OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

JUNE 5, 2008

The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, June 5, 2008, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Ward Pedley, Chairman
Judy Dixon, Vice Chairman
Gary Noiffsinger, Director
Madison Silvert, Attorney
Sean Dysinger
C.A. Pantle

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CHAIRMAN: Call the meeting of the Owensboro Metropolitan Board of Adjustment to Order. We'll start our meeting with a prayer and the pledge of allegiance to the flag. If you will stand, please.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: First item on the agenda is to consider the minutes of the May meeting, May 1, 2008 meeting. Are there any additions, corrections?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Move to approve.

MR. PANTLE: Second.

CHAIRMAN: We have a motion and a second. All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries. The minutes are approved.

Next item.

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CONDITIONAL USE PERMITS

ITEM 2

201 Phillips Court, zoned R-4DT
Consider a request for a Conditional Use Permit to construct a parking lot in the rear of the property. Reference: Zoning Ordinance, Article 8, Section 8.2C1
Applicant: KY United Methodist Homes for Children and Youth, Mary Kendall Campus

MR. SILVERT: State your name, please.

MR. WILLIAMS: Zack Williams.

(ZACK WILLIAMS SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is located on Phillips Court between 15th Street and 17th Street. The property is currently zoned R-4DT Inner-City Residential. OMPC records indicate that the OMBA approved a Conditional Use Permit on February 1, 2007 to add the subject property to the Mary Kendall Campus at 193 Phillips Court for the purpose of administrative offices. The request before you is to provide adequate parking for the office personnel.

Four other Conditional Use Permits have been
approved for 193 Phillips Court. They are listed by date as follows:

July 11, 1996, to construct a building for educational and meeting activities.


November 6, 2003, to construct a 30' x 30' garage and storage building on the existing campus.

April 6, 2006, to construct a 30' x 60' picnic shelter on the existing campus.

LAND USES IN SURROUNDING AREA

The adjoining property is zoned R-4DT Inner City Residential and P-1 Professional.

ZONING ORDINANCE REQUIREMENTS

1. One parking space per 400 square feet of office space, including one (1) ADA Van accessible space.

2. Vehicular use area screening is required.

SUGGESTED CONDITIONS

The Conditional Use Permit approved on February 1, 2007 was subject to the consolidation plat approval by the OMPC. A Construction Permit for the parking lot should not be granted without consolidation plat approval by the OMPC.

MR. WILLIAMS: I would like to enter the Staff
Report into the record as Exhibit A.

CHAIRMAN: Is anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Does anyone here have any questions or comments on the application?

(NO RESPONSE)

CHAIRMAN: Board members have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. DYSINGER: Mr. Chairman, move to approve the Conditional Use Permit given the findings the proposed use is compatible with and necessary for current usage. With the condition that the construction permit not be issued until the consolidation plat be approved by the OMPC.

MR. DIXON: Second.

CHAIRMAN: We have a motion by Mr. Dysinger and second by Ms. Dixon. Any questions or comments on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.
ITEM 3

1901 Hall Street, zoned R-4DT
Consider a request for a Conditional Use Permit to place a 14' x 70' Class-2 manufactured home on the property.
Reference: Zoning Ordinance, Article 8, Section 8.2 A10B
Applicant: Harry Pavlas

ZONING HISTORY

The subject property is currently zoned R-4DT Inner-City Residential. OMPC records indicate that one Conditional Use Permit has been approved for class-2 manufactured housing (1905 Hall Street) within this block of Hall Street. Based on a site visit, it appears that a class-2 manufactured home was located at 1901 Hall Street, but has been removed recently.

LAND USES IN SURROUNDING AREA

The majority of properties along this block of Hall Street are zoned R-4DT and are used for single-family residences. The subject property is bordered on all sides by R-4DT zoning.

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 property is required to have at least three trees.

5. 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.

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

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

The site plan submitted by the applicant addresses each of these items satisfactorily.

MR. WILLIAMS: We would like to enter the Staff Report into the record as Exhibit B.

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anyone here like to speak in opposition or have any comments?
MR. CORNETT: Yes.

CHAIRMAN: Step forward, please.

