The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, August 4, 2011, 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
Sean Dysinger

CHAIRMAN: I want to call the Owensboro Metropolitan Board of Adjustment to order. Want to welcome each one of you this evening. The first thing we do we start our meeting each Thursday night with a prayer and pledge to allegiance. We invite you all to join us. Gary has our prayer this evening.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Again, I want to welcome you to the Board of Adjustment meeting. If you have any comments on any item, please to come to one of the podiums. State your name so we'll have that on record in the office. We'll listen to whatever you have to talk about as long as it's not over and over. We'll cut
you off if it's the same thing over and over.

With that the first item is consider the
minutes of the July 7th meeting. They're on record in
the office. We have no problems or didn't find any
problems unless somebody has something.

MR. NOFFSINGER: That's correct.

CHAIRMAN: Entertain a motion to dispose of
the item.

MR. PEDLEY: Move for approval.

MR. DYSINGER: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

The next item we like to change Item 5 to
Number 1 and go from there.

MR. NOFFSINGER: I would also like to announce
that before be move forward Item Number 6, 319
Frederica Street for First Security Bank has been
withdrawn. So if you're here tonight to hear any
testimony regarding that item, there will be no
opportunity to speak. That item has been withdrawn.

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CONDITIONAL USE PERMIT

Ohio Valley Reporting
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ITEM 5
926 Maple Street, Zoned I-1
Consider request to revoke a Conditional Use Permit in
order to operate an outdoor storage facility approved
at the April 7, 2011 OMBA meeting.
Reference: Zoning Ordinance, Article 8, Section 8.2L8
Applicant: River City Industrial Services, Inc.

MR. NOFFSINGER: Mr. Chairman, the Board of
Adjustment approved this Conditional Use Permit with
several conditions. There are three conditions that
are still outstanding that need to be taken care of.
The first item that needed to be taken care of
was an amended development plan which was to be filed
with our office. It has not been filed.
The second item was there was a buffer area
that was supposed to be ten feet wide. It's only
about 8, 8 1/2 feet. It needs to be increased.
The third item is that the screening has not
been completed at the site. I think there's a gate
that fronts one of the streets, Maple Street, I
believe. That has not been fully screened and it
needs to be screened.

We have also had reports that the EPA has been
out at the site because there have been some
complaints with the neighbors; however, no violation
has been recorded by the EPA.

So you will not be considering revocation of
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this Conditional Use Permit based upon odors because
the EPA has not issued a violation. So you're only
here to address these three items.
Now, with that the applicant is represented
here tonight by counsel, by Mr. Bill Wilson. He gave
me a letter that I need to read into the record. He's
asking that your action be postponed until our meeting
in September. That will be the first Thursday night
in September.
    "Dear Gary: I have recently been engaged in a
good bit of activity relating to apparent problems
with the Conditional Use Permit that was issued to
River City Industrial Services, Inc., on the outdoor
storage facility it operates at 926 Maple Street. I
have discussed the matters your office feels have not
been adequately addressed with Mike Butler. His
engineer, Don Bryant, and you in an attempt to come up
with an appropriate resolution of the three problem
areas that your office feels still exist. As you know
the matter is on the agenda for this evening's meeting
of the Owensboro Metropolitan Board of Adjustment.
Due to obvious time restraints I cannot completely
satisfy all of these concerns in that time frame.
    "Nevertheless, you may take this letter as my
client's agreement to address all of them in what will
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hopefully be a satisfactory manner by next month's meeting of the Board of Adjustment. I have only this morning notified Don Bryant regarding his submission of an amended development plan and he has agreed to do so prior to next month's meeting. Mr. Bryant has also agreed to file an application for variance relating to the 10 foot buffer area along the north side of the subject property, where there apparently has been a buffer installed that is only 8 to 8 1/2 feet wide.

Mr. Bryant knows that the application for variance must be filed by August 11, 2011 to be on next month's agenda.

"The final matter to be addressed relates to the gate along the Maple Street entrance. My client has indicated that he will also have that matter adequately addressed by the time of the September meeting of the Board of Adjustment.

"In the event that you have any questions pertaining to the above feel free to contact me at your convenience. William L. Wilson, Jr."

With that, Mr. Chairman, Staff believes that they are making a positive attempt to address these issues. It would be Staff’s recommendation that you hold off taking action until the September meeting.

However, what you do from here is up to you as
a board. You will need to vote on any action that you take.

CHAIRMAN: What is the board's pleasure?

MR. DYSINGER: Mr. Chairman, I do have a question that Mr. Noffsinger might be able to answer. Did counsel or counsel could possibly address this as well, give you any indication as to why the applicant made no attempt to communicate with Staff for however many weeks? I mean we have a violation here from the 7th, June 7th?

MR. NOFFSINGER: That's correct.

MR. DYSINGER: Did they give any indication why there was no communication?

