

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 OCTOBER 6, 2011

3 The Owensboro Metropolitan Board of Adjustment
4 met in regular session at 5:30 p.m. on Thursday,
5 October 6, 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 Marty Warren
- 15 Sean Dysinger
- 16 Shannon Raines
- 17 * * * * *

18 CHAIRMAN: Let me call the meeting of the
19 Owensboro Metropolitan Board of Adjustment to order.
20 Welcome each one of you here this evening. We start
21 our program each meeting with a prayer and the pledge
22 of allegiance. We invite you all to join us if you
23 will. Brian Howard will have our prayer.

24 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

25 CHAIRMAN: Again, I want to welcome you to
this meeting. If you have any comments, come to one
of the podiums, state your name so we'll have record
in the office and we'll proceed with that.

With that the first item is the minutes of the

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1 September meeting. We haven't found any problems in
2 the office. Anybody know of any corrections?

3 (NO RESPONSE)

4 CHAIRMAN: If not the chair is ready for a
5 motion.

6 MR. PEDLEY: Motion for approval.

7 MR. DYSINGER: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries.

12 Next item, please, sir.

13 -----

14 CONDITIONAL USE PERMITS

15 ITEM 2

16 9856 Kelly Cemetery Road, zoned R-1A and A-U
Consider a request for a Conditional Use Permit in
17 order to install a Class 2, 16 foot by 76 foot
manufactured home in an R-1A zone.

18 Reference: Zoning Ordinance, Article 8,
Section 8.2A10B

19 Applicant: Robert Bates, Hacienda Properties, LLC

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

22 MS. STONE: Becky Stone.

23 (BECKY STONE SWORN BY ATTORNEY.)

24 ZONING HISTORY

25 The subject property is currently zoned R-1A

1 Single Family Residential. The OMPC records indicate
2 there have been no Zoning Map Amendments for the
3 subject property. A conditional use permit was
4 approved by the OMBA on June 2, 2011 to install a
5 Class 2, 14 foot by 76 foot manufactured home in an
6 R-1A zone. The requirement for a concrete sidewalk
7 and paved parking were waived. Because the applicant
8 wishes to install a larger manufactured home than was
9 previously approved, a new conditional use permit is
10 required.

11 There are existing single wide (Class 2)
12 manufactured homes in the area.

13 The applicant is again asking that the
14 concrete sidewalk requirement be waived and that the
15 paved parking requirement be waived. Based on the
16 aerial photography of the area from February 2010,
17 there appear to be no sidewalks in the area. This is
18 a rural area where sidewalks are not typical. There
19 also appears to be a mix of paved and gravel driveways
20 and parking areas along Kelly Cemetery Road in the
21 vicinity of the subject property.

22 LAND USES IN SURROUNDING AREA

23 The properties to the north and south are
24 zoned R-1A Single Family Residential and A-U Urban
25 Agriculture. The properties to the east are zoned A-U

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1 Urban Agriculture and A-R Rural Agriculture. The
2 properties to the west are zoned R-1A Single Family
3 Residential.

4 ZONING ORDINANCE REQUIREMENTS

5 The Class-2 manufactured home site standards
6 based on the requirements of the Zoning Ordinance are
7 as follows:

- 8 1. A concrete or asphalt parking pad to
9 accommodate two 9'x18' spaces is required.
- 10 2. A minimum 10'x 10' deck or patio is
11 required.
- 12 3. A concrete sidewalk is required, but may
13 be waived along rural roads (without curbs).
- 14 4. The driveway apron shall not exceed 40% of
15 the lot width.
- 16 5. The property is required to have at least
17 three trees.
- 18 6. The manufactured home shall be permanently
19 installed on a permanent foundation. A poured
20 concrete or masonry block skirting wall shall be
21 constructed beneath and along the entire perimeter of
22 the manufactured home.
- 23 7. All wheel, trailer-tongue and hitch
24 assemblies shall be removed upon installation.
- 25 8. The manufactured home shall be permanently

1 connected to an approved water and sewer system
2 when available.

3 MS. STONE: The site plan submitted meets all
4 of these requirements with the exception of a concrete
5 sidewalk and the paved parking which the applicant is
6 asking to be waived.

7 CHAIRMAN: Have we had any comments filed in
8 the office?

9 MR. NOFFSINGER: No, sir.

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

12 (NO RESPONSE)

13 CHAIRMAN: Does the applicant have anything
14 you want to add to it at this time?

15 (NO RESPONSE)

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

18 MS. MASON: Mr. Chairman, I move for approval
19 with my findings of fact that it's consistent with the
20 previously approved conditional use permit. It's
21 compatible with the areas. There are other Class 2
22 single-wide manufactured homes in the area and it is a
23 rural community. And all of the zoning ordinance
24 requirements be met with the exception of a concrete
25 sidewalks as this is a rural area and sidewalks are

1 not typical and there appears to be no sidewalks in
2 the area. Also waived the paved parking as some of
3 the parking in the area is not paved. The lot be kept
4 mowed to basic standards would be a condition.

5 MR. DYSINGER: Second.

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

8 (NO RESPONSE)

9 CHAIRMAN: Staff have anything to add on it?

10 MR. NOFFSINGER: No, sir.

11 CHAIRMAN: The applicant understand all of the
12 guidelines at this time?

13 APPLICANT REP: Yes, sir.

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

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries.

18 Next item, please.

19 ITEM 3

20 10648 Lafayette Street, zoned R-1A

21 Consider a request for a Conditional Use Permit in
22 order to construct and operate a multi-purpose church
23 building.

24 Reference: Zoning Ordinance, Article 8, Section 8.2B4

25 Applicant: Carrol T. Bell, Robert Sowders, Trustees,
Whitesville Baptist Church

ZONING HISTORY

The subject property is currently zoned R-1A

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1 Single Family Residential. OMPC records indicate that
2 there have been no Zoning Map Amendments for the
3 subject property. A conditional use permit
4 application was previously accepted for the subject
5 property, but was withdrawn while the church
6 researched and resolved property boundary issues.

7 LAND USE IN SURROUNDING AREA

8 The properties to the north, south, east and
9 west are zoned R-1A Single Family Residential.
10 Whitesville Baptist Church owns properties to the
11 south, east and west.

12 ZONING ORDINANCE REQUIREMENTS

13 1. Vehicular area screening, 3 foot high
14 continuous element and one tree every 40 linear feet
15 within 3 foot wide easement on property along
16 Lafayette Street right-of-way.

17 2. Vehicular use screening from adjoining
18 residential lots consisting of a 3 foot high
19 continuous element and one tree every 40 linear feet
20 within a 3 foot wide easement on the property.

21 3. Parking required at 1 parking space for
22 every 5 seats.

23 MS. STONE: Their site plan does reflect
24 meeting those zoning ordinance requirements.
25 Additionally they have submitted a minor subdivision

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1 that clears up the property boundary issue that
2 prevented them from going forward with the conditional
3 use permit previously.

4 We would like to file the Staff Report into
5 the record as Exhibit B.

6 CHAIRMAN: Have we had any comments in the
7 office on this?

8 MR. NOFFSINGER: No, sir.

9 CHAIRMAN: Is anyone wishing to speak in
10 opposition?

11 (NO RESPONSE)

12 CHAIRMAN: Does the applicant have anything
13 you'd like to bring at this time?

14 (NO RESPONSE)

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

17 MR. PEDLEY: Mr. Chairman, I make a motion for
18 approve based on findings that I've heard no
19 opposition on this item, and the church use is
20 compatible in a residential neighborhood and it will
21 not have adverse an influence on the neighborhood.

22 MR. WARREN: Second.

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

1 (NO RESPONSE)

2 CHAIRMAN: Staff have anything else to add?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Hearing none all in favor with the
5 motion raise your right hand.

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries.

8 Next item, please, sir.

9 ITEM 4

10 926 Maple Street, zoned I-1 (Postponed from the
September 1, 2011 meeting)

11 Consider a request to revoke a Conditional Use Permit
12 in order to operate an outdoor storage facility
approved at the April 7, 2011 OMBA Meeting.

Reference: Zoning Ordinance, Article 8, Section 8.2L8

13 Applicant: River City Industrial Services, Inc.

14 MR. NOFFSINGER: Mr. Chairman, the Zoning
15 Administrator, Mr. Jim Mischel, is here tonight to
16 give a report as to the status of this property and
17 any alleged violations and what corrections have been
18 made.

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

21 MR. MISCHEL: Jim Mischel.

22 (JIM MISCHEL SWORN BY ATTORNEY.)

23 MR. MISCHEL: Since the last meeting I've made
24 some random inspections of the property that's located
25 at 926 Maple Street, and I have a few comments.

1 The first inspection I made was September 2nd.
2 That inspection occurred at 1:30. At that time what I
3 had noted there that there was no red dumpster located
4 on that lot or liquid found.

5 The reason I state that, I think Mr. Pedley at
6 the last meeting stated that there was a red dumpster
7 with some liquid coming out of it.

8 When I did that on September 2nd, it was gone.
9 I didn't see it on the property.

10 On September 9th I made another inspection at
11 2:34 p.m. At that time I did not see any, I didn't
12 observe any liquid or smell any odors or anything on
13 that day.

