to the east of Maple Street.
The new McFarland Funeral Home also lies to the north
of the subject property.

ZONING ORDINANCE REQUIREMENTS

1. Article 13, Section 13.8 B4 requires 1
parking space for every 5 seats in the main auditorium
with a minimum of 5 parking spaces.

2. Article 17, Section 17.312 states that
when a vehicular use area adjoins public or private
street right-of-way, a minimum 3 foot width landscape
easement is required with 1 tree per 40 feet of
vehicular use area boundary, plus a continuous 3 foot
high planting, hedge, fence or wall.

MR. HOWARD: We would like to enter the Staff
Report into the record.

CHAIRMAN: Any opposition filed in the office?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Does the applicant have any comments they want to present at this time?

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

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

MS. MASON: Mr. Chairman, I move for approval since there's no objections and it is compatible with the current land use and there's been three similar conditional use permits that have been approved in the past including this one which this board approved.

MR. DYSINGER: Second.

CHAIRMAN: A motion has been made and a second.

Applicant, you understand the requirements for
the landscaping and stuff as stated on the
application?

APPLICANT REP: Yes.

CHAIRMAN: Any other comments from the board
or staff?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

ITEM 5

1001 West Seventh Street, zoned R-4DT
Consider request to amend a Conditional Use Permit to
operate a homeless shelter for 35 individuals from
8:00 p.m. to 6:00 a.m. seven days a week.
Reference: Zoning Ordinance, Article 8,
Section 8.2A7/6a
Applicant: Rev. John R. Vaughan; Roman Catholic
Diocese of Owensboro

ZONING HISTORY

The property was rezoned from R-1T Townhouse
zone to R-4DT Inner City residential zone in 2000. A
conditional use permit was approved in July 2000 for
the construction of a new building on the site, which
was occupied by the existing Blessed Sacrament Chapel
and the St. Vincent DePaul Store. The new building
was proposed for church related activities. A final
development plan was subsequently approved in October of 2000 showing the existing and proposed church related buildings on the site with adequate parking for the church function and the retail use of the St. Vincent DePaul Store.

A Conditional Use Permit was approved for the property in December 2006 in order to operate a temporary homeless shelter for a maximum of 35 guests from 8 p.m. to 6 a.m. for December 2006 through March 2007. The applicant wishes to amend the conditional use permit to remove the restriction of specific dates of operation so that the shelter may continue its operation from year to year.

LAND USES IN SURROUNDING AREA

The area surrounding the proposed site consists mainly of single family residences. The site currently houses a church building and a church related building in addition to the building that will house the shelter if approved.

ZONING ORDINANCE REQUIREMENTS

The zoning ordinance classifies the proposed use as a dormitory under the definitions applicable to homeless shelters. It is proposed as a safe place to sleep out of the elements and is seeking to fill a need of the community, particularly during the winter
months, and is not proposing to offer additional social services to the residents who sleep there. As a dormitory use, the regulations of the zoning ordinance have certain criteria that must be met in order for the OMBA to consider approval of the use. The applicant has provided the required information relative to these criteria and it has been included in the application for this proposed use and has been distributed to the board members for this information. Parking requirements for the previous retail use located in this building exceed the parking spaces required for the dormitory use.

MR. HOWARD: We would like to enter the Staff Report into the record.

CHAIRMAN: Has there been any opposition filed in the office?

MR. NOFFSINGER: No.

CHAIRMAN: Does anyone in the audience wishing to speak in opposition of this item?

(NO RESPONSE)

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

MR. SILVERT: Could you state your name, please.

SISTER BOONE: Sister Joseph Angela Boone.
SISTER JOSEPH ANGELA BOONE SWORN BY ATTORNEY.)

SISTER BOONE: I just wanted to thank you for letting the shelter be used last year. There were over 3,000 beds that were occupied during the month of December, January, February and March. Food was brought in and given to the homeless people at that time. It's a great benefit I think to the society to get the men or women, whoever they were, off the street. This year, as he said, it's going to be from November rather than starting in December because cold weather comes in November. It is interesting how many times during this past summer that we had request for people to even use the shelter during the summer months, which we couldn't do because it was not set up and permitted to be used. We appreciate the possibility that's being used again this coming winter.

CHAIRMAN: Staff have any other comments or questions?

MR. NOFFSINGER: Based upon my calculations it looks like they were in full capacity for each month during the time they were open. It certainly shows a need for this type of service in the community.