MR. SILVERT: State your name, please.

MR. CORNETT: My name is James Cornett.

(JAMES CORNETT SWORN BY ATTORNEY.)

MR. CORNETT: I live right behind this property you're talking about. I have about 20 pictures here. It shows no driveway, no sidewalk, no trees. It's just a junk pile. It always has been a junk pile. I would love for you to look at it.

You can see the property that's beside it. They have a boat, a tractor-trailer and a hot dog traveling machine that hasn't been moved in ten years.

The property beside it, you have to call them every month to cut their grass.

The property to the south side of where he wants to put this trailer in is remodeling that home to make it look real nice.

All the homes on the other side of the street are real nice. You know, something you want to live in.

This piece of property looks like it has a septic sewer tank, because I've been over there looking. I've not seen any hook-up lines. There's a big concrete pad with a pole running out of it about
20 feet in the air. To me that a septic tank. If he has sewer, I can't find it.

This property has never had -- the first time it came about they moved that trailer in there. There never was a foundation. Never was secured right. The grass was never kept up. Place covered up in weeds. The back gate is bent off. I mean it's just an eye sore to the property of everybody that's trying to keep their house looking nice. It's been like for --

I'm 54. My mother has lived there for over 60 years. That piece of property right there has never looked any better than what I'm showing you.

The last trailer that was there was burned down they said by someone put a cigarette in an ashtray and put it under a couch. The guy comes out. Tears all the aluminum off and sells it. You can see in the pictures how much that he wanted to take off and leave. He got what he wanted. It's been like that ever since. I can't remember when it burned down. It's probably been - I don't know - six months, a year. Just those tires, those concrete, all that junk. They just come out the other day and cut the grass.

Everybody around there wants to keep their house up. Everybody cuts their yard. Nobody would
want that right in the center. Especially right beside the trailer that has a Winnebago. The boat has never been in the water. The Gyro hot dog machine has not moved in ten years I know. So it's just moved another trailer in to the city. Putting it right there is just an eye sore for the community. I've never seen anything that the gentleman that owns the property says he's going to do. He was going to put flowers out. He's going to put trees out. He's going to make it look so nice. Well, they had snakes, three pit bulls chained up. When they got done they didn't have any grass because they had them chained up to a tree. Those things you screw in the ground. They never cut the grass.

If you want to put a trailer in, get some property somewhere and go out in the country and put it in and put your septic tank on it. Don't put it right there in the neighborhood where people have lived all their life and trying to make something of what they've got look nice.

Do you have any questions of me?

CHAIRMAN: Any board member have any questions?

(NO RESPONSE)

CHAIRMAN: Is the applicant here to address
the concerns of this gentleman?

MR. SILVERT: State your name, please.

MR. PAVLAS: Jim Riney.

(JIM RINEY SWORN BY ATTORNEY.)

MR. RINEY: As I said, I'm Jim Riney. We
prepared the site plan and deal with the technical
issues of the application tonight.

The plan that we showed, as the Staff Report
indicated, it contains the elements that are required.
We're locating a modular home on the lot. The
property right now does not have a concrete drive or
sidewalk or those things that were mentioned, but
they're the subject of the plan that has been
submitted with the application that says that that's
what has to be put in with the modular home.

Regarding the sanitary sewer system
connection. Sanitary sewer is available to the site.
What I heard describe as far as a pipe, it sounds like
a typical vent pipe on a mobile home connection where
there's municipal sewers or septic tank. There are
more septic tanks allowed within the city system, and
sort of not on that size of a lot. The sewer service
would have to be provided via the RWRA sanitary sewer
system that exist currently on Hall Street.

Site plan, just for the record, does include
the requirement to install 4 foot concrete drive, the
cement apron, the cement pad, three trees as was
conveyed to you earlier by the Staff Report.

CHAIRMAN: Jim, did you say that the sewer tap
is available? Is available by RWRA?

MR. RINEY: There should be a sewer tap there.
I have not asked them to mark the tap on the ground,
but a sewer system is in the small street. I suspect
there was one there, that sewer system before, but I
can't come to you tonight with the evidence to show
you that.

Mr. Pavlas, he may be able to tell you whether
or not they were paying sewer charge on that in the
past.

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

MS. DIXON: Was a permit issued for the mobile
home that was here before this one?

MR. WILLIAMS: There was no conditional use
permit for this property. I don't have a recent -- it
may have predated. We don't know that.

CHAIRMAN: Any other board members have any
other questions?

(NO RESPONSE)

MR. SILVERT: State your name, please.
MR. MISCHEL: Jim Mischel.

(JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: What might clarify the situation a little bit is, when we issued a building permit, the electricity will not be turned in to OMU, it won't be hooked up until all of these improvements are made. They have to have the underpinning. They have to have the sidewalk, the driveways. We need to check on the sewer connection before they even get electricity. Typically that's what we do now before we turn the electricity on. When they get the electricity, it will be up to compliance in all aspects and everything.

Now, a year down the road, I can't attest to any trash or anything like that. That's why we have a property maintenance code.

MR. NOFFSINGER: Mr. Mischel, who enforces the property maintenance code?

MR. MISCHEL: That right now is community development, but it might be going to the city engineer's office.

MR. NOFFSINGER: It's not your office or the Planning Commission?

MR. MISCHEL: No, it's not. It's not with the Planning Commission, the property maintenance code.
MS. DIXON: I guess what I'm asking is: What kind of assurance can we give these people that their property value is not going to be compromised by a place like this?

MR. MISCHEL: The only assurance we give is when the permit is issued, the electricity will not go on until all these improvements are made. As far as the future, there is a property maintenance code with the City of Owensboro. The concern can be addressed to them and they will go out, they should go out and will go out and see if they're justified and the cite the owner or the conditions of that property.

MR. NOFFSINGER: Ms. Dixon, we can't give assurances on property values.

MR. SILVERT: State your name again.

MR. CORNETT: James Cornett.

If you look at the size of the property, I don't really see how he can put a trailer in there, a deck, a sidewalk and a driveway. I don't see how he can do that. If he can, it must going to be an awfully small trailer.

We were promised the last time we were here that he was going to put in trees and flowers and all this good stuff. Well, that never happened either. The picture shows that the property has -- it just
amazes me how you're going to put it all there.

MR. NOFFSINGER: For the record I've given Mr. Cornett, I believe it is, a copy of the site plan prepared by the applicant.

MR. CORNETT: Okay.

Well, I just wanted to ask you all if you lived where I was, would you want what I just showed you beside your house? If you would, happy birthday. We don't. It's a crying shame that a mobile home has to come into the City of Owensboro just for someone to maybe collect a government paycheck or somebody with Section 8. That's probably what it will turn into anyway. Why can't he take it somewhere else instead of putting it right in the middle of town there.

If you look around, that other trailer beside it, you see what we got there. We have two. I mean two. Go riding through town. There's not a way you all have two trailers probably within three miles of you all together like that. You wouldn't want them.

CHAIRMAN: Any board members have any questions of the applicant, Mr. Riney, or anyone else?

If you wish to speak, step forward, please.

MR. SILVERT: State your name, please.

MR. CECIL: Don Cecil.

(DON CECIL SWORN BY ATTORNEY.)
MR. CECIL: The girl that lived there before the last, she said that place was on a septic tank. Now, whether it is now, I don't know. They never did take care of it. They'd just rent it to anybody that would come along. In fact, the last bunch they had in there caused it to burned down. They had dogs, snakes and everything else in there. He just rents it to anybody. We live across the street from it. In fact, one time some people living in there, I heard a car jugging back and forth one morning. I jumped out of bed and went out there and it was car, they backed into my car. I caught them out there before they got away. They were fixing to take off before I got out there.

CHAIRMAN: Anyone else like to speak in opposition?

(NO RESPONSE)

CHAIRMAN: Any board members have any further questions or comments?

(NO RESPONSE)

CHAIRMAN: I think chair is ready for a motion.

MR. NOFFSINGER: This lady would like to speak.

MR. SILVERT: State your name.
MS. CORNETT: I'm Thelma Cornett. I was down here several years ago with --

MR. SILVERT: Let me swear you in, ma'am.

(MS. THELMA CORNETT SWORN BY ATTORNEY.)

MS. CORNETT: I was down here several years ago. The board also sent me a letter. We can down here and protested this. They told all these things like they said they was going to do. You can look at the fence at how the grass, how all those bushes and everything has grown up in there. They don't take care of anything when they get in there. Like he said, they just rent it to anybody. It's out of their hands and they do what they want to with it once they get there.

CHAIRMAN: Anyone else like to speak in opposition? Any comments or questions?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. DIXON: Mr. Chairman, I move to deny the motion based upon the opposition of the neighbors. By virtue of the pictures that are shown, it's incompatible with the other houses around it.

MR. PANTLE: Second.

CHAIRMAN: We have a motion by Ms. Dixon and a second by Mr. Pantle. Any questions on the motion or
comments?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS - JUDY DIXON, WARD PEDLEY AND C.A. PANTLE - RESPONDED AYE.)

CHAIRMAN: All opposed.

(BOARD MEMBER SEAN DYSINGER RESPONDED NAY.)

CHAIRMAN: Motion carries three to one. The application is denied.

Next item.

ITEM 4

2110 Grimes Avenue, zoned I-1
Consider a request for a Conditional Use Permit to operate an indoor recreational facility for the use of electric-go-carts, arcade, pizza shop, and laser tag.
Reference: Zoning Ordinance, Article 8, Section 8.B11
Applicant: Ryan McDaniel and W-4 Investments, LLC

ZONING HISTORY

The subject property is zoned I-1 Light Industrial. OMPC records indicate that no conditional use permits or variances have been requested for this property. The last known use of the property was as a linen supply service.

LAND USES IN SURROUNDING AREA

The subject property is bordered by I-1 Light Industrial zoning in the east, south, and west of the property. The property to the north is zoned I-2,
ZONING ORDINANCE REQUIREMENTS

1. One parking space per employee on max shift.
2. One parking space per two participants.
3. One parking space per three spectator seats.
4. Vehicular use area screening.
5. Outside storage area screening.

MR. WILLIAMS: I would like to enter the Staff Report into the record as Exhibit C.

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Is there anyone here that would like to speak in opposition?

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. DYSINGER: Mr. Chairman, given the findings that the proposed usage would be an asset in the community. It is compatible with surrounding zoning usage. Move to grant the Conditional Use
Permit.

CHAIRMAN: We have a motion. Do I hear a second?

MS. DIXON: Second.

CHAIRMAN: We have a motion by Mr. Dysinger. Second by Ms. Dixon. Any question or comments on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

ITEM 5

2202, 2214, 2222, 2224, 2226, 2230 West 10th Street, zoned I-2

Consider a request for a Conditional Use Permit to operate and expand an automobile and truck parts storage business and salvage yard.

Reference: Zoning Ordinance, Article 8, Section 8.2G4 and 8.4

Applicant: West Side Auto Parts, Inc.

ZONING HISTORY

The subject property is zoned I-2, Heavy Industrial. OMPC records indicate that no other conditional use permits or variances have been requested for this property. The property is currently being used as an automobile and truck parts storage yard.

LAND USES IN SURROUNDING AREA
The subject property is bordered on the south and west by I-2, Heavy Industrial zoning with the exception of one R-4DT zoning at 2011 Lancaster Avenue. There are no conditional use permits on file for these addresses, but some are currently used by West Side Auto for the storage of vehicles in an unknown state of operability. 2011 Lancaster Avenue is utilized as a single-family residence and is not owned by West Side Auto. The properties to the east are also zoned I-2, Heavy Industrial, but are used as residences. The properties to the north are zoned R-4DT and are utilized as single-family residences. The residential zoning is within the 300 foot buffer required by the zoning ordinance.

ZONING ORDINANCE REQUIREMENTS

1. A minimum 8' high fence surrounding the outdoor storage area.

2. A tree for every 40' lineal feet of outside storage area along the boundary of the storage area.

3. No stacking of materials or vehicles above the required fence.

SUGGESTED CONDITIONS

1. Subject to approval of a Variance for the 300 foot buffer from residential property.
2. No drive access point off of West 10th Street or Lancaster Avenue.

3. A consolidation plat be submitted to consolidate all properties.

4. No stacking of materials or vehicles above the required fence.

5. A pest control plan must be implemented and maintained annually.

6. Trees be placed on the exterior of the fence.

MR. WILLIAMS: I would like to enter the Staff Report into the record as Exhibit D.

CHAIRMAN: Anyone here representing the applicant?

MR. KAMUF: Yes, Mr. Chairman.

MR. SILVERT: State your name, please.

MR. KAMUF: Charles Kamuf.

MR. SILVERT: Mr. Kamuf, as always, I recognize the oath you took as an attorney.

CHAIRMAN: Mr. Kamuf, let's see if we have any opposition on this item and see what the concerns are.

MR. KAMUF: Let me say this: That we have written letters to all of the neighbors. I personally talk to some. Lorraine Cundiff, the owner of West Side, has talked to them. We've written every
neighbor a letter and explained to them what we're
doing. She's also met with them. I don't think
there's any opposition here tonight.

CHAIRMAN: Mr. Noffsinger, has there been any
correspondence in the Planning Office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Anyone here like to speak in
opposition, question or comments on this item?

(NO RESPONSE)

CHAIRMAN: Any board members have any
questions of Mr. Kamuf?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. PANTLE: Mr. Chairman, being it's the same
business all the time and is compatible with the
community around it, I move to approve the Conditional
Use with Conditions 1, 2, 3, 4, 5 and 6 as stated by
the Staff.

MR. DYSINGER: Second.

CHAIRMAN: We have a motion and a second. Any
question or comments on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right
hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries unanimously.

Related Item:

ITEM 5A

2202, 2214, 2222, 2224, 2226, 2230 West 10th Street, zoned I-2
Consider a Variance to waive the 300 foot separation requirement between an auto and truck parts storage business and salvage yard and residential zoning.
Reference: Zoning Ordinance, Article 8, Section 8.2G4 and 8.4
Applicant: West Side Auto Parts, Inc.

CONSIDERATIONS

Staff finds that there are special circumstances with regards to the subject property.
The applicant contends that the subject property is located in an area that has been a mixed use of Industrial, Commercial and Residential since before zoning regulation. The applicant does not believe that granting this variance will alter the essential character of the neighborhood or pose a hardship or nuisance because of this longstanding use.
The applicant also suggests that the appearance of the property will be improved by the installation and maintenance of an adequate screening element. If the conditional use is approved for the property, which it has, the subject property would not be able to carry out the approved use due to the size of the lot.
Since a conditional use permit has been
approved for this location, the variance should also be approved.

Staff does believe there would be a hardship if this variance were not approved.

There are various precedents within the city area where such a decision has been made. You can reference them in your documentation.

Findings, if granting this Variance, the Staff believes this application will not adversely affect the public health, safety or welfare; will not alter the essential character of the general vicinity; will not cause a hazard or a nuisance to the public; and will not allow an unreasonable circumvention of the requirements of the zoning regulations.

So Staff recommends approval. However, that is if there is no objection by local residents to this expansion.

I would like to enter the Staff Report into the record as Exhibit E.

CHAIRMAN: Has there been any correspondence in the Planning Office of this issue?

MR. WILLIAMS: There has not, sir.

CHAIRMAN: Anyone here representing the applicant?

MR. KAMUF: Yes.
CHAIRMAN: Is anyone here have any questions or comments or opposition on this item?

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: The chair is ready for a motion.

MR. DYSINGER: Mr. Chairman, given the findings that granting the variance will not adversely affect the public health, safety or welfare; will not alter the essential character of the general vicinity; will not cause a hazard or a nuisance to the public; and will not allow an unreasonable circumvention of the requirements of the zoning regulations, I move that we grant this variance request.

CHAIRMAN: We have a motion by Mr. Dysinger.

MR. PANTLE: Second.

CHAIRMAN: Second by Mr. Pantle. Any comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.
2290 Harbor Road, zoned I-2
Consider a request for a Conditional Use Permit to
construct one 1,489,000 gallon steel tank inside the
existing earthen dike and tank farm at Miles River
Terminal for the storage of Urea Ammonium Nitrate
solution.
Reference:  Zoning Ordinance, Article 8, Section
8.2G4/27
Applicant:  Miles Farm Supply, LLC

ZONING HISTORY

The subject property is zoned I-2, Heavy
Industrial.  OMPC records contain no conditional use
permits or variances for the subject property. The
tract contains four existing storage tanks inside a
containment dike that was designated for this purpose.

LAND USE IN SURROUNDING AREA

The subject property is bordered by I-2 Heavy
Industrial zoning on all sides. All surrounding
property is owned by the Owensboro Riverport
Authority.

MR. WILLIAMS:  I would like to enter the Staff
Report into the record as Exhibit F.

CHAIRMAN:  Is anyone here representing the
applicant on this item?

MR. DYSINGER:  Mr. Chairman, for the record my
wife works for Miles Farm Supply. I however would not
feel pressured to rule on this either way. I think I
can hear the evidence impartially.

CHAIRMAN:  No noted.
MR. SILVERT: Given the statement by Mr. Dysinger that he at least wants to bring out the potential for the appearance of conflict, I think we need to open it up to ask if there's any objection from anyone present as to Mr. Dysinger continuing to rule on this issue?

CHAIRMAN: Is there anyone here that has any objection to Mr. Dysinger acting or voting on this item?

(NO RESPONSE)

CHAIRMAN: So noted. If he does not, we do not have a quorum.

MR. DYSINGER: Thank you, Mr. Chairman.

CHAIRMAN: Anybody here that would like to speak on this item?

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. PANTLE: Mr. Chairman, I move to approve this Conditional Use Permit for the reasons stated and where it's located in the property, the surrounding property.

CHAIRMAN: We have a motion for approval by
Mr. Pantle.

MS. DIXON: Second.

CHAIRMAN: We have a second by Ms. Dixon. Any comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

ITEM 7

6133 US Highway 60 East, zoned I-2

Consider a request for a Conditional Use Permit to construct a 98' x 148' fabric-type storage building on an existing concrete slab for the purpose of storing low-hazardous products and noncombustible materials.

Reference: Zoning Ordinance, Article 8, Section 8.2G4/27

Applicant: Yellow Banks River Terminal and Hawesway, Inc.

ZONING HISTORY

The subject property is zoned I-2, Heavy Industrial. OMPC records indicate that a conditional use permit was approved on August 3, 2007 for the construction of a storage building in the near vicinity to that proposed by this application. Other conditional use permits have been approved for buildings on the property on April 5, 2001 and June 5, 1997.

The subject property is located within a special flood hazard area and contains floodway. The
proposed building is not to be located in the floodway as per the site plan. A stream construction permit to build in a special flood hazard area was issued on May 5, 2008 by the Kentucky Division of Water (#17126) for the construction of the proposed building.

LAND USES IN SURROUNDING AREA

The subject property is bordered by I-2 Heavy Industrial zoning to the north and south. The property is bordered to the west by the Ohio River and to the east by B-4, General Business zoning.

ZONING ORDINANCE REQUIREMENTS

1. Parking of one space per two employees at max shift must be available on site (minimum five spaces.)

MR. WILLIAMS: I would like to enter the Staff Report into the record as Exhibit G.

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anyone here like to speak in opposition of this item?

(NO RESPONSE)

CHAIRMAN: Board members have any questions of the applicant?

MR. DYSINGER: Mr. Chairman, I have a
question. I don't know, since the applicant is not here, if it can be answered. What is a fabric type storage building.

MR. NOFFSINGER: We have a picture of it, I think.

MR. DYSINGER: Thank you.

CHAIRMAN: Chair is ready for a motion.

MR. PANTLE: Mr. Chairman, I move we approve the conditional use for being that the Kentucky Division of Water approved it and where it's located, the area where it's being built. Also that the zoning ordinance be complied with: Parking of one space per two employees at max shift must be available on site (minimum 5 spaces.)

CHAIRMAN: We have a motion for approval by Mr. Pantle. Do we have a second?

MR. DIXON: Second.

CHAIRMAN: Second by Ms. Dixon. Comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

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VARIANCE
ITEM 8

195 Booth Field Road, zoned R-1A
Consider a Variance to reduce the side-yard building setback from 10' to 4' along the north property line to build only a detached garage with covered porch.
Reference: Zoning Ordinance, Article 8.5(d)
Applicant: John and Patsy Austin

CONSIDERATIONS

Staff does not find special circumstances in this situation.

The applicant desires to detach a garage and does not want to place it any closer to the residence than is shown on his site plan. Placing the garage behind the house would allow a reduction in the side yard setback to three feet, but according to the applicant, this would require the side yard to be paved and would be out of character with the neighborhood. He also contends that the garage would seem too close to the swimming pool if placed behind the home. However, it is evident from the site plan that there is sufficient space to meet the building code minimum of six feet. The opposite side of the property is not a suitable location for the garage because it contains a septic drain field.

A site visit has confirmed that the adjacent property to the north does have a steep elevation change near the property line which may prevent the
adjoining owner from additional building in this area. The applicant contends that this would ensure that adequate space will exist between the proposed garage and any buildings on the adjacent lot. However, there can be no presumption that the adjoining properties will not be developed to the extent allowed by the zoning ordinance. The applicant is able to meet the requirements of the zoning ordinance on the subject property by relocating the proposed garage to the rear.

Additionally, there is no evidence of setback encroachments in the general vicinity of the subject property. Therefore, approval of the variance will be out of character with the general vicinity.

The Staff does not believe it was a hardship on the applicant since there is sufficient room on the property to locate the garage behind the house; thereby meeting zoning ordinance setback requirements.

FINDINGS

1. Granting this variance will not adversely affect the public health, safety or welfare.

2. It will alter the essential character of the general vicinity.

3. It will not cause a hazard or a nuisance
to the public.

4. It will allow an unreasonable circumvention of the requirements of the zoning regulations.

For these reasons Staff recommends denial.

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

CHAIRMAN: Anyone here representing the applicant?

MR. AUSTIN: Yes.

CHAIRMAN: Anyone here in opposition of this item?

(NO RESPONSE)

CHAIRMAN: Would the applicant like to address the board?

MR. AUSTIN: Yes, sir, please.

CHAIRMAN: Please step forward.

MR. SILVERT: State your name, please.

MR. AUSTIN: John Austin.

(JOHN AUSTIN SWORN BY ATTORNEY.)

MR. AUSTIN: I understand the Staff's concern that this may be a precedent setting situation. Given the nature of the area of the Booth Field Road residence, the fact that my back neighbor, the Tuckers, were contacted. They do not have a problem
with this. They actually own the lot that would be to
the northeast, if you have the plat there before you.
It's a vacant lot. They just bought two lots. Built
on one and kept one vacant. That sits over the back
side of the hill, which actually ridges on the north
south property line that bisects the northern side of
my property.

The gentleman to my immediate north, Mr. Mangrum, has exhibited no problems with this
whatsoever. I did state in my statement that the
property is for sale. So Mr. Mangrum will not be an
issue for very long.

Knowing this I did speak with the real estate
lady. I showed her the sketches that are before you.
I requested her to tell me right now that this really
looked like it would be a problem to her. She did
not. She did not feel like that it would be a major
malfunction.

Esthetically I've worked very hard with my
contractor who is here with me tonight to try to make
this all blend well into the existing home and in to
the area around it.

Again, while I understand that this is not a
common variance in the area, I would disagree
respectfully that it would be out of character with
the neighborhood in general.

The nearest neighbor then across road of Booth Field is a fairly open area, as most of you may be aware. Out buildings are not uncommon. Although, lots may be positioned a bit differently than ours, as Staff has pointed out.

My concern with moving the garage to fall within the requirements of the Zoning Commission, as far as setbacks are concerned, it would definitely approach upon the residents and make this entire project not worthwhile.

Our home is built with cathedral ceilings. There are no attic spaces. There are no crawl spaces. There are no basement. Somewhere between little and no storage. We probably should have look at that when we bought the home, but quite frankly we liked the home instead. What we're looking to do with this garage is create an actual pull-down attic space for some additional storage. Again, trying to keep it esthetically in tune with the rest of the home.

Thank you.

CHAIRMAN: Board members, do you have any questions?

(NO RESPONSE)

CHAIRMAN: I have a couple of questions for
Staff.

Let's see if we have any questions by the board members.

Any board members have any questions?

MR. DYSGINGER: Not right now.

CHAIRMAN: The location of this garage -- I'm asking Staff this. What's the spacing between that garage and that house have to be at that point?

MR. WILLIAMS: Minimum is six feet.

CHAIRMAN: He is showing ten feet.

MR. WILLIAMS: Ten feet, yes, sir.

CHAIRMAN: So if he moved it six feet, then what would the side yard requirement be?

MR. NOFFSINGER: He would have eight feet it looks like. The requirement would be ten feet.

CHAIRMAN: Is this an A-R zone?

MR. NOFFSINGER: This, I believe, is an R-1A zone, yes, sir. Single-family residential.

CHAIRMAN: And that requires ten foot setback?

MR. NOFFSINGER: Yes, sir.

CHAIRMAN: That's the reason for this variance?

MR. NOFFSINGER: I think the gentleman wants to keep it as far from his home as possible so as not to seemingly encroach upon the home. Why it's ten
feet, he'll have to answer that.

MR. AUSTIN: The ten foot request -- I originally started looking at an 18 foot garage. I cut the garage down. The ten foot would allow at least for some semblance of a breezeway. Of someway to create some landscaping and maintain the value of the home.

If I move to four foot from the home, I can fall within the ten foot requirement, but that puts us right upon two bedroom windows and a bathroom window with a space of four foot and would be extremely dark and no in keeping with the character of the neighborhood at all.

With the ten foot, sir, again, I can do some landscaping. We have a rod iron gate that enters a court yard. I can put a rod iron gate and really balance the entire home, sir.

CHAIRMAN: But the zoning ordinance requires six feet between the garage and the house; is that correct, Mr. Noffsinger?

MR. NOFFSINGER: Yes, sir.

CHAIRMAN: If you move the six, you still would not be in compliance on your side yard. You only have eight. So you still need the variance.

MR. AUSTIN: Yes, sir.
CHAIRMAN: I'm just clarifying, for my own information clarifying why you would not move over so you would not need a variance.

MR. AUSTIN: Understood, sir. Another question that I tried to address once I learned more about the requirements was the possibility, and Staff address this, of moving the garage further back. Again, looking at the plat of the property, you see the pool in the back. I even considered changing the entire approach of the garage so that it would be like a combination garage and pool house. The biggest problem with that, sir, would be that I would then require another 30 feet minimum of an asphalt/concrete and that completely eliminate the landscaping of that side of the yard. Again, as Staff pointed out, would truly not be in keeping with that neighborhood at that particular time, sir.

CHAIRMAN: Mr. Noffsinger or Staff, if he attached the garage to the house, he would have generally the same?

MR. NOFFSINGER: That is correct.

CHAIRMAN: Would that put it in compliance?

MR. NOFFSINGER: Yes, sir.

CHAIRMAN: You have several ways that you can come into compliance without this variance. The
problem with this variance is once we do this and your neighbor next-door wants one, we're bound to give it to him, and it goes on and on and on. That's one of the reasons we call it a circumvention of the zoning ordinance. You can put that garage on that lot without the variance. That's all I have to say. I just want to make those comments.

Any board members have any questions?

(No response)

Chair is ready for a motion.

Ms. Dixon: Move to deny because it would provide an unreasonable circumvention of the requirements and there are other options open to the applicant, and that it would alter the essential character of the general vicinity.

Mr. Dysinger: Second.

Chairman: We have a motion and a second. Any comments or question on the motion?

(No response)

Chairman: All in favor raise your right hand.

(All board members present responded Aye.)

Chairman: Motion carries unanimously.

We need one more motion.

Mr. Dysinger: Move to adjourn.

Ms. Dixon: Second.
CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.
STATE OF KENTUCKY )
)SS: REPORTER'S CERTIFICATE
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 40 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 25th day of June, 2008.

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

COMMISSION EXPIRES: DECEMBER 19, 2010
COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY