

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 FEBRUARY 3, 2011

3 The Owensboro Metropolitan Board of Adjustment  
4 met in regular session at 5:30 p.m. on Thursday,  
5 February 3, 2011, at City Hall, Commission Chambers,  
6 Owensboro, Kentucky, and the proceedings were as  
7 follows:

8 MEMBERS PRESENT: C.A. Pantle, Chairman  
9 Ward Pedley, Vice Chairman  
10 Ruth Ann Mason, Secretary  
11 Gary Noffsinger, Director  
12 Madison Silvert, Attorney  
13 Rev. Larry Hostetter  
14 Sean Dysinger  
15 Shannon Raines

16 \* \* \* \* \*

17 CHAIRMAN: Let me call the Owensboro  
18 Metropolitan Board of Adjustment to order. We start  
19 our meeting each night with a prayer and pledge to the  
20 allegiance. We invite you all to join with us. Ruth  
21 Ann Mason will have our prayer this evening.

22 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

23 CHAIRMAN: Again, I want to welcome you to the  
24 Board of Adjustment this evening. If you have any  
25 comments on any of the items, please come to one of  
the podiums, state your name and you will be sworn in  
so we will have a permanent record in case we have  
problems down the road.

Ohio Valley Reporting

(270) 683-7383

1                   With that the first thing we need to do this  
2 evening is we have got a new member with us. We need  
3 to swear her in first.

4                   (SWEARING IN OF MS. SHANNON RAINES BY  
5 ATTORNEY.)

6                   CHAIRMAN: Shannon, we welcome you and look  
7 forward to many years of hope and good decisions made  
8 for this board. Again, it's good to have you with us.

9                   First item we have this evening is consider  
10 the minutes of the January 6th meeting. They're on  
11 record in the office. I don't think we have found any  
12 problems or mistakes.

13                   MR. NOFFSINGER: No, sir.

14                   CHAIRMAN: With that I'll entertain a motion  
15 to dispose of the item.

16                   MR. PEDLEY: Motion for approval,  
17 Mr. Chairman.

18                   FATHER HOSTETTER: Second.

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

22                   (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23                   CHAIRMAN: Motion carries.

24                   Next item please, sir.

25                   -----

Ohio Valley Reporting

(270) 683-7383



1 the accessory storage building has been reviewed by  
2 the Downtown Design Administrator and a Certificate of  
3 Appropriateness was denied because the proposed  
4 location of the building does not comply with the  
5 Build-to-Zone requirements to Article 21. A  
6 Certificate of Appropriateness cannot be approved  
7 unless a dimensional variance is granted by the  
8 Owensboro Metropolitan Board of Adjustment. This  
9 would require a recommendation on the variance from  
10 the Owensboro Historical Preservation Board to the  
11 OMBA. The OHPB met on January 19, 2011, and made a  
12 favorable recommendation for the approval of the  
13 dimensional variance. A Certificate of  
14 Appropriateness must be issued if and when the  
15 dimensional variance is granted by the OMBA before a  
16 building permit can be issued.

17 LAND USES IN SURROUNDING AREA

18 The properties to the north are zoned R-4DT  
19 Inner City Residential and B-2 Central Business. The  
20 properties to the south and west are zoned R-4DT Inner  
21 City Residential. The properties to the west are  
22 zoned R-4DT Inner City Residential. The properties to  
23 the west are zoned R-4DT Inner City Residential, B-4  
24 General Business and I-1 Light Industrial.

25 ZONING ORDINANCE REQUIREMENTS

Ohio Valley Reporting

(270) 683-7383

1           1.   Parking - No additional parking is  
2   required.

3           2.   Landscaping - No additional landscaping  
4   required.

5   SPECIAL CONDITIONS

6           1.   Obtain a Certificate of Appropriateness  
7   from the Downtown Design Administrator.

8           2.   Submittal and approval of a revised Final  
9   Development Plan.

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

12           FATHER HOSTETTER: Mr. Chairman, I would like  
13   to recuse myself from this decision.

14           CHAIRMAN: So noted.

15           Is there any opposition filed in the office?

16           MR. NOFFSINGER: No, sir.

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

19           (NO RESPONSE)

20           CHAIRMAN: Does the applicant have any  
21   comments at this time they would like to bring  
22   forward?

23           MR. GREEN: We would just like to thank the  
24   Board for your time.

25           CHAIRMAN: You want to come to the podium and

Ohio Valley Reporting

(270) 683-7383

1 state your name, please.

2 MR. GREEN: My name is Ron Green. I'm a  
3 member of Sts. Joe & Paul Catholic Church.

4 (RON GREEN SWORN BY ATTORNEY.)

5 MR. GREEN: My name is Ron Green. I'm a  
6 member of Sts. Joe & Paul Church. We are building  
7 this accessory building for the various services of  
8 ministries that we offer to our parish and our  
9 community. I would like to thank the Board at this  
10 time for hearing this variance.

11 CHAIRMAN: Thank you.

12 Is there any comments or questions from the  
13 Board of the applicant?

14 (NO RESPONSE)

15 CHAIRMAN: Entertain a motion to dispose of  
16 the item.

17 MR. PEDLEY: Mr. Chairman, I make a motion for  
18 approval based on findings it is an accessory to an  
19 existing building on a previous Conditional Use  
20 Permit, and it is a compatible use within the  
21 neighborhood, will not have an adverse influence on  
22 the future development, and the Owensboro Historical  
23 Preservation Board recommended approval for the  
24 variance. With the conditions that they obtain a  
25 Certificate of Appropriateness from the Downtown

Ohio Valley Reporting

(270) 683-7383

1 Design Administrator and submittal and approval of a  
2 revised Final Development Plan.

3 CHAIRMAN: A motion has been made. Is there a  
4 second?

5 MS. MASON: Second.

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

9 (NO RESPONSE)

10 CHAIRMAN: Staff have any comments?

11 MR. NOFFSINGER: No, sir.

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

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE -  
15 WITH FATHER LARRY HOSTETTER RECUSING HIMSELF FROM THE  
16 VOTE.)

17 CHAIRMAN: Motion carries.

18 Next item, please.

19 Related Item:

20 ITEM 2A

21 514 East 4th Street, zoned R-4DT (Neighborhood  
22 Character Overlay District)

23 Consider request for a Variance in order to increase  
24 the maximum setback of 10 feet from the property line,  
25 as required by Article 21, to 78 feet from the  
property line on East 5th Street and to increase the  
maximum setback of 10 feet from the property line, as  
required by Article 21, to 53 feet from the property  
line on Clay Street, for the construction of an  
accessory storage building.

1 Reference: Zoning Ordinance, Article 21,  
Section 21.89(a)(ii)

2 Applicant: Sts. Joseph & Paul Catholic Church

3 MS. EVANS: The purpose of the maximum setback  
4 is to create building near the sidewalk encouraging  
5 pedestrian oriented development and continuing the  
6 historic fabric of the downtown area. The building  
7 proposed is an accessory structure and the ordinance  
8 is silent on accessory structure location with the  
9 exception of residential garages.

10 The Staff believes that the Variance is  
11 warranted for the accessory structure to be located on  
12 the interior of the lot; thereby preserving the area  
13 near the street for potential future development of  
14 additional principal structures on the site meeting  
15 the requirements of Article 21.

16 The Historic Preservation Board met on January  
17 19, 2011, and made a favorable recommendation to  
18 approve the dimensional variance based on preserving  
19 future development area.

20 Granting this variance will not alter the  
21 essential character of the general vicinity or be an  
22 unreasonable circumvention of the requirements of the  
23 zoning ordinance because the area should be preserved  
24 for potential future principal structure in order to  
25 better meet the intent of Article 21.

Ohio Valley Reporting

(270) 683-7383



1           The Staff would recommend approval with the  
2 following Conditions:

- 3           1. Obtain a Certificate of Appropriateness  
4 from the Downtown Design Administrator;  
5           2. Submittal and approval of a revised Final  
6 Development Plan.

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

9           FATHER HOSTETTER: Mr. Chairman, I would  
10 recuse myself from this item as well.

11           CHAIRMAN: So noted.

12           Staff have any comments at this time?

13           MR. NOFFSINGER: No, sir.

14           CHAIRMAN: Has there been any objections in  
15 the office?

16           MR. NOFFSINGER: No, sir.

17           CHAIRMAN: Is there anyone wishing to speak in  
18 opposition of this?

19           (NO RESPONSE)

20           CHAIRMAN: Hearing none the applicant have  
21 anything else you would like to add at this time?

22           MR. GREEN: No.

23           CHAIRMAN: With that we'll entertain a motion  
24 to dispose of the item, please.

25           MS. MASON: Mr. Chairman, I move for approval

Ohio Valley Reporting

(270) 683-7383

1 with the findings that since it is an accessory  
2 structure to be used by the church and it's located in  
3 the interior of the lot it will not affect the public  
4 health, safety or welfare. Since it will allow future  
5 principal structures to be built in accordance with  
6 Article 21, it will not alter the essential character  
7 of the general vicinity. Since it's located in the  
8 interior lot, it will not cause a hazard or nuisance  
9 to the public. It will not allow unreasonable  
10 circumventions of the requirements of the zoning  
11 regulations since it's an accessory structure and it  
12 should be constructed as proposed in order to preserve  
13 the area near the street for possible principal  
14 structures meeting the requirements of Article 2.

15 The Conditions would be to obtain a  
16 Certificate of Appropriateness from the Downtown  
17 Design Administrator, and a submittal and approval of  
18 a revised Final Development Plan.

19 MR. DYSINGER: Second.

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

23 (NO RESPONSE)

24 CHAIRMAN: Staff have anything else to add?

25 MR. NOFFSINGER: No, sir.

Ohio Valley Reporting

(270) 683-7383

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

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE -  
4 WITH FATHER LARRY HOSTETTER RECUSING HIMSELF FROM THE  
5 VOTE.)

6 CHAIRMAN: Motion carries.

7 Next item, please.

8 ITEM 3

9 1100 West 11th Street, zoned R-4DT

10 Consider request for a Conditional Use Permit in order  
11 to operate a residential transitional living facility  
12 for 7 persons within an existing structure.

13 Reference: Zoning Ordinance, Article 8, Section 8.2A7

14 Applicant: Friends of Sinners, Inc., Roger Chilton

15

16 ZONING HISTORY

17 The subject property is currently zoned R-4DT  
18 Inner City Residential. OMPC records indicate there  
19 have been no zoning map amendments for the subject  
20 property.

21 The applicant is requesting to operate a  
22 residential substance recovery ministry for up to  
23 seven residents. Residents will be non-violent,  
24 non-sex offenders who have been court ordered to the  
25 facility. The facility will have two full-time  
employees and numerous volunteers.

All criteria are required for conditionally  
permitted group housing was submitted with the

Ohio Valley Reporting

(270) 683-7383

1 application.

2 LAND USES IN SURROUNDING AREA

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

7 ZONING ORDINANCE REQUIREMENTS

8 1. Parking - 5, plus 1 for every 5 beds.  
9 Required - 6 spaces, as shown on the site plan  
10 submitted.

11 2. Landscaping - None

12 Also items 3 through 12 the criteria for conditionally  
13 permitted group housing are also zoning ordinance  
14 requirements.

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

17 CHAIRMAN: Been any comments or questions  
18 filed in the office?

19 MR. NOFFSINGER: No, sir.

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

22 (NO RESPONSE)

23 CHAIRMAN: Is the applicant here and do you  
24 have any comments at this time?

25 APPLICANT REP: No comments, sir.

Ohio Valley Reporting

(270) 683-7383

1           CHAIRMAN: The board members have any  
2 questions of the applicant?

3           (NO RESPONSE)

4           CHAIRMAN: Staff have anything to add?

5           MR. NOFFSINGER: I would just like to take the  
6 opportunity to compliment the applicant on a very  
7 detailed proposal and application. The Staff  
8 certainly appreciates it and say that the Board  
9 appreciates the level of detail that you put into this  
10 application.

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

13          MR. PEDLEY: Mr. Chairman, I make a motion for  
14 approval based on findings the applicant submitted and  
15 signed and agreed to the zoning ordinance requirements  
16 and a list of the house rules and it is a residential  
17 of nature and should allow harmonious integration into  
18 the neighborhood. It will not allow an adverse  
19 influence on future uses and development.

20          MR. DYSINGER: Second.

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

24          (NO RESPONSE)

25          CHAIRMAN: Staff have anything else you all

Ohio Valley Reporting

(270) 683-7383

1 need to add?

2 MR. NOFFSINGER: No, sir.

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

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries.

7 Next item, please.

8 -----

9 VARIANCE

10 ITEM 4

11 2326 West 8th Street, zoned R-4DT

12 Consider request for a Variance in order to reduce the  
13 street yard building setback line along Hocker Street  
14 from 15 feet from the property line to 10 feet from  
15 the property line in order to construct a  
16 single-family residence.

17 Reference: Zoning Ordinance, Article 3,  
18 Section 3-5(a)(3)

19 Applicant: City of Owensboro.

20 MS. EVANS: Section 3-5(a)(3) of the Zoning  
21 Ordinance allows for street yard setback to be reduced  
22 from 25 feet from the property line to 15 feet from  
23 the property one on back to back corner lots in an  
24 R-4DT zone. The applicant is wishing to tear down the  
25 old dilapidated building on the lot and build a new  
home as part of the City of Owensboro Homebuyer  
Program which provides safe, affordable homes for low  
to moderate income families. This is an older area of  
town developed before the zoning ordinance with

1       substandard lots and it would be difficult to fit a  
2       home within the prescribed setback. There are other  
3       properties that appear to encroach on the 15 foot side  
4       yard setback for back to back corner lots at 2401 West  
5       8th Street, 2433 West 8th Street, 2227 West 9th  
6       Street, and 2311 and 2301 West 9th Street. Granting  
7       this Variance will not adversely affect the public  
8       health, safety or welfare; in fact it will improve the  
9       public safety by providing a low to moderate income  
10      family with a new safe residence. Granting this  
11      Variance will improve the essential character of the  
12      general vicinity because the applicant will be  
13      replacing a vacant, dilapidated residence with a new  
14      residence. Granting this Variance will take away the  
15      hazard and nuisance of the vacant residence currently  
16      on the property and replace it with a new residence.  
17      It will not allow an reasonable circumvention of the  
18      requirements of the zoning ordinance because the  
19      property is in an older area of town developed before  
20      the zoning ordinance with substandard lot sizes and  
21      there appear to be other encroachments in the area.

22                 Staff would recommend approval.

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

25                 CHAIRMAN: Thank you.

                  Ohio Valley Reporting

                  (270) 683-7383

1           Has there been any opposition or comments in  
2 the office?

3           MR. NOFFSINGER: No, sir.

4           CHAIRMAN: Is there anyone opposed to this  
5 particular item?

6           (NO RESPONSE)

7           CHAIRMAN: Applicant is not here either.  
8 Entertain a motion to dispose of the item.

9           MR. DYSINGER: Mr. Chairman, move to grant the  
10 Variance given the findings that due to the nature of  
11 the lot itself makes granting the Variance reasonable.  
12 Further granting the Variance will serve the public  
13 welfare by replacing a dilapidated lot with something  
14 that's been revitalized.

15           CHAIRMAN: We have a motion. Is there a  
16 second?

17           MS. MASON: Second.

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

21           (NO RESPONSE)

22           CHAIRMAN: Staff have anything else he would  
23 like to add?

24           MR. NOFFSINGER: No, sir.

25           CHAIRMAN: Hearing none all in favor of the

Ohio Valley Reporting

(270) 683-7383



1 motion raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries.

4 Next item, please, sir.

5 ITEM 5

6 6045 Highway 54, zoned B-4, I-1 (Postponed from the  
7 January 6, 2011 meeting)

8 Consider request for a Variance in order to eliminate  
9 the required 6 foot high solid fencing around an  
10 outdoor storage area, to allow the existing Highway 54  
11 entrance at the intersection of Winkler Road and  
12 Highway 54 to be located 0 feet from the intersection  
13 right-of-way rather than 50 feet as required and to  
14 waive the screening element from the intersection of  
15 Highway 54 and Winkler Road to the east 188 linear  
16 feet.

17 Reference: Zoning Ordinance, Article 8, 13 and 17,  
18 Section 8.5.3(1), 13.22, 17.313, Table 17.312(5a)  
19 Applicant: Bluegrass Truck, Trailer & Equipment, LLC;  
20 Carl & Linda Boarman

21 MS. STONE: We have included in your packet  
22 this month as requested by the Board a copy of the  
23 approved final development plan. We would like to  
24 enter that into the record as Exhibit E.

25 We have received a new proposed site plan, as  
discussed at last month's meeting and this was  
included in your application packets as well; however,  
we didn't receive the site plan until January 21st,  
the day the packets went out. So we were unable to  
include --

MR. SILVERT: Ms. Stone, I need to swear you  
in.

1 (BECKY STONE SWORN BY ATTORNEY.)

2 MS. STONE: The 27th of January is the date we  
3 sent the packets out. That's the date we got the site  
4 plan in. So we were unable to include a review of the  
5 site plan for you so I have handed you a copy prior to  
6 the meeting and I would like to do that overview  
7 before you act on each of these items.

8 The first item concerns the zoning ordinance  
9 requirement of a 6 foot high solid fence around the  
10 outdoor --

11 MR. DYSINGER: Mr. Chairman, I find it  
12 necessary to recuse myself from this matter.

13 CHAIRMAN: Be so noted, sir.

14 MS. RAINES: Mr. Chairman, me too because I've  
15 not been involved with this in the past.

16 CHAIRMAN: So noted. We still have majority,  
17 enough for a vote.

18 MR. NOFFSINGER: Yes.

19 MS. STONE: 1. The Zoning Ordinance requires  
20 the 6 foot high solid fencing around the outdoor  
21 storage.

22 That's Section 8.54(j) and Table 17.311(5a).

23 The applicant is applying for a Variance. The  
24 proposed site plan has relocated the outdoor storage  
25 to the rear of the lot. There's an elevation change

Ohio Valley Reporting

(270) 683-7383

1 with a drop in elevation from the front of the lot to  
2 the rear. This may provide screening of outdoor  
3 storage in front if the storage height is controlled;  
4 however, the other sides would still not be screened  
5 as required by the ordinance.

6 2. The Zoning Ordinance requires a 3 foot  
7 continuous element between vehicular use area and  
8 Highway 54.

9 That's Zoning Ordinance Section 17.3121(b) and  
10 Section 3-6(e).

11 Applicant is requesting a waiver of this  
12 landscaping for 188 feet from Winkler Road east  
13 because existing pavement exists on the highway  
14 right-of-way which would require that the applicant  
15 remove the pavement in order to install the vehicular  
16 use area screening. The applicant is also showing  
17 pavement and sign to remain on public right-of-way.  
18 OMBA does not have the authority to grant permission  
19 for encroachments into state right-of-way. Kevin  
20 McClearn of the Kentucky Transportation Cabinet  
21 e-mailed a response to our inquiry regarding this  
22 encroachment that indicates the Cabinet cannot allow  
23 the encroachment to remain and that no special  
24 approval has been issued to allow the encroachments to  
25 remain.

Ohio Valley Reporting

(270) 683-7383

1           We would like to submit that e-mail into the  
2 record as Exhibit F.

3           3. Zoning Ordinance requires that the  
4 commercial access point be located a minimum distance  
5 of 50 feet from the intersecting right-of-way.

6           That's Section 13.22 of the Ordinance.

7           Applicants have previously requested to allow  
8 the access point on Kentucky 54 at the Winkler Road  
9 intersection to remain open. The proposed site plan  
10 shows this access to be closed. So we're uncertain  
11 whether the applicants are withdrawing the variance  
12 request for this item, and I'm sure they can address  
13 that when they respond. An existing entrance already  
14 exists nearer the center of the property. That  
15 existing entrance was approved on the final  
16 development plan to be widened to 50 feet, although  
17 that widening is not depicted on the proposed site  
18 plan submitted in conjunction with the variance  
19 request. The applicants are additionally proposing to  
20 widen and share an entrance with the Lions Club to the  
21 far east on the property. A third access point is not  
22 recommended.

23           4. Applicants are showing that shared access  
24 point with the existing access point to the east of  
25 the subject property and an access to the property at

Ohio Valley Reporting

(270) 683-7383

1 the rear from the existing lane to the east of the  
2 property. If this is to be accomplished, the revised  
3 final development plan would require signatures of  
4 both the subject property owners and the adjoining  
5 property owner. The vehicular use area between the  
6 adjoining drive and the outdoor storage area would  
7 have to be paved. The access to Highway 54 would also  
8 need to be paved as indicated on the proposed site  
9 plan.

10 5. Zoning Ordinance has a provision for a  
11 paving exception for large farm vehicular display.

12 That's Section 13.511.

13 The applicants are proposing agricultural  
14 sales lot to the front of the property in the area  
15 that formerly was the outdoor storage area. The  
16 paving exception would apply to this area. However,  
17 there is a requirement in the ordinance that a final  
18 development plan be approved, that the plan designate  
19 the location of parking spaces to contain the large  
20 vehicles on display; that the spaces are surfaced in  
21 some manner so that the large vehicles will not deform  
22 wet ground and that aisles that are used to access the  
23 spaces are fully paved. The site plan does not  
24 indicate the proposed surface or the paved aisles to  
25 access the sales lot. This was previously discussed

Ohio Valley Reporting

(270) 683-7383

1 with the applicants and their attorney prior to the  
2 January OMBA meeting. These should be depicted  
3 specifically on a revised development plan. Since  
4 much of the lot has been previously graveled, the plan  
5 should indicate the extent of gravel, the location of  
6 new pavement and anything remaining on the lot not to  
7 be used as agricultural sales or outdoor storage  
8 should be returned to grass.

9 We have an aerial photograph of another  
10 property that demonstrates the depiction of paved  
11 aisles and gravel display. This property is located  
12 at 7274 Highway 431, and there was a development plan  
13 approved in October of 2008. We'd like to submit this  
14 aerial photograph as Exhibit G to show how that is  
15 depicted on a agricultural sales lot.

16 Another example of paved aisles was 2120  
17 Highway 60 East, and that was for a previous  
18 manufactured home sales.

19 6. Zoning ordinance requires 3 foot  
20 continuous element between vehicular use area and  
21 Winkler Road. That's Section 13.22.

22 The proposed site plan shows gaps in the  
23 continuous screening element. The proposed site plan  
24 shows part of the proposed landscaping within the  
25 Winkler Road right-of-way. Proposed vehicular use

Ohio Valley Reporting

(270) 683-7383

1 area landscaping should be shown on the site plan  
2 within the property line of the subject property.

3 7. Applicant provided evidence at the last  
4 OMBA meeting that uses on the property have changed or  
5 vacated. The proposed site plan still shows the  
6 ornamental iron use, the body shop, the stone sales  
7 office and the site statistics reference the  
8 automobile sales with the agricultural sales lot  
9 added. If the uses have changed or been eliminated,  
10 the revised final development plan should reflect what  
11 is existing or proposed to assure proper parking and  
12 site development improvements have been provided.

13 The variances requested tonight were  
14 previously requested in conjunction with the zoning  
15 change request before the OMPC on January 8, 2009, and  
16 we would like to enter that transcript as Exhibit H of  
17 that meeting.

18 These variances were not approved upon  
19 approval of the final development plan. The  
20 applicants posted surety in the form of a performance  
21 bond for the vehicular use area landscaping and the  
22 outdoor screening in the amount of \$10,462. That  
23 included 5 trees, 180 linear feet of continuous  
24 vehicular use area landscaping and 585 feet of 6 foot  
25 high fencing. We'd like to enter that surety form

Ohio Valley Reporting

(270) 683-7383

1 also as Exhibit I.

2 With that the overview of the proposed site  
3 plan, the first item requested for a variance is to  
4 waive the required 6 foot high solid fencing around an  
5 outdoor storage area. The previous meeting we read  
6 our Staff Report into the record so it's ready for  
7 your consideration at this point.

8 CHAIRMAN: Thank you.

9 Is there any comments from the Staff at this  
10 time?

11 MR. NOFFSINGER: No, sir.

12 MS. STONE: We'd like to enter this review of  
13 the site plan into the record too.

14 CHAIRMAN: So noted.

15 The applicant ready to present your alls  
16 findings and comments?

17 MR. SILVERT: State your name, please.

18 MR. SULLIVAN: Ron Sullivan.

19 MR. SILVERT: You're duly sworn as an  
20 attorney.

21 MR. SULLIVAN: I'm floored by the Staff  
22 Report. I have no idea where this thing is going to  
23 or where it's come from and how it got to this point.  
24 It sounds more like a crucifixion than it does  
25 anything else that I have ever participated in.

Ohio Valley Reporting

(270) 683-7383



1 MS. STONE: That wasn't a Staff Report. That  
2 was a review of the site plan, the proposed site plan  
3 that was submitted in accordance with the Zoning  
4 Ordinance.

5 MR. SULLIVAN: I don't know how these common  
6 ordinary citizens could ever comply with what all was  
7 just provided to you all in that report. I couldn't  
8 even keep up with it, as far as what was said.

9 I think the bottom line may be that we are  
10 here on three variances.

11 The first variance we requested was to be  
12 excepted from the 6 foot high fencing requirement.  
13 That is before the board at this time; is that  
14 correct?

15 MS. STONE: Yes.

16 MR. SULLIVAN: With respect to that, there's  
17 been a couple of plans. One plan was provided to me  
18 by my client on or about the day that the reports went  
19 out to the board. I thought that was the plan that we  
20 were considering this evening. Then my client has  
21 provided me with a new plan today which is different  
22 from what I saw on or about January 27th. Is that  
23 plan --

24 MS. STONE: The only plan that we have is the  
25 plan that was submitted to us on January 27th. So if

Ohio Valley Reporting

(270) 683-7383

1       there's another plan we have not seen that.

2               MR. SULLIVAN: Can I see what you have from  
3       January 27th?

4               CHAIRMAN: Sure.

5               MR. SULLIVAN: I'm now on the same page with  
6       you all.

7               With respect to that request that they be  
8       granted a variance for the outdoor storage area, then  
9       the plan submitted, the one that we have before us,  
10       shows an area to the rear of the property in a very  
11       low elevation where they propose to store stone. They  
12       are asking for a variance that they not be required to  
13       have a 6 foot fence around that area as depicted on  
14       that plan.

15              Now, if this were granted, I think that a  
16       development plan change would be necessary to be  
17       approved showing the outdoor storage area in the lower  
18       elevation neighborhood rather than where it was in  
19       front of the property. All things being equal it  
20       seems to me that there is nothing to the east. I  
21       think that the Staff said that there was no protection  
22       from the west or from the east with respect to  
23       elevation. Is that what the Staff said?

24              MS. STONE: That's correct. We said that  
25       there was an elevation change that would screen in the

Ohio Valley Reporting

(270) 683-7383

1 front with storage at a certain height that hadn't  
2 been addressed on the other three sides.

3 MR. SULLIVAN: The other three sides are the  
4 Daviess County Lions Club Fair Grounds, I guess, on  
5 two sides, and then there's the Susan J. Dotson  
6 property on the east. There's a tremendous amount of  
7 natural screening around the Dotson property which was  
8 previously discussed and we were allowed not to have  
9 to screen around the Dotson property because both the  
10 landowners wanted it that way and the Staff found that  
11 okay. So I don't know why there would be any problem  
12 with respect to the east side where the Dotson  
13 property is.

14 The west side and the south side - excuse me -  
15 the north side are the fair grounds and the elevation  
16 situation I just don't see it as being a problem. I  
17 don't know what the Staff is saying about that other  
18 than there could be a view of the premises of the  
19 outdoor storage from those directions.

20 However, we ask that the board grant this  
21 variance from the 6 foot fencing with the condition  
22 that there be no storage higher than 6 feet, which is  
23 the way we anticipate that it would be granted.

24 If the storage is kept below 6 feet, it would  
25 not be visible from the highway and it will not impact

Ohio Valley Reporting

(270) 683-7383

1 adversely any of the neighbors.

2 CHAIRMAN: Any board members have any  
3 questions or comments?

4 FATHER HOSTETTER: Just a question of  
5 clarification.

6 I drove out there earlier today just to kind  
7 of see what it looks like. Are we talking about the  
8 stone that there's to the right of the building would  
9 all be moved then to this depression?

10 MR. BOARMAN: Yes.

11 MR. SULLIVAN: Yes.

12 I don't know if there's anywhere that it's  
13 stated that the height of the storage would be limited  
14 in any manner, but there's no intent to store anything  
15 higher than 6 feet.

16 MR. BOARMAN: Yes.

17 MR. SULLIVAN: Nothing would be higher than 6  
18 feet in the outdoor storage area. In fact, most of it  
19 runs about 4 feet actually. They're pallets of stone  
20 and you can't pack, you can't just put that much  
21 weight on them. They have a little fence around them.  
22 Some have a little fence around them. It's all,  
23 again, under 4 feet.

24 CHAIRMAN: Any other board members have any  
25 comments?

Ohio Valley Reporting

(270) 683-7383

1           MR. PEDLEY: Mr. Chairman, I would like to  
2 make a few comments.

3           I visited this site in the last two or three  
4 days several times. I was out this morning. I  
5 visited it. I looked at the elevations. I looked at  
6 it from Highway 54 and drove into the access to the  
7 fairgrounds and looked at it in every respect. Also,  
8 observed many of the items that need to come in  
9 compliance had been done. Saw the backhoe was working  
10 today removing the grass. The asphalt on the entrance  
11 next to Winkler Road on Highway 54, that was being  
12 removed. So several things is in the process to bring  
13 this into compliance. I did observe that your  
14 proposed stone storage area, the elevation is low  
15 enough that it will not be seen from Highway 54. The  
16 only question is the neighbor on each side, I  
17 understand he doesn't want the fence.

18           MR. BOARMAN: Right.

19           MR. PEDLEY: I think he signed that.

20           MR. SULLIVAN: Joe, you have to come up here  
21 if you say anything and be sworn, and you're welcome  
22 to do that. Please come up.

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

25           MR. BOARMAN: Joe Boarman.

Ohio Valley Reporting

(270) 683-7383

1 (JOE BOARMAN SWORN BY ATTORNEY.)

2 MR. BOARMAN: I have talked with Susan Dotson  
3 and Bart Hodskins both. They're on both sides. They  
4 have no problem with the stone. Don't want any kind  
5 of screening or fence. I've got their numbers if you  
6 need to call them.

7 CHAIRMAN: You got a statement signed from  
8 them to put into the record?

9 MR. BOARMAN: I've just got their number and I  
10 can call them.

11 CHAIRMAN: But you don't have a statement  
12 signed to put in?

13 MR. BOARMAN: No.

14 MR. SULLIVAN: We had a signed statement  
15 before that was placed in the record.

16 MR. BOARMAN: Of course, that was from  
17 everybody in the City of Philpot.

18 MR. SULLIVAN: There was a signed statement  
19 that was in the record that I thought I put in last  
20 month, and it's a statement by numerous neighbors. I  
21 don't recall whether these two neighbors are signed on  
22 that paper.

23 Are they signed?

24 MR. BOARMAN: Yes.

25 MR. SULLIVAN: There is a signed statement

Ohio Valley Reporting

(270) 683-7383

1 saying they don't want any fence by these neighbors.

2 MR. PEDLEY: I do recall the signed statement  
3 that was put into the record. I don't know what names  
4 was on it.

5 MR. BOARMAN: Pretty well everybody in the  
6 City of Philpot.

7 MR. PEDLEY: The gentleman to the east of the  
8 pass way.

9 MR. BOARMAN: He was on there.

10 MR. PEDLEY: His name was on there?

11 MR. BOARMAN: Bart Hodskins, yes.

12 CHAIRMAN: Any other comments from the board  
13 at this time or questions?

14 (NO RESPONSE)

15 CHAIRMAN: Mr. Sullivan, do you have anything  
16 else to add right now?

17 MR. SULLIVAN: No. We certainly would like to  
18 get that variance.

19 CHAIRMAN: Call for a motion to dispose of  
20 this particular item first.

21 MR. PEDLEY: Mr. Chairman, on this one item of  
22 a variance for waiving the requirements on the 6 foot  
23 fence I make a motion for approval to waiving the  
24 requirement of the 6 foot fence strictly for the  
25 purpose of the stone storage yard. On the location

Ohio Valley Reporting

(270) 683-7383

1 according to the site plan submitted here tonight is  
2 dated January. And based on the findings it will not  
3 adversely affect the public health, safety or welfare,  
4 because topography from Highway 54 it will be out of  
5 sight of the public. 2) It will not alter the  
6 essential character of the general vicinity because of  
7 the major improvements of landscape screening and  
8 esthetic appeal has been greatly enhanced and is in  
9 character with the surrounding neighborhood. 3) It  
10 may cause a hazard or nuisance to the public because  
11 trespassing or kids playing on the owner's property it  
12 could be a hazard. I would encourage the operator to  
13 not stack those stones more than six feet high. 4) It  
14 will not allow an unreasonable circumvention of the  
15 requirements of the zoning ordinance regulations  
16 because of the topography and the distance from  
17 Highway 54 screening stone from public view, and the  
18 neighbors have voiced no opposition and the property  
19 owners have made major improvements bringing the  
20 property into compliance with several other points  
21 enhancing the esthetic appeal of that entire area.

22 The Condition: This waiver is strictly for  
23 the storage of the stone products and must be  
24 according to the site plan submitted. It does not  
25 waive the requirements for a 6 foot high solid fence

Ohio Valley Reporting

(270) 683-7383



1 for other materials or any other location on the  
2 property. 2) A revised development plan must be  
3 submitted and approved reflecting the actions of the  
4 OMBA.

5 CHAIRMAN: We have a motion. Is there a  
6 second?

7 FATHER HOSTETTER: Second.

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

11 (NO RESPONSE)

12 CHAIRMAN: Staff have anything else to add at  
13 this time?

14 MR. NOFFSINGER: No, sir.

15 CHAIRMAN: Hearing none all in favor of the  
16 motion that's been made raise your right hand, please.

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE -  
18 WITH SEAN DYSINGER AND SHANNON RAINES REMOVING  
19 THEMSELVES FROM VOTING.)

20 CHAIRMAN: Motion carries.

21 MS. STONE: The next variance to be considered  
22 is to allow the existing Highway 54 entrance at the  
23 intersection of Winkler Road and Highway 54 to be  
24 located zero feet from the intersection right-of-way  
25 rather than 50 feet as required.

Ohio Valley Reporting

(270) 683-7383

1           On the proposed site plan that was submitted  
2           to us, this entrance is showing, again, as closed. So  
3           I don't know if we want to get a response about  
4           whether this variance is still being requested before  
5           I read into the record the Staff Report.

6           MR. SULLIVAN: Ron Sullivan.

7           Correct me if I'm wrong. The site plan shows  
8           grass in the area where we requested the variance for  
9           the entrance. I'm advised that the pavement has been  
10          removed from that area and that the request for that  
11          variance is withdrawn.

12          MS. STONE: Then we'll move on to the third  
13          variance request.

14          MR. NOFFSINGER: Before we move on, I do have  
15          a point of clarification. Just to make sure that it's  
16          understood that there are exceptions on this site plan  
17          submitted for your consideration tonight that do not  
18          meet the minimum ordinance requirements and would have  
19          to be, a development plan has to be approved. For  
20          example, there's an access point shown connecting to  
21          the Daviess County Fairground's access point. That  
22          could only be approved by the Planning Commission on a  
23          revised development plan if the adjoining landowner  
24          signs off on that plan.

25          Also, although the driveway to Highway 54 is

Ohio Valley Reporting

(270) 683-7383

1 shown to be grass, there's an area there that shows  
2 pavement to remain that's in the right-of-way.

3 I'm not sure if that comes up on this next  
4 variance if you're going to consider that, but the  
5 development plan that was approved by the Planning  
6 Commission showed that pavement to be removed from the  
7 right-of-way. So I just want to make sure it's clear  
8 that you're not asking for a variance for that access  
9 point to remain. So with that then the pavement would  
10 have to be removed all the way up to the property  
11 line.

12 CHAIRMAN: Come forward and state your name,  
13 please.

14 MR. BOARMAN: Joe Boarman.

15 I think that is a state issue, isn't it?

16 MR. NOFFSINGER: No, sir. That's a local  
17 issue with the Planning Commission with this board as  
18 well as the State of Kentucky.

19 MR. BOARMAN: Being my neighbor's is further  
20 out than mine is, his is going to be pulled back too,  
21 being it's state?

22 MS. STONE: If he redevelops the property, we  
23 would ask any encroachment to be removed from the  
24 right-of-way.

25 MR. BOARMAN: I thought if it's a state issue

Ohio Valley Reporting

(270) 683-7383

1 it's got to be moved -- if it's on a state road it's  
2 got to be removed, right?

3 MS. STONE: If we're reviewing a development  
4 plan or a site plan for development, any encroachment  
5 on the right-of-way, the zoning ordinance would  
6 require us to have it removed.

7 Now, if the state wants to remove other  
8 encroachments beyond our development review, that's up  
9 to them.

10 MR. BOARMAN: I've got to peel my back, but he  
11 can leave his there on the state road?

12 MR. NOFFSINGER: He can leave his on state  
13 roadway until the state comes along and says, it must  
14 be removed or he redevelops the property and he goes  
15 through the same process that you're going through to  
16 redevelop the property. Then we would take a look at  
17 it and it would be a requirement of the zoning  
18 ordinance that that pavement be removed. He's not  
19 redeveloping his property so we're not here to discuss  
20 his property tonight. It's only your property. What  
21 I described to you is what you agreed to do with your  
22 development plan that was approved by the Planning  
23 Commission, but I notice on this site plan it shows  
24 the pavement to remain. So I want to make sure it's  
25 very clear that this board cannot approve that

Ohio Valley Reporting

(270) 683-7383

1 pavement to remain there. You're already under an  
2 obligation to remove that from the state's  
3 right-of-way.

4 MR. BOARMAN: Okay.

5 MR. PEDLEY: Clarification. Are we denying  
6 the variance or are we denying the request to the  
7 pavement to remain?

8 MS. STONE: I believe they withdrew the  
9 variance for the access to remain. The pavement is  
10 not a variance issue. It's a final development plan  
11 issue. You can't get a variance on an encroachment.

12 MR. SULLIVAN: What Mr. Boarman was pointing  
13 out was that he's in business, the gentleman to is  
14 west is in business, and the gentleman to the west is  
15 able to advertise his business all the way out onto  
16 the pavement that is in the same line with where he  
17 has drawn here that the pavement remain.

18 That's what you're saying, isn't it, Joe?

19 MR. BOARMAN: Yes.

20 MR. SULLIVAN: There's no way you can get a  
21 variance for that so there's no variance request for  
22 that. What I had hoped was that when you did a  
23 development plan, which is not to be before this board  
24 but to be before the OMPC; is that correct?

25 MS. STONE: Yes.

Ohio Valley Reporting

(270) 683-7383

1           MR. SULLIVAN: When you do a development plan,  
2 I don't know why the development plan has to  
3 incorporate part of Highway 54 and ask us to remove  
4 the sign and remove the pavement when it's not our  
5 property. Never was our property. The development  
6 plan can be approved without telling us what to do  
7 with Highway 54. Telling anyone what to do with  
8 Highway 54, as long as it only deals with our  
9 entrances in and out of Highway 54. That's for  
10 another place at another time, I guess.

11           MS. STONE: I believe that the zoning  
12 ordinance requires that there are no encroachments on  
13 the public right-of-way Section 3-6(e).

14           Now, nonconforming situations are allowed to  
15 remain by the zoning ordinance, but their survival is  
16 not encouraged and we bring those into conformance  
17 when properties develop.

18           CHAIRMAN: Mr. Sullivan, you've seen this  
19 ordinance. You've had it before.

20           MR. SULLIVAN: I certainly don't have it  
21 memorized.

22           CHAIRMAN: No and none of us. What I'm trying  
23 to say is when you come in and talk to the Staff and  
24 they explain this to you and they understand it or  
25 should understand it, when they make all the laws and

Ohio Valley Reporting

(270) 683-7383

1 rules to you, this was passed by the Court and the  
2 City and that's what we've got to go by. We can't  
3 change it. You know that. That's the ordinance.

4 MR. SULLIVAN: I'm not asking you --

5 CHAIRMAN: I'm trying to explain where you're  
6 going at and what you said you didn't understand is or  
7 why he didn't understand it.

8 MR. SULLIVAN: Again, the situation was there.  
9 It's been there for 50 years, and now we've got to  
10 remove it.

11 CHAIRMAN: That's right. When you change the  
12 plan, you've got to comply.

13 MR. SULLIVAN: Yes, sir.

14 CHAIRMAN: Thank you.

15 MR. SULLIVAN: I guess we'll move on to the  
16 next matter.

17 MS. STONE: The last variance is to waive the  
18 screening element from the intersection of Highway 54  
19 and Winkler Road to the east a distance of 188 linear  
20 feet.

21 The subject property was recommended for  
22 rezoning from A-U Urban Agriculture to B-4 General  
23 Business and I-1 Light Industrial on January 8, 2009,  
24 with the zoning change final on February 8, 2009.  
25 This portion of the property that contains the

Ohio Valley Reporting

(270) 683-7383

1 vehicular use screening requested to be waived is  
2 zoned B-4. The applicants have applied for this  
3 variance because the installation of the landscaping  
4 will require that the pavement encroaching into the  
5 right-of-way be removed in order to install the  
6 landscaping. The OMPC allowed the applicant two years  
7 from the date of the meeting to remove the pavement to  
8 be in compliance with the ordinance and install the  
9 screening. A final plan to record the action of the  
10 OMPC on several requested variances and the OMPC  
11 approved the development plan to be signed by the  
12 Executive Director provided the changes were  
13 appropriately noted on the plan. The final  
14 development plan was approved on January 16, 2009, and  
15 was in compliance with the zoning ordinance and  
16 variances as approved by the OMPC and shows the  
17 landscaping to be installed as a 3 foot high  
18 continuous element with a tree every 40 linear feet.  
19 The landscaping could be revised on an amended  
20 development plan to consist of one low shrub every 10  
21 feet with a tree every 40 linear feet if this area  
22 continues to be used as a car sales lot. There is a  
23 provision in the ordinance that would allow the lower  
24 landscaping for car sales.

25 Other properties in this vicinity have been

Ohio Valley Reporting

(270) 683-7383



1 brought into conformance with the requirements of the  
2 zoning ordinance upon redevelopment and there is no  
3 special circumstance to allow the subject property to  
4 continue in violation of the ordinance requirements.  
5 6192, 6200 Highway 54 was rezoned in May of 2008. As  
6 a result of that zoning change, a final development  
7 plan was required. Vehicular use areas had to be  
8 paved, appropriate screening in compliance with the  
9 zoning ordinance and access in compliance with the  
10 access standards was required. 6028 Highway 54 was  
11 rezoned in July of 2001. That zoning change required  
12 that landscaping and land use buffers be installed and  
13 provided that no access to be provided to Highway 54,  
14 a major roadway. That property was in use as a post  
15 office and the applicants, Joseph and Linda Boarman,  
16 were proposing to develop the back of the property as  
17 a car lot. No site plan for the car lot development  
18 was proposed and the zoning requirements were not  
19 implemented and the business does not exist there. If  
20 there is a proposal for the lot to develop at a future  
21 date, the landscaping and land use buffers and the  
22 access requirements will be applied. In December of  
23 1999, 6235 changed occupancy of an existing building  
24 and all vehicular use areas were required to be paved  
25 with outdoor storage required to be screened with a

Ohio Valley Reporting

(270) 683-7383

1 minimum 6 foot high solid wall or fence. In 1997  
2 there was a condition on property located in the 5550  
3 block of Highway 54 being rezoned to B-4 that there  
4 would be no direct access onto Highway 54 or Old  
5 Highway 54. This property was consolidated to  
6 property to the east located at 5600 Highway 54 and no  
7 additional access was permitted other than the access  
8 point that existed on 5600 to Old Highway. It  
9 currently complies with the access requirements.

10 Since the zoning change in 2009 of the subject  
11 property and the allowance of two years to comply with  
12 the ordinance for installation of this landscaping, no  
13 work has been completed toward its installation.  
14 Vehicular use area landscaping between the parking or  
15 display areas and the street or road right-of-way is  
16 consistently applied to all properties within Daviess  
17 County and there are no findings that would support  
18 the waiver request. Landscaping in this location  
19 provides aesthetic value to the community at large and  
20 aids in storm water run off. It provides an  
21 environmental impact by a cooling effect on islands of  
22 pavement. Plants and trees provide oxygen to the  
23 environment and help to mitigate some of the adverse  
24 impacts of development activities on the environment.  
25 Applying the standard consistently across all

Ohio Valley Reporting

(270) 683-7383

1 properties in Daviess County has resulted in a more  
2 aesthetically pleasing community and in the absence of  
3 evidence that would demonstrate that the landscaping  
4 is detrimental to the public or is not able to be  
5 installed, the Staff can think of no findings that  
6 would support this waiver. The applicants have been  
7 given ample time to install the screening in view of  
8 the need to remove the pavement to do so. They have  
9 not begun to address the landscaping in the two years  
10 that have passed since their approved development  
11 plan.

12 The applicant is requesting this variance on  
13 the issue that has already been addressed by the  
14 action of the OMPC at the January 8, 2009 meeting and  
15 on the approved final development plan. The  
16 applicants have until January 8, 2011 to install the  
17 screening element. They did not appeal the decision  
18 of the OMPC and submitted and signed a final  
19 development plan showing the screening to be installed  
20 by the date set by the OMPC.

21 Granting this Variance will adversely affect  
22 the public health, safety or welfare because the  
23 screening is an element that the community has  
24 required consistently to increase the aesthetics of  
25 the community; will alter the essential character of

Ohio Valley Reporting

(270) 683-7383

1 the general vicinity because other lots that have  
2 redeveloped in the general area have had to install  
3 the vehicular use area screening as required by the  
4 ordinance; will cause a hazard or a nuisance to the  
5 public because the community aesthetic standard will  
6 not be met; will allow an unreasonable circumvention  
7 of the requirements of the zoning regulations because  
8 there are no legal findings to support the waiver of  
9 this requirement.

10 The Staff would recommend denial. If the  
11 variance is considered for approval by the OMPC, a  
12 revised development plan must be submitted and  
13 approved reflecting the actions on this request.

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

16 MR. SULLIVAN: Would you read your last  
17 sentence again?

18 MS. STONE: If the variance is approved by the  
19 OMBA, a revised development plan must be submitted and  
20 approved reflecting the actions of the OMBA.

21 MR. SULLIVAN: I understood you to say OMPC.

22 MS. STONE: Oh, I may have. I'm sorry.

23 I meant the intent is the actions here be  
24 reflected on the plan as approved by the OMPC.

25 MR. SULLIVAN: I see.

Ohio Valley Reporting

(270) 683-7383

1           CHAIRMAN: Mr. Sullivan.

2           MR. SULLIVAN: What we're asking for here is  
3 to be granted a variance from the screening  
4 requirements from the vehicular use area. In part we  
5 had hoped that we wanted the pavement to remain. We  
6 didn't want to put screening in because we wanted the  
7 pavement to remain. The pavement we thought it very  
8 inappropriate to, my clients did, to have to tear up  
9 the pavement in front of their business which was used  
10 by their clients and customers and themselves.

11           Now we are learning that the requirement is  
12 going to be to go outside our own property and remove  
13 the pavement from the state right-of-way, which I  
14 don't know why I as a landowner have to go out and  
15 remove pavement from the state right-of-way. Let them  
16 remove their own pavement if they want to I would  
17 think. I don't know why the OMPC or the Board of  
18 Adjustment would require me to clean up the state  
19 highway right-of-way of its pavement. I don't  
20 understand that. I don't understand anybody forcing  
21 me to do things in the state highway right-of-way. I  
22 want to leave it the way it was.

23           We would like to get a variance. We would  
24 like to leave it the way it was. We would like to let  
25 the -- if the state wants to come in and clean up its

Ohio Valley Reporting

(270) 683-7383

1 own right-of-way, let them do that. I don't see why  
2 we have to. Why we the property owner has to. The  
3 state owns it. Let them take care of it. Let them  
4 take the pavement out if they choose to. Since that  
5 pavement is there it's ridiculous to try to plant  
6 flowers in it or plant bushes or plant screening in  
7 it. For that reason we request that the variance be  
8 granted. Thank you very much.

9 CHAIRMAN: Any board members have any  
10 questions or comments right now before we entertain a  
11 motion?

12 MR. PEDLEY: At this time we are considering a  
13 variance on the Highway 54 intersection and Winkler  
14 Road, only the access point?

15 MS. STONE: We're considering the variance for  
16 the vehicular use area screening along the front of  
17 the property between the parking and 54. They've  
18 withdrawn the variance request for the entrance to  
19 stay on 54 at the intersection of Winkler Road and  
20 Highway 54.

21 MR. PEDLEY: They're withdrawing request for  
22 the variance on the entrance to Highway 54?

23 MS. STONE: That's my understanding.

24 MR. SULLIVAN: Yes.

25 MR. PEDLEY: You're now on the variance on the

Ohio Valley Reporting

(270) 683-7383

1 screening?

2 MS. STONE: The screening variance, yes, sir.

3 MR. PEDLEY: The waiving of the screening  
4 element from the intersection of Highway 54 and  
5 Winkler Road to the east a distance of 188 linear  
6 feet, is that what we're considering the variance on  
7 now?

8 MS. STONE: Yes, sir.

9 MR. NOFFSINGER: Yes.

10 CHAIRMAN: Any other board members have any  
11 questions or comments?

12 FATHER HOSTETTER: Yes.

13 CHAIRMAN: Staff have anything else you want  
14 to add?

15 MR. NOFFSINGER: No, sir.

16 FATHER HOSTETTER: I'm trying to understand  
17 why that screening isn't possible. Is it because the  
18 pavement is there right now?

19 MR. SULLIVAN: There's pavement there that has  
20 been there for 50 years or more. It seems to my  
21 client inappropriate to dig up the pavement in order  
22 to put in a few plants and screen an area that is  
23 right in front of his business that people have  
24 traversed in and out of for these many years.

25 Again, I don't see why he has to clean up the

Ohio Valley Reporting

(270) 683-7383

1 state highway right-of-way under any circumstances.  
2 That being the case, there's pavement there. Why do  
3 we have to tear up the pavement to put flowers in?  
4 There's nothing unseemly or unsightly about the  
5 situation that exists there now. He has just removed  
6 today the area that's shown on the plat where they're  
7 going to put grass. That will leave only the pavement  
8 on the backside. There will not be an entrance. We  
9 would like not to have to put out the screening there  
10 because it's an open area that has been used in the  
11 past and we'd like to continue to use it that way. We  
12 don't want to have to tear up pavement in order to  
13 plant a couple of flowers in that 188 feet. I mean  
14 shrubs and so forth. We've got them over about what  
15 looks like about 300 feet to the east of the property.  
16 We've got it all the way down looks like 300 feet on  
17 the west side of the property. Thank you.

18 MR. NOFFSINGER: Mr. Chairman, back when this  
19 property was paved most likely, I can't say for  
20 certain, but the landowner paved this area of the  
21 state right-of-way. I seriously doubt that the State  
22 of Kentucky went in and paved this area right-of-way.  
23 They would have had no reason to.

24 So it's really something that the previous  
25 property owners at some point in time paved this area

Ohio Valley Reporting

(270) 683-7383



1 beyond their property boundaries and out into state  
2 right-of-way.

3 And with that it's been since early 1980's  
4 this community has had a landscaping ordinance.  
5 Unless the applicant can show reasonable cause that  
6 the landscaping not be required, then this board, as  
7 well as the Planning Commission as well as Planning  
8 Staff and the community, had insisted upon landscaping  
9 to be installed. On nonconforming uses it has been  
10 routine that the landscaping be installed on private  
11 property. This is not the first landowner in our  
12 history that has had to remove pavement.

13 Now, this item has already been addressed by  
14 the Planning Commission. We stated in the record  
15 where the Planning Commission has already acted on  
16 this same variance request with a development plan and  
17 found cause to deny the variance. Now, I think they  
18 had very good findings of fact to do so.

19 Now we're back here two years later, which  
20 they were given two years to comply with the  
21 ordinance, wondering why that they have to remove  
22 pavement in the state right-of-way and have to make  
23 some beautification as others we have stated in this  
24 area have done. It should not be a question of why,  
25 other than why has it not been done. Because we've

Ohio Valley Reporting

(270) 683-7383

1 already addressed this situation with the applicant.  
2 The applicant has posted surety with the Planning  
3 Commission to ensure that certain items be taken care  
4 of on this property, and here we are today on a second  
5 round to ask for a variance to not have to do what is  
6 reasonably requested by others in the community.

7 MR. SULLIVAN: May I say something?

8 The Staff's observation about that maybe some  
9 prior landowner there put this pavement out toward  
10 Highway 54 is not relevant to the responsibility of  
11 the current landowner for property and pavement  
12 outside of the boundary of his property. You don't  
13 buy a piece of property, you don't buy the burden of  
14 cleaning up the state highway department for what  
15 anybody, well, state right-of-way, for what anyone may  
16 have put there before you bought the property adjacent  
17 there to. So there's no obligation on the part of  
18 this property owner to clean up the state  
19 right-of-way. Any suggestion by the Staff's comment  
20 that that's a burden that you acquire when you acquire  
21 land, that is not the law of Kentucky and there's  
22 nothing in the zoning ordinance that makes that the  
23 law of Kentucky. We are not required to operate  
24 outside of our property. If someone wants to clean  
25 that pavement up, then let them clean it up.

Ohio Valley Reporting

(270) 683-7383

1           The proposition that we are asking for is  
2 because the pavement is there we would like to have  
3 the variance granted. Thank you.

4           CHAIRMAN: I think we have hashed this pretty  
5 good. I'll entertain a motion to dispose of the item.

6           MR. PEDLEY: I've got a couple of comments  
7 with regard to Mr. Sullivan.

8           I'm also a developer. I've got a lot of  
9 landscaping, a lot of development, commercial and  
10 industrial property. I've never been before this  
11 board in 52 years for a variance. The purpose of this  
12 is to create curb appeal for this community. The most  
13 important thing for anyone that has a business or this  
14 community is curb appeal. That's the main core to  
15 this community, Highway 54. If we don't require  
16 landscaping to create that appeal, to me that's the  
17 residential developer, the homebuilder, and also  
18 commercial developer and industrial developer. I know  
19 the value of good landscaping. You look at any  
20 national chain that comes in this community you'd  
21 never have to tell them to do their landscaping. They  
22 overdo it every time. They know the value of it.  
23 It's curb appeal for the community whether you're  
24 trying to sell stone or whether you're trying to sell  
25 houses or whatever you're try to sell in this

Ohio Valley Reporting

(270) 683-7383

1 community. The curb appeal is everything. That is  
2 the main arterial to this community.

3 I concur with Mr. Noffsinger. It's something  
4 that I believe that absolutely should be. I do not  
5 believe the state came over on that property and put  
6 that asphalt in. Whoever had that property before  
7 probably did it. We cannot approve landscaping on the  
8 public right-of-way. It must be on the private  
9 property.

10 So with that I think it's very, very important  
11 that we stick to the ordinance on this because when we  
12 do not -- we set a precedence, and this allow others.  
13 Because others will do exactly what you've done. Say,  
14 well, you didn't make the other one do it. So it's  
15 very important.

16 So, Mr. Chairman, whenever you're ready for a  
17 motion.

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

20 MR. PEDLEY: Mr. Chairman, I make a motion to  
21 deny the variance based on findings it will adversely  
22 affect the public safety and welfare because the  
23 screening is an element of the community has required  
24 consistently to increase the aesthetics of the  
25 community; it will alter the essential character of

Ohio Valley Reporting

(270) 683-7383

1 the general vicinity because other lots that have  
2 redeveloped in the general area have had to install  
3 the vehicular use area screening as required by the  
4 ordinance; it will cause a hazard or a nuisance to the  
5 public because the community aesthetic standard will  
6 not be met; and will allow an unreasonable  
7 circumvention of the requirements of the zoning  
8 regulations because there are no legal findings to  
9 support the waiver of this requirement.

10 CHAIRMAN: Is there a second?

11 MS. MASON: Second.

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

15 (NO RESPONSE)

16 CHAIRMAN: Staff have anything else to add?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: Mr. Sullivan, you understand the  
19 motion that he just made?

20 MR. SULLIVAN: Yes.

21 CHAIRMAN: With that hearing no other comments  
22 all in favor raise your right hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE -  
24 WITH SEAN DYSINGER AND SHANNON RAINES REMOVING  
25 THEMSELVES FROM VOTING.)

Ohio Valley Reporting

(270) 683-7383

1 CHAIRMAN: Motion carries.  
2 Next item, please.  
3 MS. MASON: Move to adjourn.  
4 CHAIRMAN: A motion has been made to adjourn.  
5 MR. PEDLEY: Second.  
6 CHAIRMAN: All in favor raise your right hand.  
7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)  
8 CHAIRMAN: We are adjourned.

9 -----

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 STATE OF KENTUCKY )

)SS: REPORTER'S CERTIFICATE

2 COUNTY OF DAVIESS )

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and  
4 for the State of Kentucky at Large, do hereby certify  
5 that the foregoing Owensboro Metropolitan Board of  
6 Adjustment meeting was held at the time and place as  
7 stated in the caption to the foregoing proceedings;  
8 that each person commenting on issues under discussion  
9 were duly sworn before testifying; that the Board  
10 members present were as stated in the caption; that  
11 said proceedings were taken by me in stenotype and  
12 electronically recorded and was thereafter, by me,  
13 accurately and correctly transcribed into the  
14 foregoing 54 typewritten pages; and that no signature  
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the  
17 27th day of February, 2011.

18  
19  
20  
21  
22  
23  
24  
25

\_\_\_\_\_  
LYNNETTE KOLLER FUCHS  
NOTARY ID 433397  
OHIO VALLEY REPORTING SERVICES  
202 WEST THIRD STREET, SUITE 12  
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES: DECEMBER 16, 2014  
COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

Ohio Valley Reporting  
(270) 683-7383