MR. WARREN: This conditional use permit
though isn't just for November through. We're opening it up, right?

MR. NOFFSINGER: Yes. The previous conditional use permit was for November to April. This would be for 12 months, 7 days a week.

CHAIRMAN: Board have any other questions or comments?

MR. DYSINGER: Mr. Chairman, I just have one question.

Sister, the only thing that you're asking is for us to remove the restriction for when you're open. You don't intend on doing anything different than what you did for just the winter months. You're just going to do it year-round?

SISTER BOONE: That's right. We have no guarantee that it can be done that long. We are extending to the public information that it will be for November, but there are times during the summer months and other times that we're not equipped to take care of homeless people at that time, but if the necessity keeps coming up we will probably make arrangements to do so, if it's permitted.

MR. DYSINGER: Thank you.

CHAIRMAN: Any other comments or questions from the board?
CHAIRMAN: Entertain a motion to dispose of the item.

MR. TAYLOR: Mr. Chairman, I move to approve the conditional use permit based on the facts that it provides an obvious need and benefit to the community, there's no apparent opposition to this, and it also meets all zoning ordinance requirements.

CHAIRMAN: Is there a second to the motion?

MR. WARREN: Second.

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

ITEM 6

2031 East Tenth Street, zoned R-4DT
Consider request for a Conditional Use Permit in order to place a 14'x52' manufactured home on the property. Reference: Zoning Ordinance, Article 8, Section 8.2A10B/7
Applicant: Martha M. Thompson

ZONING HISTORY

The subject property is currently zoned R-4DT Inner-City Residential and OMPC records indicate that
the subject property has always been zoned R-4DT. OMPC records indicate that one conditional use permit
has been granted for a manufactured home in this section of East Tenth Street. The request was
approved for 2007 East Tenth Street in April 1990. There is also an existing manufactured home located at
1027 West Tenth Street which may likely predate zoning regulations.

LAND USES IN SURROUNDING AREA

The property to the north, east and west is zoned R-4DT Inner-City Residential. The property to
the south across East Tenth Street is zoned I-2 Heavy Industrial.

ZONING ORDINANCE REQUIREMENTS

The class-2 manufactured home site standards based on the requirements of the zoning ordinance are
as follows:

1. A concrete or asphalt parking pad to accommodate two 9'x18' spaces is required.

2. A minimum 10'x10' deck or patio is required.
3. A concrete sidewalk is required, but may be waived along rural roads (w/o curbs).

4. The driveway apron shall not exceed 40 percent of the lot width.

5. The property is required to have at least three trees.

6. The manufactured home shall be permanently installed on a permanent foundation. A poured concrete or masonry block skirting wall shall be constructed beneath and along the entire perimeter of the manufactured home.

7. All wheel, trailer-tongue and hitch assemblies shall be removed upon installation.

8. The manufactured home shall be permanently connected to an approved water and sewer system when available.

The applicant has requested a waiver of the required sidewalk since there are no sidewalks in the vicinity of the property along East Tenth Street.

MR. HOWARD: We would like to enter the Staff Report into the record.

CHAIRMAN: Is there any opposition in the office?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Is the applicant here and have anything you want to add at this time?

(NO RESPONSE)

CHAIRMAN: Seeing no one any board members have any questions or comments at this time?

(NO RESPONSE)

CHAIRMAN: Entertain a motion to dispose of the item.

MR. WARREN: Motion to approve the conditional use permit with the findings that there are other manufactured homes already existing in the area and it's in keeping with the general vicinity. The land use permits it. Also, we'd like to grant the waiver of the sidewalk since there are no other sidewalks in the vicinity.

CHAIRMAN: Is there a second?

MS. MASON: Second.

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

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board have any other comments or questions?
CHAIRMAN: Hearing none all in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

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VARIANCES

ITEM 7

1008, 1016, 1018 Omega Street; 2600 West Tenth Street, 2517, 2521, 2523 Lancaster Avenue, zoned I-2
Consider request for a Variance to waive the perimeter tree requirement except along the east boundary and 40 linear feet along the north boundary and 25 linear feet along the south boundary as shown on the site plan.
Reference: Zoning Ordinance, Article 17, Section 17.311
Applicant: Judson Ray & Gloria Jean Drewry

CHAIRMAN: Is there any opposition filed in the office?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Is the applicant here?

APPLICANT REP: Yes.

