The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, September 2, 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
Rev. Larry Hostetter
Marty Warren
Sean Dysinger
Clay Taylor

* * * * * * * * * * * * * * * * * *

CHAIRMAN: Let's call the meeting to order of the Metropolitan Board of Adjustments. Welcome you to the meeting. We start each meeting with a prayer and pledge of allegiance. We invite you to join us. With that I'll ask Father Larry to have our prayer.

(INVOCAUTION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Again, I want to welcome you to the meeting this evening. If you have any comments on any of the items, please come to one of the podiums. State your name so we'll have record of it. With that we'll start with the first item.

The minutes of the last meeting on August 5th.

Ohio Valley Reporting
(270) 683-7383
They're on file in the office. We found no corrections that need to it. With that we'll entertain a motion to dispose of the item.

MR. DYSINGER: Move to approve.

MS. MASON: Second.

CHAIRMAN: A motion has been made and a second to approve. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

----------------------------------------------

CONDITIONAL USE PERMIT

ITEM 2

10648 Lafayette Street, zoned R-1A (Postponed from the August 5, 2010 meeting)

Consider request for a Conditional Use Permit in order to construct a fellowship hall for use at church functions.

Reference: Zoning Ordinance, Article 8, Section 8.2B4

Applicant: Whitesville Baptist Church

MR. NOFFSINGER: Mr. Chairman, the applicant has requested that you consider postponing this item until the first Thursday in October to allow them additional time to get their site plan and some other issues in order. It will require you to vote to postpone.

MR. WARREN: Motion to postpone the item.

MR. DYSINGER: Second.

Ohio Valley Reporting
(270) 683-7383
CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 3

2412 Old Henderson Road, zoned B-4

Consider request for a Conditional Use Permit for landscaping services in order to store and sell products such as mulch, dirt, rock and straw to residential and commercial customers.

Reference: Zoning Ordinance, Article 8, Section 8.2H8/33a

Applicant: Jared Hodskins and P.J. Murphy, Harold McClery

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

MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is currently zoned B-4 General Business. OMPC records indicate there was a zoning map amendment for the subject property from R-4DT Inner City Residential to B-4 General Business in May 2004. Additionally there was a minor subdivision plat consolidating the subject property with 2420 Old Henderson Road in July of 2007 and a minor subdivision plat dividing 2412 and 2420 Old Henderson Road in September 2007.

The applicant is wishing to build a 35 by 50

Ohio Valley Reporting

(270) 683-7383
foot building for landscaping services and to store
and sell landscaping products in bulk to residential
and commercial customers.

LAND USES IN SURROUNDING AREA

The properties to the north and west are zoned
R-4DT Inner City Residential and P-1 Professional
Service and are single-family residences and a church
parking lot. The property to the south is zoned P-1
Professional Service and is a church. The property to
the east is zoned B-4 General Business and the land is
vacant.

ZONING ORDINANCE REQUIREMENTS

1. Parking - Landscaping Services: No
minimum established by the Zoning Ordinance. The
applicant is providing 1 handicapped parking space as
shown on the site plan submitted.

2. Landscaping - 1 tree every 40' along the
west property line, 6' high solid screening element
along the north, south, east and west property lines.
The storage bins along the west property line provide
the screening element and the applicant indicates
there are existing trees, meeting the minimum
ordinance requirements. The applicant is installing a
6' high privacy fence along the north, south and east
property lines as shown on the site plan submitted.

Ohio Valley Reporting

(270) 683-7383
MS. EVANS: We would like to enter the Staff Report into the record as Exhibit A.

CHAIRMAN: Thank you.

Is there any comments filed with the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is there anyone with information opposed to this item?

MR. KAMUF: Mr. Chairman, I have some questions.

MR. SILVERT: Just state your name for the record, Mr. Kamuf. We recognize your oath as an attorney.

MR. KAMUF: Charles Kamuf. I own the property directly to the west of this. I have no objection to the conditional use, but I would like for the plat that has been filed, I don't know whether you call it a development plan or --

MR. NOFFSINGER: Site plan.

MR. KAMUF: The site plan that was prepared by a non-engineer that it be filed in the record and that there will be a solid complete fence around the west and along the south of the property.

CHAIRMAN: Any other comments?

MR. KAMUF: That's it.

CHAIRMAN: Any board member have any question
of him or Staff?

MR. KAMUF: The reason for that, Mr. Chairman, it's not the ordinary site plan that you see. I want to be sure that they're held to that site plan as far as their development along with that solid fence.

CHAIRMAN: So noted.

Any questions from the board or Staff?

MR. TAYLOR: I'm just confused on what he's asking. I'll just ask the Staff: Is that what they're showing, currently showing on their site plan but not marked what he's used to seeing or is that something in addition to what we have here?

MR. NOFFSINGER: I think what Mr. Kamuf is attempting to do is make sure it's clear in the record and the applicant understands that what's shown on this site plan in terms of screening must be done and that includes the fence along those boundaries, as well as any necessary trees, but it's shown on the site plan.

MR. TAYLOR: It is shown on it. Okay.

MR. KAMUF: Clay, it's a little unusual.

MR. TAYLOR: I get what you're saying. I just wanted to clarify to make sure.

MR. KAMUF: Also along the front, they show a solid fence along the front with a solid gate. I want
Mr. Noffsinger: I will state for the record the site plan meets the minimum requirements for a conditional use permit. It's just not prepared by a registered land surveyor or an engineer, but that is not a requirement.

Mr. Kamuf: Thank you, Mr. Chairman.

Chairman: Thank you.

Is the applicant present and have any comments at this time?

Mr. Hodskins: That was our plan in the first place to get that done.

Chairman: Do you have any other comments?

Mr. Hodskins: No.

Mr. Noffsinger: You just might want to make sure they're on the record that they do understand that.

Chairman: Come forward and state your name for the record, please.

Mr. Silver: Could you state your name, please.

Mr. Hodskins: Jared Hodskins.

(Jared Hodskins sworn by attorney.)

Ohio Valley Reporting

(270) 683-7383
CHAIRMAN: You understand the statements that he made, understand it clearly that this needs to be filed in the office, that you're required to do the job as stated?

MR. HODSKINS: Yes.

CHAIRMAN: Thank you. Do you have anything else you want to add?

MR. HODSKINS: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

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

MS. MASON: Mr. Chairman, I move for approval with the findings, based on the findings that it's compatible with the land use and the zoning in the area and there's no opposition and it needs to meet the zoning ordinance requirements.

CHAIRMAN: Is there a second?

MR. DYSINGER: Second, Mr. Chairman.

CHAIRMAN: A motion has been made and a second. Any other comments from the board or the Staff?
CHAIRMAN: Hearing none you understand all of the requirements?

MR. HODSKINS: Yes.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

----------------------------------------------

VARIANCE

ITEM 4

1212 JR Miller Boulevard, zoned B-4

Consider request for a Variance in order to reduce the required buffer area between a restaurant drive-through window and a Residential Zone from 100 feet to 36 feet.

Reference: Zoning Ordinance, Article 8, Section 8.4/15

Applicant: K&E Limited Partnership-Kyle Duane, Regional Manager

MS. EVANS: The Applicant is requesting to reduce the required buffer between a Restaurant Drive-Through window and a Residential Zone from 100 feet to 36 feet. The subject property was rezoned from I-1 Light Industrial to B-4 General Business in April 2009 and a Variance was granted by the Planning Commission in April 2009 to reduce the roadway buffers on JR Miller Boulevard and East Parrish Avenue from 50 feet to 40 feet to reduce the building setback lines.
on JR Miller Boulevard and East Parrish Avenue from 75 feet to 57 feet and 42 feet respectively and to reduce the rear yard setback from 20 feet to 5 feet. One of the reasons for granting the rear setback variance was to allow the rear building wall to provide screening between the commercial activity and the adjacent residential uses across the alley.

Initially, this variance request was recommended for denial because the drive-through window is in a position where it would direct additional traffic onto the narrow alley behind the building. The applicant has submitted a new site plan addressing the concerns regarding increased traffic on the narrow alley behind the building. The new site plan shows elements that would direct traffic to exit the drive-through lane to the north, keeping traffic to a minimum on the narrow alley, reducing hazard to the neighboring residential properties and reducing potential conflicts with vehicles entering or exiting the alley. The City Engineer has reviewed the revised plan and it is acceptable to him with the provision that no landscaping be planted in the median for sight distance purposes and that the entrance and exits to the drive through be signed an entrance only and exit only.

Ohio Valley Reporting
(270) 683-7383
However, the order board and loud speaker and lights from vehicles at the pick-up window could still cause a nuisance to the public and alter the character of the neighborhood by making the commercial activity visible and audible to the neighboring residential properties.

Granting this variance will not adversely affect the public health, safety or welfare because traffic will be directed to the north out of the drive-through lane limiting the traffic on the alley. It may alter the essential character of the general vicinity because it will increase the visibility of the commercial activity to the adjoining residential neighborhood. It may cause a hazard or a nuisance to the public because the ordering board and loud speaker will increase the audibility and visibility of the commercial activity to the residential neighborhood; and it will not allow an unreasonable circumvention to the requirements of the zoning ordinance.

Staff recommends approval if there is no evidence presented indicating this would alter the essential character of the vicinity or cause a nuisance to adjoining residences with a condition of an approved revised final development plan.

Staff would recommend denial if there is

Ohio Valley Reporting
(270) 683-7383
testimony from adjoining property owners indicating
the drive-through window would cause a nuisance or
further alter the character of the surrounding
neighborhood.

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

CHAIRMAN: Any comments or questions filed
with the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is the applicant here?

MR. KAMUF: Yes, sir, Mr. Chairman.

CHAIRMAN: Is anybody in opposition to this
particular item at this time?

(NO RESPONSE)

MR. KAMUF: We're here to answer any
questions, Mr. Chairman.

CHAIRMAN: Anyone have any questions of the
applicant or their representative?

(NO RESPONSE)

CHAIRMAN: Entertain a motion to dispose of
the item.

MR. TAYLOR: Mr. Chairman, move to grant the
variance based upon the findings there is no apparent
opposition in the room at this time. It won't alter
the essential character of the neighborhood. It is
zoned B-4 and generally permitted in there. It won't cause a nuisance or a hazard to the public and it will not allow an unreasonable circumvention of the requirements of the zoning regulations. I do place the condition to approve a revised final development plan.

MR. WARREN: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: The applicant have anything he wants to add?

MR. KAMUF: No, Mr. Chairman.

CHAIRMAN: Thank you.

Hearing none all in favor of the item raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ADMINISTRATIVE APPEAL

ITEM 5

Ohio Valley Reporting

(270) 683-7383
Consider request for an Administrative Appeal to revise the conditions of a previous Administrative Appeal relative to time restrictions on truck traffic.

Reference: Zoning Ordinance, Article 7, Section 7.34

Applicant: Houston J. Marks, II; Marks Co., Inc.

ZONING HISTORY

The subject property is currently zoned I-1 Light Industrial. OMPC records indicate there have been no Zoning Map Amendment applications approved for the subject property.

There was an Administrative Appeal approved in January 2007 regarding screening of a non-conforming vehicular-use-area having been abandoned for more than 18 months with the condition that there would be no truck traffic between 9:00 p.m. and 7:00 a.m.

Since the approval of the original Administrative Appeal, the uses occupying the building have changed, and there is now a heating and air conditioning company leasing a portion of the building. This use requires cargo vans and service trucks to have access to the property at all times, in case of an emergency situation, to pick up repair parts and replacement equipment.

The applicant is requesting the condition of the original Administrative Appeal to be changed to continue to restrict semi-trucks and delivery trucks.
between the hours of 9:00 p.m. and 7:00 a.m. except in
emergency situations, but to allow cargo vans or
service trucks to pick up repair parts or replacement
equipment (heating and air conditioning units) at any
time.

LAND USES IN SURROUNDING AREA

The properties to the north and east are zoned
I-1 Light Industrial. The property to the south is
zoned R-4DT Inner City Residential and B-4 General
Business. The property to the west is zoned R-4DT
Inner City Residential.

SPECIAL CONDITIONS

Semi-trucks and delivery trucks are not
allowed on site between 9:00 p.m. and 7:00 a.m. except
in case of an emergency, and cargo vans and service
trucks may pick up repair parts or replacement
equipment at any time.

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

CHAIRMAN: Thank you.

Any comments filed in the office?

MR. NOFFSINGER: Yes, sir. I do have an
e-mail that's from Steve Lambert to Melissa Evans,
Staff person.

"I will be out of town on September 2nd and

Ohio Valley Reporting

(270) 683-7383
will not be able to attend the meeting. I own the
duplex at 1129 Allen Street, at the corner of 12th and
Allen. I would not be in favor of any semi-truck
traffic after 9:00 p.m. or before 7:00 a.m. If this
is just for service vans or pickup truck now and then,
I would be okay with it. Thanks."

That is what the application is asking for.

CHAIRMAN: Is anyone else here in opposition?

MR. VANOVER: My name is Guy Vanover.

(GUY VANOVER SWORN BY ATTORNEY.)

MR. VANOVER: My name is Guy Vanover. I live
at 1201 St. Ann. They do start before 7.

I don't have any problems with, you know,
picking up stuff with the cargo trucks or anything.
Just as long as they do what they say they're going to
do and not start before 7 like they do now.

CHAIRMAN: Any questions of the opposition
from the board?

MR. DYSINGER: So you're saying they currently
violate the --

MR. VANOVER: Yes. They start about 6:00 in
the morning and they usually finish about 6:00 at
night.

MR. NOFFSINGER: Excuse me. They can work on
the property at different hours. The restriction was

Ohio Valley Reporting
(270) 683-7383
for truck traffic in terms of the semi-trucks.

Actually at this point it's any truck traffic coming on the lot before 7 a.m.

MR. VANOVER: You may be right on that. I'll check it out, you know. I live next-door to them. I live directly north of their warehouse door where the air conditioner sits.

MR. NOFFSINGER: Please let us know if there is an issue and Staff would be glad to take a look at it. They can work at other hours during the day, but at this point -- what they're asking for is large trucks would still be prohibited 9:00 p.m. to 7 a.m.

MR. VANOVER: I don't mind the small trucks.

MR. NOFFSINGER: But what they would like to have is these smaller trucks to come in in the middle of the night.

MR. VANOVER: Like I said, I don't any problem with that because their warehouse doors are actually on Allen Street and not 12th, other than the loading dock.

CHAIRMAN: Any other comments?

(NO RESPONSE)

CHAIRMAN: Thank you.

Does anybody else have any other comments?

(NO RESPONSE)

Ohio Valley Reporting

(270) 683-7383
CHAIRMAN: The applicant have any comments at this time?

MR. SILVERT: Would you state your name please?

MR. MARKS: Houston Marks.

(HOUSTON MARKS SWORN BY ATTORNEY.)

MR. MARKS: Sir, I will acknowledge to Mr. Vanover that I was down there one day and the doors were open and they were in the building, but once again they were not running truck traffic, but they did have the doors open. I just wanted to state that for the record.

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

MR. DYSINGER: In the application you state that generally this will be for emergency situation.

MR. MARKS: Yes, sir.

MR. DYSINGER: Could you describe what some of those might be just so I can get an idea of how often something like this might take place.

MR. MARKS: A certain number of years ago Unilever, which was then Ragu, was storing empty containers in the building. They had a load on site ready to fill during the night operations and something happened to them. A piece of equipment ran
into them and broke the load. They actually came down after the 9:00 hour and had to get like five loads of trucks to get over there to keep the operation running. That would be an emergency situation unbeknownst to anyone.

The other thing is just to make sure, you know, if a pickup truck shows up at 10:00 at night, open up the building to get a part out, that we are not in violation of what you all are asking us for.

MR. DYSINGER: Thank you, Mr. Chairman.

CHAIRMAN: Any other questions from the board of the applicant?

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Do you have any other comments?

MR. MARKS: No, sir.

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

MR. TAYLOR: Mr. Chairman, move to grant the revision of the Administrative Appeal. A previous Administrative Appeal was granted. This does not alter the general scope of that appeal. It does somewhat change it, but it still protects the health, safety and welfare of the community and it does
protect the essential character of the surrounding area.

CHAIRMAN: Is there a second?

MS. MASON: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

One last item.

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.

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

WITNESS my hand and notary seal on this the 25th day of September, 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

Ohio Valley Reporting
(270) 683-7383