14 September 16th an inspection occurred at 1:13
15 p.m. There was a couple of observations there. I'm
16 going to show some pictures here. There was some
17 stacking of material. Those pouches that everybody
18 has been talking about. They were stacked above the
19 fence. Some of the fencing material, the fabric
20 fencing was blowing in the air. So I have a couple of
21 pictures.

22 I'll put those in the record.

23 On September 23rd was the next inspection.
24 That occurred at 1:31 p.m. No violations were
25 observed at that time.

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1 I also noted that on September 23rd the gate
2 still had not been installed.

3 I made an inspection, the next one was
4 September 30th. That inspection occurred at 3:03 p.m.
5 I observed a container with those pouches stacked
6 inside of it. There was liquid on the ground under
7 the container, towards the rear of the container. I
8 didn't see any liquid running or dripping from the
9 container. It was just on the ground. I checked the
10 rest of the site and did not see any liquid anywhere
11 else.

12 At that time the gates had been installed.

13 MR. DYSINGER: I'm sorry, did you say had or
14 had not?

15 MR. MISCHEL: Had been.

16 My last inspection was today, October 6th, at
17 3:01 p.m. I did not observe any violations. There
18 wasn't any stacking above the fence. There was not
19 smells or liquids or anything that I could see.

20 Also, the Environmental Cabinet out of the
21 Madisonville Regional Office, they were contacted at
22 the last meeting, that's why it was held over, for
23 some violations that they had found and cited River
24 City to make corrections.

25 I have a letter here from them where they made

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1 an inspection yesterday, October 5th. They said that
2 they didn't find any violations. That they had been
3 corrected. They did mention that they would look at
4 the site in the future, but at this time they were
5 satisfied with what had been done.

6 With that I don't know if you have any
7 questions.

8 MR. DYSINGER: Mr. Chairman, the liquid that
9 was observed, not on today's inspection but the one
10 before, was that within the property boundaries or
11 outside of it?

12 MR. MISCHEL: That was on their property
13 underneath their container.

14 MS. MASON: The fabric that was blowing on the
15 fence, was that repaired then? Because you said you
16 didn't see any violations.

17 MR. MISCHEL: The day I was out there, at the
18 time I saw it the wind was blowing.

19 MS. MASON: You didn't notice it the other
20 times?

21 MR. MISCHEL: No.

22 CHAIRMAN: Any other comments or questions
23 from the board?

24 MR. PEDLEY: Mr. Chairman, I have been by
25 twice. I was by this morning. I checked the entire

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1 perimeter and all the screening was in place. I did
2 not see any leeching of any material out of the
3 dumpsters that I saw before. The lot was clean. I
4 didn't smell any odors. So I didn't observe any
5 violations. When I was there about mid month, I
6 didn't observe any violation at that time.

7 CHAIRMAN: Thank you.

8 Does the applicant have anything you'd like to
9 add at this time?

10 MR. SILVERT: Would you just state your name
11 for the record.

12 MR. WILSON: Bill Wilson.

13 MR. SILVERT: You're sworn as an attorney.

14 MR. WILSON: I really have nothing to add, Mr.
15 Chairman.

16 I do have a copy of the letter from Mr. Neil
17 Berry with the Cabinet over in Madisonville. If I
18 might read it.

19 It's to River City Industrial Services. It
20 says, "On 8/23, the Division of Waste Management
21 issued River City Industrial Services a Notice of
22 Violation. The Madisonville Regional Office
23 appreciates River City Industrial Services's efforts
24 to address the compliance issue raised by the NOV.
25 The actions taken by River City Industrial Services is

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1 response to the NOV are considered sufficient at this
2 time with regard to the violations."

3 They also, in the back, "The plastic bags with
4 leaking putrescible residue was not observed stored on
5 the outdoor lot. No violations were observed.
6 Violations documented on 8-23-11 have been resolved."

7 I have pictures also that I would like to put
8 in the record. We've talked about this gate a lot.
9 The gate did come in last month, since the last
10 meeting. It's quite large.

11 There's the gate itself. There's a shot with
12 it open and it takes part of the lot. If I could, I'd
13 like to have those in the record, and also the letter
14 from the Madisonville office.

15 CHAIRMAN: Any other comments or questions
16 from the board?

17 (NO RESPONSE)

18 CHAIRMAN: Staff have anything else to add?

19 MR. NOFFSINGER: No, sir.

20 CHAIRMAN: Any other comments at this time?

21 (NO RESPONSE)

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

24 MR. PEDLEY: Counsel, what would be our course
25 of action? We've postponed this twice. We can't

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1 postpone it again. We need to vote it up or down; is
2 that correct?

3 MR. SILVERT: It was a request to revoke the
4 conditional use permit. So it would be a motion
5 either to revoke or to not revoke.

6 MR. NOFFSINGER: It could come back in the
7 future because the conditions must continue to be
8 satisfied. This is the situation where based upon the
9 previous condition, if this were to be considered
10 permanent use in the future, if they violated the
11 conditions that you previously placed on the
12 conditional use permit, we'll be back here considering
13 revocation of the conditional use permit and the
14 applicant is certainly aware of that.

15 MR. DYSINGER: Mr. Chairman, given the
16 findings that the applicant is currently in compliance
17 with the conditions placed on the original conditional
18 use permit, and without prejudice to any action that
19 might be necessary in the future should the applicant
20 no longer be in compliance, I move that we deny the
21 revocation of the conditional use permit at this time.

22 CHAIRMAN: You've heard the motion. Is there
23 a second?

24 MS. RAINES: Second.

25 CHAIRMAN: A motion has been made and a

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1 second. Any other questions or comments from the
2 board?

3 (NO RESPONSE)

4 CHAIRMAN: Staff have anything else to add?

5 MR. NOFFSINGER: No sir.

6 MR. PEDLEY: I have a question on the motion.
7 You made a motion to deny or to revoke it?

8 MR. DYSINGER: The revocation. Yes, sir. It
9 would sustain the conditional use permit.

10 MR. PEDLEY: I wanted to make sure.

11 CHAIRMAN: All in favor raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Next item, please.

15 -----

16 VARIANCES

17 ITEM 5

18 3225 Adams Street, Zoned R-1B

19 Consider a request for a Variance in order to reduce
20 the required side street yard setback along Park
21 Avenue from 25 feet to 10 feet in order to construct
22 an unenclosed accessory structure (carport).

23 Reference: Zoning Ordinance, Article 8, Section
24 8.5.6(c), Article 3, Section 3-7(c)

25 Applicant: Rex Marsh

22

23 MS. STONE: This existing lot is
24 non-conforming in size as are other lots in the
25 immediate vicinity. There are several encroachments

1 of principal and enclosed accessory buildings in the
2 area into the side street yard setback located at 3242
3 Park Avenue, 3229 Park Avenue, and 3301 Park Avenue,
4 also 3400 Park Avenue, and 3226 St. Mary's Street.

5 The applicant's proposal would create less of
6 a visual encroachment into the required setback as
7 it's proposed to remain unenclosed, open on all four
8 sides. Granting the variance will not alter the
9 essential character of the general vicinity because
10 there are other existing structures, including
11 enclosed principal structures that currently encroach
12 into the required setback in the immediate vicinity.
13 It would not alter the public, health, safety or
14 welfare or cause a nuisance to the public as all sides
15 of the carport are to be open allowing unrestricted
16 vision and view. Granting the variance will
17 not be an unreasonable circumvention of the ordinance
18 because there are several existing structures in the
19 immediate vicinity that currently encroach into the
20 setback and the variance would be in keeping with the
21 development patterns in the area relative to side
22 street setbacks.

23 The Staff would recommend approval of this
24 variance application with the condition that the
25 carport is to remain open on all four sides to ensure

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1 no traffic vision obstructions for neighboring
2 properties.

3 We'd like to enter this Staff Report into the
4 record as Exhibit C.

5 MR. PEDLEY: Mr. Chairman, I need to
6 disqualify myself from this item.

7 CHAIRMAN: So noted.

8 Is any opposition or comments filed in the
9 office?

10 MR. NOFFSINGER: No, sir.

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

13 (NO RESPONSE)

14 CHAIRMAN: Does the applicant have anything
15 you want to say or add to it?

16 APPLICANT REP: No.

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

19 MR. DYSINGER: Mr. Chairman, due to the
20 specific and unique nature of this particular property
21 and given the finding that it does not conflict with
22 the character of the given area, I move that we find
23 for the applicant and grant the variance with the
24 condition that the carport remain open all four sides
25 to ensure no traffic vision obstructions for

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1 neighboring properties.

2 MR. WARREN: Second.

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

6 (NO RESPONSE)

7 CHAIRMAN: Staff have anything else to add?

8 MR. NOFFSINGER: No sir.

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

11 (ALL BOARD MEMBERS PRESENT - WITH THE
12 DISQUALIFICATION OF WARD PEDLEY - RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Next item, please, sir.

15 ITEM 6

16 630 Ford Avenue, zoned R-1B

17 Consider a request for a Variance in order to reduce
18 the required side yard setback from 5 feet to 2 feet
19 in order to construct an enclosed accessory building
(garage and storage).

Reference: Zoning Ordinance, Article 8,
20 Section 8.5.6(d), Article 3, Section 3-7(b)

21 Applicant: Edward L. McCrackin, Judy H. McCrackin

22 MS. STONE: The home adjacent to the subject
23 property has an existing detached garage located in
24 its rear yard that is only 6 inches from the property
25 line encroaching into the required 3 foot setback at
that location. Additionally the home located at 702

1 Ford Avenue, built prior to the adoption of the zoning
2 ordinance, appears to encroach on the east
3 side into the required 5 foot side yard setback. A
4 variance was granted in this block for the property at
5 720 Ford Ave (Trinity Episcopal Church) to build a
6 canopy at 2.9 feet from the property line on the east
7 side of the property.