CHAIRMAN: Do you have any comments you'd like to add at this time?
APPLICANT REP: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: Mr. Brian Howard might want to summarize the Variance Staff Review just in summary form in terms of what the request is and what the Staff's position is.

MR. HOWARD: Basically the property was recently zoned I-2 Heavy Industrial. That was approved, I believe, in December of 2006. Prior to that it was zoned I-1 Light Industrial and R-4DT Inner-City Residential. The applicant had been using the property as a salvage yard and other uses that were not permitted in those zones so they did rezone to an I-2 Heavy Industrial use.

Also with that they applied and received a Conditional Use Permit in order to use the facility as a wrecking yard and salvage yard, storage yard, which the only way they can be approved is through a Conditional Use Permit. At the time they also were granted a variance in order to waive a separation requirement from the surrounding commercial and residential zoned properties. That's a 300 foot
waiver from the residential property and 100 foot from commercially zoned property.

At that time there was a development plan that was submitted or a site plan that was submitted that showed the required landscaping which includes a fence. The applicant's fence does exceed the minimum height requirement, which is eight feet, and they've installed a ten foot fence around the property that is currently in existence. The plan did show that the trees were proposed to be installed as required.

Now, the applicant is requesting that the majority of those trees be removed.

The Staff's position would be that it's a minimal screening requirement. That they've already received some waivers and things on other set backs, and separations, and buffers. Since it is a minimal requirement, Staff would recommend that the trees be installed.

If you have any questions, would be glad to answer those.

MR. NOFFSINGER: I do have a question so I understand where the variance is being sought.

The east property line, would that be where the existing building sets?

MR. HOWARD: Correct. That would be the
existing building along Omega Street.

MR. NOFFSINGER: Since we have a building there, they're not going to have room to put any trees along that east boundary?

MR. DREWRY: They're already there.

CHAIRMAN: Come forward.

MR. SILVERT: State your name, please.

MR. DREWRY: My name is Judson Ray Drewry.

(MR. JUDSON RAY DREWRY SWORN BY ATTORNEY.)

CHAIRMAN: Start again.

MR. DREWRY: I was just answering the question. East is not going to be changed at all. All the trees along Omega Street are going to stay there. Everything is going to stay. The only thing is I don't want trees inside my fence, inside my privacy fence. The fence is 10 foot tall and there's no need for trees inside.

Along the north boundary there's 135 feet that will be nothing but landscaping. That's on all of Tenth Street. All of that is going to be strictly landscaping. Everything on Omega, except for the driveway, is already landscape. The 25 foot on the south boundary, that's already landscaped. It stays because that's part of Omega Street.

The only thing I wanted was the trees out of
the inside of the input fence. There's no practical
use for them to be there. You couldn't see them. I
mean it's not practical. Also it's a fire hazard.

MR. DYSINGER: Sir, just so I'm clear. Where
exactly is the ten foot fence that you're talking
about? Southwest?

MR. DREWRY: On the big drawing, the fence on
the big drawing was in red.

MR. NOFFSINGER: Mr. Drewry, I made a mistake
on east. I meant the west side. You're asking west
side not to put the trees where the existing building
is. There adjoining the parking lot of the rest home
you're asking that the trees not have to be installed
there.

MR. DREWRY: That's existing building, right
up against that line. So there's no trees that could
go there anyway.

MR. NOFFSINGER: Right. Although, it's an
ordinance requirement that you have those trees.

MR. DREWRY: Not in the drawing that I've got.

MR. NOFFSINGER: Right. I understand that
now.

MR. DREWRY: There are trees on the west side,
but they've been placed inside the ten foot fence from
the building back to Lancaster Avenue.
MR. NOFFSINGER: That brings me to my next question because those trees are shown inside your privacy fence along Lancaster and along a portion of the west property line. I thought you said you didn't want the trees.

MR. DREWRY: I don't want the trees in there.

MR. NOFFSINGER: But the way this is written up it's as if you submitted the site plan and the trees that are shown here are the trees that would be required to be installed. Now, I may be confused, but that's the way I'm reading this.

MR. DREWRY: There's two drawings. I've got one that approved the last variance. Then there was one for the upgrade.

MR. HOWARD: There should be two drawings in your packet. In the left-hand corner one should say "Original Variance" and the second should say "Proposed Variance."

MR. NOFFSINGER: I only had one large drawing and that's what I was going by. This one might be the other one and was not stapled in. It wasn't stapled in.

MR. DREWRY: See, that's what I want. The second one there you'll see where it's drawn in, all the different things. The trees are gone on the
inside of the privacy fence.