MR. NOFFSINGER: I did not receive any communication from their attorney, but he is here. He may have a little trouble speaking where you can hear him tonight, but he can speak.

MR. WILSON: I'm Bill Wilson.

I really can't answer that question why Mike did or didn't do something. What I can answer is I knew about this for the first time about 4:00 yesterday afternoon when I met with him. Well, briefly before that because I spoke with Gary maybe at 2:00 when I had a phone call about a meeting that afternoon, which was yesterday.

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Don Bryant when I called him this morning he knew nothing about it.
So why Mike did what he did or didn't do, I can't answer that. What I mentioned to Madison on the way in here, you know, and I'm certainly not telling Staff how to work anything, but had we gotten a copy of any of those notices, you know, you do a probate matter the probate clerk, whether you're active in the estate or not once your name is on the file notices that go out to the executor of the estate go also to the attorney that showed up.
If I had known of this, we wouldn't be here tonight. I'll assure you that. I can't tell you why Mike did anything. Did he think I was getting a copy? I don't know. I never knew about it until 24 hours ago and Don Bryant knew about it about 8 hours ago. That's why we're asking to be given a chance to address these things. He should have addressed and he didn't.
MR. DYSINGER: That's the only thing I have, Mr. Chairman.
CHAIRMAN: Any other board members have any questions?
(NO RESPONSE)
CHAIRMAN: Entertain a motion to postpone the
MR. NOFFSINGER: Do you want to see if there's anyone in the audience.

CHAIRMAN: Does anyone in the audience wishing to speak on this opposition?

Come forward and state your name.

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

MR. WEAVER: Dennis Weaver.

(DENNIS WEAVER SWORN BY ATTORNEY.)

MR. WEAVER: I live right across the street on Moreland Avenue from him. I feel like he's had more than enough time. He knew. He operated a whole year illegal before he even got it zoned. Now he's been since April and still has done nothing. I feel like the man has had more than enough time to fix the problem.

CHAIRMAN: So noted. We'll put that on the record.

Any other comments?

Come forward please and state your name.

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

MS. DUNN: My name is Teri Dunn.

(TERI DUNN SWORN BY ATTORNEY.)

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MS. DUNN: When they came out and put the
green tarp up around the fences, they left a section
in my backyard undone. Their dumpsters are filled
with water and mosquitos. I'm afraid of that west
Nile going around the mosquitos breeding in that
water. I have two children. I would like something
to be done about that, if you could.
CHAIRMAN: We note that and the inspector will
check on that.

Any other comments?

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

MR. ATWELL: James Atwell.

(JAMES ATWELL SWORN BY ATTORNEY.)

MR. ATWELL: Gentlemen and lady, if you will
look back at the records from the first two meetings
we had, the fencing that was told to them to put in
was a slat fence and what we have up is a mosquito net
looking device that doesn't really do anything. I
remember specifically that you all told him that there
had to be a slat fence, the woven type. That's
nowhere near what's out there.
CHAIRMAN: Would you like to make a comment,
please?

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

MR. MISCHEL: Jim Mischel.

(JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: Typically we do allow that type
of screening, unless there's a condition placed. I
would have to go back through the minutes and the
notes to see if you did put that condition on there,
but typically we allow the slats or this type of
fabric, fence to be installed.

CHAIRMAN: When you go back, check on the
water and stuff, if you would. Report next time to us
too and let the attorney know also, please.

MR. MISCHEL: Now, I think the water and the
mosquitos that would probably be a health department
issue. I don't know if they've been notified or not.

MR. NOFFSINGER: Again, Mr. Chairman, we're
here to discuss three conditions that the applicant is
not in compliance with. Anything other than those
three conditions, this board would not have the
jurisdiction to discuss or entertain.

While that may be unfortunate for these
neighbors here that have concerns, whatever your
actions are need to hinge upon the three reasons
they're here for revocation.

CHAIRMAN: Okay. We understand that. It
would be nice to inform the attorney of the
information from us. Appreciate that.
Any other comments?
MR. SILVERT: Would you state your name,
please?
MR. WARREN: Jim Warren.
(JIM WARREN SWORN BY ATTORNEY.)
MR. WARREN: What I would like to ask is just
a question on the last meeting we had. They were set
to stipulations what they had to do for the
conditional use permit, and they haven't done those
three things in a timely fashion. How many times will
they be allowed to just -- if they come back again, is
it going to be the same thing again or are they going
to have another certain amount of time to get it done?
They were laid out pretty forward what they needed to
do. They've obviously not chose to do that. Does
anybody, if they come back a second time and it's not
done will it be taken away from them or will it be
given another chance to do it?
MR. NOFFSINGER: Sir, that's going to be a
decision this board has to make. Certainly they're
within their rights to revoke it tonight. They may
give them more time, as they've asked. That's up to
this board. They have to address that question.
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MR. WARREN: All right.
CHAIRMAN: Any other comments?
MR. SILVERT: If you would just state your name again for the record. You've been sworn.
MR. WEAVER: Dennis Weaver.
One of the other conditions I don't think has been addressed, but there wasn't supposed to be anything higher than the fence. Everything he's got in there is higher than the fence. I didn't know if that was going to be addressed.
MR. NOFFSINGER: Sir, the materials that were stacked on the property were to be no higher than the fence and that was a condition; however, the trailers, it was noted that they park there and they're going to be higher than the fence. This board took that into consideration and did not require those trailers to be lower.
MR. WEAVER: You talking about semi-trailers?
MR. NOFFSINGER: Yes, sir. Those containers.
MR. WEAVER: There's other type trailers in there as well.
MR. NOFFSINGER: It's my understanding it was materials that are to be stacked. So if they were to stack trailers one on top of the other, then they would be stacked, but it has to be stacked material.
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If you had two storage containers stacked on top of each other, that's stacked. But if it's just a semi-trailer or one container, it wouldn't be a stacked material.

CHAIRMAN: Any other comments?

(NO RESPONSE)

CHAIRMAN: Board members have any other comments or questions?

MR. DYSINGER: Mr. Chairman, I would like to say I'm not opposed to postponing this. Counselor makes a good case.

You're here to represent the client and you just found out yesterday.

I'm not opposed to it. What I will say, is that when we come back a month from now I would like to hear either from counsel or from the client himself as to why there has been a complete apparent disregard for the Staff's efforts to communicate, you know, to have this rectified. I understand he can't answer that tonight, and I'm not asking you to. These neighbors have been patient. I think Staff has been patient. I'm seeing, what I see at this point is a willful disregard for everybody but themselves. I'll say that. Again, I'm not opposed to postponement.

CHAIRMAN: Any other comments?

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CHAIRMAN: Entertain a motion for or against to postpone.

MS. MASON: I will say that I'm not opposed to postponing either, but I agree with Sean. I just think he hasn't done anything that he said he would do. But I'm not opposed to postponing too since his attorney wasn't aware of what was going on.

MR. PEDLEY: I would like to say that he has partially done some of the zoning ordinance requirements. He hasn't done some of the conditions put on. Typically we would give 30 days to come into compliance before we recommend revoking the conditional use permit.

So with that I make a motion that we postpone to the September meeting to allow the applicant to come into compliance and for the zoning administrator to do a little research and find out some additional information that we might need. But let me assure you, if this isn't done it will be revoked at the next meeting.

CHAIRMAN: Is there a second?

MR. DYSINGER: I'll second it.

CHAIRMAN: A motion has been made and a second. Any other questions or comments from the Ohio Valley Reporting
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board?
FATHER LARRY: I would just add I find this a little disturbing that there has been so much time that has gone by without anything being done. Speaking as an educator at some point you've got to draw the line and you'll have to face the consequences.
CHAIRMAN: Appreciate all the board members comments on it. Staff have anything else?
MR. NOFFSINGER: No, sir.
CHAIRMAN: All in favor raise your right hand. (BOARD MEMBERS WARD PEDLEY, SEAN DYSINGER, RUTH ANN MASON RESPONDED AYE.)
CHAIRMAN: All opposed. (FATHER LARRY HOSTETTER RESPONDED NAY.)
CHAIRMAN: Motion carry. Next item, please, sir.
ITEM 2
909 Mosley Street, zoned I-1
Consider a request for a Conditional Use Permit in order to operate a trampoline and tumbling/gymnastics schools for not more than 30 participants at a time.
Reference: Zoning Ordinance, Article 8, Section 8.2B11/13
Applicant: Renee King; Steve & Patricia McFarling
MR. SILVERT: Would you state your name, please?
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ZONING HISTORY
The subject property is currently zoned I-1 Light Industrial. OMPC records indicate the subject property was rezoned from B-4 General Business to I-1 Light Industrial in 1980.
The applicant is wishing to operate a trampoline and tumbling/gymnastics school for not more than 30 participants at a time and not more than 2 employees; there will be no spectator seats. They will offer recreational and competitive classes for school aged students and host special activities such as parties, clinics and summer day camps. The hours of operation will be from 3:30 p.m. to 8:30 p.m. Monday thru Friday and 10:00 a.m. to 2:00 p.m. on Saturdays with special summer hours of 9:00 a.m. to 12:00 p.m. Monday thru Friday.
The applicant is proposing to use the building at 909 Moseley Street for the operation of the business and the two properties to the east, 508 and 512 East 9th Street, to accommodate the required parking. They plan to consolidate all three properties into one.

LAND USES IN SURROUNDING AREA
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The subject to the north is zoned B-4 General Business. The properties to the south, east and west are zoned I-1 Light Industrial.

