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

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

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

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  Again, I want to welcome all of you to the Owensboro Metropolitan Board of Adjustment 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.
With that the first item on the agenda is to consider the minutes of the March 5th meeting. They're in the office. I don't think we have any problems with it. With that I will entertain a motion.

MS. DIXON: Move to approve.

MS. MASON: 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.

Next item, please, ma'am.

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CONDITIONAL USE PERMITS

ITEM 2

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

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

Applicant: River Metals Recycling, LLC

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

MR. SILVERT: State your name, please.

MS. EVANS: Melissa Evans.
ZONING HISTORY

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

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

All other permits as may be required by the Army Corps of Engineers or the Kentucky Division of Water must be obtained prior to the issuance of a conditional use permit as per Article 18-4(b)(3)(c). Certification from a registered professional engineer must be provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge as
required by Article 18-5(b)(4)(a) of the Zoning Ordinance. A Stream Construction Permit from the Division of Water, a letter from the Army Corps of Engineers and a letter of no impact from a registered professional engineer were all submitted with the application.

LAND USES IN SURROUNDING AREA

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

ZONING ORDINANCE REQUIREMENTS

1. Parking requirements - Heavy industrial uses, conditional - 1 for every 2 employees on maximum shift (minimum 5) - 12 employees on maximum shift - total 6, as indicated on the site plan.
2. Landscaping requirements - one tree every 40 feet of the linear boundary and a continuous eight foot solid wall or fence.

SPECIAL CONDITIONS

1. Replace existing chain link exterior gates
with eight foot solid gates.

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

CHAIRMAN: Thank you.

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

(NO RESPONSE)

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

MS. REPASKY: Wanda Repasky for the applicant.

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

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

CHAIRMAN: Any comments or questions from the board?

(NO RESPONSE)

CHAIRMAN: Staff have any other comments or questions?

MS. STONE: No.

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

MS. MASON: Mr. Chairman, I move to approve.
My findings of fact are similar conditional use permits have been approved. It is a logical expansion of the existing use, it's compatible with the land use in the area. The conditions that all of the permits need to be obtained from the Army Corps of Engineers and the Kentucky Division of Water and also replace the existing chain link exterior gates with eight foot solid fence.

CHAIRMAN: Is there a second?

MR. WARREN: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MS. STONE: No.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

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

MS. REPASKY: We do.

CHAIRMAN: Wanted to make sure. Thank you.
Go ahead.

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VARIANCES

ITEM 3

303 East 14th Street, 1200 Moseley Street, zoned I-2 to B-5
Consider request for a Variance in order to reduce the roadway buffer along JR Miller Boulevard from 50 feet from the centerline of the road to 40 feet from the centerline of the road.
Reference: Zoning Ordinance, Article 13, Section 13.6221
Applicant: Thom John Properties, LLC

MS. STONE: We have had no inquiries or comments from the public on this item.

MS. EVANS: The applicant proposes to build a strip mall with parking and landscaping as required by the Zoning Ordinance at 303 East 14th Street and then a convenient store at 1200 Moseley Street. The subject property does front on JR Miller Boulevard, but there will be no access allowed to JR Miller Boulevard.

The applicant states that the current depth of the property prohibits the construction of a 60 foot deep strip mall which is typically the minimum depth for practical development of a strip mall the applicant says.

An application for a Zoning Map Amendment from I-2 to B-5 was approved by the Planning Commission on
March 12, 2009, the Preliminary Development Plan submitted along with that rezoning was postponed until the action is taken by the Board of Adjustment on this Variance. A Minor Subdivision plat has been submitted to create the proposed lots which shows a right-of-way dedication along JR Miller Boulevard consistent with the proposed reduction.

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

To accommodate for this potential the staff would recommend that if this variance is granted the applicant be required to dedicate the reduced roadway
buffer along JR Miller Boulevard as public
right-of-way. The dedication of this right-of-way
would provide for adequate room for the potential turn
lane along JR Miller Boulevard.

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

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

Staff recommends approval with the following
conditions:

1. Approval of a preliminary and final
development plan.

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

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

CHAIRMAN: Thank you.

Is anyone wishing to speak in opposition of
this item?
(NO RESPONSE)

CHAIRMAN: Is the applicant here and would like to make any comments at this time?
(NO RESPONSE)

CHAIRMAN: Hearing none does the board have any comments or questions?
(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?
MS. STONE: No.

CHAIRMAN: Entertain a motion to dispose of the item.

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

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MS. STONE: No.

CHAIRMAN: The applicant understand the special circumstances?

APPLICANT REP: Yes.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 4

9210 Highway 144, zoned B-4
Consider request for a Variance in order to reduce the front building setback line from 75 feet from the centerline of the road to 55 feet from the centerline of the road.
Reference: Zoning Ordinance, Article 8, Section 8.5.16(c)
Applicant: East Daviess County Water Association

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

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

The request will be an unreasonable circumvention of the Zoning Ordinance as it appears adequate room exists on the site to meet the requirements as demonstrated by a previously submitted site plan or a reconfiguration of the improvements on the site. It appears the parking in the rear of the building is not required according to the site statistics provided by the applicant. The Zoning Ordinance requires one space for every 400 square feet which in this case would be five parking spaces. There is parking provided along the west side of the building that meets the parking requirements of the
Zoning Ordinance. If the applicant wished to have more parking, it appears there is room on the site for it to be in a different location which would provide enough space for the proposed building to be moved back to meet the required building set back of 75 feet.

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

Staff recommends denial of the application.

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

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

(NO RESPONSE)

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

State your name, please.

MR. BRYANT: Don Bryant.

(DON BRYANT SWORN BY ATTORNEY.)

MR. BRYANT: The information provided as far as being able to build this building in the original
location is correct. If you look at the drawing submitted, look at the existing topography. It does drop off to an extreme to the rear and it's also in a wooded area. They would have to clear that wooded area in order to build a reasonable slope back that far into the lot. They prefer to leave that natural, leave those trees in place. The only alternative to that would be a substantial retaining wall which is very costly. Really feel like it wouldn't be very sightly.

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

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

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

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

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

So my question to you is: The decision to
even put it there, that's not my business. It's not
my decision. I'm trying to find a reason to approve
this variance. Your drive-up window could be on the
west end and be three or four feet higher than it is now. The building could be shifted to the west toward the existing building probably 20, 40 feet, then it could be moved back. So there's several reasons there and I don't understand why that really -- again, it's not my decision. I'm just trying to find a reason to approve this variance for you.

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

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

There actually were two lots here. That's why you have the offset in the right-of-way. There's a new right-of-way acquired on the east lot when the roadway through Knottsville was widen. So you have additional right-of-way on that portion. These two
lots were consolidated before and rezoned so that they could be put together. They actually acquired this lot in order to build this office building. That was the purpose for acquiring it. The original site plan was laid out and I don't think there was a full understanding as to the impact of the fill behind the building until they were looking at actually doing the construction and starting to bring fill in. So they weren't aware that with the proposed grading with the original plan that it was going to impact so much. So they asked us to pull the building forward. We've already shifted that building significantly to the west to pull it back away from the slope as much as we can. They're wanting to utilize that existing asphalt. The building, the garage behind the existing office is going to be retained. This other building, Frankie, you'll have to address that. I'm not sure what that is. That may be removed also.

Frankie, can you answer that?

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

MR. FULKERSON: Frankie Fulkerson.

(FRANKIE FULKERSON SWORN BY ATTORNEY.)

MR. FULKERSON: The existing office now will be torn down once the new one is built. You're
talking about the drive on the west side, is that the
one you're talking about? It will all be taken out.

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

MR. FULKERSON: Yes.

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

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

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

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

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

MR. FULKERSON: We would like to have it where
the old one is, but it's impossible to keep the
business going. You know, you'd have to tear that one
down to build there and then you wouldn't have a water
MR. PEDLEY: Are you aware that most of that lot has already been filled?

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

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

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

MR. TAYLOR: I think he's speaking west where you're proposing to put it. Maybe move it 30 feet to the west of where you're proposing it. Then you've got to move it back because the grade is a lot gentler there and it would be a lot less fill that you would have to do. That's kind of what I was looking at when I looked at it. I know on 144 there when they came through and straightened out the road a lot of the building and houses there with the setbacks were within the setback zone. It kind of does seem unjust to enforce it there, but on the same token when you
look at the site plan it seems like the slope is so
much gentler if you went 20 feet to the west of where
you're proposing it. I think that's Ward is trying to
get across. I don't know for sure, but that's kind of
what my question was. How big of a king would it be
for you to move it 20 or 30 feet to the west of where
you're proposing it now?

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

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

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

MS. STONE: Yes.

MR. BRYANT: So they have that option.
MS. STONE: As long as it's not increased in size.

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

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

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

MS. STONE: That would be --

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

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

MR. TAYLOR: My question is: If that was the
route that we decided would be best would be deny for
this variance and then for them to open up an
application for --

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

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

MS. STONE: This is a variance request. Not a
change in non-conforming. So there's certain findings
that you have to make in order to grant that variance
request. You've been given some evidence about the
topography of the lot. You would just need to assess
the evidence that's before you. The Staff's
recommendation was based on an approved site plan that
had been submitted for the property showing that those
site development requirements could be met. You do
have some additional public testimony that you could
draw on if you wanted to make a finding otherwise.
MR. DYSINGER: Mr. Chairman, it seems to me that the issue before us tonight, Staff has testified that this can be worked around without granting the variance, without undue circumvention of the zoning ordinance. These other issues to me seem ancillary. I haven't heard any evidence from the applicant to contradict what we've been told by the Staff. They seem to contend that you can work around this without circumventing the ordinance.

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

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

MR. FULKERSON: It's going to cost the water association so much money to do this. We're trying to
save some money for our customers.

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

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

CHAIRMAN: Mr. Bryant, I get the impression
that it will probably be denied the way it is now.
Would you like to take 30 days and go back and
re-evaluate and resubmit some corrections or take
denial, which you may get?

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

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

CHAIRMAN: Been problems before too.

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

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

CHAIRMAN: Maybe not.

Any other questions from the board or the Staff?

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

There's so many houses and so many other things that are beyond that setback that I hate to put
something -- while it is, you know, of a certain mission, I do think that they have a hardship in a certain way. I do not think that it's going to alter the neighborhood or alter anything else that's in the area, but by definition it is against what we're saying. That was just my only comment.
MR. PEDLEY: It does not alter the essential
class the and it does not create a nuisance.

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

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

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

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

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

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

MS. STONE: If you could find that it wasn't
an unreasonable circumvention based on some physical
characteristics you're talking about, talking like the
topography.

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

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

CHAIRMAN: Make a motion.

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

MR. PEDLEY: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MS. STONE: No.

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

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

CHAIRMAN: All opposed.

(BOARD MEMBER SEAN DYSINGER RESPONDED NAY.)

CHAIRMAN: Five to one. Motion carries.

Next item, please.

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ADMINISTRATIVE APPEALS

ITEM 5

1201 Frederica Street, zoned B-4
Consider request for an Administrative Appeal concerning the proposal to change from one non-conforming use to another non-conforming use with 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

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

ZONING HISTORY

The subject property is currently zoned B-4
General Business. OMPC records indicate there have been no Zoning Map Amendment applications approved for the subject property.

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

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

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

The applicant is aware of the Staff recommendations or the condition that the Staff is going to recommend. He is here to address that
recommendation after I finish with this Staff Report.

SPECIAL CONDITIONS

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

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

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

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

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

MR. SILVERT: State your name, please.
MR. BROWNING: Scott Browning.

(SCOTT BROWNING SWORN BY ATTORNEY.)

MR. BROWNING: I represent the building.

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

CHAIRMAN: Staff have any other comments or questions?

(NO RESPONSE)

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

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

CHAIRMAN: Any comments?

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

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

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

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

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

MR. SILVERT: If there is of any renter?

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

MS. STONE: The intent of the ordinance is to allow non-conforming situations to continue, but not to encourage their survival. So with the new tenant we feel like we should apply those site development requirements that would be applicable to any other
property in this zone even though their parking area
is an affixed area. We're not asking them to increase
that area. We're just asking for landscaping and the
reduction of that access point.

CHAIRMAN: Board members have any other
comments?

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

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

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

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

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

MR. PEDLEY: And the access point also?

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

CHAIRMAN: Any other comments from the board?

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

I have no idea how much this landscaping and
all is going to cost because we have to cut out the
parking lot. I have to put in a curbs and planting
and stuff like that. I have reduced, I have rented
this or leased this at a reduced rate in order to get
it leased because it's just sitting there, property
taxes. It could cause a financial hardship if I have
to do this.

CHAIRMAN: Any other comments?

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

CHAIRMAN: Any other comments from the board
or Staff?

(NO RESPONSE)

CHAIRMAN: Motion one way or the other.

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

Is that correct, Becky?
MR. SILVERT: Again, I want to clarify.

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

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

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

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

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

MS. STONE: Well, Southern Star and Mr. Browning is the appellant. He is the owner. We don't want to start a process of having more months go on if it's rented to another entity at that point. In this case Southern Star is the applicant, but any use on that property should require that landscaping and the reduced access. That's why we added in the Staff Report that if Southern Star does not continue that lease, then the next occupant would be required to put that landscaping in. You can make your motion obviously however you want to make it. I'm just explaining what the Staff Report was based on.
MR. PEDLEY: Let me amend my motion to require any use of that building after a six month period would require the landscaping and the closing of the access point.

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

CHAIRMAN: Ask the motionee.

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

CHAIRMAN: If he so desires.

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

MS. MASON: Longer. Like give him a year.

Southern Star is saying, he says Southern Star says they're going to stay in there for a year.

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

MS. MASON: Until another user comes along.

Like if Southern Star stays there for a year or
longer, then he doesn't have to do anything.

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

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

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

MS. MASON: So the motion is six months.

CHAIRMAN: Is there a second to the motion?

MS. DIXON: Second.

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

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

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

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

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

MR. BROWNING: I am the sole owner of it.

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

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

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

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

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

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

MR. PEDLEY: Yes.

CHAIRMAN: Any other questions or comments?

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

CHAIRMAN: You have heard the applicant say
that he'd like to state that a year. The motion says six months. We've got a second to that. Is there amendment to it? If not --

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

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

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

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

MR. SILVERT: I'm going to restate the motion for everyone. It's Ward's privilege to amend his motion.
So, Ward, I'm going to restate the motion and you tell me whether or not this is the motion you agree on. Okay?

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

MR. PEDLEY: I accept that amendment.

MS. MASON: I second it.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MS. STONE: No.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

You've got one year to do something.
ITEM 6

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

ZONING HISTORY

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

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

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

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

CHAIRMAN: Is the applicant here this evening?

MR. SANDERS: Yes.

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

MR. SANDERS: Don Sanders.
(DON SANDERS SWORN BY ATTORNEY.)

CHAIRMAN: You have the floor, sir.

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

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

CHAIRMAN: Do you have any other comments?

MR. SANDERS: No, I don't.
CHAIRMAN: Board have any questions of the applicant?

(NO RESPONSE).

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

CHAIRMAN: Thank you.

Any other comments from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MS. STONE: No.

CHAIRMAN: Hearing none entertain a motion.

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

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

(NO RESPONSE)

CHAIRMAN: Any other questions or comments from the board?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries

We need one final motion.

MR. DYSINGER: Move to adjourn.

MS. MASON: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

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

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

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