MS. MASON: So this fence is a metal fence. Not a chain-link?

MR. DREWRY: Yes, ma'am. It's a metal fence.

MS. MASON: And it goes?

MR. DREWRY: It's 10 feet tall. Most places it's 11 because it's off the ground in most places I put so it goes at least 10 foot in the air.

MR. DYSINGER: The solid metal, is it the chain-link with the little rivets?

MR. DREWRY: It's solid metal. It looks exactly like a building. There's no wood. It's all metal. It's metal sheet that's ten foot tall screwed to angle iron. It's withstood 70 and 80 mile an hour winds. It hasn't wiggled yet.

MR. DYSINGER: And there's no room on the outside of this fence for trees?

MR. DREWRY: No, sir. There's no room on the outside of the fence at all. There's 9 to 11 foot on the south boundary on Lancaster, but that's mostly city property. I just mow it and keep it maintained. If they wanted me to put trees out there, I'd be glad to do that or bushes or whatever, you know. That's their part, the city's property. There's no sidewalk on that side. There's actually no sidewalks anywhere
around there. I just mow it?

CHAIRMAN: Staff have any other comments or questions?

MR. NOFFSINGER: No, sir.

MR. WARREN: What kind of trees are there?

MR. DREWRY: The ones that's there, most of them are Cyprus, ball Cyprus. Eight inch ball Cyprus. I'll have to put three on Tenth Street, three more trees on Tenth Street.

MR. DYSINGER: So if you would plant the trees as required, would they even be visible from outside your property?

MR. DREWRY: No, sir, they would not. Not until ten years or more.

MR. NOFFSINGER: Ideally what you do before you place the fence, you don't put the fence right on the property line. You put the trees on the outside and you place the fence back, but then you lose property that you can use for your operation. Now we're dealing with the issue that the fence has been installed and where do you put the trees. When was the fence installed?

MR. DREWRY: Several years. Well, I put part of it in two years ago. When I bought the property over on Lancaster, I bought two more lots over there.
So I put down by Lancaster and then by the rest home.

I put the fence in then there, just when I expanded
the property. Before that it was probably eight or
nine years.

MR. DYSINGER: So when you put this fence in,
the portion of it that you put in, did you not --
maybe this question is for Staff.

Did the applicant not have to get a permit at
that time for this fence?

MR. NOFFSINGER: Well, that would be a
question for Mr. Mischel.

MR. DREWRY: I didn't get a permit. I went
and approved the existing fence that was there is what
I did. I didn't get a permit.

MR. SILVERT: State your name, please.

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: Typically we do not permit
fences. No permit required. So I guess at this time,
two years ago or back in the '80s when the fence was
put in, I guess he did it on his own.

MR. DREWRY: I did all my landscaping, all the
Cyprus trees, all the landscaping, the rose bushes,
all the hollys and everything else I did all on my
own. I never asked anybody. I asked them how they
needed it, but I didn't get no orders to anything like
that.

MS. MASON:  How long have you been in business
at this particular property?

MR. DREWRY:  Fourteen years.

MS. MASON:  And you've been the original
person all along?

MR. DREWRY:  Yes, ma'am.

CHAIRMAN:  Any other questions or comments
from the board of the applicant?

(NO RESPONSE)

CHAIRMAN:  Staff have anything else to add?

MR. NOFFSINGER:  No.

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

MR. DYSINGER:  Mr. Chairman, my thinking on
this matter, my thinking on all Variances is that
burden is on the applicant of why they shouldn't have
to comply. With that said, I'd be interested in what
other board members think about this situation,
putting these trees in behind the fence.

MR. TAYLOR:  My opinion is that at some point
whether a permit had to be required or not when this
original fence was constructed that he is now at a
hardship because of that. If there was a problem
then, we probably should have brought it up then. Now for him to either move the fence back or put these trees in a place where we're not going to be able to see them, in my opinion, would put undo hardship on him whenever the fence went up 14 years or 20 years or 7 years, it may should have got caught then as opposed to maybe in the future. It's on the property line. I know saying it's not permitted so it may be some kind of deal where it's hard to pick up. But in my opinion it looks like to me that him planting the trees is just going to cost him, you know, and you're never going to see him. Obviously to move the fence would cost way more than that and that would defeat the purpose too. It just doesn't seem to me with no extreme opposition, it just seems like it would be an extreme hardship on him without any opposition that's been brought forth.