ZONING ORDINANCE REQUIREMENTS

1. Parking - They are required to have 17 spaces.
2. Landscaping - 3 foot wide landscaping easement with 1 tree every 40 feet and a 3 foot high continuous element along the Vehicular Use Area boundaries.

SPECIAL CONDITIONS

Approval of a minor subdivision plat to consolidate the property.

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

CHAIRMAN: Thank you.

Has there been any comments filed with the office?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Is the applicant here and you have any comments you would like to present at this time?

APPLICANT REP: No. Thank you.

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CHAIRMAN: Board members have any questions of the applicant?
(NO RESPONSE)
CHAIRMAN: Staff have any other comments?
MR. NOFFSINGER: No, sir.
CHAIRMAN: Entertain a motion to dispose of the item.
MS. MASON: Mr. Chairman, I move for approval. My findings of facts are that it's compatible with the land use in the area. There's no opposition and it will not have an adverse influence on the neighborhood. With the conditions that approval of a minor subdivision plat to consolidate the property.
MR. DYSINGER: Second.
CHAIRMAN: A motion has been made and a second. Any other questions or comments from the board?
(NO RESPONSE)
CHAIRMAN: Staff anything else?
MR. NOFFSINGER: No, sir.
CHAIRMAN: The applicant understand everything that we've presented?
APPLICANT REP: Yes, sir.
CHAIRMAN: Hearing no other comments all in Ohio Valley Reporting
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favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

ITEM 3

801 West Fifth Street, zoned B-4

Consider a request for a Conditional Use Permit in
order to operate a childcare facility for up to 175
children from 6 a.m. to 12 a.m. Monday thru Friday.

Reference: Zoning Ordinance, Article 8, Section 8.2B3
Applicant: H.L. Neblett Community Center

ZONING HISTORY

The subject property is currently zoned B-4
General Business. OMPC records indicate the property
was rezoned from B-4 General Business and R-4DT Inner
City Residential to B-4 General Business in 2005.

The applicant is wishing to operate a
cildcare facility, after school program and evening
recreation mentoring program for up to 175 children
within an existing community center. The facility
will operate Monday thru Friday 6:00 a.m. to 12:00
a.m.

LAND USES IN SURROUNDING AREA

The properties to the north are zoned B-4
General Business and P-1 Professional Service. The
properties to the south are zoned B-4 General
Business. The properties to the east and west are
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zoned R-4DT Inner City Residential and B-4 General Business.

ZONING ORDINANCE REQUIREMENTS
1. Parking - they're required to have 34 spaces and they're providing 40 on their site plan that was submitted.
2. Landscaping - 3 foot wide landscaping easement with 1 tree every 40 feet and a 3 foot high continuous element along the Vehicular Use Area boundaries.

MS. EVANS: We would like to enter the Staff Report into the record as Exhibit B.
CHAIRMAN: Any comments filed in the office?
MR. NOFFSINGER: No, sir.
CHAIRMAN: Anyone wishing to speak in opposition of this item?
(NO RESPONSE)
CHAIRMAN: Is the applicant here and do you have any comments you would like to make?
APPLICANT REP: No, sir.
CHAIRMAN: Any board members have any questions of the applicant?
(NO RESPONSE)
CHAIRMAN: Staff have any other comments?
MR. NOFFSINGER: No, sir.

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CHAIRMAN: Entertain a motion to dispose of the item.

MR. PEDLEY: Mr. Chairman, I make a motion for approval based on the findings we've heard no opposition on this. It is compatible use in the neighbored. It will not have an adverse influence on the future development.

MS. MASON: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

CHAIRMAN: The applicant have anything else you would like to add?

APPLICANT REP: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 4

227 East Ninth Street, zoned I-1
Consider a request for a Conditional Use Permit in order to operate a trampoline and tumbling/gymnastics schools for not more than 48 participants at a time.

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Reference: Zoning Ordinance, Article 8, Section 8.2B11/13
Applicant: Renee King; Ken & Sherry Crandall

ZONING HISTORY
The subject property is currently zoned I-1 Light Industrial. OMPC records indicate there have been no zoning map amendments for the subject property.
This use was the same use that was on the Mosley Street application. The applicant has prepared two applications for different sites while they're debating which property will be more feasible for them to use.
So the activities at the site will be the same. The only difference that this site could accommodate up to 40 students at a time rather than the 39. All other issues with the item will be the same though.
MR. NOFFSINGER: Is that 48 participants?
MS. EVANS: Forty-eight at this site.

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

ZONING ORDINANCE REQUIREMENTS
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1. Parking - they will be required to have 26 spaces at this site.

2. Landscaping - 3 foot wide landscaping easement with 1 tree every 40 feet and a 3 foot high continuous element along the Vehicular Use Area boundaries.

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

CHAIRMAN: Is there any comments filed in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: The applicant here and is anyone wishing to speak in opposition of this item?

(NO RESPONSE)

CHAIRMAN: The applicant have any comments you would like to make at this time?

APPLICANT REP: No, sir.

CHAIRMAN: Hearing none the board have any questions?

(NO RESPONSE)

MR. NOFFSINGER: No, sir.

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Entertain A motion to dispose of the item.

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MR. DYSINGER: Mr. Chairman, given the findings that the use is compatible with the surrounding neighborhood I move that we grant the conditional use permit.

CHAIRMAN: Is there a second?

FATHER HOSTETTER: Second.

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

(NO RESPONSE)

CHAIRMAN: Anything else from the staff?

MR. NOFFSINGER: No, sir.

CHAIRMAN: The applicant have anything else you would like to add?

APPLICANT REP: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

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VARIANCES

ITEM 7

6701 Block Highway 405, zoned R-1C

Consider a request for a Variance in order to reduce the required project boundary for a Planned Residential Development from 20 feet to 10 feet along Ohio Valley Reporting

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the southeast property line.
Reference: Zoning Ordinance, Article 10,
Section 10.432
Applicant: Image Builders, LLC

MR. SILVERT: Would you state your name, please?
MR. HOWARD: Brian Howard.
(BRIAN HOWARD SWORN BY ATTORNEY.)

SPECIAL CIRCUMSTANCES
The subject property was rezoned from B-4 General Business to R-1C Single-Family Residential at the June 2011 OMPC meeting. The applicant is proposing a Planned Residential Development consisting of 11 lots and a private alley for rear access to the lots. By choosing to do a Planned Residential Development the applicant will not have to meet the minimum 50 foot lot widths typically required in an R-1C zone. They will be able to install the private alley that will be used for rear access to the lots which is also allowed in a Planned Residential Development. However there is a requirement of a 20 foot setback from the project boundary lines that is not required in a standard subdivision plat in order to buffer from other properties.

The applicant argues that because of the required project boundary they will lose the use of Ohio Valley Reporting
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the proposed lots in this development because there will not be enough space left on the lot for a single family residence, thus reducing the number of sellable lots from 11 to 10.

If the applicant were to do a standard subdivision plat for the subject property, the private alley that is currently proposed would not be allowed. It would not be feasible to put a public street through this development because of the restrictions on the amount of land area available. This would leave only the option for access to be off of Highway 405 and Wrights Landing Road. The access standards state that on both Highway 405 and Wrights Landing Road there is a minimum of 250 foot spacing between access points. It is the Staffs’ calculation that with this minimum distance there would only be space for 2 access points off of Highway 405 and 1 access point off of Wrights Landing Road. It is our opinion that if the lots shared access points, the applicant could, at most fit 6 lots onto the subject property.

The applicant may be losing the use of 1 lot and have 10 sellable lots if they are required to meet the project boundary setback of 20 foot in a Planned Residential Development; but if they were to do a

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standard subdivision they would only have, at most, 6 sellable lots due to the access spacing standards. It is Staffs' opinion that the applicant will be benefitting greatly by being able to do a Planned Residential Development, even if the Variance is not granted.

Granting this variance will alter the essential character of the general vicinity because it abuts a residential neighborhood that was developed as a standard subdivision meeting lot size requirements and keeping this 20 foot project boundary setback will allow adequate space between the existing neighborhood and this proposed Planned Residential Development with a private alley and smaller lot sizes and greater density.

Granting this variance will be an unreasonable circumvention of the requirements of the zoning ordinance because by choosing to do a Planned Residential Development the applicant is already receiving benefits of smaller lot sizes and the use of a private alley and this development should adhere to the requirements of Article 10 in order to benefit.

MR. HOWARD: With that I would like to enter the Staff Report into the record as Exhibit D with the recommendation from Staff for denial.

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CHAIRMAN: Been any opposition or comments in the office?

MR. NOFFSINGER: Yes, sir. We have had one call from an adjoining landowner that state that they had concerns. They were indeed adjoining property owner and had concerns about the buffer being reduced from 20 feet down to 10 feet.

CHAIRMAN: So noted.

Is anyone here this evening wishing to speak in opposition?

If you're in opposition, I just want to know of anyone. Just minute.

Let's hear the applicant first and then you can bring your opposition.

Is the applicant here. Anybody representing the applicant?

MR. SILVERT: State your name, please.

MR. BAKER: Jason baker.

(JASON BAKER SWORN BY ATTORNEY.)

MR. BAKER: We prepared the application for the applicant. He wasn't able to make it tonight. I can answer any questions relating to the specific application, but couldn't act on behalf of the client.

CHAIRMAN: Any board members have any questions of the applicant representation at this Ohio Valley Reporting
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MR. DYSINGER: Yes. Mr. Chairman, I would just ask if the applicant's representative can give us a reason to grant the variance?

MR. BAKER: The reason the applicant was applying for the variance has to do with there's an existing sanitary sewer force main which traverses from the sanitary sewer lift station property directly behind this and extends directly across the subject tract bisecting it out toward 405.

The location of that force main limits the distance, the width of those lots directly to the west. That's the purpose for the request.

CHAIRMAN: Any other questions from the board members?

MR. DYSINGER: I would ask Staff if they've like to comment on that? Does sewer main factor into their report at all?

MR. NOFFSINGER: Yes, we're certainly aware of that. We did take that into account in our review. Again, in looking at if they developed this as a regular subdivision, they could get six sellable lots. They chose to do a Planned Residential Development. They can get ten sellable lots and they want to push it to 11. That would be at the expense of the

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adjoining landowner and their right to a buffer from a
project that's not a part of their development.

Although this development will be in keeping
with the density of the zoning they're under, you will
find that the lots in this development are going to be
much smaller than what they are in the adjoining
development. So they're already taking advantage of
the benefit that the ordinance has allowed them to do
by doing a Planned Residential Development. This is
asking to go another step further.

Certainly we would like it get as many lots
out there as we can. We don't recommend doing that at
the risk of circumventing the zoning ordinance which
has already allowed flexibility for this developer to
create more lots than what the ordinance would
ordinarily allow.

CHAIRMAN: Any other comments or questions of
the applicant's representative right now?

(NO RESPONSE)

CHAIRMAN: The one that has opposition at this
time please come forward and state your name please,
ma'am.

MS. JOHNSON: My name is Tamra Johnson.

(TAMRA JOHNSON SWORN BY ATTORNEY.)

MS. JOHNSON: I have few questions. The first
one was why do they want to change, and now I know
that instead of having ten sellable lots they want to
have 11.

With this I believe that ten houses back there
is going to be congested. It's going to be problems
with the noise. I think these will cause problems.

I also would like to know if the variance is
on the three properties off of 405 on Chandler Avenue?
Apparently this is the only place that they're asking
for a variance. Is this yes or no?

MR. NOFFSINGER: If I may.

Yes, ma'am, the only place they're asking for
a variance would be along that property line that
adopts the two lots that front Chandler. The one at
Chandler and 405, and then the lot next to it.
They're identified as lot 4D and lot 4C. A portion of
lot 4B. Just a small portion.

MS. JOHNSON: Also, if this does get passed, I
would like to know if there will be a barrier of some
sort. Not a planned for a barrier, but a barrier. Of
course, when they start building, there's going to be
dust and dirt and so forth and the noise, of course.
I would like to know if there's going to be some kind
of barrier put up. When will this variance be voted
on? Does anybody know?

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CHAIRMAN: Tonight.

MS. JOHNSON: My one last comment is I respectfully ask that it be denied because of the noise and the view and the congestion back behind the houses. Thank you.

CHAIRMAN: Anyone else have any other comments?

Come forward and state your name please, ma'am.

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

MS. HEADY: By name is Bobbi Heady. (BOBBI HEADY SWORN BY ATTORNEY.) MS. HEADY: I'm the lot that just has the small amount. I received a letter too. I have some of the same concerns that Tammy has. It will be very close to our property in the back of my house. Noise factor, congestion, blocking the vow. I'm with her. I'd like to respectfully request that this be denied, this variance. Thank you.

CHAIRMAN: Anyone else have any other comments?

Come forward, please, ma'am.

MR. SILVERT: Could you state your name, Ohio Valley Reporting (270) 683-7383
please?
MS. ROWLAND: Helen Rowland.

(HELEN ROWLAND SWORN BY ATTORNEY.)

MS. ROWLAND: My husband and I are the owners of block 40 in Wrights Acres. We do request that this variance be denied for the simple fact that if you take it from 20 feet to 10 feet, that house will be almost literally right outside my back door. I feel that is entirely too close. If you put ten houses in that area, it will be very, very congested regardless of what a plan may show. I thoroughly agree with the other two that are here. Thank you.

CHAIRMAN: Any other comments from the board members?

(NO RESPONSE)
CHAIRMAN: Staff have any other comments?
MR. NOFFSINGER: The only question I think that has not been addressed would be a barrier. If this variance is not granted, is there going to be some type of barrier. That was the one question I think that was not addressed.

MR. PEDLEY: Mr. Noffsinger, does the ordinance require screening?
MR. NOFFSINGER: No, sir.

MR. PEDLEY: Doesn't require.

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MR. NOFFSINGER: No, sir.

CHAIRMAN: Mr. Baker, come forward. Can you answer our question, please.

MR. BAKER: Jason Baker.

I know of no plan to put up a fence; although technology is I'm communicating with the client here and he said "I'll put up a fence." I don't know if that works.

MR. NOFFSINGER: It doesn't change Staff's recommendation, but at least it gives these folks an idea of what to expect.

CHAIRMAN: State your name again, please.

MS. JOHNSON: Tamra Johnson.

In the last meeting that we had here, which was June 9th, I believe, the builder said the plan was to put up a barrier of some sort. That is all well and good. His plan, we all know that plans don't go as planned. So I would like to get a guarantee that if this variance does go through that there will be some type of barrier. As my neighbor said, these houses will be in our backyard. That's my question.

Thank you.

CHAIRMAN: Thank you.

Board members have any other comments?

MR. PEDLEY: It's unfortunate that the Ohio Valley Reporting
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applicant is not here to agree to some sort of
screening, fence or pine trees; although, we can put
that condition on the variance.

Is that right, Mr. Noffsinger?

MR. NOFFSINGER: Yes, sir.

MR. PEDLEY: It would be good if the builder
was here. He's not. I'm not for postponing this. I
think we need to move forward. However, we have a
severe shortage of lots in this community for
builders. I know Image Builders have been searching
all over for lots. We do not have lots to build homes
on because of the lack of development. Most of the
builders are searching for lots. Also the
comprehensive plan would support higher density. It
does support higher density. I believe that's the
direction we're moving in.

Also, this side yard of these homes is to the
rear of the homes in lot 4D and lot 4C. There's quite
a space. I do believe there needs to be a screening.

I believe either a fence or pine trees or both.

With that, Mr. Chairman, if you're ready.

CHAIRMAN: We're ready for a motion.

MR. PEDLEY: I think I'm prepared.

Again, my findings are with what I've
previously stated about the shortage of lots in this
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community. We're needing to go to a higher density in
our developments and the comprehensive plan encourages
that. Most of the builders are searching for lots
today. We have totally depleted our development lots.
For that reason I'm going to make a motion that we
approve this variance with the findings that it will
not adversely affect the public health, safety or
welfare because it is in a residential area. To the
north of those the spacing on the houses are much
closer than it will be to the rear lots, on these
houses on these two lots. It will not alter the
essential character of the general vicinity. Actually
it abuts the rear lots. Everything to the north of
what they're developing will be narrow lots and
closer. It will not cause a hazard or nuisance to the
public. Based on my findings that we do have a
shortage of lots. The comprehensive plan calls for
high density in our developments in the future. It
will not adversely allow an unreasonable circumvention
of the requirements of the zoning ordinance
regulations because actually when you allow this
development to be that way you actually created a
closer and higher density. Because it is on a rear
lot, the house on Chandler and spacing is quite a
distance, I don't feel it's a major circumvention of
the requirements of the zoning ordinance.
I will put on a condition on it that the
builder put up a fence 6 feet high and a pine tree
every 10 feet on the side of the homes on Chandler
Avenue. That's my motion.
CHAIRMAN: Is there a second to the motion?
MS. MASON: I'll second it.
CHAIRMAN: A motion has been made and a
second. Any other questions or comments from the
board?
(NO RESPONSE)
MR. DYSINGER: Mr. Chairman, I would just say
that under normal circumstances and in all the years
that we've been on this board together I generally
defer to Mr. Pedley's experience and judgment and
issues of development. I do have to say that in this
case however I don't think that the argument is
compelling in the face of such egregious circumvention
of the zoning ordinance. That's all I would say.
CHAIRMAN: Any other comments or questions
from the board members?
(NO RESPONSE)
CHAIRMAN: Staff have anything else, comments
you all would like to make?
MR. NOFFSINGER: I think we better remain
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CHAIRMAN: So noted.
Hearing no other questions or comments all in favor raise your right hand.
(BOARD MEMBERS WARD PEDLEY AND RUTH ANN RESPONDED AYE.)

CHAIRMAN: Opposed.
(BOARD MEMBERS FATHER LARRY HOSTETTER AND SEAN DYSINGER RESPONDED NAY.)

CHAIRMAN: Two/two.
I'm against the application so I vote no. So the motion fails.

Next item, please.

MR. NOFFSINGER: We need another motion.
MR. DYSINGER: Mr. Chairman, given the findings that there is simply no compelling reason to grant the variance, further that there is nothing adherent in the lot shape or size that would compel granting it and creating an obvious circumvention of the zoning ordinance, and given the testimony of adjoining landowners, it would create a nuisance in the neighborhood and is therefore not compatible. I move that we deny the variance request.

FATHER LARRY: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

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

(BOARD MEMBERS SEAN DYSINGER, FATHER LARRY RESPONDED AYE.)

CHAIRMAN: Opposed.

(BOARD MEMBERS WARD PEDLEY AND RUTH ANN MASON RESPONDED NAY.)

CHAIRMAN: I have to go along with the motion to deny it.

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ADMINISTRATIVE APPEAL

ITEM 8

2125 Breckenridge Street, zoned B-4
Consider a request for an Administrative Appeal concerning the proposal to change from one non-conforming use to another non-conforming use with regards to parking, access and landscaping.
Reference: Zoning Ordinance, Article 4, 7,
Section 4.53, 7.34
Applicant: Irvin Merritt; Haphazard, LLC

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

The applicant is requesting to change from one non-conforming use as a restaurant to another non-conforming use as a restaurant. The site, with regards to parking, access and landscaping, will remain the same as it was with the previous business.

LAND USES IN SURROUNDING AREA

The properties to the north and east are zoned B-4 General Business. The properties to the south and west are zoned R-3MF Multi-Family Residential.

AUTHORITY FOR CHANGE IN NON-CONFORMING USE

A motion to approve would allow the operation of a restaurant using the existing site with no additional improvements to the site required.

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

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

CHAIRMAN: Has there been any opposition filed in the office on this?

MR. NOFFSINGER: No, sir. For the record this is an existing block building that's been used for a restaurant as long as certainly I can remember it as a
child. It will continue a restaurant here. They're making no additions to this facility. It will remain as is and function hopefully as a successful restaurant if you approve this Administrative Appeal.

CHAIRMAN: What is the board's pleasure on this appeal?

MR. DYSINGER: Mr. Chairman, given the findings that new non-conforming use will be exactly as restrictive as the old non-conforming use I move that we find in favor of the appellate.

CHAIRMAN: Is there a second?

MS. MASON: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have any other comments?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 9

7046 Highway 56, zoned B-4

Consider a request for an Administrative Appeal
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concerning the proposal to change from one non-conforming use to another non-conforming use with regards to parking, access and landscaping.

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

Applicant: Jeff Blackstone; Jimmy Yeckering

ZONING HISTORY

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

The applicant is requesting to change from one non-conforming use as a restaurant to another non-conforming use as a restaurant. The site, with regards to parking, access and landscaping, will remain the same as it was with the previous business.

The applicant is proposing to construct a patio on the front of the building. If this patio were to remain uncovered, it would not increase the non-conformity of the structure or site; however, if the applicant wishes to cover the patio, this would increase the non-conformity and therefore the Board could not act to approve a roof structure.

LAND USES IN SURROUNDING AREA

The properties to the north, south and west are zoned B-4 General Business. The property to the west is zoned R-1A Single-Family Residential.

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AUTHORITY FOR CHANGE IN NON-CONFORMING USE

A motion to approve would allow the operation of a restaurant using the existing site with no additional improvements required to the site and would allow the applicant to construct an uncovered patio. A motion to deny would require the applicant to install the parking, appropriate access points and landscaping as required by the zoning ordinance.

SPECIAL CONDITIONS

We would like to place one special condition on this item, if it were approved. That is:

1. Construction of any building additions or roof structures over the proposed patio is prohibited.

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

CHAIRMAN: Thank you.

Any comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is there anyone talking against the appeal at this time?

CHAIRMAN: Hearing none board members have any comments?

MR. DYSINGER: Mr. Chairman, I would just ask if the applicant is aware of the special condition that's been requested, understands it and so forth.

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CHAIRMAN: Come forward and state your name.
MR. SILVERT: Would you state your name, please.
MR. BLACKSTONE: Jeff Blackstone.
JEFF BLACKSTONE SWORN BY ATTORNEY.)
MR. BLACKSTONE: Yes, I understand that. The reason for the patio at all is to get one level into the restaurant. You've got steps and there's no way to make it handicap accessible really. So by putting a deck out there allows us to do that. The only reason for putting a roof over it and not really enclose it in is just strictly a convenience for weather. It doesn't extend out any further than the area that's already bricked or whatever is already there. It just eliminates steps. So whatever works out on that, you know. Umbrella I guess work just as well.
CHAIRMAN: Any other comments or questions of the applicant?
(NO RESPONSE)
CHAIRMAN: The Staff have anything else?
MR. NOFFSINGER: No, sir.
CHAIRMAN: Entertain a motion to dispose of the Administrative Appeal.
FATHER HOSTETTER: Mr. Chairman, I move that
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we grant the Administrative Appeal based on the fact
that we're moving from one non-conforming use as a
restaurant to another with, however, the special
condition that construction of any building additions
or roof structures be prohibited over the proposed
patio.
CHAIRMAN: Is there a second?
MR. DYSINGER: Second.
CHAIRMAN: A motion has been made and a
second. Any other comments or questions from the
board?
(NO RESPONSE)
CHAIRMAN: Staff have anything else?
MR. NOFFSINGER: No, sir.
CHAIRMAN: All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries.
Next item.
FATHER HOSTETTER: Move to adjourn.
MS. MASON: Second.
CHAIRMAN: All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: We are adjourned.

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

I, LYNETTE KOLLER FUCHS, Notary Public in and for the State of Kentucky at Large, do hereby certify that the foregoing Owensboro Metropolitan Planning Commission 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 45 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 26th day of August, 2011.

LYNETTE 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, KENTUCKY

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