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

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CHAIRMAN: I want to call to order the Owensboro Metropolitan Board of Adjustment. We start our program each month with a prayer and the pledge of allegiance. Ask Madison to give our prayer this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: I want to welcome you all to the meeting this evening. If you have any comments on any item, please come to one of the podiums and state your name so we'll have record of that.

With that the first item on the agenda is the minutes of the October 7th meeting. They're in the

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office. We haven't found any problems.

MR. NOFFSINGER: Correct.

CHAIRMAN: With that I'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. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

CONDITIONAL USE PERMIT

ITEM 2

523, 529, 531, 533 Leitchfield Road, zoned B-5

Consider request for a Conditional Use Permit in order to operate an outdoor storage facility.

Reference: Zoning Ordinance, Article 8, Section 8.2L8

Applicant: J.E.D. Rentals Family Partnership, LTD

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-5 Business Industrial. OMPC records indicate there was a zoning map amendment approved by the OMPC for a
portion of the subject property (523 Leitchfield Road) from R-4DT to B-4 in 1983 and a zoning map amendment for the entire subject property from R-4DT and B-4 to B-5 approved by the OMPC in September 2010.

The zoning map amendment application approved in September 2010 was submitted after the applicant received a violation notice in July of 2010 for the operation of a storage yard in an inappropriate zone.

Accesses is obtain to the subject property using a public alley along the southeast side of 533 Leitchfield Road and there is also a public alley along the backside of the subject property. Both alleys are covered in gravel and appear to be used by the applicant as their private property. In fact, there is a fenced gate stretching across the alley of the backside of the property blocking public access to the alley. Neither alley's boundaries are clearly defined because of the gravel covering. Both alleys need to be formally returned to public use or the applicant should request from the City of Owensboro that those alleys be closed. Only screened areas of an outdoor storage yard can be gravel, and all other areas outside of the fence shall be paved or returned to grass.

A variance application to waive the screening

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requirement accompanies this request. Staff would recommend that appropriate screening from the roadway be considered as a condition of the conditional use permit if granted, to assure the appropriate integration of the expanded outdoor storage use in the neighborhood.

The applicant is proposing to continue to utilize the subject property as outdoor storage.

LAND USES IN SURROUNDING AREA

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

ZONING ORDINANCE REQUIREMENTS

1. Parking - No minimum established by the zoning ordinance.

2. Landscaping - A six foot solid wall or fence around the entire perimeter of the subject property and one tree per 40 linear feet where adjoining residential zoning.

SPECIAL CONDITIONS

1. Approval of a minor subdivision plat consolidating the subject property.

2. All vehicular use areas outside of the fencing shall be paved or returned to grass, if not used as vehicular use area.

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3. Return public alleys to public use or have alleys formally closed.

4. Appropriate screening of outdoor storage lot from adjoining roadway.

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

CHAIRMAN: Thank you.

Do we have any comments in the office for or against?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Is the applicant here and are you ready to present?

MR. DAVIS: I'm the applicant.

CHAIRMAN: Come to the podium and state your name.

MR. SILVERT: State your name, please.

MR. DAVIS: My name is Paul Davis.

(PAUL DAVIS SWORN BY ATTORNEY.)

MR. DAVIS: We was talking about it today. Me and Ernie and Jerry, which is the owners of J.E.D. Rental Properties, that we would like to try with the variance and the conditional use permit to leave the...
front side of the fence, you know, don't make it
blocked in. Like put in the panels. We would like to
try to be able to get a variance to leave it open due
to the fact we've had a lot of equipment
vandalized, stolen through the years. We pay Night
Hawk Security to secure all the areas, which they do
of what we have on Leitchfield Road as well 1518 where
Ernie Davis Mechanical is.

What we want to do is just use this strictly
for parking equipment, dump trucks. We want to kind
of keep it from being vandalized.

Also, we have no problem whatsoever of
asphalting the entrance way where the one alley comes
in between 533 and 535. Which 535 is a warehouse.
It's been there 70, 80 years and we would like to
leave that alley way open, but we're in the process
now of closing the alley way that adjoins the backside
which would be the east side of the property. It's
between 529, 531 and 533 Leitchfield and Mudd's
Warehouse. We're wanting to consolidate all of the
properties and then also closing that alley way, but
we want to leave the one alley way open that comes off
of Leitchfield Road for Mudd's Warehouse to have
access to their property.

All we're doing is just asking if we could

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with the variance just the front piece of the property, not cover it, the railing or the slats put in the fence. Then we're willing to asphalt. Put trees every 40 feet or if we need to put trees every 30 or every 20 feet, you know, just to keep from having to block off that property from view from Night Hawk Security. That's all. We're willing to work with you all on however we can. We would just like to be able to keep that open if possible.

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

MR. TAYLOR: For Staff.

Would that be a separate variance than the one that they have applied for?

MR. NOFFSINGER: No. I believe the next item would be the variance.

MR. TAYLOR: I didn't know if that meant --

MR. NOFFSINGER: However Staff's recommendation on the conditional use permit is it be approved with the four conditions. If the four conditions are approved, then there might need to be a stipulation there that if a variance is approved for any of these that that would be acceptable. Because the conditions that we are recommending specifically speak to this conditional use permit application and
many of them are contrary to what the applicant wants to do.

MR. TAYLOR: Right. That's what I was wondering. The conditions seem to kind of conflict with, it seems like he's somewhat meeting some of the conditions, but what he's saying is conflicting with them as well.

MR. NOFFSINGER: Right. Staff's position would be we would not recommend approval on the conditional use permit unless these conditions are met.

MR. DAVIS: And the only condition we're asking for is just the slats in the fencing. You know, we're willing to do the landscaping in the front. You know, do the asphalting for the conditional use permit and also this variance and stuff, you know, because we know all traffic use areas has to be paved. It's like -- the alley way is ten foot, but we're willing to pave more in going all the way back to the fence line and everything on the properties.

MS. MASON: But you're willing to return the alley way back to public use is what you're saying. Leave one the alley ways open and close the other?

MR. DAVIS: Yes, ma'am. I don't think --
Mr. Weikel is helping us at Bryant. We're not planning on trying to close the one alley way between -- it's right beside 533 and 535, but we just want to close because we own all the property surrounding both alleys. J.E.D. Rental owns every piece of property in that area. We're just wanting to close that one back alley way because it's for nothing. There's no use for that alley way for public use or anything.

MS. MASON: You spoke to the city about this then?

MR. DAVIS: Yes.

MR. PEDLEY: Mr. Davis, are you stating that you're not wanting to screen the Leitchfield Road front area?

MR. DAVIS: Yes, sir, Mr. Pedley. We would like to leave that open due to the fact of Night Hawk Security. Because they'll drive up and down the road there. If we put a solid screen fence in at that area, they would not be able to see what's in the lot. They do that for every piece of property we have. Because we've had a lot of vandalism, you know, things stolen. We notice like one piece of the fence I think is almost on the property line. We're willing to move it back to give -- there was one section that was right on the property line that we move it back a
little bit on the buffer to be able to put trees. We put more trees or whatever to make it look better on that property. That's the only thing that we're asking, is not put the slats in the front piece of the property facing Leitchfield road.

CHAIRMAN: But you're willing to put a chain-link fence up where you can see through if possible?

MR. DAVIS: Yes, sir. Continuous 6 foot chain-link fence all the way around the property and then just not put the slats in the front, but we'll put the trees, whatever we need to in the front. We'll asphalt, you know, the entrance way for the conditional use permit and also for the variance to help with that. We would like to have six months, you know, if possible because the asphalt plant will probably be closing here in the next month or so. I don't know if we'll be able to get on the schedule enough to be able to do it this year.

You all state paving. Can we pour concrete instead of paving? Is there a reason why we wouldn't be able to do that? We already have some concrete poured.

MR. NOFFSINGER: Concrete is fine. The trees are a requirement. The trees you're going to have to
meet that buffer. You're going to have to back that up. The ordinance requirement for the screening is to screen the south storage yard from the public's view. From Staff's perspective that is very critical in terms of these new developing areas and existing developing areas that these storage yards be screened from public view. If this is not one that should be screened from public view, and there are reasons for it, we should be looking towards an ordinance amendment because it wouldn't be necessary anywhere. This is why the ordinance is written, to screen outdoor storage yards such as this.

MR. DYSINGER: Mr. Chair, I have a question for the applicant. A couple of questions actually. First on had the screening issue, you testified that you've had vandalism and so forth in the area currently.

MR. DAVIS: Yes, sir.

MR. DYSINGER: Is it screened now?

MR. DAVIS: No, sir. We haven't had the problems since we've hired Night Hawk Security. They've been doing it for us probably I'd say three years and it's really helped with somebody watching the property.

MR. DYSINGER: Your testimony is that because
they can see in there that there hasn't been a problem since that time?

MR. DAVIS: Yes, sir. Which J.E.D. is part of Ernie Davis Mechanical. Every lot that Ernie Davis Mechanical is in is owned by J.E.D. Rentals.

MR. DYSINGER: On the alley issue, this is probably more for legal counsel than anyone else.

This is public use land and it should be returned to that or dealt with that in a formal waiver regardless of what have we do on this -- well, not regardless. If we approve with the condition that that be returned to public use, that doesn't prejudice any action that they would take with the City or otherwise to do one thing or the other; is that correct? I just want to make sure it's taken care of as far as tonight is concerned, but I also don't want to make their process more complicated to actually return it to public use or take it on theirself.

MR. NOFFSINGER: No. This says, either return it to public use or formally close it. One or the other. They need to address it.

MR. DAVIS: We understand what the conditions are, as far as the screened in front part of the fence from the public eye, but that's why we're going through with the variance. Trying to see if we can
keep from that to help protect our equipment and stuff like that. Because we have a big investment in equipment and trailers and stuff. What we're going to do is cleanup the lower lot. That way help open stuff up more. Make it a lot more presentable than what was there prior.

MR. DYSINGER: Mr. Chair, I do have one other item which may again be for counsel.

We do have two items ahead of us. We're kind of taking testimony on both. For the purposes of moving through the agenda, if we were to approve the conditional use permit which requires the screening, that would not affect us dealing with the variance that comes right after it, to do whatever we would decide to do at that point; is that correct?

MR. SILVERT: Variance would be on that requirement.

MR. DYSINGER: Hypothetically we could enforcement requirement just to turn right around and review that requirement of the next without putting us in any position of having it second-guessed later on?

MR. NOFFSINGER: Yes. That's why I stated we need to make it clear that if it's approved as written here, that they have the right to seek the variance on the next item.
MR. DYSINGER: Just wanted to make sure of
that for the record.

MR. TAYLOR: One question.

Would it tie the applicant's hands any more if
this conditional use is approved and then if the
variance is then denied? Would it put them in a
situation worse than they are right now?

MR. NOFFSINGER: No. The conditions that we
have right here are conditions of the zoning
ordinance.

MR. TAYLOR: Correct. I understand that. Say
that we did approve this conditional use permit and
then the board voted and said that they really need to
have that screening because that's what it says, what
situation will they be in then?

MR. DYSINGER: In compliance.

MR. NOFFSINGER: Right. That's what I'm
asking. It seems to me that if board was leaning in a
direction to deny a variance, would it thus be better
on the applicant to deny the conditional use permit as
well?

MR. SILVERT: Then they would not be in
compliance.

MR. TAYLOR: So either way they would not be
in compliance.
CHAIRMAN: Any other?

MR. NOFFSINGER: Excuse me.

The use, this is not an industrial zone. It's B-5 commercial and industrial zone. In that commercial industrial zone, in order to operate an outdoor storage yard, you have to have a conditional use permit. If it were an industrial zone, they would not need this conditional use permit, but you still have the same conditions.

MR. TAYLOR: Right.

MR. DAVIS: So, in other words, if we went to change it to industrial, we wouldn't have needed --

MR. NOFFSINGER: You wouldn't need a conditional use permit, but you still have the same site development requirements.

CHAIRMAN: Any other questions from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir. No, sir.

CHAIRMAN: You have any other questions you want to ask?

MR. DAVIS: No, sir.

CHAIRMAN: What's the board's pleasure?

MR. DYSINGER: Mr. Chairman, given that this usage has been ongoing in a noncompliance matter and

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the purpose of this matter is just to bring them into
compliance, I move that we grant the conditional use
permit with the following conditions:

1. Approval of a minor subdivision plat
consolidating the subject property;

2. All vehicular use areas outside of the
fencing shall be paved or returned to grass, if not
used as a vehicular use area;

3. Return public alleys to public use or have
alleys formally closed;

4. Appropriate screening of outdoor storage
lot from adjoining roadway;

5. That there be a review in seven months to
ensure compliance.

CHAIRMAN: Is there a second to the motion?

MR. TAYLOR: Second.

CHAIRMAN: A motion has been made and a
second.

Staff, do you have any other comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board have any other comments or
questions?

MS. MASON: Do we have to add to that if the
variance is approved it will be acceptable? What Gary
had said earlier, would that have to be added into the
motion or not?

MR. DYSINGER: Mr. Chair, I would say that a review could take many forms, and if it's not necessary in seven months, it's reviewed and we not deal with it.

CHAIRMAN: Mr. Attorney, are we clear?

MR. SILVERT: We are clear.

MR. TAYLOR: I still second.

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

(NO RESPONSE)

CHAIRMAN: Do you have any questions at this time?

MR. DAVIS: No, sir.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

VARIANCE

ITEM 3

523, 529, 531, 533 Leitchfield Road, zoned B-5

Consider request for a Variance in order to install six foot high chain link fence instead of the required six foot high continuous solid wall or fence for an outdoor storage yard.

Reference: Zoning Ordinance, Article 8, 17, Section 8.5.17(l), 17.311(5a), 17.3114

Applicant: J.E.D. Rentals Family Partnership, LTD

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MS. EVANS: The Applicant is requesting to install a six foot high chain-link fence instead of the required six foot high continuous solid wall or fence as required by the zoning ordinance. The applicant states that he wishes to construct a six foot chain-link fence that can be seen through with three runs of barbwire on top for security purposes.

OMPC records indicate there was a zoning map amendment to bring this property into compliance with a B-5 zone and then you just granted the conditional use permit application.

The applicant currently owns the properties to the north, south and east of the subject property using them all in conjunction with the subject property as warehouses and outdoor storage yards. The properties to the north, south and east are zoned light industrial and are currently nonconforming with regards to screening and landscaping.

We have pictures that are on your screen that show the front of this outdoor storage yard along Leitchfield Road coming from the north going to the south and then coming from the south going to the north and then the last picture shows the residential properties across the street.

If the applicant would be willing to install a...
6 foot high solid wall or fence along Leitchfield Road from the north end of the adjoining property to the north of the subject property, to the south end of 533 Leitchfield Road and install one tree every 40 linear feet, the Staff would recommend waiving the requirement of the 6 foot high solid wall or fence along the other boundaries of the subject property.

The applicant's entire property is bounded to the north and south by buildings that provide sufficient screening into the west by the railroad tracks and a tree line that provides sufficient screening.

If the applicant is not willing to provide screening and landscaping along the entire length of their property along Leitchfield Road, the Staff would recommend the variance be denied and the applicant be required to install a 6 foot high solid wall or fence around the entire perimeter of the subject property. Screening along the entire frontage would provide appropriate screening of the existing nonconforming storage yard and the proposed continuation of that storage yard from the street right-of-way.

Granting the variance along the street frontage will cause a nuisance to the public because it will be creating an expansion of unscreened,
unsightly storage across from residential properties. It will allow an unreasonable circumvention of the requirements of the zoning regulations because it will allow the applicant to expand an existing nonconformity without due consideration of the ordinance requirements and their intent.

Staff would recommend denial unless the applicant agrees to screen and landscape the subject property and adjoining outdoor storage yard along Leitchfield Road.

Staff would recommend approval of the request along the boundaries not abutting the roadway if the applicant agrees to screen and landscape along the entire length of their property containing outdoor storage along Leitchfield Road with the conditions:

1. Approval of a minor subdivision plat consolidating the subject property.
2. All vehicular use areas outside of the fencing shall be paved or returned to grass, if not used as vehicular use area.
3. Return public alleys to public use or have alleys formally closed.

We would like to enter the Staff Report into the record as Exhibit B, and we would like to enter the pictures that I have printed off for the court.

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reporter as Exhibit C.

CHAIRMAN: Does the applicant have any other comments you would like to make on this item?

MR. DAVIS: Not other than what I did just a moment ago.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

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

MR. TAYLOR: I do have one question just of the applicant. Just something real --

CHAIRMAN: Come to the podium, please.

MR. TAYLOR: It's more just of recognizing what you just said.

What she's saying is kind of what we're tasked to do and what it seems like that we are definitely supposed to do here, is follow the ordinance as it's written. In doing that, they would recommend what you're requesting of the screening. While they're saying approval on part of it, they're still saying to deny you that right and that you still need to screen the road there. I just wanted to make sure that that
was clear and that when we're saying that, that's kind
of clear from that recommendation for that report.

    MR. DAVIS: Yes, sir. I understand that.
    That's what I was wanting the board to understand too.
A lot of you are business owners or been involved in
businesses. We're asking for the variance of the
fencing to not have to screen the front of it due to
the fact of vandalism in that area. We've been in
that area now I guess I was two years old. So 20
years ago. We've had quite a bit of vandalism through
the years and we've had to go and pay someone now to
keep it from things being vandalized, stolen. That's
what we're asking, for the variance of not putting the
slats in the fencing. We are willing to do the
landscaping. If you want us to put trees every 20
feet, you know, that would kind of help build a little
more buffer through there. Also, we'd like to
asphalt. We have no problem asphalt or concrete the
entrance way coming in off Leitchfield Road. That way
it helps Mudd's Furniture. It helps another business
in Owensboro operate. Then also we're willing to --
the fencing.

    The alley way, we want to keep that one alley
way open, but we want to close, which we're in the
process of now consolidating all the pieces of

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property which is 523, 29, 30, 31 and 33 together.

We're wanting to consolidate and take that alley way and put with those pieces of property. Considering we own all the property in the surrounding except for across the west side of Leitchfield Road.

MR. TAYLOR: Whatever way the vote turns out, if it is denied, it's not for being unsympathetic. It's that we're tasked to kind of carry out the letter of that ordinance and what the vision of it was in case something is against it. It appears to me in that case that the ordinance is kind of strict on it. Not that our hands are tied, but we wouldn't have that ability, but the ordinance is kind of clear on that. I don't want any ruling to look unsympathetic. We try to do the best we can, but it's almost as if our hands would be tied on that. I'd be ready to make a motion.

MR. DAVIS: That is the reason why we were asking for the variance, you know, from having to put the slats in the fencing. That's why we come forward and is asking for the variance. We're willing to do, like I said, everything else on there. We would just like to be able to that property adjoining Leitchfield Road not to put slats.

MR. DYSINGER: And staff is saying that's the one part that they absolutely must have.
MR. DAVIS: That's the reason why we're doing the variance and coming in front of. To see if that's something we can do due to the fact of vandalism, steeling, all of that.

MR. DYSINGER: As Mr. Taylor points out, it is a difficult situation.

MR. DAVIS: I understand that. I understand that.

CHAIRMAN: I'll entertain a motion at this time, please.

MR. PEDLEY: Mr. Chairman, I'm going to make a motion to grant the variance, to waive the requirements for a 6 foot high solid wall or fence along the north, east and south boundaries of the applicant's property with appropriate screening and landscaping along Leitchfield Road of the subject property.

Findings for granting this variance will not adversely affect the public health, safety or welfare because installing the screening will greatly improve the appearance of the area. It will not alter the essential character of the general vicinity because installing the screening will improve the character of the area. Will not cause a hazard or nuisance to the public. Screening will improve the unsightly
conditions. It will not allow an unreasonable circumvention of the zoning ordinance requirements because it is improving the unsightly conditions of the area.

With the Conditions:

1. Approval of minor subdivision plat consolidating the subject property;

2. All vehicular use areas outside of the fencing shall be paved or returned to grass, if not used as vehicular use area;

3. Return public alleys to public use or have alleys formally closed;

4. Install appropriate screening and one tree every 40 feet along Leitchfield Road off the subject property;

5. Install slats in the chain-link fence for screening on the nonconforming property to the north of the subject property. One 1 tree every 40 feet may be waived on this section because the fence is on the property line and the trees would have to be in the public right-of-way.

MR. SILVERT: Mr. Pedley, for clarification. At the beginning of your motion you stated that the solid wall or fence would not have to be erected. Is it the fence that you want to vary or the fact that
it's solid?

MR. NOFFSINGER: Mr. Pedley, are you saying that the 6 foot chain-link fence is appropriate; however, it's to contain slats along the frontage of the subject property as well as the nonconforming property adjoining that along Leitchfield Road?

MR. PEDLEY: That's correct.

MR. NOFFSINGER: So it's to have a chain-link fence with slats along the entire frontage of Leitchfield Road for the existing storage area as well as the new storage area?

MR. PEDLEY: That's correct.

MR. NOFFSINGER: And you're waiving the requirements for the fence on the other boundaries?

MR. PEDLEY: On the nonconforming north of the subject property. We're waiving the tree requirements.

MR. NOFFSINGER: Yes.

MR. DYSINGER: Second.

CHAIRMAN: A motion has been made and a second.

MR. DAVIS: Let me understand what he just said.

The slats on the entire frontage of Leitchfield?
MR. PEDLEY: Yes. Slats on the subject property which of these lots and the chain-link fence you have, slats in it, and a tree, 1 tree every 40 feet. Then on the property north of that, the nonconforming part of your property, you put slats in the existing chain-link fence, but no trees are required.

MR. DAVIS: In other words, you're saying no trees, but put the slats in the fence that's been there on the north side of the property?

MR. PEDLEY: Yes. That's to screen the entire Leitchfield Road.

MR. DAVIS: You're asking for us to screen the entire Leitchfield Road property that's facing it waiving the trees?

MR. PEDLEY: Yes.

MR. DAVIS: Where did the north side property become involved in this piece of property that we're doing now? Because that's been an existing piece of property that's been chain-linked since the late '50s. What we're doing now is 523, 531, 529 and 533. I don't want to involve the other pieces of property on it. Because you're saying now that you don't want me to slit the entire piece of property all the way down. Instead of just what we're going in and have it
rezoned and just pass the conditional use permit for?

MR. PEDLEY: Yes, that's correct. That's a trade off because we're not requiring you to install a 6 foot high solid fence around the entire perimeter of the property and install trees, 1 tree every 40 feet around the entire perimeter. This on the Leitchfield Road side, we feel it needs to be screened because of the equipment and everything that you have in there is very unsightly. Screen the entire length. It just gives Leitchfield Road --

MR. DAVIS: You're saying equipment is unsightly? Is that what you said?

MR. PEDLEY: Yes.

MR. DAVIS: In other words, you're asking to do the entire Leitchfield Road in spite of the trees? You know, because I don't want to do the entire Leitchfield Road because we don't want to involve the north piece of property. We're only wanting to involve the piece of property that we just had rezoned.

MR. TAYLOR: Since he wasn't asking for -- I mean is it legal for something that's already been grandfathered in for us to place a restriction upon it?

MR. SILVERT: Only if it's negotiated as such.
CHAIRMAN: That's what he's trying to do.

MR. DAVIS: That's defeating the purpose of what we want to do.

MR. TAYLOR: That's kind of why I was asking on the conditional use, if it would be opening them up to anything else.

MR. NOFFSINGER: I don't think it is. What the requirements that you have right now on the subject property to do would be screening the subject property from public view. That would be along Leitchfield Road, plus as you drive up and down Leitchfield Road you can see in on the two sides of the property. If you put screening there, you wouldn't be able to see it.

So what Mr. Pedley is saying, that as a trade off to having to screen the other three sides of the subject property, that that screening be moved to the Leitchfield Road frontage and you not have to screen the interior part of that lot. That's the trade off in the variance that he's speaking of. So that if you screen the entire frontage, you don't need the screening on the back portion and you don't need it on the two sides.

MR. DAVIS: I thought the variance of what we're doing was just the said property that we've been
involved with of doing those. Just putting slats in it. Not the existing piece of property that has already been grandfathered in.

MR. NOFFSINGER: You are correct. And the Staff's recommendation is that that variance be denied.

Now Mr. Pedley is making a recommendation for approval and saying if you're willing to screen the frontage of the nonconforming area as a trade off, we will approve the variance. If you're not willing to do that, then there's not a motion for that, but that's the motion he has on the table.

MR. DAVIS: But then that defeats what I've just been asking for, you know, on that said property to the north side. That defeats the purpose of what I'm asking for as far as the variance.

CHAIRMAN: We understand what you're asking and we understand what his motion is. You have the opportunity if they pass for or if they pass it, then you can go along with his wishes or then you cannot have anything unless we get another motion.

MR. NOFFSINGER: Compliance with the ordinance or compliance with the variance. That is the choice. It hasn't subjected him on anything on that adjoining property unless he's --
MR. TAYLOR: Unless it's approved.

MR. NOFFSINGER: -- unless it's approved and
he's willing to do that. But he still has the option
of complying with the zoning ordinance requirement
even if the variance is approved.

MR. DYSINGER: In other words, there would be
no undue burden. It's not necessary that he comply
with our decision here. He has the choice to comply
with the law as it stands. The Burden does not
change. He's not under any additional burden.
There's just an opportunity to do it in a way that I
think, if I may say, would be a little bit more
fitting with the situation that he's in while still in
keeping with our responsibility to uphold.

CHAIRMAN: You understand now?

MR. DAVIS: Which you're saying just the said
property that we're dealing with now?

MR. DYSINGER: If this motion passes, then you
can comply with the motion and screen the areas that
Mr. Pedley has said and you will be at that point in
compliance. If you chose not to do that, then the
standing burden of the ordinance as it stands still
applies to you. You'll have to screen the entire
perimeter of the existing property.

Now, you are correct in that the property that
you discussed, the grandfathered property, however you want to refer to it, is not necessarily wrapped up in this situation in except as much as there is a compromise here in the form of Mr. Pedley's motion. So that we remain true to the ordinance, the spirit of the ordinance, while taking some of the burden off of you for screening property that doesn't face anyone, which we all can see is somewhat burdensome in your case. If you chose not to do that, you're totally within your rights to do that. However, the burden of the ordinance is still on you and you must comply with that.

MR. DAVIS: If I did anything, I would rather, you know, put the screening or the slats in the said property that we're dealing with than do the entire length of Leitchfield Road and put the trees every 40 feet. I would rather do that property, you know, if that takes to get it passed where I can use it for a storage lot. Because now the property was old homes that were tore down. I took care of them and I got rid of -- there was drug activity going on in there and I had the police there quite a bit. We tore the old house down and made it a storage area because we said, you know, we own all the property around. I would be more willing to put slats in just the...
sections on Leitchfield Road the property that we're
dealing with than have to do the other piece of
property also. Because I want it left alone. It's
all grandfathered in. I want that piece of property
left alone because we bought as is. It's still got
the smokestack from the old warehouse or whatever that
burned in the early '70s, I believe, or whatever. We
want that piece of property left alone. If I'm going
to do anything, I'll do it to the piece of property
that we're dealing with, 523.

I understand, sir, and you'd be within your
rights to do either.

CHAIRMAN: We all understand then and we've
got his motion on the floor. We did get a second.

MR. DYSINGER: Yes. I second.

CHAIRMAN: A motion has been made and a
second. Any other comments at this time?

MR. NOFFSINGER: No, sir.

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

(BOARD MEMBERS MARTY WARREN, SEAN DYSINGER,
WARD PEDLEY, RUTH ANN MASON AND FATHER HOSTETTER ALL
RESPONDED AYE.)

CHAIRMAN: Opposed.

(BOARD MEMBER CLAY TAYLOR RESPONDED NAY.)

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CHAIRMAN: Motion is passed.

ITEM 4

507 East Parrish Avenue, zoned B-4
Consider request for a Variance in order to reduce the roadway buffer along East Parrish Avenue from 50 feet from the centerline of the road to 32 feet from the centerline of the road.
Reference: Zoning Ordinance, Article 13, Section 13.6221
Applicant: Clarth Properties, LLC

MR. NOFFSINGER: Before we move forward on this, it's my understanding that the applicant wishes to amend the application to read that this would be a reduction in the roadway buffer from 50 feet from the center line of the road to 36 feet from the center line of the road.

Is that correct?

You need to get the applicant on the record stating that that is correct.

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

MR. CLARK: Aaron Clark.

(AARON CLARK SWORN BY ATTORNEY.)

MR. NOFFSINGER: So that will be 36 feet, correct?

MR. CLARK: Correct.

MR. NOFFSINGER: Thank you.

CHAIRMAN: Staff, state your comments,
MS. EVANS: The applicant is requesting to reduce the roadway buffer along East Parrish Avenue from 50 feet from the center line of the road to 36 feet from the center line of the road to accommodate the parking layout as shown on the site plan submitted with the application.

The applicant states that the grade of the land falls off sharply from the front corner of the building to the northwest of the corner of the property. This is causing a steep grade for the planned parking lot with the entrance located off of Sweeney Street. They also state the grading is causing difficulties meeting the ADA standards for a handicapped parking spot. The granting of the Variance would allow the applicant to place the handicapped parking spot further south and require less grading work to meet the ADA standards.

The applicant is required to provide 17 parking spaces on the site, but they are proposing to provide 23. They have room on the site to provide the required number of spaces without the reduction of the roadway buffer. Upon inspection of the property it was found that the applicant could locate the handicapped parking spot somewhere else on the property.
property and still meet the ADA requirements. It was also found that the applicant could locate the entrance to the parking lot off of the alley to the rear of the property instead of off Sweeney Street and reduce the negative effect of the grading issues and provide more parking spots.

Granting this variance will alter the essential character of the general vicinity by allowing this parking lot to be closer to East Parrish Avenue than other properties that may develop in the area.

It will also allow an unreasonable circumvention of the requirements of the zoning ordinance because there is adequate room on the property to meet the parking requirements.

There have been no other roadway buffers granted in this area for granting this variance. Staff would recommend denial.

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

CHAIRMAN: Any comments filed in the office?
MR. NOFFSINGER: No, sir.
CHAIRMAN: Anyone wishing to speak in opposition of this item?
(NO RESPONSE)

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CHAIRMAN: The applicant ready to come forward and state your reasons?

MR. CLARK: Yes, sir.

Of course, safety is our number one concern. It is my understanding, from the people that we have hired, due to the sloping this will be the best positioning for the handicapped parking place and proximity to the front door of the practice.

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

MR. DYSINGER: What's the nature of the business, Mr. Chairman?

MR. CLARK: Chiropractic practice.

CHAIRMAN: Staff have any comments at this time?

MR. NOFFSINGER: No, sir.

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

MR. TAYLOR: I have a question. It's kind of hard if somebody recommended to him for this layout and for it not to be and for him not to possibly realize the gravity of what if this was to be denied and if it would have brought that individual with him, that perhaps maybe if it was extended to another month for him to bring that
consultant with him onto why this was to be or even to
explore the options that the Staff had.

Oh, that person is here. I didn't want to
just go vote without anybody talking. It seemed like
we were getting somewhere kind of quick.

MR. SILVERT: State your name, please.

MR. BRUCE: Mike Bruce.

(MIKE BRUCE SWORN BY ATTORNEY.)

MR. BRUCE: Requesting this variance we can
locate the handicap parking on another lot on the back
site side of the building off of an alley, but due to
the nature of his business that's not adequate service
for a handicap individual to get around to the front
side of the building to have access. The parking lot
on the west side of the building does slope off
steeply and there is high ground and flat area in the
front of the building area next to Parrish Avenue.
The existing parking for this building is the full
width of the building off of Parrish Avenue. That's
being closed and grassed, but that would have been or
that is currently is in the buffer zone.

In the neighboring blocks, there are
intrusions into this buffer zone that haven't been
complied with yet. We figured that until the
remainder of the properties along Parrish Avenue

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comply with the buffer zone or until the land was
needed at that point that we could get by with this
and be willing to change those handicap parking spaces
to the other lot as such time that the buffer, full
buffer zone was needed.

CHAIRMAN: The applicant have any questions of
the gentleman?

MS. EVANS: I would like to make one comment.
The Staff's recommendation is based on the
rest of this area developing. As he stated, currently
there are places where the parking is in this buffer
zone, but all of those are nonconforming situations.
We would like to protect the area for future
development in keeping that buffer where it is for
future development purposes.

CHAIRMAN: Any board members have any
questions of either one?

MR. CLARK: I just want to make sure that it
is clear that our front door entrance is going to be
facing Sweeney Street also. In the event that there
is development and that road is widen, of course, we
would be willing to move that parking place at that
time.

MR. NOFFSINGER: That would also include
installation of your redesign on your parking area to

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remove some pavement as well as relocate your
landscape materials. Are you willing to take full
responsibility and cost of relocating the landscape
materials, removing that asphalt and removing that
handicap spot from that buffer area should this land
be necessary for the widening of Parrish Avenue?

MR. CLARK: Yes, sir.

MR. NOFFSINGER: Staff is comfortable with
that.

We welcome your business. Let me tell you
this would be great for this area. We're also
concerned about future improvements on that roadway
and we take those very serious. I think what you're
going to do there is just going to be outstanding. We
want to work with you. I think with what the
applicant just stated here on the record I think that
it should be granted on temporary basis with the
applicant accepting the full responsibility of
relocation, as he stated, in the future when that land
becomes necessary. Thank you.

CHAIRMAN: Board have any other questions of
the applicant?

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

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CHAIRMAN: Entertain a motion.

MR. TAYLOR: Mr. Chairman, move to approve the variance based on the fact that it will not adversely affect the public health. In fact, it's a welcome addition to that area that's been needing it for a while. The reason why it's going to stick out is because nothing has been developed there for a while so it's going to look good.

In doing that, the special condition that I place upon this is that if there is an announced widening of Parrish Avenue that would protrude into that buffer zone, that the applicant will at that point move their parking that proceeds into that buffer zone out of there and adhere to all landscaping and requirements of the zoning ordinance after removing that parking spot.

MR. NOFFSINGER: At their expense.

MR. TAYLOR: At their expense.

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?

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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ADMINISTRATIVE APPEAL

ITEM 5

1925 Triplett 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 and landscaping.

Reference: Zoning Ordinance, Article 4, 7, Section 4.53, 7.34

Applicant: Billy D. Clark, Sr.; Chris Wilson & Mary Wilson, Seth Stiff & Joe Howell

ZONING HISTORY

The subject property is currently zoned B-4 General Business. OMPC records indicate there have been no zoning map amendments approved for the subject property.

The applicant is requesting to change from one nonconforming use of a pet shop to another nonconforming use as a by appointment only catering business. The applicant will be providing some parking as shown on the site plan submitted.

LAND USES IN SURROUNDING AREA

The properties to the north, south and west

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are zoned B-4 General Business. The property to the east is zoned R-4DT Inner City Residential.

A motion to approve would allow the operation of a by appointment only catering business using the existing parking as is.

A motion to deny would require the applicant to install parking and landscaping as required by the zoning ordinance.

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

CHAIRMAN: Is anyone here wishing to speak on the item?

Come forward and state your name, please, sir.

MR. SILVERT: State your name.

MR. FELDPAUSCH: My name is Charlie Feldpausch. I'm here on Billy Clark's behalf. He was ill.

(MIKE FELDPAUSCH SWORN BY ATTORNEY.)

MR. FELDPAUSCH: We have a catering business, we're wanting to relocate to a different area. We do keep it to a total by appointment only type of business. We do not have a retail business, which is what has been in the property very much so in the past. My speculation is that our traffic would be a lot less than what was there previously, as well as
improving the area and the look of the property from it being vacant for the last two or three years.

MR. DYSONGER: Mr. Chair, what was the nature of the previous nonconforming business?

MR. NOFFSINGER: It was a pet shop. Tropical Breeze Pet Shop used to be there, and as a child I remember frequenting that business very much.

Again, we welcome your business here. It sounds like a good use of this particular piece of property and wish the applicants much success.

MR. FELDPAUSCH: Thank you.

CHAIRMAN: Anybody have any questions of the applicant or representative of him?

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Entertain a motion to dispose of the item, please.

MR. DYSONGER: Mr. Chairman, move that we find in favor of the applicant and grant the continuing nonconforming use given the findings the change will not increase nonconforming and scope or area of operation and it will not have an adverse affect on existing or future development of subject property or adjoining area.
MR. WARREN: Second.

CHAIRMAN: A motion has been made and a second.

Any other questions by the board or does the Staff have any other questions?

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.

NEW BUSINESS

ITEM 6

609 Wing Avenue, zoned R-4DT

Review of Approved Conditional Use Permit

Applicant: Boulware - The Mission on the Hill, Inc.

MR. NOFFSINGER: Jim Mischel will provide the review.

MR. SILVERT: State your name for the record, please.

MR. MISCHEL: Jim Mischel.

(JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: A conditional use permit was approved on November 6, 2008 with the following conditions. There were four conditions.

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1. Review of the operation be conducted at
   six month intervals after occupancy for a period of
   two years.

2. The Benita Avenue access point must be
gated, locked, contain a knock box, and only
accessible by emergency vehicles.

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

4. The number of residents will not exceed
90.

I conducted an inspection on October 4, 2010
with Alan Engleheart, president of the Boulware
Mission and noted the following conditions at that
time:

1. The Benita Avenue access was gated. It
   was locked and it had a knox box there.

2. All residents at this time reside in the
   chapel. There was a total of 31 beds. There were 17
   beds on one side of the chapel and 14 on the other
   side.

3. During the day approximately 30 people are
   transported from the Boulware Mission on Hall Street
   for counseling and they are gone by 5 p.m. at night.

4. They have counseling at night for people
   in the community that have day jobs. That number

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usually averages about 20 people at night.
Mr. Engleheart did inform me and they have been into our office for discussions. In the near future they plan to remodel some more of that campus to increase the number of beds from 31 to 74. They were also remodeling part of the office area. They still be in compliance. They plan on taking up to 74 and they can have up to 90. That was the conditional use permit. They are here if you need to ask questions.

CHAIRMAN: Board members have any questions at this time?
(NO RESPONSE)
CHAIRMAN: Anyone in the audience have any questions or comments?
(NO RESPONSE)
CHAIRMAN: Hearing none do I need to take any action on this?
MR. NOFFSINGER: No, sir.
CHAIRMAN: Entertain one more motion.
MR. WARREN: Motion to adjourn.
MS. MASON: Second.
CHAIRMAN: A motion has been made and a second. 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 48 typewritten pages; and that no signature was requested to the foregoing transcript.

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