

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT.

2 APRIL 9, 2009

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:00 p.m. on Thursday, April
5 9, 2009, at City Hall, Commission Chambers, Owensboro,
6 Kentucky, and the proceedings were as follows:

7 MEMBERS PRESENT: C.A. Pantle, Chairman
8 Ward Pedley, Vice Chairman
9 Ruth Ann Mason, Secretary
10 Gary Noffsinger, Director
11 Madison Silvert, Attorney
12 Judy Dixon
13 Marty Warren
14 Sean Dysinger
15 Clay Taylor

16 * * * * *

17 CHAIRMAN: Call the Owensboro Metropolitan
18 Board of Adjustment to order. We start our meeting
19 each month with a prayer and pledge of allegiance. We
20 invite you all to join us at this time. Madison will
21 do the prayer this evening.

22 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

23 CHAIRMAN: Again, I want to welcome all of you
24 to the Owensboro Metropolitan Board of Adjustment
25 meeting this evening. If you have any comments on any
item, please come to the podium. State your name and
be sworn in at that time and you can speak. We
welcome each one of you to say whatever comments you
have to say.

1 With that the first item on the agenda is to
2 consider the minutes of the March 5th meeting.
3 They're in the office. I don't think we have any
4 problems with it. With that I will entertain a
5 motion.

6 MS. DIXON: Move to approve.

7 MS. MASON: Second.

8 CHAIRMAN: We have a motion and a second. All
9 in favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries.

12 Next item, please, ma'am.

13 -----

14 CONDITIONAL USE PERMITS

15 ITEM 2

16 7061 Highway 2830, zoned I-2
17 Consider request for a Conditional Use Permit in order
18 to construct an addition to an existing warehouse for
19 recycling and processing of scrap metal from used
20 fabrication items, including vehicles and automobiles,
21 in a floodway.

Reference: Zoning Ordinance, Article 8, 18,
Section 8.2G4 C/27, 18-6(b)(2)

Applicant: River Metals Recycling, LLC

21 MS. STONE: The application is ready for your
22 consideration. There have been no inquiries or
23 comments from the public in the office.

24 MR. SILVERT: State your name, please.

25 MS. EVANS: Melissa Evans.

1 (MELISSA EVANS SWORN BY ATTORNEY.)

2 ZONING HISTORY

3 The subject property is currently zoned I-2
4 Heavy Industrial. OMPC records indicated in March of
5 2006 there was a Zoning Map Amendment application
6 approved for the subject property rezoning it from I-2
7 and B-4 to I-2. In May of 2006, there was a Variance
8 application approved to reduce the required buffer
9 between an industrial zone and a residential zone from
10 300 feet to zero feet. Also, in May of 2006, there
11 was a similar Conditional Use Permit application
12 approved.

13 The existing landscaping and fences as shown
14 on the site plan submitted meet the requirements of
15 the Zoning Ordinance, Article 17, Section 17.311. All
16 exterior access gates on the property are to be eight
17 feet in height and solid.

18 All other permits as may be required by the
19 Army Corps of Engineers or the Kentucky Division of
20 Water must be obtained prior to the issuance of a
21 conditional use permit as per Article 18-4(b)(3)(c).
22 Certification from a registered professional engineer
23 must be provided demonstrating that encroachments
24 shall not result in any increase in flood levels
25 during the occurrence of the base flood discharge as

1 required by Article 18-5(b)(4)(a) of the Zoning
2 Ordinance. A Stream Construction Permit from the
3 Division of Water, a letter from the Army Corps of
4 Engineers and a letter of no impact from a registered
5 professional engineer were all submitted with the
6 application.

7 LAND USES IN SURROUNDING AREA

8 The property to the north of the subject
9 property is zoned I-2 Heavy Industrial and is vacant
10 farm land. The property to the south is zoned I-2
11 Heavy Industrial and A-R Rural Agriculture and is farm
12 land with an existing residence. The property to the
13 west is zoned MHP, Manufactured Housing Park, and is
14 vacant. The property to the east is zoned I-2 Heavy
15 Industrial and is a tire recycling business.

16 ZONING ORDINANCE REQUIREMENTS

17 1. Parking requirements - Heavy industrial
18 uses, conditional - 1 for every 2 employees on maximum
19 shift (minimum 5) - 12 employees on maximum shift -
20 total 6, as indicated on the site plan.

21 2. Landscaping requirements - one tree every
22 40 feet of the linear boundary and a continuous eight
23 foot solid wall or fence.

24 SPECIAL CONDITIONS

25 1. Replace existing chain link exterior gates

1 with eight foot solid gates.

2 MS. EVANS: We would like to enter the Staff
3 Report into the record as Exhibit A.

4 CHAIRMAN: Thank you.

5 Is there anyone in the audience wishing to
6 speak in opposition of this item?

7 (NO RESPONSE)

8 CHAIRMAN: Is the applicant here and do you
9 have any comments you would like to make?

10 MS. REPASKY: Wanda Repasky for the applicant.

11 CHAIRMAN: Would you come forward and state
12 your name for the record, please.

13 MS. REPASKY: Wanda Ballard Repasky. I'm the
14 attorney for the applicant, River Metals. We have no
15 comments and we thank you for your consideration. We
16 are happy to answer any questions you might have.

17 CHAIRMAN: Any comments or questions from the
18 board?

19 (NO RESPONSE)

20 CHAIRMAN: Staff have any other comments or
21 questions?

22 MS. STONE: No.

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

25 MS. MASON: Mr. Chairman, I move to approve.

1 My findings of fact are similar conditional use
2 permits have been approved. It is a logical expansion
3 of the existing use, it's compatible with the land use
4 in the area. The conditions that all of the permits
5 need to be obtained from the Army Corps of Engineers
6 and the Kentucky Division of Water and also replace
7 the existing chain link exterior gates with eight foot
8 solid fence.

9 CHAIRMAN: Is there a second?

10 MR. WARREN: Second.

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

14 (NO RESPONSE)

15 CHAIRMAN: Staff have anything else?

16 MS. STONE: No.

17 CHAIRMAN: Hearing none all in favor of the
18 motion raise your right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries.

21 Before you leave, ma'am, let me ask you one
22 question. You understand the special conditions and
23 agree to them?

24 MS. REPASKY: We do.

25 CHAIRMAN: Wanted to make sure. Thank you.

1 Go ahead.

2

3

VARIANCES

4

ITEM 3

5

303 East 14th Street, 1200 Moseley Street, zoned I-2
to B-5

6

Consider request for a Variance in order to reduce the
roadway buffer along JR Miller Boulevard from 50 feet
7 from the centerline of the road to 40 feet from the
centerline of the road.

8

Reference: Zoning Ordinance, Article 13,
Section 13.6221

9

Applicant: Thom John Properties, LLC

10

MS. STONE: We have had no inquiries or

11

comments from the public on this item.

12

MS. EVANS: The applicant proposes to build a

13

strip mall with parking and landscaping as required by

14

the Zoning Ordinance at 303 East 14th Street and then

15

a convenient store at 1200 Moseley Street. The

16

subject property does front on JR Miller Boulevard,

17

but there will be no access allowed to JR Miller

18

Boulevard.

19

The applicant states that the current depth of

20

the property prohibits the construction of a 60 foot

21

deep strip mall which is typically the minimum depth

22

for practical development of a strip mall the

23

applicant says.

24

An application for a Zoning Map Amendment from

25

I-2 to B-5 was approved by the Planning Commission on

1 March 12, 2009, the Preliminary Development Plan
2 submitted along with that rezoning was postponed until
3 the action is taken by the Board of Adjustment on this
4 Variance. A Minor Subdivision plat has been submitted
5 to create the proposed lots which shows a right-of-way
6 dedication along JR Miller Boulevard consistent with
7 the proposed reduction.

8 The City Engineers office has informed our
9 staff that there is a potential for a right turn lane
10 to be installed on JR Miller Boulevard at this
11 location. The newly adopted downtown plan proposes
12 reconfiguration of downtown streets. A traffic study
13 is being conducted to determine the need for rerouting
14 of that traffic with the proposed changes. This may
15 impact the intersection of JR Miller Boulevard and
16 East Parrish Avenue and may necessitate the
17 construction of a right turn lane. Even absent of the
18 additional volume from proposed changes in the
19 downtown area, this is a major intersection of
20 principal and minor arterial streets and the
21 accommodation for a future turn lane should not be
22 compromised.

23 To accommodate for this potential the staff
24 would recommend that if this variance is granted the
25 applicant be required to dedicate the reduced roadway

1 buffer along JR Miller Boulevard as public
2 right-of-way. The dedication of this right-of-way
3 would provide for adequate room for the potential turn
4 lane along JR Miller Boulevard.

5 When other roadway variances cuts in, approved
6 in the past as typically has also been required that
7 that reduction be set aside as right-of-way.

8 Findings of Fact: Granting this variance will
9 not adversely affect the public health, safety or
10 welfare; it will not alter the essential character of
11 the general vicinity; it will not cause a hazard or a
12 nuisance to the public; and it will not allow an
13 unreasonable circumvention of the requirements of the
14 zoning ordinance.

15 Staff recommends approval with the following
16 conditions:

17 1. Approval of a preliminary and final
18 development plan.

19 2. Approval of a minor subdivision plat
20 dedicating the reduced roadway buffer as right-of-way
21 with no access permitted to JR Miller Boulevard.

22 We would like to enter the Staff Report into
23 the record as Exhibit B.

24 CHAIRMAN: Thank you.

25 Is anyone wishing to speak in opposition of

1 this item?

2 (NO RESPONSE)

3 CHAIRMAN: Is the applicant here and would
4 like to make any comments at this time?

5 (NO RESPONSE)

6 CHAIRMAN: Hearing none does the board have
7 any comments or questions?

8 (NO RESPONSE)

9 CHAIRMAN: Staff have anything else to add?

10 MS. STONE: No.

11 CHAIRMAN: Entertain a motion to dispose of
12 the item.

13 MR. PEDLEY: Mr. Chairman, I make a motion for
14 approval based on Staff's review and findings of fact
15 that it will not adversely affect the public health,
16 safety or welfare; will not alter the essential
17 character of the general vicinity; it will not cause a
18 hazard or a nuisance to the public; and it will not
19 allow an unreasonable circumvention of the
20 requirements of the zoning regulations. With the
21 conditions: 1) Approval of a preliminary and final
22 development plan, and 2) approval of a minor
23 subdivision plat dedicating the reduced roadway buffer
24 as right-of-way with no access permitted to JR Miller
25 Boulevard.

1 MR. DYSINGER: Second.

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

5 (NO RESPONSE)

6 CHAIRMAN: Staff have anything else to add?

7 MS. STONE: No.

8 CHAIRMAN: The applicant understand the
9 special circumstances?

10 APPLICANT REP: Yes.

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

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries.

15 Next item, please.

16 ITEM 4

17 9210 Highway 144, zoned B-4
18 Consider request for a Variance in order to reduce the
19 front building setback line from 75 feet from the
20 centerline of the road to 55 feet from the centerline
21 of the road.

22 Reference: Zoning Ordinance, Article 8,
23 Section 8.5.16(c)

24 Applicant: East Daviess County Water Association

25 MS. STONE: There has been no comments or
inquiries in the office on this application.

MS. EVANS: The applicant proposes to build an
office building on the subject property with parking

1 and landscaping as required by the zoning ordinance.
2 The subject property is zoned B-4 General Business.
3 The applicant states that because of the extreme drop
4 off in grade at the rear of the property there is not
5 sufficient room to build a drive through lane without
6 significant fill.

7 While it is recognized that there is a
8 topography issues on the site, it has not been
9 demonstrated that this topography would prevent the
10 site from being developed in accordance with the
11 requirements of the Zoning Ordinance. In fact, a
12 previous site plan shows the building can be located
13 meeting the prescribed setbacks.

14 The request will be an unreasonable
15 circumvention of the Zoning Ordinance as it appears
16 adequate room exists on the site to meet the
17 requirements as demonstrated by a previously submitted
18 site plan or a reconfiguration of the improvements on
19 the site. It appears the parking in the rear of the
20 building is not required according to the site
21 statistics provided by the applicant. The Zoning
22 Ordinance requires one space for every 400 square feet
23 which in this case would be five parking spaces.
24 There is parking provided along the west side of the
25 building that meets the parking requirements of the

1 Zoning Ordinance. If the applicant wished to have
2 more parking, it appears there is room on the site for
3 it to be in a different location which would provide
4 enough space for the proposed building to be moved
5 back to meet the required building set back of 75
6 feet.

7 Findings: Granting this Variance will
8 adversely affect the public health, safety or welfare;
9 it will alter the essential character of the general
10 vicinity; it will cause a hazard or a nuisance to the
11 public; and it will allow an unreasonable
12 circumvention of the zoning requirements.

13 Staff recommends denial of the application.

14 We would like to enter the Staff Report into
15 the record as Exhibit C.

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

18 (NO RESPONSE)

19 CHAIRMAN: Is the applicant here? Do you have
20 any comments?

21 State your name, please.

22 MR. BRYANT: Don Bryant.

23 (DON BRYANT SWORN BY ATTORNEY.)

24 MR. BRYANT: The information provided as far
25 as being able to build this building in the original

1 location is correct. If you look at the drawing
2 submitted, look at the existing topography. It does
3 drop off to an extreme to the rear and it's also in a
4 wooded area. They would have to clear that wooded
5 area in order to build a reasonable slope back that
6 far into the lot. They prefer to leave that natural,
7 leave those trees in place. The only alternative to
8 that would be a substantial retaining wall which is
9 very costly. Really feel like it wouldn't be very
10 slightly.

11 They feel like they need the parking, although
12 it's not required. As far as the impact on the area,
13 the existing office as shown on the plat, and that
14 existing office is actually 4 feet closer to the
15 roadway than the proposed new office. One of the
16 conditions with this new office is that the existing
17 office building be torn down upon completion when they
18 move into the new building. So as far as any negative
19 impact on the community, we have the nonconforming
20 structure that's there now. This is actually going to
21 improve the situation by moving the new building back
22 four feet beyond what's there today. It's a net
23 improvement. I don't understand the justification
24 that it has a negative impact on the community when
25 it's actually improving it from the non-conforming

1 status that it is today.

2 CHAIRMAN: Any board members have any
3 questions of Mr. Bryant?

4 MR. PEDLEY: Yes, I have some questions of Mr.
5 Bryant.

6 Mr. Bryant, I drove up to Knottsville last
7 week and again this week to look at this site to see
8 what you have. It appears that from your parking lot
9 grade, existing grade to your drive-up window, the
10 existing grade is about 4 to 6 feet lower than the
11 parking lot grade which means you have to elevate that
12 basement quite a bit for drainage for the basement.

13 In front of the lot, there's also a means that
14 your drive-thru window you probably have to elevate
15 that another 4 to 6 feet plus you have 12 inch of
16 floor joists on top of your basement. Your drive-up
17 window you have to basically level with the floor.
18 You're looking at filling probably 4 to 5 feet at that
19 drive-up window. I looked at the situation scooting
20 that building back 20 feet, it would make it even
21 worse.

22 So my question to you is: The decision to
23 even put it there, that's not my business. It's not
24 my decision. I'm trying to find a reason to approve
25 this variance. Your drive-up window could be on the

1 west end and be three or four feet higher than it is
2 now. The building could be shifted to the west toward
3 the existing building probably 20, 40 feet, then it
4 could be moved back. So there's several reasons there
5 and I don't understand why that really -- again, it's
6 not my decision. I'm just trying to find a reason to
7 approve this variance for you.

8 Also your existing building will be removed
9 and there's a gravel driveway on the west end of that
10 existing building that enters on Highway 144. Will
11 that be removed? If it does, that helps the situation
12 of traffic because it does go out to somewhat of a
13 blind curve. I'm trying to find a reason to approve
14 the variance. I'm just wondering if you've looked at
15 all the issues about where you really want to put that
16 building?

17 MR. BRYANT: We have Frankie Fulkerson with
18 the water district that's here. Their decision to
19 place the building here is their decision, was made
20 when they purchased the property.

21 There actually were two lots here. That's why
22 you have the offset in the right-of-way. There's a
23 new right-of-way acquired on the east lot when the
24 roadway through Knottsville was widen. So you have
25 additional right-of-way on that portion. These two

1 lots were consolidated before and rezoned so that they
2 could be put together. They actually acquired this
3 lot in order to build this office building. That was
4 the purpose for acquiring it. The original site plan
5 was laid out and I don't think there was a full
6 understanding as to the impact of the fill behind the
7 building until they were looking at actually doing the
8 construction and starting to bring fill in. So they
9 weren't aware that with the proposed grading with the
10 original plan that it was going to impact so much. So
11 they asked us to pull the building forward. We've
12 already shifted that building significantly to the
13 west to pull it back away from the slope as much as we
14 can. They're wanting to utilize that existing
15 asphalt. The building, the garage behind the existing
16 office is going to be retained. This other building,
17 Frankie, you'll have to address that. I'm not sure
18 what that is. That may be removed also.

19 Frankie, can you answer that?

20 MR. SILVERT: Could you state your name,
21 please?

22 MR. FULKERSON: Frankie Fulkerson.

23 (FRANKIE FULKERSON SWORN BY ATTORNEY.)

24 MR. FULKERSON: The existing office now will
25 be torn down once the new one is built. You're

1 talking about the drive on the west side, is that the
2 one you're talking about? It will all be taken out.

3 MR. PEDLEY: Gravel drive on the west side of
4 the existing building will be removed?

5 MR. FULKERSON: Yes.

6 MR. PEDLEY: It's getting into a blind corner.

7 MR. FULKERSON: There used to be a tank there
8 that had a fire plug where the fire truck could pull
9 into. That's the reason why it's there now. Of
10 course, we took the old tank down and moved it and the
11 fire plug is gone. That's the main reason why that
12 drive was there to start with, for fire trucks.

13 MR. PEDLEY: You do realize you're going to
14 have to elevate that grade. With the existing drive
15 up you will have to elevate that grade four to six
16 feet.

17 MR. FULKERSON: Yes. The closer we can get it
18 up the less we're going to have to be filling it for
19 our drive-thru around behind the building.

20 MR. PEDLEY: So you're originally set on that
21 site. That's what you want to do?

22 MR. FULKERSON: We would like to have it where
23 the old one is, but it's impossible to keep the
24 business going. You know, you'd have to tear that one
25 down to build there and then you wouldn't have a water

1 office.

2 MR. PEDLEY: Are you aware that most of that
3 lot has already been filled?

4 MR. FULKERSON: Yes. We filled some of it
5 ourselves. We just tore down the old Knottsville
6 Credit Union that used to be there. We tore it down
7 there.

8 MR. PEDLEY: I ask all these questions to see
9 if there's any way that you might be willing to move
10 that building to the west and eliminate those
11 problems.

12 MR. FULKERSON: You talking about on the west
13 side of the existing building? There's not enough
14 room.

15 MR. TAYLOR: I think he's speaking west where
16 you're proposing to put it. Maybe move it 30 feet to
17 the west of where you're proposing it. Then you've
18 got to move it back because the grade is a lot gentler
19 there and it would be a lot less fill that you would
20 have to do. That's kind of what I was looking at when
21 I looked at it. I know on 144 there when they came
22 through and straightened out the road a lot of the
23 building and houses there with the setbacks were
24 within the setback zone. It kind of does seem unjust
25 to enforce it there, but on the same token when you

1 look at the site plan it seems like the slope is so
2 much gentler if you went 20 feet to the west of where
3 you're proposing it. I think that's Ward is trying to
4 get across. I don't know for sure, but that's kind of
5 what my question was. How big of a king would it be
6 for you to move it 20 or 30 feet to the west of where
7 you're proposing it now?

8 MR. FULKERSON: Just the parking would be the
9 only issue, you know, while they was building this new
10 building, the parking for our customers while they're
11 building it. That would be the only problem with it.
12 We can move it some, you know. I don't know. Thirty
13 feet would be probably too much, wouldn't it?

14 MR. BRYANT: We've moved it that much already
15 from its original location. Actually about 25 feet.
16 Like I say, you'd actually be moving it far enough
17 that you really didn't need the other lot that you
18 purchased. You're actually building on the original
19 lot.

20 With a non-conforming structure as long as
21 they didn't expand it, would they be allowed to
22 replace that building with a new building and still
23 remain non-conforming?

24 MS. STONE: Yes.

25 MR. BRYANT: So they have that option.

1 MS. STONE: As long as it's not increased in
2 size.

3 MR. BRYANT: As long as it's not increased.
4 Because there's not a lot of difference. I don't know
5 the exact measurements.

6 Ward, I'm trying to give you something to hang
7 your hat on. We've got the existing building there
8 that we could replace and it is extremely
9 non-conforming to the extent you hit the roadway into
10 that setback line. The fact that they're going to
11 remove that structure and improve the situation.
12 We've got a net improvement as far as the impact of
13 the community.

14 MR. TAYLOR: Is that okay, if a motion was
15 made for them to do that as long as they didn't
16 increase the size to build the new building if they
17 tore down the other one? Is that an option that is
18 available to them?

19 MS. STONE: That would be --

20 MR. TAYLOR: If we deny the variance, can they
21 do that?

22 MS. STONE: That would be a change from one
23 non-conforming use -- it would be a different
24 application.

25 MR. TAYLOR: My question is: If that was the

1 route that we decided would be best would be deny for
2 this variance and then for them to open up an
3 application for --

4 MS. STONE: There is an application process
5 for relocating the non-conforming use on a piece of
6 property.

7 MR. BRYANT: I guess my point is that we could
8 actually go back and replace this and actually have a
9 worse situation than we're proposing here. This is an
10 improvement over the existing building. In times
11 past, we've looked at existing situations and taken
12 that into consideration. It's not practical to meet
13 all requirements. As long as it's an improvement,
14 then it's better than it is today.

15 MS. STONE: This is a variance request. Not a
16 change in non-conforming. So there's certain findings
17 that you have to make in order to grant that variance
18 request. You've been given some evidence about the
19 topography of the lot. You would just need to assess
20 the evidence that's before you. The Staff's
21 recommendation was based on an approved site plan that
22 had been submitted for the property showing that those
23 site development requirements could be met. You do
24 have some additional public testimony that you could
25 draw on if you wanted to make a finding otherwise.

1 MR. DYSINGER: Mr. Chairman, it seems to me
2 that the issue before us tonight, Staff has testified
3 that this can be worked around without granting the
4 variance, without undue circumvention of the zoning
5 ordinance. These other issues to me seem ancillary.
6 I haven't heard any evidence from the applicant to
7 contradict what we've been told by the Staff. They
8 seem to contend that you can work around this without
9 circumventing the ordinance.

10 Can you guys tell me that that's not the case?

11 MR. BRYANT: It can be, but they would have to
12 clear a large area of this wooded area in the back.
13 This fill slope with that much fill without a
14 retaining wall they would have to extend that slope
15 several feet back into that wooded area and they would
16 like to leave that natural. Plus it's a substantial
17 additional cost to the water district. It can be
18 done. We had a plan approved to that affect. That's
19 where the fill that's been placed there now. It was
20 placed under the original plan to the front. That's
21 when we realized the original plan was going to cause
22 all this work to be done back in the woods. They were
23 not aware of that looking at the plan before.

24 MR. FULKERSON: It's going to cost the water
25 association so much money to do this. We're trying to

1 save some money for our customers.

2 MR. PEDLEY: I agree, Don. If you moved the
3 building back 20 feet, same alignment, it would get
4 out over that. If you look at the lines on this topo
5 over here, every one of those lines is two feet
6 across. You're getting to where it's nearly
7 impossible to pull it back 20 feet and fill that area,
8 stabilize that bank and get that driveway around
9 there. I'm only suggesting that you move it to the
10 west.

11 MR. BRYANT: Well, another option would be to
12 eliminate the parking in the back and actually scoot
13 the building back which that would be about 19 feet.
14 You could do that, but then your drive-thru lane that
15 comes around the back corner of the building gets
16 really tight by adding the parking in. That gives us
17 a good radius to come around the rear of the building.
18 Just creates a better flow. You can actually move the
19 building back to the setback. Put the lane in the
20 back and eliminate the parking at the rear. Put that
21 elsewhere on the lot. It just means that you're going
22 to lose some parking at the rear of the building,
23 which is employee parking. It's intended to be
24 employee parking.

25 CHAIRMAN: Mr. Bryant, I get the impression

1 that it will probably be denied the way it is now.
2 Would you like to take 30 days and go back and
3 re-evaluate and resubmit some corrections or take
4 denial, which you may get?

5 MR. FULKERSON: He's suppose to start Monday.

6 MR. BRYANT: Yes. They've already let a
7 contract on the building. We're waiting on this.

8 CHAIRMAN: Been problems before too.

9 MR. BRYANT: That's up to the applicant.

10 MR. FULKERSON: If we go ahead and let them
11 start.

12 CHAIRMAN: Maybe not.

13 Any other questions from the board or the
14 Staff?

15 MR. TAYLOR: The only comment that I have, and
16 I'm kind of up in the air here just because I kind of
17 know the area of how the road ran and how it runs now.

18 There's so many houses and so many other
19 things that are beyond that setback that I hate to put
20 something -- while it is, you know, of a certain
21 mission, I do think that they have a hardship in a
22 certain way. I do not think that it's going to alter
23 the neighborhood or alter anything else that's in the
24 area, but by definition it is against what we're
25 saying. That was just my only comment.

1 MR. PEDLEY: It does not alter the essential
2 character and it does not create a nuisance.

3 MR. TAYLOR: And I don't think it creates a
4 safety hazard.

5 MR. PEDLEY: Unreasonable circumvention is the
6 only issue we have. We have to have the findings to
7 approve it. Certainly have all the findings in my
8 opinion except allow an unreasonable circumvention of
9 the zoning ordinance. It can be placed on that lot at
10 another point and meet the setback requirement. All
11 that other three, it will not adversely affect the
12 public health, safety or welfare. In fact, it will
13 enhance it.

14 MR. BRYANT: Right. It's a net improvement.

15 MR. PEDLEY: You're closing part of a wide
16 drive and you're locating another drive. You're
17 eliminating one.

18 You will not alter the essential character of
19 the general vicinity, because most of the structures
20 in Knottsville set much closer. Highway 144 has
21 already been widened. Probably never be widened again.

22 MR. BRYANT: I think you just made a good
23 case.

24 MS. STONE: If you could find that it wasn't
25 an unreasonable circumvention based on some physical

1 characteristics you're talking about, talking like the
2 topography.

3 MR. TAYLOR: I would be prepared to make a
4 motion if the chair ask for it.

5 MR. PEDLEY: I'm ready to make a motion.

6 CHAIRMAN: Make a motion.

7 MR. TAYLOR: Mr. Chairman, I move to approve
8 the variance based upon the findings I do not think it
9 will adversely affect the public health, safety or
10 welfare, because it is generally a positive gain of
11 what is existing there. It will not alter the
12 essential character of the general vicinity because
13 many of the structures, homes and businesses in the
14 area are well beyond the setback that this will be.
15 It will not cause a hazard or a nuisance to the
16 public. It will actually enhance the safety. Though
17 it is a circumvention of the zoning requirement, I do
18 not think that it is unreasonable since there are
19 factors that are involved in the lot such as the grade
20 in the fill dirt that must be involved in order to
21 make the building reasonable, that it will not be an
22 unreasonable circumvention. So I recommend approval.

23 MR. PEDLEY: Second.

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

1 board?

2 (NO RESPONSE)

3 CHAIRMAN: Staff have anything else to add?

4 MS. STONE: No.

5 CHAIRMAN: All in favor of the motion raise
6 your right hand, please.

7 (BOARD MEMBERS MARTY WARREN, WARD PEDLEY, CLAY
8 TAYLOR, JUDY DIXON AND RUTH ANN MASON ALL RESPONDED
9 AYE.)

10 CHAIRMAN: All opposed.

11 (BOARD MEMBER SEAN DYSINGER RESPONDED NAY.)

12 CHAIRMAN: Five to one. Motion carries.

13 Next item, please.

14 -----

15 ADMINISTRATIVE APPEALS

16 ITEM 5

17 1201 Frederica Street, zoned B-4
18 Consider request for an Administrative Appeal
19 concerning the proposal to change from one
20 non-conforming use to another non-conforming use with
21 regards to parking requirements.
Reference: Zoning Ordinance, Article 4 and 7,
Section 4.53, 7.34
Appellant: Southern Star Central Gas Pipeline, Inc.;
Scott Browning

22 MS. STONE: We haven't had any inquiries or
23 comments in the office.

24 ZONING HISTORY

25 The subject property is currently zoned B-4

1 General Business. OMPC records indicate there have
2 been no Zoning Map Amendment applications approved for
3 the subject property.

4 The subject property has been non-conforming
5 with regards to the parking requirements for 30 years
6 as it was being operated as a furniture store, but for
7 the last 18 months it has been vacant so it has lost
8 that non-conforming status.

9 The parking would continue to be
10 non-conforming for data processing and record storage,
11 the newly proposed use. Under the current ordinance,
12 one parking space for every 200 square feet of
13 building would be required for data processing.
14 However, the applicant has stated that the use will
15 only have two employees and will not be open to the
16 public.

17 The current ordinance requires vehicular use
18 area landscaping of a 3 foot continuous element and
19 one tree every 40 feet of the vehicular use area
20 boundary. Also, access to the site exceeds the
21 maximum 40 foot access currently allowed for new
22 development.

23 The applicant is aware of the Staff
24 recommendations or the condition that the Staff is
25 going to recommend. He is here to address that

1 recommendation after I finish with this Staff Report.

2 SPECIAL CONDITIONS

3 1. Access shall be reduced to a maximum of 40
4 feet in width and vehicular use area landscaping shall
5 be installed.

6 If the board does feel it is appropriate, the
7 applicant is actually going to ask that this request
8 if opposed that the condition be delayed due to the
9 brevity of the lease. It's only a six month lease as
10 of right now. If the board feels it is appropriate to
11 extend that time to install the improvements, we would
12 ask that it only be extended for six months. And if
13 at the end of that six months the building is still
14 occupied, then the improvements should be required to
15 be installed at that time.

16 Now, if the building is unoccupied at the time
17 after that six months, we would ask that the
18 improvements should be installed with the occupancy of
19 the new tenants since it has gone from that 18 months
20 and it's past that non-conforming.

21 We would like to enter the Staff Report into
22 the record as Exhibit D.

23 CHAIRMAN: Is applicant here and wish to speak
24 at this time?

25 MR. SILVERT: State your name, please.

1 MR. BROWNING: Scott Browning.

2 (SCOTT BROWNING SWORN BY ATTORNEY.)

3 MR. BROWNING: I represent the building.

4 Aaron Brown is here with Southern Pipeline. We're
5 here to answer any questions.

6 CHAIRMAN: Staff have any other comments or
7 questions?

8 (NO RESPONSE)

9 MR. BROWNING: The requirements for the
10 landscaping that she had mentioned, of course, the
11 parking situation is already in question. They
12 require a three foot element across the front there,
13 which would actually reduce the amount of parking
14 available because of the requirements by the current
15 statute or whatever you call them.

16 The angle parking require I think 14 feet, I
17 believe, between the parking area and the bed reduced
18 to 12 feet.

19 CHAIRMAN: Any comments?

20 MR. TAYLOR: I have a question for the Staff.

21 In your reading, what you recommended was if
22 we were to approve this, it's to be approved for a
23 short term for a 6 month lease and then be
24 re-evaluated after that. In that conclusion are you
25 just talking about the parking or are you talking

1 about the landscaping as well?

2 MS. EVANS: No. We're asking that if it is
3 approved that the improvements of this condition,
4 reducing the access of 40 feet, to 40 feet of width
5 and then landscaping be installed, we're asking that
6 that be required at six months, at the end of the six
7 months if the building is occupied. If the building
8 is not occupied, then it has to be installed when a
9 new renter moves into that building. So we're asking
10 for it to be required no matter what, but just the
11 timing. You know, six months if it's occupied and a
12 little bit longer if it's not occupied.

13 MR. SILVERT: Just to clarify. If the current
14 renter or lessee holds over their lease after that six
15 months, will it be required or is it only when a new
16 renter comes in?

17 MS. EVANS: No. It's required if --

18 MR. SILVERT: If there is of any renter?

19 MS. EVANS: Right. If the building is
20 occupied by anyone.

21 MS. STONE: The intent of the ordinance is to
22 allow non-conforming situations to continue, but not
23 to encourage their survival. So with the new tenant
24 we feel like we should apply those site development
25 requirements that would be applicable to any other

1 property in this zone even though their parking area
2 is an affixed area. We're not asking them to increase
3 that area. We're just asking for landscaping and the
4 reduction of that access point.

5 CHAIRMAN: Board members have any other
6 comments?

7 MR. TAYLOR: Just one, and I may just not have
8 listened or read it.

9 So after six months, if they still desire to
10 stay there, are we saying that they need to require or
11 meet the parking requirements then as well?

12 MS. STONE: No. Say at that point they will
13 make the landscaping and access, if they stayed beyond
14 that sixth month initial time.

15 MR. TAYLOR: So the six months is just for
16 this landscaping?

17 MS. STONE: Right. We're not asking about
18 parking requirements.

19 MR. PEDLEY: And the access point also?

20 MS. STONE: And the access, right. The
21 landscaping and the access point.

22 CHAIRMAN: Any other comments from the board?

23 MR. BROWNING: We would like to make one more
24 comment.

25 I have no idea how much this landscaping and

1 all is going to cost because we have to cut out the
2 parking lot. I have to put in a curbs and planting
3 and stuff like that. I have reduced, I have rented
4 this or leased this at a reduced rate in order to get
5 it leased because it's just sitting there, property
6 taxes. It could cause a financial hardship if I have
7 to do this.

8 CHAIRMAN: Any other comments?

9 MR. BROWNING: If I don't agree to this, it's
10 just going to sit there vacant, right? So it seems
11 like it would be better to have it occupied. Probably
12 going to sit there more than a year anyway.

13 CHAIRMAN: Any other comments from the board
14 or Staff?

15 (NO RESPONSE)

16 CHAIRMAN: Motion one way or the other.

17 MR. PEDLEY: Mr. Chairman, I'm going to make a
18 motion in favor of the appellant. Grant them the
19 non-conforming use for reasons it will not adversely
20 affect the future development of the area. Also it is
21 less burdensome parking and also traffic. Then after
22 the six month period, if Southern Star is still there
23 they shall install the required landscaping and they
24 shall close the access point to a maximum of 40 feet.

25 Is that correct, Becky?

1 MR. SILVERT: Again, I want to clarify.

2 Is your motion depending upon Southern Star
3 being there at six months or any tenant?

4 MR. PEDLEY: My motion was based on Southern
5 Star.

6 MR. TAYLOR: I would like to add a caveat to
7 that to where after six months any applicant, whether
8 it be Southern Star or the next applicant must meet
9 that requirement.

10 MR. PEDLEY: Is Southern Star, the applicant
11 here? This appeal is for Southern Star. Not another
12 entity.

13 CHAIRMAN: That's the way it's made out.

14 MS. STONE: Well, Southern Star and
15 Mr. Browning is the appellant. He is the owner. We
16 don't want to start a process of having more months go
17 on if it's rented to another entity at that point. In
18 this case Southern Star is the applicant, but any use
19 on that property should require that landscaping and
20 the reduced access. That's why we added in the Staff
21 Report that if Southern Star does not continue that
22 lease, then the next occupant would be required to put
23 that landscaping in. You can make your motion
24 obviously however you want to make it. I'm just
25 explaining what the Staff Report was based on.

1 MR. PEDLEY: Let me amend my motion to require
2 any use of that building after a six month period
3 would require the landscaping and the closing of the
4 access point.

5 MS. MASON: Of course, I know there's a motion
6 on the floor so I don't know if this is -- is there
7 any way that we can give him a little longer than six
8 months after? Because he says Southern Star is going
9 to stay in there for maybe a year and the financial
10 hardship to do the landscaping, cut out the parking
11 lot, whatever he has to do. Can we give him longer
12 that than six months?

13 CHAIRMAN: Ask the motionee.

14 MS. MASON: Okay. I'm asking the motionee?

15 CHAIRMAN: If he so desires.

16 MR. PEDLEY: You're going to amend the motion
17 to extend the six months?

18 MS. MASON: Longer. Like give him a year.
19 Southern Star is saying, he says Southern Star says
20 they're going to stay in there for a year.

21 MR. PEDLEY: If Southern Star is no longer the
22 user. My motion was it wouldn't be required until
23 another applicant or another user.

24 MS. MASON: Until another user comes along.
25 Like if Southern Star stays there for a year or

1 longer, then he doesn't have to do anything.

2 MR. PEDLEY: Or any user that comes after the
3 six month period it would be required.

4 MS. STONE: I thought the motion was that
5 Southern Star would do it at six months though if they
6 continue to be in the building. Is that what you
7 said? We need to make sure we have the motion right.

8 MR. PEDLEY: That was my first motion. After
9 six months, Southern Star do the landscaping and the
10 access point would be reduced to 40 feet in width.

11 MS. MASON: So the motion is six months.

12 CHAIRMAN: Is there a second to the motion?

13 MS. DIXON: Second.

14 MS. MASON: I don't think I understand the
15 motion, I'm sorry.

16 After six months, if Southern Star stays, does
17 he have to still do the landscaping?

18 MR. PEDLEY: Yes. That's the motion.

19 MR. DYSINGER: Does Southern Star partially
20 own this property or is Mr. Browning the sole owner
21 would be my question?

22 CHAIRMAN: Would you come forward and state
23 that, please.

24 MR. BROWNING: I am the sole owner of it.
25 Just leasing it to Southern Star.

1 MR. DYSINGER: Then I'm a little unclear why
2 Southern Star is required to do anything. I
3 understand they're on the application.

4 MR. TAYLOR: I don't think they're saying
5 Southern Star is to do it. They're saying if Southern
6 Star is in there. After six months, if they're out
7 there after six months, the next person that comes in
8 he has to have it done before the next person gets in
9 there.

10 MR. DYSINGER: I understand. But unless I'm
11 mistaken, the motion says Southern Star is on the hook
12 for --

13 MR. TAYLOR: Well, that's going to be between
14 the landlord and the lessee.

15 CHAIRMAN: At the end of six months either
16 one, the renter or the owner will place it.

17 MR. DYSINGER: If it is not occupied in six
18 months, then at the time that it does become occupied,
19 it's required at that point?

20 MR. PEDLEY: Yes.

21 CHAIRMAN: Any other questions or comments?

22 MR. BROWNING: I would ask that you would
23 extend the time to a year while Southern Star is
24 there. I would be happy to do it at that point.

25 CHAIRMAN: You have heard the applicant say

1 that he'd like to state that a year. The motion says
2 six months. We've got a second to that. Is there
3 amendment to it? If not --

4 MS. MASON: I would like to amend it to a year
5 to do the improvements to the landscaping. If
6 Southern Star is still there, that he would have a
7 year to do improvement. I don't know how to word it
8 correctly.

9 In other words, if Southern Star is still
10 there for a full year, then at the end of that year he
11 has to do the improvements or if another person comes
12 along and rents it, he has a year to do improvement.

13 MS. STONE: The applicant has stated that he
14 would agree to do that within a year. If Southern
15 Star is not there, if they leave in six months, you
16 need a provision for when that improvement needs to be
17 made. You need a specific time frame, if another
18 tenant came into that facility.

19 MS. MASON: So if another tenant comes in
20 after six months and purchases the property or rents
21 the property, then the improvements would have to be
22 made.

23 MR. SILVERT: I'm going to restate the motion
24 for everyone. It's Ward's privilege to amend his
25 motion.

1 So, Ward, I'm going to restate the motion and
2 you tell me whether or not this is the motion you
3 agree on. Okay?

4 The appellant will reduce to a maximum of 40
5 feet in width of the access and the vehicular use area
6 landscaping shall be installed at the end of one year
7 should a tenant be occupying the building at the end
8 of one year. If a tenant is not occupying the
9 building, then the landscaping improvements shall be
10 installed at the time that either a tenant does later
11 occupy the building or someone purchases the building,
12 prior to purchase.

13 MR. PEDLEY: I accept that amendment.

14 MS. MASON: I second it.

15 CHAIRMAN: A motion has been made and a
16 second. Is there any other comments or questions by
17 the board?

18 (NO RESPONSE)

19 CHAIRMAN: Staff have anything else to add?

20 MS. STONE: No.

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

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries.

25 You've got one year to do something.

1 Next item.

2 ITEM 6

3 701 Walnut Street, zoned R-4DT
4 Consider request for an Administrative Appeal
5 concerning the proposal to change from an existing
6 non-conforming use as a commercial business to another
7 non-conforming use as a hot dog stand.
8 Reference: Zoning Ordinance, Article 4, 7,
9 Section 4.53, 7.34
10 Appellant: Don L. Sanders; Brad Hamilton

11 ZONING HISTORY

12 The subject property is currently zoned R-4DT
13 Inner-City Residential. OMPC records indicate there
14 have been no Zoning Map Amendment applications
15 approved for the subject property.

16 In 1997 a request for a change in use from a
17 non-conforming computer equipment service center to a
18 non-conforming grocery store was approved.

19 According to the applicant the subject
20 property has been used for many business purposes for
21 approximately the last 30 years.

22 MS. EVANS: We would like to enter the Staff
23 Report into the record as Exhibit E.

24 CHAIRMAN: Is the applicant here this evening?

25 MR. SANDERS: Yes.

 CHAIRMAN: Would you come forward please and
state your name.

 MR. SANDERS: Don Sanders.

1 (DON SANDERS SWORN BY ATTORNEY.)

2 CHAIRMAN: You have the floor, sir.

3 MR. SANDERS: 701 Walnut Street is just a
4 building that's been there for probably 35 to 40
5 years. I've been living there since about 31 years on
6 the same block. To my knowledge I thought it was
7 already zoned commercial. When I purchased the
8 building, I come down here and they said it wasn't.
9 All I wanted to do was basically get it zoned
10 commercial just to put a hot stand there for the
11 neighborhood kids. They have nothing to do.

12 MS. STONE: Just for the clarification for the
13 board. This is not a rezoning request. This is a
14 request to change one non-conforming use to another.
15 If he rezoned the property, there would be a number of
16 site development plans that would be imposed on that
17 property. The size of the property prohibits those
18 site development requirements from being met for that.
19 It's been non-conforming for some time. The board has
20 approved the previous non-conforming use, I think, to
21 a computer service business was the last business. So
22 he's asking for a change again to another commercial
23 use.

24 CHAIRMAN: Do you have any other comments?

25 MR. SANDERS: No, I don't.

1 CHAIRMAN: Board have any questions of the
2 applicant?

3 (NO RESPONSE).

4 MR. SANDERS: It's something I feel like the
5 neighborhood really needs. I moved in that
6 neighborhood when I was 12 years old. On every corner
7 there was a mom and pop store, you know. It's got a
8 park across from me where the kids play over there. I
9 just feel like there needs to be something. If they
10 want something to drink, they don't have to kind of go
11 out in the street, out over Frederica Street and get
12 hurt just to get something to drink. I think it's
13 pretty much needed in the neighborhood.

14 CHAIRMAN: Thank you.

15 Any other comments from the board?

16 (NO RESPONSE)

17 CHAIRMAN: Staff have anything else to add?

18 MS. STONE: No.

19 CHAIRMAN: Hearing none entertain a motion.

20 MR. CHAIRMAN: Mr. Chairman, I move that we
21 find for the appellant and grant the continuing
22 non-conforming use with the findings that the use is
23 consistent with the previous non-conforming uses, and
24 further that it will be an asset and improvement to
25 the neighborhood.

1 MR. WARREN: Second.

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

4 (NO RESPONSE)

5 CHAIRMAN: Any other questions or comments
6 from the board?

7 (NO RESPONSE)

8 CHAIRMAN: All in favor raise your right hand.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries

11 We need one final motion.

12 MR. DYSINGER: Move to adjourn.

13 MS. MASON: Second.

14 CHAIRMAN: All in favor raise your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: We are adjourned.

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

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and
4 for the State of Kentucky at Large, do hereby certify
5 that the foregoing Owensboro Metropolitan Board of
6 Adjustment meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 44 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 13th day of April, 2009.

18

19

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

22

COMMISSION EXPIRES: DECEMBER 19, 2010

23

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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