8 Granting this variance would be in keeping
9 with other encroachments within the same block front;
10 would not alter the essential character of the general
11 vicinity because there are other existing structures
12 that currently encroach into the required setback in
13 the immediate vicinity. The variance will not alter
14 the public, health, safety or welfare or cause a
15 nuisance to the public because the construction sits
16 well back on the property and will not create an
17 obstacle to views of adjoining properties. It would
18 not be an unreasonable circumvention of the zoning
19 requirements because there are similar examples of
20 encroachments into required side yards in the
21 immediate vicinity.

22 The Staff recommendation would be to approve.
23 We'd like to enter the Staff Report into the record as
24 Exhibit D.

25 CHAIRMAN: Been any comments or questions in

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1 the office?

2 MR. NOFFSINGER: No, sir.

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

5 (NO RESPONSE.

6 CHAIRMAN: Does the applicant have anything
7 you would like to add at this time?

8 APPLICANT REP: No.

9 CHAIRMAN: Entertain a motion to dispose of
10 the item.

11 MS. MASON: Mr. Chairman, I move for approval
12 with the findings that it will not adversely affect
13 the public health, safe or welfare, as well as it will
14 not cause a hazard or nuisance to the public because
15 it will not create an obstacle to views of the
16 adjoining properties. And it will not alter the
17 essential character of the vicinity because there are
18 similar setback encroachments in the area. Then it
19 will not allow an unreasonable circumventions of the
20 requirements of the zoning regulations as there are
21 encroachments into required side yards in the
22 vicinity.

23 MR. PEDLEY: Second.

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

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1 board?

2 (NO RESPONSE)

3 CHAIRMAN: Staff have anything else to add on
4 it?

5 MR. NOFFSINGER: No, sir.

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

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries.

10 Next item, please.

11 ITEM 7

12 2306 Windhaven Drive, zoned I-1

13 Consider a request for a Variance in order to waive
14 the required six foot high solid wall or fence around
15 an outdoor storage lot.

16 Reference: Zoning Ordinance, Article 8,
17 Section 8.5.3(j), Article 17, Section 17.3114

18 Applicant: Mid-South Equipment, LLC, Chad Watts, Jim
19 Watts

20 MS. STONE: A site plan was approved in
21 December of 2009. The site plan depicted a large
22 gravel area, identified as a storage area enclosed by
23 a six foot high solid fence meeting the zoning
24 ordinance requirements. A building permit was issued
25 in January of 2010 to construct the building for
rental sales and the building was completed in June of
2010.

In the Spring of 2011, an inspection revealed

1 that the six foot high solid fence had not been
2 erected. The applicant was notified informally that
3 they had not completed the solid fencing in accordance
4 with the zoning ordinance and their approved site plan
5 and that this should be completed.

6 On May 12, 2011, a formal violation notice was
7 sent to notify the owners that the fence must be
8 installed with a compliance date of June 12, 2011,
9 thirty days from the issuance of the notice of
10 violation.

11 Brian Howard, from our office, communicated
12 with Tony Sook via e-mail in response to his questions
13 on May 20, 2011 outlining the options available for
14 compliance to the zoning ordinance to bring the
15 property into compliance. The options
16 available include:

- 17 • Install the fencing in accordance with the
18 ordinance requirements for outdoor storage.
- 19 • Pave the area used for display of the rental
20 items.
- 21 • Apply for a variance to consider a reduction
22 or elimination of the screening requirements.

23 It is the opinion of the Staff that if the
24 gravel area remains, it must be considered as outdoor
25 storage and screened with a six foot high solid wall

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1 or fence. If the area is sales/rental display area,
2 then the area can be paved and screening in not
3 required around the entire perimeter of the paved lot.
4 A three foot high continuous element with one tree for
5 every 40 linear feet would be required where the paved
6 lot is adjacent to the right-of-way of Windhaven
7 Drive.

8 The applicant refers to several businesses in
9 their application that they believe to be
10 non-compliant with the regulations for screening of
11 outdoor storage yards.

12 Triplett Investigations, LLC lists these
13 businesses in a confidential investigation that was
14 made part of the application with supporting
15 photographs.

16 The first business listed is O'Bryan Implement
17 Sales located at 2000 West 5th Street in Owensboro,
18 Kentucky. It is our understanding that O'Bryan
19 Implement sells large farm vehicles and lawn mowers
20 with the attachments for that type of equipment.
21 There is an exception in the zoning ordinance for
22 paving if the business is displaying large farm
23 vehicles or manufactured homes. (Section 13.511) A
24 final development plan is currently required if
25 this exception is to be used and while O'Bryan

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1 Implement could possibly apply for the paving
2 exception with the submission of a development plan,
3 they have been in existence at this location prior to
4 the zoning ordinance requirements and are therefore,
5 legally non-conforming and are not required to bring
6 their operation into compliance with the ordinance
7 unless the size or scope of their operation increases.

8 They have been in violation in the past of the
9 zoning ordinance previously by storing equipment on
10 adjacent properties beyond the scope of their existing
11 non-conforming status. As a result, they were sent a
12 notice of violation resulting in the removal of the
13 farm equipment stored on adjacent properties and
14 maintaining their non-conforming status.

15 The second business referenced is ERB
16 Equipment located at 2133 US Highway 60 East in
17 Owensboro. This business appears to be a legally
18 non-conforming business as well from the information
19 we have in our records and the information in the PVA
20 records. The buildings on the site were built in 1957
21 and 1967, both dating before the ordinance was adopted
22 in Daviess County. The property has changed
23 ownership, but appears to have continued operation as
24 a John Deere Implement Sales with the current owner
25 purchasing the property in 2009. K&W Equipment was

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1 the previous owner from 1989 and the sign permit
2 issued to K&W also indicates that they were a
3 John Deere dealer.

4 Since 1989, there have been sign permits
5 issued and a building permit was issued in 1996 for an
6 addition to one of the buildings located on the site.
7 However, at that time the OMPC office did not perform
8 the site plan reviews for the county. Daviess County
9 had a zoning administrator and building official that
10 authorized that the site plan was compliant with the
11 ordinance. If indeed, the site plan was not compliant
12 at that time, we have no records of that as Daviess
13 County reviewed the site plan. OMPC issued the
14 building permit because we had received jurisdiction
15 from the state on building permits.

16 An additional permit was issued in 2000 to
17 build a storage building to replace a storage building
18 that had to be moved in order to reroute a sewer main
19 for RWRA. It is the opinion of the Staff that the
20 site continues to operate in a legally non-conforming
21 status.

22 The third business listed is CMC Rental &
23 Sales at 2235 Ragu Drive. PVA records indicate that
24 one building on the site was constructed in 1979 and a
25 second building in 1991. OMPC records show that an

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1 accessory building was permitted in October of 1990
2 and a permit was issued for an addition in 1984. A
3 portion of the outdoor storage area to the rear of the
4 building is screened by the building, but the fence
5 along the Wendell Ford Expressway is a chain-link
6 fence with no screening material and the outdoor
7 storage is visible. The Staff cannot determine with
8 certainty if this site is legally non-conforming or if
9 it has been in violation for the last 32 years.

10 The last business referenced is Wright
11 Implement at 3225 Carter Road. There is a development
12 plan on file for this location. The development plan
13 shows a large washed limestone rocked area labeled
14 "only for farm equipment display" as allowed in the
15 exception mentioned previously for farm vehicles and
16 manufactured homes in Section 13.511 of the Zoning
17 Ordinance.

18 There is also a rocked equipment storage area
19 on the site near Buckland Square frontage to the east
20 of the building that indicates screened fencing at
21 that area. Inspection of the property indicates
22 they appear to be in compliance with the approved
23 development plan.

24 A similar equipment rental store is located at
25 1301 Daviess Street. This property did receive a

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1 variance to eliminate the required landscaping along
2 the parking lot on the south property line adjoining
3 the fire training center. The site plan does note,
4 however, that the storage equipment and maintenance
5 area is to be screened with a 6 foot high solid screen
6 and any areas used for storage to be screened on all
7 sides by a six foot high solid wall or fence. Upon
8 the inspection of this property, the Staff found that
9 the outdoor storage area is entirely screened with a
10 small asphalt (paved) display area.

11 The zoning ordinance requires outdoor storage
12 to be screened with a solid six foot element. The
13 screening of outdoor storage helps to make the
14 community more aesthetically pleasing. The applicant
15 has provided examples of unscreened storage that is
16 either non-conforming or utilizes the exception that
17 is allowed by the zoning ordinance. These examples do
18 not provide a basis to eliminate the outdoor screening
19 requirement for this property or for future
20 businesses. A precedent should not be set to
21 eliminate screening requirements. The applicant
22 should have been aware of this requirement as the site
23 plan submitted by the applicant and approved by the
24 OMPC clearly shows the graveled area and the required
25 6 foot high solid screen. If the applicant chooses to

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1 revise the site plan to show this area as sales
2 display area, then the area should be paved.

3 Granting this variance would alter the
4 essential character of the immediate vicinity. Kight
5 Lumber, located at 2301 Windhaven, has outdoor storage
6 that is screened as shown in these photographs.

7 We'll put that in the record.

8 Granting this variance based on non-conforming
9 situations would affect the public welfare because one
10 of the purposes of the screening is to promote good
11 aesthetics for the community. If a variance were
12 granted based on grandfathered uses, the intent of
13 getting properties into compliance with the current
14 regulations as they are developed is defeated.

15 Granting the variance would be an unreasonable
16 circumvention of the ordinance, if findings are based
17 on non-conforming uses that exist.

18 The applicant was aware with the submittal of
19 their site plan that the graveled outdoor storage
20 areas must be screened.

21 We do not believe the strict application of
22 the regulations deprive the applicant of the
23 reasonable use of the land or created unnecessary
24 hardship on the applicant.

25 We would propose that this variance would

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1 adversely affect the public health, safety and welfare
2 because outdoor storage is required to be screened for
3 the aesthetics of the community. It will alter the
4 essential character of the general vicinity because
5 other businesses in the immediate vicinity do not have
6 unscreened outdoor storage. It will cause a hazard or
7 nuisance to the public because outdoor storage is
8 unsightly. And it will allow an unreasonable
9 circumvention of the requirements of the zoning
10 regulations because similar outdoor storage lots on
11 like zoned property have been required to provide the
12 6 foot high solid wall or fence.

13 The Staff recommendations would be for denial.
14 We would like to enter the Staff Report into the
15 record as Exhibit E.

16 MR. NOFFSINGER: Mr. Chairman, this one page
17 you just received has a front and a back. It shows
18 the Kight Home Center on one side and it shows the
19 truck screen with the fence. Then the other side is
20 the solid fencing along the road frontage. I know
21 it's hard to tell because it's not in color, but
22 that's what you're seeing. That's right across the
23 street from the subject property.

24 MR. PEDLEY: Mr. Chairman, I need to
25 disqualify myself from this item because of my

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1 business association with Mid South.

2 CHAIRMAN: So noted.

3 Has there been any comments filed in the
4 office or complaints?

5 MR. NOFFSINGER: No, sir.

6 Well, excuse me. There was a complaint.
7 That's how we were called attention to this back some
8 time ago. There been no other complaints or anything
9 registered in the office.

10 CHAIRMAN: Thank you.

11 Is there anyone in the audience wishing to
12 speak in opposition of this item?

13 (NO RESPONSE)

14 CHAIRMAN: Staff have anything you'd like to
15 bring at this time to the board?

16 (NO RESPONSE)

17 MR. DYSINGER: Mr. Chairman, I do have
18 question of the Staff.

19 The Staff Report seems to make a determination
20 that the applicant's actions were not willful;
21 however, they did submit a site plan, an approved site
22 plan which showed the required screening and yet the
23 applicant did not comply with their own site plan.

24 I'm wondering if the Staff can shed light on
25 why they made the determination that it wasn't willful

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1 actions on the part of the applicant?

2 CHAIRMAN: Staff have any comments, please?

3 MR. NOFFSINGER: Ms. Stone.

4 MS. STONE: Well, we determined from the
5 violation that perhaps they just hadn't installed the
6 screening yet. They have applied for a variance. If
7 the variance is denied and they still don't put it up,
8 then we would consider that willful, but they're still
9 in the process of coming into compliance with their
10 site plan.

11 CHAIRMAN: Thank you.

12 Does any board member have any questions of
13 the applicant?

14 MS. RAINES: Mr. Chairman, I have a question.

15 I'd like to clarify, I guess, trying to make
16 sure that I understand. The original request was
17 stating that they were going to be using that area,
18 the graveled area as a storage space; is that right?

19 MR. NOFFSINGER: That is correct.

20 MS. RAINES: But it seems, according to the
21 application that's been completed, the variance
22 application, that their intent is to use it as heavy
23 equipment sales and rental lot. Maybe we've changed
24 the purpose a little bit?

25 MR. NOFFSINGER: Well, the original

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1 development plan that was filed shows that this was to
2 be an outdoor storage area. It would be graveled and
3 there would be a 6 foot high fence with a screening
4 element attached to that fence.

5 MS. RAINES: So if they had decided to use it
6 for rental and sales, then what would the process be?

7 MR. NOFFSINGER: Then they would be required
8 to pave the lot and to install a 3 foot high
9 continuous element and one tree per 40 feet along the
10 public right-of-way area with the street frontage.

11 MS. RAINES: It is being used as sales?

12 MR. HOLTREY: I'm Travis Holtrey on behalf of
13 the applicant. I represent Mid South Equipment.

14 It is being used for the sales of rental of
15 equipment that ranges in weight from 8 tons to 20
16 tons. A majority of that equipment has tracks on it,
17 hard rubber trucks or steel track. Therein lies the
18 issue with pavement. To move this equipment across
19 such pavement, if it were paved, would tear it up
20 whether it's asphalt or cement.

21 Also, the equipment weighs a lot. Movement of
22 the equipment with that kind of weight over time is
23 also going to continually be a perpetual cost of
24 repairing the pavement and the concrete. They're so
25 cognizant of this damage that it does. If any of you

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1 have been by that place, that they display some of
2 their equipment out on the front lawn that they own
3 where when you go by on 54 you'll see some of their
4 equipment.

5 When they move that equipment to the front
6 lawn, they use a back gate so that the equipment never
7 comes into contact with the pavement of Windhaven
8 Drive because of the damage that it would do to the
9 pavement.

10 The lot is obviously, since the date of
11 inception, has been used for promoting the equipment,
12 selling the equipment, renting the equipment, making
13 it available to the public to see. That's a problem
14 when you say, well, if you want to leave it gravel, we
15 need to have a wall or continuous wall or screen
16 around it.

17 Attached to the application you will see one
18 of our distributorship agreements says that to
19 continue to be able to sell or to rent that equipment
20 it has to be visible to the public 24 hours a day, 7
21 days a week. That is part of the distributorship
22 agreement that we would be in breach of if we have to
23 put something around, a screen or a solid wall to
24 where it can't be seen, you know, after business
25 hours.

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1 At this point what we've done to keep that
2 particular distributor happy is during the daytime
3 move equipment out to be seen, you know, out on 54 and
4 leave some of it there to be seen overnight. The
5 problem kind of has this company a catch 22. The
6 catch 22 is if we do put the wall up, the continuous
7 wall around it, then it's not visible and we're in
8 violation of our distributorship agreement.

9 If we are required to pave it, it is just
10 going to be a continuous, continuous expense because
11 of the destruction that steel tracks on hard rubber
12 tracks on these backhoes, front end loaders will cause
13 over time. Therein lies the issue that brings us to
14 ask for the application.

15 There is one thing I would like to add. I did
16 make reference in the application to Exhibit A
17 indicating that the surrounding property owners,
18 everybody that has ownership of property adjacent to
19 the property had submitted an affidavit.

20 There was one property owner that we had sent
21 an affidavit to that did not supply the affidavit in
22 time for me to get it in the application. Notice did
23 go to Dale Buskill of Buskill Properties. Notice did
24 go to Mr. Buskill and just today -- I was out of town.
25 Just got in a few minutes ago. I understand that Mr.

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1 Buskill drop off a note indicating that he is not in
2 opposition of this application for variance and he
3 signed it. I would like to make it a part of the
4 record because I do represent to the board that all
5 adjacent owners do not object to this. I did want to
6 add this to the record.

7 CHAIRMAN: No noted.

8 MR. NOFFSINGER: Mr. Chairman, the display of
9 this equipment out in the lawn that Mr. Holtrey is
10 referring to is an additional violation of the zoning
11 ordinance.

12 CHAIRMAN: So noted.

13 Any board members have questions of the
14 applicant at this time?

15 MR. DYSINGER: Mr. Chairman, I have a couple
16 of questions.

17 You mentioned the adjacents and their
18 non-conforming status. The Staff seemed to do a
19 pretty good job of explaining that all of those uses
20 were legally non-conforming whether due to grandfather
21 clause or various other subjects of the ordinance. Do
22 you dispute any of Staff's testimony for any reason?

23 MR. HOLTREY: I don't dispute. I'd like a
24 clarification on what you just said. I think you said
25 that the adjacent property owners are legally

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1 compliant. I don't want anybody to think I'm
2 representing that all of these competitors are
3 adjacent property owners. The competitor's pictures
4 that were shown are locations throughout town. So I
5 don't want to even remotely think I represented that
6 they were adjacent property owners.

7 We do not dispute that they are legally
8 compliant, these competitors or these other people
9 that display their equipment.

10 The one question I did have, and I think there
11 was some clarification that was rendered this evening
12 on that for me was with ERB Equipment because they
13 took over new ownership recently. When they took over
14 ownership recently, whether or not they would have to
15 come in compliance with either having a paved lot or
16 put in a screen around the premises. Apparently I was
17 misunderstanding in my assumption on that.

18 The application I'm addressing why we believe
19 that it would not affect the aesthetics. I did submit
20 photographs of the way the yard has been maintained
21 and kept since the day of inception of business. I
22 tried to be as thorough as possible to eliminate as
23 much questioning. I'd be happy to answer any other
24 questions.

25 MR. DYSINGER: Mr. Chairman, counselor talked

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1 about the distributorship agreement that kind of has
2 his client in a bind.

3 I'm curious, was your client aware of the
4 screening requirements at the time that they entered
5 the distributorship agreement?

6 MR. HOLTREY: Were they aware of the
7 screening? You know, the owners had no idea of this.
8 If you'll look at the application, I tried to shed
9 light on this. On the last page of the application
10 under Item C, it would be Page 5 of 5. Under Item C,
11 the lot was first designed with an asphalt surface
12 which would not require a solid fence.

13 When the owners, when Chad and Jim Watts were
14 told by engineers that the equipment or they told the
15 engineers that the equipment would destroy and damage
16 an asphalt lot, the engineer said that making it
17 gravel would be no problem. We did not appreciate the
18 violation at that time. It was like, okay, we'll just
19 make that a gravel lot, and we went forward with it.
20 The site plan does show, the site plan shows what it
21 shows. We were under no understanding that was going
22 to be an issue.

23 MR. DYSINGER: That seems peculiar to me. The
24 site plan shows something. I'm just trying to make
25 the connection between why it shows that and no one

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1 seems to have any intentions of complying with the
2 site plan.

3 MR. HOLTREY: My understanding of when that
4 came about was when we indicated that for this to not
5 have a solid fence around it, it would have to be
6 paved. The indication was, there is no way we can put
7 this equipment on such pavement. It was like, well,
8 then we can make it gravel. We did not appreciate
9 that by making it gravel you would then have to have a
10 solid fence.

11 MR. DYSINGER: I understand that part. I
12 would probably make the same mistake.

13 My question is: Why does the site plan show
14 the screening if there was no intention to have it or
15 am I misunderstanding?

16 MR. HOLTREY: I don't know the answer to that.
17 I don't know why the site plan would show that fence
18 to be that way if there was not an intent. The intent
19 was to follow the site plan when they ran into the
20 issue. Then they said, can't make it pavement. So
21 that would be the only insight I can shed on that.

22 CHAIRMAN: Would the Staff have any comments
23 on that statement at this time?

24 MR. NOFFSINGER: No, other than what the
25 development plan shows. It mean it clearly shows that

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1 there was going to be a solid fence all the way around
2 the area. Going to be gravel. Before that it was to
3 be paved. When they changed the development plan for
4 some reason, obviously it's, as Mr. Holtrey has
5 identified to you.

6 I will note the agreement that we had with the
7 distributorship is not dated. There are no dates
8 anywhere. I can't state as to the dates of the
9 development plan and their agreement.

10 FATHER HOSTETTER: Quick question just to
11 understand.

12 The reasons for the request, the asphalt won't
13 not work because it will be destroyed by the
14 equipment. The fencing wouldn't work because you're
15 required to display the equipment to the public and
16 fencing would cover that up. Just want to be sure.

17 MR. HOLTREY: That's right. In a nutshell
18 simply stated, that's it. Some of the equipment would
19 raise above the sight level of a 6 foot fence. You'd
20 see the tops of it. You would not have the ability to
21 see all of the equipment that's on the yard and
22 available for sale.

23 MS. MASON: Mr. Chairman, I have a question.

24 So the distributor that's saying that it can't
25 be, they want it to be visible from the street or from

1 the road?

2 MR. HOLTREY: They want it to be visible to
3 the public after hours, which in this situation would
4 be from Windhaven Drive. Similar to the CMC, I
5 believe, or O'Bryan. The building does hide a portion
6 of the yard so you couldn't see it from 54, but as you
7 turn it's visible from Windhaven from the road and
8 from the side of the parking lot that you can pull
9 into the parking lot where the building would not
10 obstruct your view to the yard. Does that make sense?

11 MS. MASON: I think so, yes.

12 CHAIRMAN: Any other questions or comments?

13 MR. DYSINGER: In the Staff Report, in the
14 paragraph regarding O'Bryan Implement Sales, it
15 references an exemption in the ordinance for paving if
16 the business is displaying large farm vehicles and
17 manufactured homes. That exemption is to allow gravel
18 instead of paving due to the nature of the equipment.
19 Do I read that correctly?

20 MR. NOFFSINGER: Back years ago there was an
21 exception made in the zoning ordinance for those
22 particular uses only. Their aisles were to be paved
23 and the area that the actual machinery or the
24 manufactured homes would sit would be gravel because
25 they weren't being moved that frequently. So the

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1 exception was granted and the study was done to allow
2 exception for manufactured housing and large farm
3 vehicles.

4 MR. DYSINGER: That exception still exist?

5 MR. NOFFSINGER: That exception is still
6 current, yes, sir.

7 MS. STONE: And requires a development.

8 MR. NOFFSINGER: And it requires a development
9 plan. Which they have a development plan here as
10 well.

11 MS. STONE: They have a site plan.

12 MR. NOFFSINGER: They have a site plan. Not a
13 development plan.

14 MS. STONE: Yes.

15 MR. DYSINGER: Mr. Chairman, can counsel shed
16 some light on why the applicant isn't pursuing that
17 avenue?

18 MR. HOLTREY: Well, one of the things I would
19 say is whether or not we are selling large farm
20 equipment or was the other trailers or manufacturing
21 housing. This is heavy machinery and track hoes and
22 that type.

23 MR. NOFFSINGER: That's correct. The
24 ordinance does not make an exception for anything
25 other than manufacture housing and farm vehicles.

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1 CHAIRMAN: Staff have other comments?

2 Jim, do you have anything to add there?

3 MR. MISCHEL: Jim Mischel.

4 I'd just like to add that historically we've
5 had other companies come before this board in the past
6 year for variances for display equipment, display
7 vehicles, display of stone. Various products. To my
8 understanding we haven't had an approved variance up
9 to this point for the display of equipment and stuff.

10 CHAIRMAN: Any board member have any questions
11 of Jim?

12 (NO RESPONSE)

13 CHAIRMAN: The applicant have anything else
14 you want to add at this time?

15 MR. HOLTREY: No thank you.

16 CHAIRMAN: Board members have any other
17 questions?

18 MS. MASON: Mr. Chairman, I have a question.
19 Maybe I didn't listen very well when Shannon was
20 asking her question earlier.

21 Are they asking for a variance to remove the 6
22 foot high solid wall around it or are they asking for
23 a variance to not pave it? I'm confused.

24 MR. NOFFSINGER: Well, I think they're asking
25 for both.

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1 MS. MASON: Both. Not to pave it and not to
2 put the fence around it?

3 MR. NOFFSINGER: That's right. They don't
4 want to do either one. We're trying to make a
5 distinction, okay, what is this. Is it a storage area
6 or is it a display area. If it's a display area, the
7 ordinance requires them to pave it and screen it with
8 the 3 foot high element.

9 If it's a storage area, the ordinance requires
10 them to put up a 6 foot high solid wall or fence,
11 which in this case they would put up screening slats.

12 Now, if you recall back a few months ago, we
13 had an applicant come in and they didn't want to
14 screen their outdoor storage area at all because they
15 had issues vandalism. Their security company wanted
16 to be able to see through the fence. This board
17 rejected that variance. Told them you had to screen
18 it. I drove by that area today and can tell you it
19 was screened very well. I don't think they're their
20 finished, but they used a screening slat that is very
21 attractive. Depending on what angle you drive by and
22 what angle you're looking into it, you can see through
23 there, but it doesn't just jump out at you that the
24 area is being used for storage or display.

25 So there are ways to screen this site and

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1 still have -- it's not going to require a 100 percent
2 opacity, but there are ways to screen it and still be
3 able to see through there where it doesn't just jump
4 right out at you.

5 We need to determine, okay, what is it and
6 then what is the requirement. You may reject the
7 variance. We've given them an option, which we're
8 not, the Staff is not taking a strong position saying,
9 no, it's storage. You have to put up a fence. We're
10 giving them an option. We're saying, okay, just tell
11 us what you want it to be and then you can either pave
12 it or you put up the fence to comply with the
13 ordinance and what various other applicants are doing
14 when they submit new proposals.

15 There are non-conforming uses out there.
16 There are probably some violations out there. We try
17 to address them as we can. That's why we're here
18 tonight. What we're requiring is consistent with what
19 we've required others in the community to do.

20 MR. HOLTREY: Mr. Chairman, if I may address
21 one thing.

22 CHAIRMAN: Come forward, please. State your
23 name again.

24 MR. HOLTREY: Travis Holtrey.

25 I don't think there's any question, in working

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1 toward a resolution of this matter, I don't think
2 there's any question that this is a distributorship,
3 this is a display lot. It has been since the day this
4 place opened. It is defined as a storage lot simply
5 because of the gravel, but what it has been used for
6 since the day this business opened and is used for to
7 this day is to have heavy equipment and other
8 equipment available to the public for rental or for
9 purchase. So treating it as such complicates the
10 issue because therein it has to become paved. You
11 pave it and you destroy it, and you pave it and you
12 destroy it because that is going to happen with these
13 tracks. Twenty ton equipment with tracks is going to
14 destroy the pavement.

15 So we want to be able to sell and rent to the
16 public at that location. The only way to do it is to
17 continue the distributorship and sells of heavy
18 equipment or rental heavy equipment. That's what the
19 lot is. It is not a storage yard. But the gravel
20 that would allow us to not destroy our lot would
21 therefore put it within this definition of a storage
22 yard, if that helps clarify.

23 MR. DYSINGER: MR. Chairman, this is a
24 question for either Staff or legal counsel.

25 Let me start with a statement and then I'll

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1 get to the question. I know everybody loves it when I
2 do that.

3 It seems to me the spirit of the exception for
4 farm equipment is what we're talking about here. If
5 you pave it, it's going to end up being gravel sooner
6 or later anyway. So grant the exception and so forth.
7 The equipment described to me seems to fit the spirit
8 of that exemption. That's the statement part.

9 The question is: Who grants this exception or
10 are they to apply for it? Could they go and make a
11 case for their equipment meeting the spirit of this
12 exception and receive, possibly receive that
13 exemption? Who gives it, first of all?

14 MR. NOFFSINGER: I think this board does in
15 terms of the variance. The zoning ordinance is very
16 clear. Now, it's not a gray area. It says exactly
17 what the exception is for.

18 They're here before you tonight asking for you
19 to grant an exception from the paving requirement or
20 potentially the screening requirement.

21 CHAIRMAN: We need to make a decision.

22 FATHER HOSTETTER: It seems to me that there's
23 also the question brought up by Mr. Dysinger about the
24 spirit of the ordinance is very relevant in this case.
25 That is why the exception was granted for the farm

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1 equipment. That seems to be relevant to this
2 decision.

3 MR. NOFFSINGER: Again, in terms of the reason
4 that exception was made in the ordinance was, and I
5 was here at the time when we were going through that.
6 Those farm vehicles do not move very often. When they
7 come in there, they're stationary until they're sold.
8 So they sit there for quite a long time.

9 The manufactured homes are brought in and they
10 sit there for quite some time until they're sold.
11 That was the reason for the exception.

12 Now, when ABC Rental came in, they were
13 required to screen and they were required to provide
14 an area that was paved for their display. Now, they
15 have similar equipment. The applicant may have
16 heavier equipment, but they have similar equipment.
17 This is such a large area and you have equipment
18 moving in and out on a routine basis. Then you have
19 dust issues. You have gravel out on the street.
20 Those are the issues that you try to address through
21 the zoning ordinance.

22 Now, that's why the exception was granted for
23 large farm vehicles. It didn't include anything else
24 other than manufactured housing and large farm use.

25 MS. RAINES: Question for the applicant, I

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1 guess.

2 The items that are for sales for rent, are
3 they moved about very often or are they stationary?

4 MR. HOLTREY: I was hoping someone would ask
5 that question. Because of the nature of the business
6 it's not just for sells. It's for rental. Because of
7 the rental there's a lot more traffic. There are
8 people delivering and picking up equipment every day.
9 I mean it is a high traffic area. Lot of movement of
10 the equipment up on to trailers, off trailers, that
11 type of thing.

12 One thing I would add is if we allow us to
13 maintain a gravel lot, make us put a screen up, it's
14 not going to keep the dust down. The screen won't
15 keep the dust down.

16 MR. DYSINGER: I'm confused entirely by the
17 this exemption.

18 The fact that the equipment does not move
19 often seems not a reason to grant the exemption. It
20 seems reason to not grant it.

21 That said, I'm going to defer to Staff's
22 testimony on why those things come about and it's
23 usually kept me out of trouble.

24 I don't have any further questions, Mr.
25 Chairman.

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1 CHAIRMAN: Board member have any other
2 comments or questions?

3 (NO RESPONSE)

4 CHAIRMAN: Staff have anything to add?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: The applicant have anything you can
7 help us on?

8 MR. HOLTREY: I've tried to answer the
9 questions. I think the application I hope everybody
10 would agree was thorough and sets forth the
11 photographs.

12 The one thing I didn't touch on was, you know,
13 the photographs of this yard demonstrate that if we're
14 going to get in an issue of aesthetics, I mean this
15 has been and is one of the best kept. If it's a
16 storage yard, which is what you're going to have to
17 define it to put a screen around it, one of the best
18 kept there is I've seen in the county, you know, in
19 the city.

20 So from an aesthetics standpoint, if you look
21 at our yard and you look at Kight's, while Kight's
22 it's not going to impede upon the aesthetic nature of
23 that area. It's an industrial area. It's well kept.
24 So that would be the only thing. That's the only
25 thing in the application that I didn't speak to this

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1 evening that I would point out to the board.

2 CHAIRMAN: One thing you didn't state on
3 there. Grandfathered in, we adopted these
4 regulations. Grandfather rule was in it. We had to
5 go along with that by state law; is that correct?

6 MR. NOFFSINGER: Yes, sir. If it's a use that
7 existed prior to the adoption of the ordinance, it
8 would be grandfathered in.

9 CHAIRMAN: So you got caught in-between.

10 MR. HOLTREY: Well, I was asked, somebody
11 asked -- actually my wife ask me. She goes, what are
12 you going to do if they're going to talk about the
13 grandfathering? Doesn't that scare you?

14 I said, the issue here is that everybody we
15 compete with in town is already this way. Nobody is
16 going to change anything. It's not like this is going
17 to be a run away train.

18 So really the grandfathering, you're correct.
19 They were grandfathered in. We can't be. So if it's
20 granted, it's like everybody that we compete with in
21 town that has a similar yard is going to go and do the
22 same thing as us? No, because they already have.
23 It's not like they're going to change.

24 So the grandfathering, you're exactly correct
25 on the grandfathering issue. In this situation, it

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1 kind of does work to the favor of Mid South from the
2 standpoint that there's nobody left in town that can
3 go and change what they already have.

4 MR. NOFFSINGER: Exception when they go to
5 expand or they do an addition. Then the ordinance
6 requires us to go in and bring those non-conforming
7 uses into compliance.

8 The situation here in terms of the variance is
9 what's unique about this lot in the situation that's
10 different than any other lot. If you find in favor
11 that this variance should be granted, why should
12 anybody have to comply with this ordinance. It's not
13 just effecting the adjoining property owners. You
14 also have public right-of-ways and motoring public can
15 see this.

16 If it's okay for this site, it should be okay
17 for every site in this community and we should be
18 looking at doing away with the screening requirement
19 for these type of uses. Unless you find something
20 that's unique to this site, because you would make
21 others go through and have made others go through this
22 same process, and they've been denied.

23 MS. RAINES: Mr. Chairman, I'm certainly not
24 an expert in concrete. I don't know much about how
25 much it can hold. I would like to know, I guess, in

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1 paving a lot what weight. You know, maybe that would
2 be helpful if we could find out some information as to
3 the maximum weight and hold before it breaks. I know
4 we do have also some things that could damage it
5 regardless, but it would be good to know and maybe
6 have the equipment that weighs more than -- I don't
7 know.

8 MR. HOLTREY: I certainly would be willing to
9 -- I don't want to represent an opinion of an expert
10 or someone here that can't be here to testified or to
11 give testimony, but I can tell you that I've asked
12 that question and can come forward with a
13 supplementary or an amendment to the application that
14 can give the board that are information to make an
15 educated decision based upon weight and the damage
16 that can be done to asphalt and concrete.

17 I'm in a position to be able to supplement or
18 give that information; however, the mechanism of doing
19 that properly is, you know, I don't know. If you
20 leave this open to amend the application or if you can
21 file an exhibit later with that information.

22 I certainly, I can assure this board that
23 information is available of the damage to the asphalt
24 and the different thicknesses.

25 MR. WARREN: I think I have a question.

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1 I don't even know whether it's a possibility.

2 I guess it's a possibility.

3 What about splitting the difference? Keeping
4 the 3 foot high continuous element with trees every 40
5 feet and the gravel lot. Is that even a possibility?

6 MR. DYSINGER: The 3 foot high continuous is
7 required with paved lot. Gravel requires the 6 foot
8 screen.

9 He's saying take one from one and one from the
10 other.

11 MR. NOFFSINGER: Certainly anything is a
12 possibility because it's before you for a variance.
13 You could say you have to do it all or you could say
14 you don't have to do anything and anything in-between.
15 You can certainly agree upon.

16 The thing is whatever you do you need to make
17 sure that you find that there's something unique here
18 and a reason for granting this variance because I know
19 this for a fact. There are others that would like to
20 have this same variance. They have been before you in
21 the past. They'll be before you down the road. It's
22 either you consider what they have and you remain
23 consistent and you find something that's unique about
24 it or you amend your zoning ordinance.

25 If you feel that screening should not be

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1 necessary for this type of use, then it needs to be
2 removed from the zoning ordinance because we don't
3 want to have people coming through this process.
4 They're telling you that, hey, we can't pave because
5 our equipment will tear is up. Hey, we can't screen
6 it with a 6 foot high fence because people can't see
7 it. There's nothing unique here in Staff's mind.
8 This is the same thing all over this community and any
9 other community in this country. Those issues we see
10 here are these same issues time and time again.

11 Is there something unique about this lot or do
12 we need to take a look at the ordinance and remove
13 this requirement from the ordinance?

14 FATHER HOSTETTER: My question, if I could
15 follow up with Mr. Noffsinger is saying. Take very
16 seriously about uniqueness, finding that uniqueness.

17 So the Staff did not find the weight or type
18 of equipment makes this situation unique? I mean we
19 get many requests or a number of requests for a
20 similar type of equipment that has the metal treads
21 that would destroy asphalt. That does not make this
22 unique is what you're saying?

23 MR. NOFFSINGER: Well, staff believes that's a
24 real concern. That's a genuine concern. We would
25 agree that you're going to have to have concrete

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1 that's pretty deep to sustain the weight of these
2 vehicles. That's why we gave them the option of using
3 the 6 foot high fence. So we opted an option there.

4 But that presents a problem for them because
5 they want everyone to be able to see what they have to
6 sell.

7 We don't find any uniqueness in that because
8 it's same way anywhere you go. If you're selling
9 cars, you don't want to have to put in any screening
10 because you can't see them. If you're storing stuff
11 on your property, you don't want to have screen it
12 because then they say vandalism will occur on the lot.

13 What Staff has heard here tonight we cannot
14 find any uniqueness in terms of fencing or screening.
15 The paving, certainly that is an issue for them. Can
16 it be designed? Probably so. Is it cost effective to
17 do that? Possibly not. We don't have that
18 information. We do know that is a concern.

19 FATHER HOSTETTER: Then I would like to go
20 back to what Mr. Warren seem to suggest. Is there an
21 alternative type of screening that might again meet
22 the spirit of the law, that there is that maybe
23 aesthetics component. While not blocking the view
24 apparently that they have to have of this equipment
25 based on the agreement that they have with

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1 distributors.

2 MS. RAINES: There seems to be no question
3 that it's not a storage space. It's used for sales
4 and rental property. So that would be shifting away
5 from the 6 foot barrier to the 3 foot barrier, but
6 then they're using gravel and the ordinance says it
7 needs to be paved. That's where we have an issue with
8 the heavy equipment.

9 MR. MISCHEL: I'd like to make a little
10 comment.

11 The last time this situation has occurred that
12 I can remember is last year Starrett Crane created a
13 new lot for a lot of their equipment. They were told
14 at the time they were going to have to pave the lot.
15 They didn't want to do that. They ended up putting a
16 chain-link fence with the slats in it. It's a pretty
17 good size area. I can't tell you how big. It's this
18 big or bigger.

19 CHAIRMAN: Close to an acre, wasn't it?

20 MR. MISCHEL: Pretty good size. They did put
21 the slats in it that was black in nature.

22 MR. DYSINGER: Mr. Chairman, that particular
23 applicant however, was it in the retail sales type
24 environment or they just needed to store equipment?

25 CHAIRMAN: Theirs was rental.

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1 MR. MISCHEL: They have their old location
2 across the street. This was a new location. They
3 bought some property. I believe they do some rental
4 over there. You know, people rent their cranes and
5 stuff like that.

6 MR. DYSINGER: If I remember correctly, it
7 wasn't like retail. These were building, developers,
8 you know, professionals.

9 MR. MISCHEL: Most of their equipment is
10 pretty good size cranes. You don't have retail.

11 MR. DYSINGER: Exactly. Right.

12 That's not to say that the example you cited
13 isn't germane. It very much is. It tends to make a
14 difference to me.

15 Mr. Warren's suggestion that we cobble
16 together various pieces of the ordinance concerns me a
17 little bit. At least as long -- this exemption thing,
18 I keep coming back to this exemption this.

19 I pulled out my ordinance. It does
20 specifically mention large farm equipment. While this
21 particular application would not necessarily support
22 granting the exemption, it doesn't emphasize the
23 similarities between say a farm equipment retailer and
24 this particular shop. At least it did not in my
25 opinion.

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1 I would ask legal counsel and possibly Staff
2 too. If we were to deny this variance, for instance,
3 on the grounds that everyone else who needs to comply
4 has complied, does that prejudice another application
5 pursuing just an exemption with the rows, the asphalt
6 rows and, for instance, a development plan on file,
7 that sort of stuff. If we deny this variance, would
8 that preclude them from pursuing that option? Of that
9 exemption specifically as opposed to just a blanket
10 variance?

11 MR. NOFFSINGER: They do not qualify for that
12 exemption.

13 MR. DYSINGER: Because of the farm equipment?

14 MR. NOFFSINGER: Right. There's a definition
15 of the ordinance as to what uses would qualify.

16 Am I correct, Staff?

17 MR. HOLTREY: I researched that because the
18 first day I met with my client I said, wait a minute.
19 What about -- because I think someone even mentioned
20 that in a potential e-mail about, well, what about
21 paving rows. When I researched that, well, I cannot
22 stand before them and say that we're selling farm
23 equipment. So I don't think we need that exemption.

24 MS. STONE: I think that they would have to
25 appeal Jim's interpretation of the zoning ordinance

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1 which would be, I mean it obviously says, large farm
2 equipment and manufactured housing.

3 CHAIRMAN: Do we have any other comments or
4 suggestions from Staff?

5 MR. DYSINGER: Mr. Chairman, I'm incline to
6 say that we have latitude when granting variances with
7 certain conditions. If we were to make those
8 conditions, the paved rows and so forth, we may be
9 accomplishing the same thing without -- I'm not taking
10 apart your suggestion. It's a good one. We're all
11 looking for a way to make everybody happy.

12 However, we must be sensitive to the people
13 that have been forced to comply with this ordinance.
14 We do not have a latitude to simply throw that off.
15 If this does have a particular due to the retail
16 nature of the equipment, that's another problem. I'm
17 not real clear as to the extend of the large heavy
18 equipment as opposed to some of the smaller stuff.

19 MR. HOLTREY: In a given month, about 40
20 percent of the traffic is sales and 60 percent of the
21 traffic on the yard is rental. Obviously there's a
22 market there. That is the best breakdown that I could
23 get from speaking to the manager of Mid South. I
24 don't mean to complicate, but that's the best I can
25 clarify.

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1 MR. WARREN: I'm making the assumption from
2 what I know of it, all of your equipment leaves there
3 on a trailer?

4 MR. HOLTREY: Yes. The movement of equipment
5 up onto the trailer and then --

6 MR. WARREN: It's not like you have to drive
7 the equipment all the way across the parking lot. You
8 pull the trailer in there, load the trailer up. If we
9 did the asphalt rows is what I'm thinking about. Your
10 equipment could sit on the dirt for that matter, but
11 it wouldn't have to --I'm thinking out loud.

12 MR. HOLTREY: I thought because when I saw
13 this idea of putting channels or call them runways of
14 pavement in-between, when I saw that idea the first
15 time I thought, well, the problem is once they're
16 unloaded off the trailer, you know, you're talking
17 about backing a trailer up to it and loading it back
18 up, what you have is you have large pieces of
19 equipment on trailers and you're moving -- you know,
20 it takes like a dump truck with a trailer on it to
21 move a lot of this and you're cutting that across
22 layers of pavement and you're talking breaking
23 pavement. It does become an issue. That's why I was
24 careful to tell you that we're not talking about two
25 and a half tons like a car. We're talking about on

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1 average, each piece of equipment on average weighs 8
2 tons. Every day there's a piece of equipment or two
3 on there that weighs 20 tons, in that range. So we're
4 not talking just about the tracks. We're talking
5 about the weight of that equipment being moved around
6 on the pavement. You get an 80 degree day, you will
7 peel asphalt by taking one turn with that kind of
8 weight.

9 MS. RAINES: I wonder still if we could learn
10 more about how much weight the pavement can handle and
11 then maybe for the 20 ton stuff. We could have some
12 sort of exception if it weighs more than 20 tons, then
13 it's not required to be on asphalt. Whatever that
14 restriction is, I guess, or however much the concrete
15 can hold I think would be helpful in determining what
16 way, what size or what specific items do need to be on
17 asphalt and which ones don't. That might be helpful.

18 MR. NOFFSINGER: If I might add to that. If
19 any consideration has been given to paving some of the
20 area for display, some of the smaller equipment, and
21 then having the larger equipment maybe screened at
22 least somewhat toward the rear of the property.

23 MS. RAINES: And the heavy stuff then could be
24 on gravel.

25 MR. NOFFSINGER: Exactly. On the gravel.

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1 MR. HOLTREY: I don't know a way to do that
2 without being in violation.

3 MR. NOFFSINGER: I think this board might
4 still have to approve some form of the variance, but
5 not the whole thing. It gives you the option to sit
6 down with the Staff and try to come up with an
7 organizational plan as to how you might structure this
8 lot to provide for the display paved in an area
9 screened for larger.

10 MR. WARREN: That would require a
11 postponement, right?

12 CHAIRMAN: I think you were going to bring up
13 a statement that your contract with the people you're
14 dealing with won't let you do that, but I think you
15 can negotiate that as good as you can --

16 MR. HOLTREY: And I'll say this. I had to be
17 careful about what I attached to this because there
18 are proprietary issues in some of my distributorship
19 agreements. Please understand that the one that I'm
20 allowed to give you I gave you. Read between the
21 lines on that indicating this is not just a singular
22 issue for us. If it was just a singular issue, I
23 really don't think I'd be paid to be here and to put
24 this together. This is an issue that's very important
25 and not just this distributorship agreement. There's

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1 some that I cannot disclose to this board because of
2 proprietary information, if that makes sense.

3 MR. DYSINGER: Mr. Chairman, I'm of the
4 opinion right now that there is enough reason to
5 believe that there is a uniqueness regarding this
6 situation that would warrant a look at some sort of
7 variance. Not based on what I have in front of me
8 tonight. But based on testimony, I'm incline to say
9 that if we were to postpone, I think that an
10 arrangement could be made that would non-circumvent
11 the zoning ordinance and would allow the applicant
12 reasonable use of his property.

13 I'm ready to make a motion to that affect.

14 CHAIRMAN: I'll entertain it.

15 MR. DYSINGER: Mr. Chairman, given the
16 findings that there is a reason to believe that there
17 may be room for compromise here, I move that we
18 postpone this action until the next regularly
19 scheduled meeting.

20 MR. WARREN: I'll second that motion.

21 CHAIRMAN: A motion has been made and a
22 second. Any other comments?

23 MR. DYSINGER: The only thing I would say is
24 that I would encourage the applicant to think in terms
25 of the exemption, those sorts of things, to

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1 accommodate the nature of your business, but further
2 keep in mind that we must respect the other applicants
3 that have had to comply with this ordinance. Our
4 hands are tied with that.

5 MR. HOLTREY: I'll get with them and then I
6 guess meet with -- is that the procedure?

7 CHAIRMAN: Yes.

8 MR. HOLTREY: I want to apologize. I've been
9 an attorney in this town for 16 years and never had to
10 approach this board. I don't know if that's good or
11 bad. If I've done anything out of place or
12 procedurally inaccurate, I apologize.

13 I do want to ask by postponing it is there a
14 requirement within a certain amount of time that I get
15 with whoever to do what?

16 MR. DYSINGER: Assuming that the motion passes
17 we will meet at the next regularly scheduled meeting
18 to make a decision, but you can submit more evidence.
19 You can talk with Staff. You can bring in different
20 things that we can look at. That's what this time is
21 for is to sea -- yes.

22 MR. NOFFSINGER: It's my hope that what will
23 happen when we leave here is sometime next week early,
24 as soon as possible, that you'll sit down with Staff
25 and will come up with a plan that will allow you to

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1 display some of that smaller equipment out near the
2 roadway that's paved, and then to the rear of the lot
3 maybe screen from the public roadways the area for the
4 larger vehicles. Maybe it's not all the way around
5 that you have to screen. Obviously your neighbors
6 aren't that concerned. From the public's view, I
7 think that's where the real concern is. If we can
8 somehow work an arrangement there. Staff would be
9 incline to support you in that. Hopefully the board
10 would find it favorable as well. Early next week we
11 need to get together because we don't want to wait
12 until the last week before the meeting and try to come
13 up with something.

14 MR. HOLTREY: I'll get with them. Okay.

15 Just so you know. I'm going to be in Florida
16 on fall break. I'm taking my two kids with me. My
17 wife is going to be out of the country. I will be
18 gone Monday, Tuesday and Wednesday, but I can get with
19 them and maybe schedule something for Thursday.

20 CHAIRMAN: Any other comments?

21 (NO RESPONSE)

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

24 (ALL BOARD MEMBERS PRESENT - WITH THE
25 DISQUALIFICATION OF WARD PEDLEY - RESPONDED AYE.)

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1 CHAIRMAN: Motion carries.

2 ITEM 8

3 104 West Ninth Street, 1010 Allen Street, zoned B-2
4 Consider a request for a Variance in order to waive
5 the required perimeter vehicular use area landscaping
6 along Allen Street

7 Reference: Zoning Ordinance, Article 17,
8 Section 17.3121(b)

9 Applicant: Bryant Commercial Multiple, LLC

10 FATHER HOSTETTER: Mr. Chairman, as Brescia is
11 adjoining this property I need to excuse myself.

12 CHAIRMAN: So noted.

13 MS. STONE: A final development plan was
14 approved on this property in July 2001 showing the
15 required 3 foot high continuous vehicular use
16 landscaping along Allen Street with one tree per 40
17 linear feet in the appropriate location within the
18 applicant's property. A revised plan was approved in
19 2009 when the property was rezoned.

20 In 2011 the portion of the property that was
21 stilled I-1 was zoned to B-2 so that a church could
22 occupy that property. A condition of that zoning was
23 another revised development plan.

24 In preparing to submit that plan, it was noted
25 that the landscaping along Allen Street is actually
located in the right-of-way. It was not installed on
the private property. The applicant had approached
the city about purchasing or being granted that excess

1 right-of-way so that that landscaping could remain
2 there. The city did not do that; however, they did
3 grant an encroachment permit to allow the landscaping
4 to remain on the public right-of-way.

5 In the encroachment permit, of course, there's
6 a provision for no liability to the city for
7 maintenance of that landscaping and for landscaping
8 not to obstruct the public vision or site.

9 We would recommend approval of this variance
10 with the condition that if for any reason that
11 encroachment permit is revoked by the city that the
12 variance would automatically be revoked as well and
13 the landscaping be installed within the private
14 property as was on the original develop plan.

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

17 CHAIRMAN: Thank you.

18 Has there been any opposition or comments in
19 the office?

20 MR. NOFFSINGER: No, sir.

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

23 (NO RESPONSE)

24 CHAIRMAN: Are you going to speak in
25 opposition?

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1 MR. BLAKE: I have some concerns about it.

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

4 MR. BLAKE: Terry Blake.

5 (TERRY BLAKE SWORN BY ATTORNEY.)

6 MR. BLAKE: My name is Terry Blake. I
7 represent Commonwealth Properties of Daviess County.
8 Commonwealth Properties owns Union Station and two
9 other lots that are contiguous with the property
10 that's in question.

11 Several things. First of all, landscaping has
12 not been previously maintained in this area. That has
13 always been a concern of Commonwealth Properties.

14 Secondly, I'm sure that Mr. Malcolm Bryant
15 will maintain landscaping. Malcolm has always been
16 very good. He certainly improved the property and we
17 would expect that he would continue.

18 I would hope that the property should it ever
19 sell that the obligation for maintenance of the
20 landscaping will be passed on to the next owner.
21 That's really a concern I have. I know how easy it is
22 for those things to pass you by because most of the
23 time you're looking at the cost of the property and
24 not necessarily anything that's attached to it.

25 Also, I think Ms. Stone has addressed it. If

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1 the city takes the landscaping property, if the city
2 takes the landscaping property will new landscaping be
3 installed? If I understand the answer to that it's,
4 yes, it will be installed on the property.

5 Any questions if you have about my concerns.

6 CHAIRMAN: Board member have any questions?

7 (NO RESPONSE)

8 CHAIRMAN: Staff have any comments on what he
9 said?

10 MR. NOFFSINGER: I think so.

11 MS. STONE: I would just want to say that the
12 encroachment permit is with Malcolm Bryant who's the
13 current owner of the property. So I assume if the
14 property is sold the city would have to enter into
15 another encroachment permit that would also require
16 maintenance of that landscaping. If they did not,
17 then if you apply that condition as we're
18 recommending, then the landscaping would have to be
19 installed on private property.

20 CHAIRMAN: The applicant come forward and
21 state your name, please.

22 MR. SILVERT: State your name, please.

23 MR. HAMILTON: Greg Hamilton.

24 (GREG HAMILTON SWORN BY ATTORNEY.)

25 MR. HAMILTON: I prepared the application for

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1 Malcolm Bryant on this property. I discussed
2 replacing of the landscaping if it is taken out by the
3 city. He is in agreement with that. He has no
4 problem with that.

5 CHAIRMAN: Any board members have a question
6 of him at this time?

7 (NO RESPONSE)

8 CHAIRMAN: Staff have any comments or
9 questions?

10 MR. NOFFSINGER: No, sir.

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

13 MR. WARREN: Mr. Chairman, I'd like to make a
14 motion to approve the variance based on the findings
15 provided by the Staff where it will not adversely
16 affect the public health, safety or welfare; it will
17 not alter the essential character of the general
18 vicinity. The landscaping is there. It's just in the
19 right-of-way and the city has entered into an
20 agreement with Mr. Bryant to take care of that. I
21 would like to apply the condition on this variance
22 that if the City of Owensboro for any reason revokes
23 the approved encroachment permit, the variance is
24 automatically revoked and the owner of the property
25 will install the required landscaping in the proper

1 location on the private property.

2 MR. DYSINGER: Second.

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

6 MS. MASON: I don't know. I'm just wondering
7 do we need to make that if for some reason Mr. Bryant
8 sells the property and the other people go into an
9 agreement with the city to continue the encroachment
10 permit, that they have to upkeep the landscaping as
11 well as Mr. Bryant has kept it up? Does that make
12 sense or not?

13 MS. STONE: It does, but I think the
14 encroachment permit that the city would issue would
15 cover the maintenance of that area. So that issue, an
16 encroachment permit to a new owner, they would have
17 language within that permit that it would be required
18 to maintain that.

19 MR. NOFFSINGER: Let me also state that
20 regardless of who owns the property, if this required
21 landscaping materials, the landowner is responsible
22 for maintaining their property either through
23 enforcement by the City of Owensboro, the property
24 maintenance department or through the planning office.

25 Now, the problem we have with that is that we

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1 don't have enough staff or resources to go out and
2 check every site to make sure all bushes are living.
3 If there is a complaint, then we can check it out.
4 They are required to maintain landscaping per the
5 ordinance or per the property maintenance.

6 CHAIRMAN: Any other comments or questions
7 from the board or staff?

8 (NO RESPONSE)

9 CHAIRMAN: All in favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT - WITH THE
11 DISQUALIFICATION OF FATHER LARRY HOSTETTER - RESPONDED
12 AYE.)

13 CHAIRMAN: Motion carries.

14 Next item.

15 MS. MASON: I make a motion to adjourn.

16 MR. WARREN: Second.

17 CHAIRMAN: All in favor raise your right hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: We are adjourned.

20 -----

21

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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 73 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 October, 2011.

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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