CHAIRMAN: Any other comments from any other board members?

MS. DIXON: I guess I have a hard time with backing away from any kind of screening with reference to salvage yards because of what we've seen over the years. Although Mr. Drewry has done a tremendous job, really an adequate job, eventually those trees will be seen.
MR. DREWRY: Another thing. I wouldn't mind, I don't mind as long as the fence is maintained at the ten foot level and in good looking condition. A lot better than most of your other salvage yards in Owensboro and around Owensboro. I don't have any problems on if the fence goes down, the trees go up. I wouldn't have any problems with that at all. To move that fence back, you're talking 30, $40,000 and lose a lot of property. Which you've only got less than two acres there for what the business is. If you take that much property out of that acreage, there's not going to be a yard there big enough.

MR. DYSINGER: In your opinion, do you not want to plant the trees just because you don't think it's necessary? Is there any other hazard?

MR. DREWRY: It's a fire hazard. Inside of a salvage yard you're using cutting torches. Grass and trees is really a fire hazard, you know. If you've got leave on the ground, it could start a fire. It's really a fire hazard. I like trees. I love trees, but not in this instance, no. I've got trees outside the lot. The front, over 100 and some feet down the front has got trees 25 feet wide. On Tenth Street there's -- it's 35 foot from the street to the building. From the proposed fence that's going to go
there, that's all going to be beautified. There will be four trees in it and shrubs and grass. That's not going to be used. That's give away from the property. Then the whole front along Omega.

Nobody in the neighborhood objects. I was surprised that the trees was in there. The drawing I seen before the last variance meeting it wasn't on it. It was the before drawing there. After the meeting I found the trees and me and my lawyer and my engineering company went and had a few words. Had a cooling down period before I made the application this time.

CHAIRMAN: Any other comments from the board?

MR. WARREN: Judy, I agree with your hesitancy, especially with this sort of thing, but I also feel like that this is pretty much, there are some unique circumstances here. He has gone over and above I believe with the fence that's there. I think with maybe some conditions or recommendations on the application that maybe we could ward off some of those problems in the future. I do feel it would be a hardship and actually pretty unnecessary. I am familiar with the scrap yard business. You're right, leaves, of course, I could see where it could be a fire hazard actually. Really, really not serving a
whole lot of purpose other than giving you and your
customers inside the fence some pretty trees.

MR. DREWRY: You can't see them when the gates
are shut.

CHAIRMAN: Any other board members have any
comments?

(NO RESPONSE)

CHAIRMAN: Entertain a motion to dispose of
the item.

MR. WARREN: I'm going to make a motion to
grant the variance. Findings that I do not feel like
it's going to adversely affect the public, safety or
welfare since we do have the fence, a 10 foot high
solid fence. It will not alter the essential
character of the general vicinity. It's already
there. By not granting this variance that it could
possibly cause a hazard or a nuisance to the public
due to the fire hazard issues. I don't think that
it's an unreasonable circumvention of the zoning
requirements. Once again I keep going back to the
fence. From what I see the main reason for our
requirements are screening and protecting the general
public and I think that he's met the requirement.

I would like to add some recommends for
approval of this application.
1. A consolidated plat shall be submitted and approved by the OMPC to consolidate all subject properties into a single tract.

2. The existing ten foot fence shall be maintained by the property owner to provide screening from all adjacent properties.

3. Storage of vehicles or materials on the site may not exceed the height of the fence.

4. A pest control plan must be implemented annually.

CHAIRMAN: Is there a second to the motion?

MR. TAYLOR: Second.

CHAIRMAN: Any other comments from the Staff?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board have any other comments or questions of the applicant?

(NO RESPONSE)

CHAIRMAN: You understand the recommendations from the board?

MR. DREWRY: Yes, I do.

CHAIRMAN: All in favor raise your right hand.

(BOARD MEMBERS PRESENT - MARTY WARREN, SEAN DYSINGER, RUTH ANN MASON, C.A. PANTLE, JR., WARD PEDLEY AND CLAY TAYLOR - RESPONDED AYE.)

CHAIRMAN: All opposed.
(BOARD MEMBER JUDY DIXON RESPONDED NAY.)

CHAIRMAN: One opposed. Motion carries.

Entertain one more motion.

MR. WARREN: 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 )
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COUNTY OF DAVIESS )

I, JANE BELCHER, 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 37 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 25th day of September, 2007.

____________________________
JANE BELCHER
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES: DECEMBER 7, 2008
COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY