The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, November 6, 2008, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

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CHAIRMAN: Call the Owensboro Metropolitan Board of Adjustment to order. We'll begin our meeting with a prayer and pledge of allegiance to the flag.

Mr. Noffsinger will lead us. Please stand.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: I would like to welcome everyone.

Anyone wishing to speak on any item we welcome your comments and your questions. We ask that you step to one of the podiums and state your name and be sworn in.

First item on the agenda is consider the minutes of the October 2, 2008 meeting. Are there any
additions or corrections?

(NO RESPONSE)

CHAIRMAN: If not chair is ready for a motion.

MR. PANTLE: Move to approve as in the office.

CHAIRMAN: Is there a second?

MS. MASON: Second.

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously. The minutes are approved.

Next item.

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CONDITIONAL USE PERMITS

ITEM 2

101-401 Blocks Veterans Boulevard, zoned B-2, B-4 (Postponed at the October 2, 2008 meeting)

Consider a request for a Conditional Use Permit to construct a phase of the riverfront project consisting of the Owensboro Riverwall construction within the floodway for approximately 1800 feet along the bank of the Ohio River from the River Park Center to the Veterans of Foreign Wars building. This phase of construction does not include improvements in Smothers Park.

Reference: Zoning Ordinance, Article 18, Section 18-4(B)(3) and 18-5(B)(4)

Applicant: City of Owensboro

MR. SILVERT: State your name, please.

MR. WILLIAMS: Zack Williams.

(ZACK WILLIAMS SWORN BY ATTORNEY.)
ZONING HISTORY

OMPC records indicate that two public facility reviews have been conducted for the construction of a MSE wall from the River Park Center patio to west of the Executive Inn Rivermont and to consider comments regarding the construction of the Riverfront West Plaza located adjacent to the Executive Inn Rivermont.

LAND USES IN SURROUNDING AREA

The north boundary of the property is the Ohio River.

The adjacent property to the west is zoned B-4, General Business and contains the Executive Inn Rivermont.

The adjacent property to the east is zoned B-2, Central Business and contains the River Park Center.

The adjacent properties to the south are zoned B-2, Central Business and contain several business activities.

ZONING ORDINANCE REQUIREMENTS

All of the following requirements have been met by the applicant:

1. Certification from a registered professional engineer that encroachments into the
floodway shall not result in any increase in flood levels during occurrence of the base flood discharge.

2. A stream construction permit from the Kentucky Division of Water.

3. Authorization from the Army Corps of Engineers.

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

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anyone here that would have any comments or opposition of this application?

(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 all the zoning ordinance requirements have been met and this project is long overdue I move that we grant the conditional use permit.

MR. WARREN: Second.

CHAIRMAN: We have a motion and a second. 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.

Next item.

ITEM 3

609 Wing Avenue, zoned R-4DT
Consider a request for a Conditional Use Permit to
operate a homeless shelter with an occupancy of 90
residents providing educational, spiritual, financial
and substance abuse recovery services to the residents
and to non-residents, with a vehicular access point on
Benita Avenue for emergency vehicles only.
Reference: Zoning Ordinance, Article 8, Section 8.2C1
Applicant: Boulware - The Mission on the Hill, Inc.

ZONING HISTORY

The property located at 609 Wing Avenue is
zoned R-4DT Inner City Residential. OMPC records
indicate that four previous Conditional Use Permits
(CUP) have been approved for the Boulware Center at
this address. On June 3, 1999, on April 7, 2005, on
September 7, 2006. Details are contained on your
staff report.

On September 4, 2008 was specifically to
operate a homeless shelter with an occupancy of 90
residents providing educational, spiritual, financial
and substance abuse recovery services for the
residents and to non-residents, and to revise the
previously approved site plan to increase the number
of parking spaces, to revise the loading dock and to include a vehicular access point on Benita Avenue. Approval was granted with the condition that the Benita Avenue access point be closed to vehicular traffic.

The current application has been made to alter that condition, allowing the access point to be gated, locked and only available to emergency vehicles by means of a key box (Knox Box). Past CUP approvals have required closing the Benita Avenue access point physically so that no vehicle may access the facility from the residential street.

LAND USES IN SURROUNDING AREA

All adjoining properties are zoned R-4DT Inner City Residential.

ZONING ORDINANCE REQUIREMENTS

1. Article 13, Section 13.8C1 requires one parking space for every four beds and one space for each employee on maximum shift.

2. Article 17, Table 17.312 requires a 3' high continuous screening element and a tree for every 40 lineal feet of vehicular use area boundary when the area is adjacent to residential zoning.

3. Article 17, Section 17.32 requires interior landscaping for vehicular use areas that are
at least 30,000 square feet, but less than 50,000 square feet in area, except in industrial zones.

SUGGESTED CONDITIONS

1. Reviews must be conducted at six month intervals after occupancy for a period of one year.

2. The number of residents will not exceed 90.

3. At no time will there be more than 120 people in the facility.

These three conditions were identical to the last approval.

4. The vehicular access point along Benita Avenue must be gated, locked with Knox Box access, and accessible only by emergency vehicles.

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

CHAIRMAN: Anyone here representing the applicant?

MR. CRAIG: My name is Bill Craig. I'm here on behalf of the applicant.

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

MR. CRAIG: Thank you.

I'm sorry to intrude on your time again. I didn't expect to be here. Funny thing happened on the
way to the occupancy permit.

We had the usual customary inspection by the fire inspector's office. Their judgment was that the Benita Avenue access point should remain in existence. They understood the issues about it not going used for any purposes. So we are agreeable, of course, that it be closed and remain completely secured with access for emergency vehicles only.

Now, that wasn't a condition we imposed or asked for, etcetera. I'm back because I'm lazy. If I have a requirement from you that it must be blocked up, and if I have a requirement from the fire inspector's office that it must remain in existence and available for emergency vehicles, then I either ask you to modify accordingly or I go to the only place I can and that's try a lawsuit because I have two governmental agencies telling me two things are inconsistent. As I said, I'm lazy. I know you all are tired of seeing me here. If I can say this without offense, I'm tired of seeing you. We have other things to do. We want to honor our commitments always.

We don't tell the fire authorities where we're going to put fire extinguishers. We don't tell them how we're going to put in fire suppression equipment.
There are lots of things that we have done over the last couple of years to comply with every requirement imposed upon us. This is a requirement which we were requested to comply with and we are going to do that unless we're prevented.

I did ask one of the representatives from the fire inspector's office to come and speak as to why they want us to do this.

It occurred to me at the time that other emergency services might have the same view. I have filed with you a request from both the Owensboro Police Department and the Daviess County Sheriff's Department as our most prominently local policing functions. They agree with the fire inspector. That it should remain in existence. They don't have problem at all with it being locked and kept locked at all times. They agree with the Knox Box arrangement to get in if there were a need to.

I'm trying to keep ourselves out of conflict with anyone. I think that's pretty much it.

Steve Leonard who represents the fire inspector's office is here and available to explain their thinking on the process. I would ask that you let him testify in that regard.

CHAIRMAN: Thank you, Mr. Craig.
MR. SILVERT: State your name, please.

MR. LEONARD: Steve Leonard.

(STEVE LEONARD SWORN BY ATTORNEY.)

MR. LEONARD: Basically what Mr. Craig asked us to do is come and explain our stats on why we required the two means of egress or an access for fire and rescue to remain open or at least available to us. We did not want to lessen any of the fire protection to the facility in question less than what it was when it was formerly used for housing the nuns and so forth.

Basically it's being used as a dormitory type setting where you have lives to protect there. The fact that it is built somewhat like a fort it limits our ability to gain access to the property because of the wall. We have to have that second egress for our ladder company, rescue squads and so forth to gain accessibility to that.

Mr. Craig wanted us to come over and explain that to you. I think probably you were aware of that because of the type of occupancy that we're dealing with. Again, when we went with other city officials over there to look at that, we were able to determine that we needed to have that available to us.

The knox box that he talked about allows us,
we are the only ones that have accessibility to that
gate. It's my understanding we would be the only ones
using that gate for that type of services. The police
department and the ambulance service does not have
access to that, but we do.

Again, the reason for that is because we have
to have the ability to get large pieces of equipment
in there such as ladders and that type of thing to
deal with the structures. It's ordinary construction.
It's a rather large facility. Again, due to the fact
that it's got this large barrier around it, it would
prohibit us from doing any street fire fighting. We
would not have accessibility to that.

We're not engaged in any debate on any side.
We're looking at this strictly as fire protection
features for that community or that area up there or
that facility up there. That's the only way we're
looking at that, is how we are to best protect those
people in that facility. Based on that we have to
have that availability. To me it's pretty simple.

CHAIRMAN: Any board members have any
questions or comments?

MS. MASON: I have a question.
The code on that knox box, only the fire
department has the code? No one at Boulware will have
that code?

MR. LEONARD: That is correct. We are the only ones that have a key to the knox box. We have about 400 knox boxes.

MS. MASON: Oh, it's a key. It's not a code.

MR. LEONARD: It is a key. That I, as the city fire marshall, the chief has, and each officer on a rig has and they pass that to the off duty guy coming on duty tomorrow. So they never leave our possession. We're the only ones that have the available keys for that. Not EMS. I think there's a big misunderstanding that police and EMS have that availability too, and they do not. That keeps it secure.

CHAIRMAN: Thank you.

MR. WARREN: Mr. Leonard, also what you might be saying or what I'm kind of thinking is, let's say you can't get in there. This gate is closed and you can't get your equipment in there and the place is on fire. That could be endangering the entire neighborhood?

MR. LEONARD: We are concerned first about the property in question. Then, of course, you're dealing with the exposures as well. Again, we look at that. It wouldn't matter if they moved a hotel in there or
any other type of center. It is lives to protect. It is a facility to protect and we have to protect that as best we can. We have to have availability to get our equipment in there to do that.

With a large facility like that, if we did have a delay in getting necessary equipment in there, you're exactly right. You would have embers and that type of thing that would cause exposure problems for the rest of the neighborhood.

History on that area over there. Eighty-eight percent or better residential occupancies. We have had a lot of disastrous fires occur over in that area for a variety of reason just due to the fact of the age of that part of the city.

So our goal is prevention. We want to do what we can to make it as safe of an area of the city as we can.

CHAIRMAN: Thank you.

Let me see if we have any opposition or comments, Mr. Craig.

Anyone like to make comments or have questions?

MR. SILVERT: State your name, please.

MR. DARLING: Bob Darling.

(BOB DARLING SWORN BY ATTORNEY.)
MR. DARLING: I would like to oppose this conditional use permit. Let me explain a couple of things.

First of all I'm not tired of seeing you all because I do see you all at other places.

Second thing I think I need to explain real fast this knox box. I work at OMU and we have knox boxes all over the place. All that does is allow emergency personnel a key to the door where the knox box is. That doesn't stop every employee at OMU from having a key to that door too. So just because there's a key in there so the police and fire can enter quickly, does not prevent everybody else in the universe having a key to their door too.

The ink isn't dry from the permit of September 4th. It's still not on-line on the transcript.

We were promised this gate would be sealed three times. This issue was brought up about three years ago when we questioned whether there was a requirement that they had to have a second entrance. We were told there was no fire code requirement that required that.

If I could go back. We want to know who has keys to this gate. The police, fire? Will David
Osborne's jail, landscaping crew, will they have a key to it? Will tree crews? If they have special events, will every employee have a key to it? Will there be residents that have keys to this, which means this gate could be left open at any time?

This property really has no security now. The gate that Mr. Craig took offense to when I showed him pictures of it in September is now wide open. There is nothing there. Just a big hole in the wall. Are we to believe that this drive gate will always stay locked? Who will monitor this gate that the neighbors can trust?

The fire department, if they do any fire runs, are going to have to go completely down Wing Avenue because the closest hydrant is north two blocks away. All hydrants are on Wing Avenue.

Why not put a gate on the back of the property off the alley? It would be a lot closer to hydrants. Like I said the neighbors were promised three times. You passed this three times.

If Ms. Dixon makes a motion tonight just leave it open ended, Lord knows they'll be back again to get more access to Benita Avenue and our neighborhood. We're getting this full business in the middle of our neighborhood on one conditional use permit at a
CHAIRMAN: Anyone else like to speak?

(NO RESPONSE)

CHAIRMAN: Mr. Craig.

MR. CRAIG: Three things.

First, the first time we came here we proposed to close the gate and there was an uproar. The next time we came we proposed to leave it open, and there was an uproar. The third time we're here on the gate issue or where the gate issue is all involved, we're saying we really don't care, but we want to comply with what has been imposed by us at the last by the fire authorities.

The knox box is exactly right as Mr. Leonard explains it. The police and fire authorities say, if we get in big enough trouble, we can call someone from the fire department to get in. It's a totally proposition if it exist or doesn't exist. There's a wall there nobody can get in.

Last but not least. Other than vandalism to our gates we are scheduling rod iron gates to go at the person and vehicular gates.

Now, we can't do everything at once. Those gates are going to be attractive and rod iron. They're done by an artist. Trying to push them
sometimes is like trying to make it rain. So that the gates will eventually be in place. The gate that we're talking about on Benita Avenue, the corrugated steal gate that was there for years will be taken down simultaneously with putting up the new gate. Unfortunately the corrugated steal gate was hit by a major tree as a result of Ike and it is a true eye sore. As soon as we can, there will be an attractive rod iron gate.

I'm quite sure that if ever that gate is open for any circumstance other than the fire authorities coming or permitting some other emergency people come in, we'll hear about it and you'll hear about it. We comply with requirements that are imposed upon us and I think the Boulware's record in that regard is impeccable. We have not stated any falsehood to this group at any time and we have complied at all times with what has been imposed upon us by the legal authority as required. As I said before, I'm lazy.

I'd like to get this completed and see you other than here.

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

MS. DIXON: Can we get the fire personnel to state again who will have access to the key for the
record again?

MR. LEONARD: This gentleman makes a good point in that anyone else can have a key, but not to the knox box. If they want to open the gate by other means, and again that's out of my jurisdiction. All I'm asking for is access to that facility by two ways that were originally put there. The original reason that was there is for access for apparatus and other emergency equipment. We do not want to lessen that protection. The knox box that we would put there, again, our intent is for that to be used for us only. We cannot govern whether or not they use it for other purposes.

Now, that would have to be decided by somebody other than me because that's not a fire issue as to who can use that gate when we're not using it. We want it there because we have to have access to the structure.

As far as locking it, the safest way to lock it and for us to assure and the knox box assures us of availability to it, we do not have to find the keyer to get in there and we do not have to use bolt cutters to open that gate. We have the ability to unlock it readily and quickly and get in there and do our jobs.

Again, if the Boulware Center wants to have
keys to open that gate, he's exactly right. They can have it and that's between these two entities and not us.

MS. DIXON: Thank you.

CHAIRMAN: Any further questions?

MR. NOFFSINGER: I do. I'm going to speak about the gate, the locked gate.

It's my understanding that the gate will be locked with the knox box. That controls the lock and the emergency personnel would only have a key. Boulware would not have a key to unlock this gate.

MR. CRAIG: That's not at all correct. The gate will be locked. The key to the gate will be put in the knox box. We can't guarantee -- we can guarantee the Boulware will not provide a key to anyone else. If we want the knox box, there will be a master cut somewhere.

The question would be if you make a restriction on us that we'll keep that gate lock except when the fire authorities go in, we're going to obey it just as we're going to obey the other restrictions you've imposed upon us.

There will be a commercial lock on that gate. It will only be openable, we're telling you it will only be openable by the emergency authorities. We're
not going to permit it otherwise to be open. I remind
you of our history in that respect.

Other gates, the gate on Wing Avenue, the
people gates will be opened during daylight hours and
closed in the evening like any home.

MR. DYSINGER: This knox box, it's just like
for real estate agents? It's outside for like open
house kind of thing? It's there.

MR. CRAIG: No. It's a lock box that they
have a key to and we don't have a key to. When they
come, they know that there's a key inside to let them
come in the gate. There will be a knox box at our
other gate on Wing Avenue which is open all day every
day, but at night when we close it, they would be able
to come in; otherwise, people can't come in.

MR. NOFFSINGER: There's a key hole is what
the knox box is.

CHAIRMAN: Any further comments from the
board?

MR. DYSINGER: I just have a question. This
may be either for Staff or legal counsel.

To me this is clearly a safety issue that the
chief is here telling us that. My question is: We
review this every six months. If the folks in the
neighborhood that complain, that have had some
problems come to us with evidence that this gate is
being misused outside of the bounds of this permit,
that review would allow us to resend the entire
conditional use permit, correct? Not just the issue
of the gate?

MR. SILVERT: That's correct.

CHAIRMAN: Any further comments?

(NO RESPONSE)

CHAIRMAN: Mr. Darling, you have any further
comments or questions?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion,

MR. TAYLOR: Mr. Chairman, I move to approve
the conditional use permit based on the findings of
facts that we have approved several conditional use
permits for this property in the past. The only
change to the most recent of those conditional use
permits is in regards to public safety. It is
recommended by officials. They will still be required
to uphold the suggested conditions that we have
imposed to them as well as one other.

Reviews must be conducted at six month
intervals of occupancy for a period of one year; the
number of residence will not exceed 90; at no time
will there be more than 120 people in the facility;
and in regards to the new gate vehicular access point
on Benita Avenue must be gated, locked with a knox box
access and only accessible by emergency vehicles.

CHAIRMAN: We have a motion.

MR. DYSINGER: Mr. Chairman, if Mr. Taylor
could amend his motion to make the interval for two
years. The reason I ask that, we have kind of inched
an inch and inched along on this conditional use
permit. I think for the folks that have been opposed
to it, it will be a source of comfort to know that
there's extra time that this is going to be reviewed.
Meaning not just two reviews but four reviews.

CHAIRMAN: Mr. Taylor, do you accept that?

MR. TAYLOR: I accept.

MR. DYSINGER: I'll second, Mr. Chairman.

CHAIRMAN: We have a motion and a second. Any
comment 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.

One more motion.

MR. WARREN: Motion to adjourn.

MR. DYSINGER: Second.

CHAIRMAN: All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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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 23 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 24th day of November, 2008.

LYNNETTE KOLLER FUCHS
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
OWENSBORO, KENTUCKY  42303

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