The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, March 4, 2010, 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
Marty Warren
Sean Dysinger
Clay Taylor

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CHAIRMAN:  Let's call the meeting to order.
Want to welcome you all for our meeting. We start our meeting every month with a prayer and the pledge of allegiance. We invite you all to join us. Ruth Ann will have our prayer this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  Again, I want to welcome you to the meeting of the Owensboro Metropolitan Board of Adjustment.

If you have any comments or questions on any item, please come to one of the microphones and state your name so we'll have record on file that you're here and whatever you have to say at that time.
With that we'll start. The first item is consideration of the minutes of February 4th. They're in the office. We don't think there's any problems with it.

MR. NOFFSINGER: No, sir.

CHAIRMAN: With that I'll entertain a motion.

MR. DYSINGER: Move to approve the minutes.

MS. MASON: Second.

CHAIRMAN: A motion has been made and a second. Any other discussion?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

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CONDITIONAL USE PERMIT

ITEM 2

320 Clay Street, zoned B-2 (Neighborhood Character Overlay District)

Consider request for a Conditional Use Permit in order to construct a 1 story 1,200 square foot addition to an existing residence for males in crisis situations housing up to 14 residents and one manager.

Reference: Zoning Ordinance, Article 8, Section 8.2A7

Applicant: New Horizons; Owensboro Christian Church, Inc.

MR. SILVERT: State your name, please.
ZONING HISTORY

The subject property is currently zoned B-2 Central Business and is in the Neighborhood Character Overlay District. OMPC records indicate there have been no Zoning Map Amendments for the subject property.

This property is located in the Downtown Overlay District within the Neighborhood Character District and is regulated under Article 21 of the Zoning Ordinance. The application for the construction of the addition has been reviewed by the Downtown Design Administrator and a Certificate of Appropriateness has been issued.

There was a Conditional Use Permit to operate an institutional type housing center for females in crisis situations approved in 1992 and a Conditional Use Permit to operate a residence for up to 8 males in crisis situations approved in 1994. A minor subdivision plat was approved for the property in 1999 and in February of 2010.

This Conditional Use Permit application is to construct a one-story, 1,200 square foot addition to the existing building and increase the number of
residents from 8 to 14.

The applicant has submitted material with the application that addresses items 1 through 10 as required by the Zoning Ordinance. Based on the review of Article 21 by the Downtown Design Administrator, the site plan meets the requirements for parking and also conforms to the requirements within the Downtown Overlay District.

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

CHAIRMAN: Any comments or questions in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone wishing to speak on this item?

(NO RESPONSE)

CHAIRMAN: Does any board members have any questions on the item?

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

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

MR. TAYLOR: Mr. Chairman, move to approve the Conditional Use Permit based on the findings that it
does meet all the zoning ordinance requirements. It's
generally permitted in the area as proven by
Conditional Use Permits approved in the past for the
area. It has met the Downtown Design Administration
for Certificate of Appropriateness and they have
submitted verification to meet all zoning
requirements.

CHAIRMAN: Is there a second?

MS. MASON: 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?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 3

115 West 7th Street, zoned R-4DT (Neighborhood
Character Overlay District)
Consider request for a Conditional Use Permit in order
to operate a college facility for meeting rooms and
visiting faculty.
Reference: Zoning Ordinance, Article 8,
Section 8.2B14

Ohio Valley Reporting
(270) 683-7383
Applicant: Brescia University.

ZONING HISTORY

The subject property is currently zoned R-4DT Inner City Residential and is in the Neighborhood Character Overlay District. OMPC records indicate there have been no Zoning Map Amendments for the subject property.

This property is located in the Downtown Overlay District within the Neighborhood Character District and is regulated under Article 21 of the Zoning Ordinance. The application for the use of the facility has been reviewed by the Downtown Design Administrator and a Certificate of Appropriateness has been issued.

This Conditional Use Permit application is to use the facility to house overnight guests of the University such as faculty and staff coming for an interview, consultants from out of town and religious leaders visiting the campus. The facility will also have two meeting rooms with seating for no more than 20 people.

LAND USES IN SURROUNDING AREA

All the surrounding properties are also zoned R-4DT Inner City Residential.

The Zoning Ordinance requirements are required

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by Article 21 as reviewed by the Downtown Design
Administrator.

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

CHAIRMAN: Any comments sent in the office?
MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone wishing to speak on this
item?

Have anything you want to add, sir? State
your name, please.

MR. YOUNGER: Larry Younger, representing
Brescia University.

(LARRY YOUNGER SWORN BY ATTORNEY.)

MR. YOUNGER: I really don't have anything
more to say. I think it's self-explanatory. I think
it's fairly simple and straightforward. It's going to
be a very low usage housing unit. We just want to
make sure we're in line with all rules and
regulations. I'll entertain any questions, if you
have any.

CHAIRMAN: Any board members have any comments
or questions?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

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CHAIRMAN: Entertain a motion to dispose of
the item.

MS. MASON: Mr. Chairman, I move for approval
based on the findings that it's a compatible use for
the area. There's no opposition. All the zoning
ordinance requirements have been met and a Certificate
of Appropriateness has been issued by the Downtown
Design Administration.

MR. PEDLEY: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

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VARIANCES

ITEM 4

1708 Todd Court, zoned R-3MF

Consider a request for a Variance in order to reduce
the street yard building setback line from 25 feet
from the property line to 10 feet from the property

Ohio Valley Reporting

(270) 683-7383
Reference: Zoning Ordinance, Article 8, Section 8.5.10(c)

Applicant: CTC Investments, LLC

MS. EVANS: Recently the City of Owensboro acquired the right-of-way along Southtown Boulevard for the roadway widening project. This caused the existing structure on the subject property to encroach into the newly applied setback and permanent utility easement.

In December of 2009, a Minor Subdivision Plat signed by the applicant was approved for the property dedicating the right-of-way. A note on this plat stated that the structure encroaching into the utility easement at 1708 Todd Court to be removed.

The applicant appears to have been compensated for the value of the entire building and its removal as part of this project. Now the applicant is proposing to remove only the portion of the structure within the utility easement leaving the remainder of the structure encroaching into the right-of-way; thus causing them to request this Variance.

If the Variance is denied, a smaller structure could be constructed on the property meeting the appropriate setbacks. The removal of the entire structure should not pose a financial hardship to the applicant.
applicant as it appears they have been compensated for
the value of the entire structure and its removal, and
they signed the plat showing the structure as to be
removed. Staff recommends denial of this Variance
request.

We would like to enter the Staff Report into
the record as Exhibit C. We would also like to enter
a copy of the plat, the minor subdivision plat from
December of 2009 into the record.

CHAIRMAN: Any comments filed in the office
for or against?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board members have any questions of
the applicant?

(NO RESPONSE)

CHAIRMAN: Is the applicant here?

Do you have anything?

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

MR. RINEY: Jim Riney.

(JIM RINEY SWORN BY ATTORNEY.)

MR. RINEY: This is the first that I was aware
that there was opposition to the application. The
statement was that the applicant had been compensated
for the building. It was my understanding from the
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owner, who is not here tonight. I'm representing the owner. That they were compensated but they were not compensated for the entire building. I don't have any appraisal documents or anything with me. I was not prepared to address that.

The applicant indicated he was prepared to remove the part of the structure that was encroaching. That may be the reference that is being made to the final plat. At the time we prepared that document for the City of Owensboro, but the applicant proposes to remove a portion of the structure. The structure appears to be two bedroom units and they're going to remove enough of the structure to convert it to a one bedroom unit. The statement was made a smaller structure could be built there, but it doesn't make sense to raise the structure and then rebuild one if you can remove part of it and then salvage the balance of the building and come back with still a liveable duplex, which this is. Residential unit.

MR. DYSINGER: Mr. Chairman, my only question would be: This variance, is it requesting -- if your client is willing to remove enough of the structure to meet with the setbacks, and I guess I'm confused with what the variance request is for. You don't have to tear the whole building down as long as you get out of
the setback, unless I'm misunderstanding something.

MR. SILVERT: I need to clarify one thing before we continue down this. We need to make sure to the board that any questions that we ask of Mr. Riney are in his professional capacity. Not as an advocate for his client. Mr. Riney is not an attorney. His client is not present. To my knowledge Mr. Riney is not a member of CTC Investments. It would be inappropriate for him, as he knows, to advocate on anything. But if you want to ask him something in his professional capacity as an engineer, that's certainly appropriate. I know Mr. Riney knows that he won't be overstepping those bounds.

MR. RINEY: Just to answer, Mr. Silvert. Yes, I will be here to answer technical issues. What issues I can address or what I have been educated on, I have experience in or examined on that I'm expected to know about, survey, boundary law, things of that nature. I'm not here as an attorney or as an advocate.

I'm just stating to this board the information that I received from the client in terms of the compensation.

Now, your question was if you go ahead and honor the setback. The part of the building you would...
removed will be that portion that would allow him to
configure the building to fit this variance. The 10
foot setback instead of the 25 foot setback because
when the state bought this property their right-of-way
hit across the structure. Where we surveyed it, the
very corner of this structure was actually over the
right-of-way line that they created. So they created
the situation where something had to give. They
wanted the right-of-way. There was an easement
imposed on there.

Now, we've understood that no one needs to
have anything in the easement. Right now with the
building there they can't have anything in the
easement because the corner of the building is there.
So his need is to remove that part of the structure
that would occupy the 10 feet that he's requesting
stay as a setback. He would allow the existing
building to continue to occupy the 15 feet that we're
asking the waiver for, if that makes sense. The
drawing, it's better than my words.

MR. DYSINGER: I understand. The plat that is
on file shows the building gone, correct?

MR. NOFFSINGER: The plat on file that I
signed indicates the structure is to be, the existing
structure is to be removed.

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Now, the description of the taking in a letter dated February 9, 2007, of Brantley Appraisal describes the description of the taking being approximately -- I'm not reading the entire.

"An additional utility easement herein referred to as the permanent easement containing 1,116 square feet will be required, being approximately 10 additional feet inside of the permanent right-of-way. Encompassed in the permanent right-of-way is the duplex that improves the property, which constitutes the acquisition of that structure, leaving only a vacant lot."

That was the appraisal in the notes that you have in the application.

MR. RINEY: Mr. Noffsinger, would you mind repeating that last sentence or whatever it was again?

MR. NOFFSINGER: It says, "Encompassed in the permanent right-of-way is the duplex that improves the property which constitutes the acquisition of that structure, leaving only a vacant lot."

MR. RINEY: Well, at this point, Mr. Chairman, I'll say I wasn't aware of that. As Mr. Silvert says, I'm not here as an advocate. Maybe the prudent thing to do is ask this board to consider to postpone this until CTC can be here with somebody to deal with that.
because this was the first notice we had that there
was an issue.

When we prepared the plat, we were under the
impression that what was going to be removed was that
area that was encroaching.

CHAIRMAN: Well, your assumption and what the
appraisal states are two different things.

MR. RINEY: It's probably not appropriate for
me to comment on that for reasons already stated.

CHAIRMAN: Any other comments from the board?

Staff have any comments?

MR. PEDLEY: I have a question for Jim or Gary
one.

Are you considering this rear yard or front
yard?

Jim, would you step up to the podium, please.

MR. SILVERT: State your name, please.

MR. MISCHEL: Jim Mischel.

(JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I think you asked if that was
the front yard. In this case, you have two streets,
you have two required frontage road.

MR. PEDLEY: What the attorney's findings are
on Deed of Dedication restrictions it says, "No
building shall be located on any lot nearer to the

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front lot line or nearer to the side lot lines than
the minimum building setback lines shown. In any
event, no building shall be located on any lot nearer
than 25 feet to the front lot line or nearer than 10
feet to any side street line. No residence shall be
located on any interior lot nearer than 20 feet to the
rear lot line."

So it is a rear lot line or is it a front lot
line? If it's considered rear, you're talking about
20 feet according to the restrictions.

MR. NOFFSINGER: Excuse me, if I might just
interpret, please.

Mr. Pedley, that issue has been addressed by
the applicant's attorney as well as the OMPC counsel.
They have deemed that it appears that the Deed of
Dedication is not an issue here. So this variance
case should stand on its own merits in terms of what
the required building setback line is and what's
proposed now. It's a very good question and we've
raised those issues; however, we're getting into an
area that legal counsel has already looked into and
advised and I don't think that we should pursue
that.

MR. PEDLEY: Does your plat, the plat, 25 foot
setback?
MR. NOFFSINGER: Yes, sir. The new plat that I signed December 4th of 2009 shows a 25 foot new building setback line from the newly acquired right-of-way on Southtown Boulevard.

MR. PEDLEY: Okay.

MR. WARREN: Is there a particular reason, does anybody know why the applicant is not here?

MR. NOFFSINGER: No, sir. We had contact with the applicant's attorney a couple of days ago, was it, Melissa. They were certainly aware of this deed.

MS. EVANS: We spoke to the applicant's attorney last Wednesday or I think the earlier part of last week and then last Thursday as well before we sent these packets out.

MR. DYSINGER: Melissa, is it your opinion the applicant is aware of the issues the Staff has with this? They've been brought up to speed and they know what the recommendations of the Staff is?

MS. EVANS: No, because Staff Reports for the Board of Adjustment meetings are not public record until the actual meeting. So no one but the Staff and the board members know what the Staff Report state until the meeting.

MR. NOFFSINGER: Have we had any contact with the applicant advising them on this variance request
prior to the submittal of the application?

MS. EVANS: Not to my knowledge.

MR. NOFFSINGER: So the variance just appeared in our office without any preliminary meetings with the Staff?

MS. EVANS: Yes, to my knowledge.

MR. RINEY: If I might just say, by coincidence I saw the applicant's representative at lunch today and he was with somebody. If I understood right, they were going to be out of town tonight. I just told him I was going to be here. He didn't express then any concern or any ideas that there was going to be contesting of it. It would leave me to believe that he didn't know that this was going to be contested.

MR. NOFFSINGER: He didn't feel like it needed to show up at this meeting to present his case on a variance request?

MR. RINEY: No, that's not what I said. I said he was out of town tonight.

MR. NOFFSINGER: Right. Why did he file the application for tonight's meeting if they were not going to show up to present their case? We scheduled the public hearing. They filed the application. Here we are. I guess you're here to do what you can, but...
it kind of puts this board in a position of where do
we go.

MR. RINEY: I don't know that he knew at the
time he had to be gone, Mr. Noffsinger, but I
respectfully request that we ask the board to postpone
it until we get the information out.

MR. DYSINGER: Mr. Chairman, Mr. Riney is in a
difficult position, but I have to say I can't see a
compelling reason to delay this action unless somebody
else on the board can tell me something I'm not
seeing. Everything we need to know appears to be in
the application.

MR. TAYLOR: My only concern with it -- I
agree that it seems like there's a lapse somewhere,
but in reading it it seems that he obviously had some
type of representation and there was some line of
miscommunication either between what he thought was
communicated to the board -- not that I'm saying the
board had miscommunication to him, but his
communication with the board and through his attorney
and perhaps he thought his attorney was going to be
here this evening. You know, you would assume if he
paid for representation through this, his
representation would probably realize, even if it
wasn't he would be paid to be here to represent him.
So he would show up. That's my only concern is if he knew his engineer was coming, perhaps he thought his representation was coming. His representation may not be here for some reason that we don't know. That would be my only concern. It does seem like a pretty big step that he thought the basis would be covered maybe not by himself being here, but at least his representation and obviously his surveyor and land engineer being here. That's my only qualm with denying a variance. I don't know. It's just a pretty big financial step to not have completely all the facts from their side. You know, not represented here.

CHAIRMAN: Staff have any other comments?

MR. DYSINGER: I don't see any indication, with all do respect, that the applicant failed to get something to us. To be honest it seems to me this application was just kind of thrown against the wall and let's see if it sticks. Not only in terms of the information that's provided to us, but in the absence of the applicant here. I don't mean that in perhaps negative connotation. I'm sure folks in this line of work does this kind of thing all the time.

CHAIRMAN: Any comment from the board?

MR. TAYLOR: I don't know what really words to
say other than I would hate to vote on this with him
not being here when I feel that it should be
postponed, which I do, and for a motion to come across
and then me vote against the motion just because I
feel that it should be postponed. You know, I don't
feel that I'm in a position right now where I would
want to deny the variance at this point. I really
think that there is, surely there's money that's been
put forth in order to prepare this application and
have representation. I think somewhere
miscommunication, you know, happened. I really do
think that something like that must have gone on.

MR. PEDLEY: I agree. I don't think I can
properly make a decision on this tonight. I really
believe it should be postponed and get Mr. Clark here.
I need to research this and look at it a little
stronger. Right now I can't make a good decision on
it.

MR. RINEY: In light of some of the other
actions that have come before this board, I would
think it would be a reasonable request to allow
another 30 days. It's not going to create an issue
with this board that I see. It may allow Mr. Clark to
have what he needs here and not rely on my not knowing
or not being able to testify.
MR. WARREN:  Would postponing this action
hinder the widening project in any way, to delay it 30
more days?

MR. NOFFSINGER: No, sir. The action to
acquire the right-of-way has already taken place. The
information provided in the application provided by
Staff shows that the applicant has been compensated.
The applicant is coming back or coming to this board
asking that the newly required setback be waived so he
doesn't have to tear the structure down, which appears
he's been compensated for, for that action. So it's
not going to delay that in any way. It's a matter of
30 day delay is certainly not a question. It's just
that we scheduled this meeting and here we are and
it's unfortunate that the applicant is not here
tonight to present their case. That's why we
scheduled the meeting. To not have communicated with
the Staff before this application was presented to
find out what we might recommend was a mistake.

Before any application is submitted, Mr. Riney
knows this, you should talk with the Staff to find out
what their position may or may not be on the case.
It's not going to delay that project. It's just
unfortunate that we can't move forward tonight. We
scheduled this hearing.

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MR. DYSINGER: I would also say that we have been resonant to delay action in the past because of evidence that is entered at a late date. I think it little behooves us to delay now because of evidence that may or may not exist somewhere.

MR. TAYLOR: On the same token, I've seen us delay this on the same thing. A guy from the car wash didn't show up one night and we delayed it for him. We could say both sides. I understand that we're saying, and he really may just be throwing a claim out there to say, I'm going to just throw this out there to see if it works. That may be the case, but that may not be the case as well. I realize he's been compensated and it appears he's just trying to take money where he got compensated and then go ahead and keep the structure, but I really don't know that for sure. Especially with the light load that we had tonight I just don't see why a postponement would really kill us. It's not like we had eight hours of presentation beforehand and bickering back and forth and we're going to say we're going to delay it another time. We didn't really have anything because Mr. Riney really can't say anything. He's in a very precarious position where he can't say anything. He knows the other side is there. He's obviously very
ill-comfortable at this point.

MR. DYSINGER: He's the real victim in the room.

MR. TAYLOR: Yes, and I feel sorry for him.

MS. MASON: I'm also in agreement to postpone it because I feel like I would prefer to hear from the applicant. I want to say that there was possibly human error in him not showing up or someone for him not showing up, his attorney.

CHAIRMAN: I'll entertain a motion.

MR. PEDLEY: Mr. Chairman, I make a motion we postpone the item to the next meeting, the April meeting.

CHAIRMAN: Is there a second?

MR. TAYLOR: Second.

CHAIRMAN: Motion has been made and a second. 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 25 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 25th day of March, 2010.

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

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