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

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

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

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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September meeting. We haven't found any problems in the office. Anybody know of any corrections?
(NO RESPONSE)
CHAIRMAN: If not the chair is ready for a motion.

MR. PEDLEY: Motion for approval.
MR. DYSINGER: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

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CONDITIONAL USE PERMITS

ITEM 2

9856 Kelly Cemetery Road, zoned R-1A and A-U

Consider a request for a Conditional Use Permit in order to install a Class 2, 16 foot by 76 foot manufactured home in an R-1A zone.

Reference: Zoning Ordinance, Article 8, Section 8.2A10B

Applicant: Robert Bates, Hacienda Properties, LLC

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

MS. STONE: Becky Stone.

(BECKY STONE SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is currently zoned R-1A

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

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

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

LAND USES IN SURROUNDING AREA

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

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

ZONING ORDINANCE REQUIREMENTS

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

1. A concrete or asphalt parking pad to accommodate two 9'x18' spaces is required.

2. A minimum 10'x 10' deck or patio is required.

3. A concrete sidewalk is required, but may be waived along rural roads (without curbs).

4. The driveway apron shall not exceed 40% of the lot width.

5. The property is required to have at least three trees.

6. The manufactured home shall be permanently installed on a permanent foundation. A poured concrete or masonry block skirting wall shall be constructed beneath and along the entire perimeter of the manufactured home.

7. All wheel, trailer-tongue and hitch assemblies shall be removed upon installation.

8. The manufactured home shall be permanently

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connected to an approved water and sewer system when available.

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

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

MR. NOFFINGER: No, sir.

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

(NO RESPONSE)

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

(NO RESPONSE)

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

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

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

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything to add on it?

MR. NOFFSINGER: No, sir.

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

APPLICANT REP: Yes, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

ITEM 3

10648 Lafayette Street, zoned R-1A
Consider a request for a Conditional Use Permit in
order to construct and operate a multi-purpose church
building.

Reference: Zoning Ordinance, Article 8, Section 8.2B4
Applicant: Carrol T. Bell, Robert Sowders, Trustees,
Whitesville Baptist Church

ZONING HISTORY

The subject property is currently zoned R-1A

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

LAND USE IN SURROUNDING AREA

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

ZONING ORDINANCE REQUIREMENTS

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

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

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

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

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

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

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

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone wishing to speak in
opposition?

(NO RESPONSE)

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

(NO RESPONSE)

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

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

MR. WARREN: Second.

CHAIRMAN: A motion has been made and a
second. Any other comments or questions from the
board?
(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

ITEM 4

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

Consider a 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 Zoning Administrator, Mr. Jim Mischel, is here tonight to give a report as to the status of this property and any alleged violations and what corrections have been made.

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

MR. MISCHEL: Jim Mischel.

(JIM MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: Since the last meeting I've made some random inspections of the property that's located at 926 Maple Street, and I have a few comments.
The first inspection I made was September 2nd. That inspection occurred at 1:30. At that time what I had noted there that there was no red dumpster located on that lot or liquid found.

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

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

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

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

I'll put those in the record.

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

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I also noted that on September 23rd the gate still had not been installed. I made an inspection, the next one was September 30th. That inspection occurred at 3:03 p.m. I observed a container with those pouches stacked inside of it. There was liquid on the ground under the container, towards the rear of the container. I didn't see any liquid running or dripping from the container. It was just on the ground. I checked the rest of the site and did not see any liquid anywhere else.

At that time the gates had been installed.

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

MR. MISCHEL: Had been.

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

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

I have a letter here from them where they made Ohio Valley Reporting

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

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

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

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

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

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

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

MR. MISCHEL: No.

CHAIRMAN: Any other comments or questions from the board?

MR. PEDLEY: Mr. Chairman, I have been by twice. I was by this morning. I checked the entire
perimeter and all the screening was in place. I did not see any leeching of any material out of the dumpsters that I saw before. The lot was clean. I didn't smell any odors. So I didn't observe any violations. When I was there about mid month, I didn't observe any violation at that time.

CHAIRMAN: Thank you.

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

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

MR. WILSON: Bill Wilson.

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

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

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

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

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

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

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

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

CHAIRMAN: Any other comments or questions
from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Any other comments at this time?

(NO RESPONSE)

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

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

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

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

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

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

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

MS. RAINES: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No sir.

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

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

MR. PEDLEY: I wanted to make sure.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

VARIANCES

ITEM 5

3225 Adams Street, Zoned R-1B

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

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

Applicant: Rex Marsh

MS. STONE: This existing lot is non-conforming in size as are other lots in the immediate vicinity. There are several encroachments.
of principal and enclosed accessory buildings in the area into the side street yard setback located at 3242 Park Avenue, 3229 Park Avenue, and 3301 Park Avenue, also 3400 Park Avenue, and 3226 St. Mary's Street.

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

The Staff would recommend approval of this variance application with the condition that the carport is to remain open on all four sides to ensure
no traffic vision obstructions for neighboring
properties.

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

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

CHAIRMAN: So noted.

Is any opposition or comments filed in the
office?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

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

APPLICANT REP: No.

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

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

MR. WARREN: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No sir.

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

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

CHAIRMAN: Motion carries.

Next item, please, sir.

ITEM 6

630 Ford Avenue, zoned R-1B

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

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

Applicant: Edward L. McCrackin, Judy H. McCrackin

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

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

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

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

CHAIRMAN: Been any comments or questions in Ohio Valley Reporting (270) 683-7383
the office?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE.

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

APPLICANT REP: No.

CHAIRMAN: Entertain a motion to dispose of the item.

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

MR. PEDLEY: 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 to add on it?

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 7

2306 Windhaven Drive, zoned I-1

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

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

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

MS. STONE: A site plan was approved in December of 2009. The site plan depicted a large gravel area, identified as a storage area enclosed by a six foot high solid fence meeting the zoning ordinance requirements. A building permit was issued 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
that the six foot high solid fence had not been erected. The applicant was notified informally that they had not completed the solid fencing in accordance with the zoning ordinance and their approved site plan and that this should be completed.

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

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

• Install the fencing in accordance with the ordinance requirements for outdoor storage.

• Pave the area used for display of the rental items.

• Apply for a variance to consider a reduction or elimination of the screening requirements.

It is the opinion of the Staff that if the gravel area remains, it must be considered as outdoor storage and screened with a six foot high solid wall
or fence. If the area is sales/rental display area, then the area can be paved and screening in not required around the entire perimeter of the paved lot. A three foot high continuous element with one tree for every 40 linear feet would be required where the paved lot is adjacent to the right-of-way of Windhaven Drive.

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

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

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

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Implement could possibly apply for the paving exception with the submission of a development plan, they have been in existence at this location prior to the zoning ordinance requirements and are therefore, legally non-conforming and are not required to bring their operation into compliance with the ordinance unless the size or scope of their operation increases. They have been in violation in the past of the zoning ordinance previously by storing equipment on adjacent properties beyond the scope of their existing non-conforming status. As a result, they were sent a notice of violation resulting in the removal of the farm equipment stored on adjacent properties and maintaining their non-conforming status.

The second business referenced is ERB Equipment located at 2133 US Highway 60 East in Owensboro. This business appears to be a legally non-conforming business as well from the information we have in our records and the information in the PVA records. The buildings on the site were built in 1957 and 1967, both dating before the ordinance was adopted in Daviess County. The property has changed ownership, but appears to have continued operation as a John Deere Implement Sales with the current owner purchasing the property in 2009. K&W Equipment was
the previous owner from 1989 and the sign permit
issued to K&W also indicates that they were a
John Deere dealer.

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

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

The third business listed is CMC Rental &
Sales at 2235 Ragu Drive. PVA records indicate that
one building on the site was constructed in 1979 and a
second building in 1991. OMPC records show that an
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accessory building was permitted in October of 1990 and a permit was issued for an addition in 1984. A portion of the outdoor storage area to the rear of the building is screened by the building, but the fence along the Wendell Ford Expressway is a chain-link fence with no screening material and the outdoor storage is visible. The Staff cannot determine with certainty if this site is legally non-conforming or if it has been in violation for the last 32 years.

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

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

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

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

The zoning ordinance requires outdoor storage to be screened with a solid six foot element. The screening of outdoor storage helps to make the community more aesthetically pleasing. The applicant has provided examples of unscreened storage that is either non-conforming or utilizes the exception that is allowed by the zoning ordinance. These examples do not provide a basis to eliminate the outdoor screening requirement for this property or for future businesses. A precedent should not be set to eliminate screening requirements. The applicant should have been aware of this requirement as the site plan submitted by the applicant and approved by the OMPC clearly shows the graveled area and the required 6 foot high solid screen. If the applicant chooses to
revise the site plan to show this area as sales display area, then the area should be paved. Granting this variance would alter the essential character of the immediate vicinity. Kight Lumber, located at 2301 Windhaven, has outdoor storage that is screened as shown in these photographs. We'll put that in the record.

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

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

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

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

We would propose that this variance would
adversely affect the public health, safety and welfare
because outdoor storage is required to be screened for
the aesthetics of the community. It will alter the
essential character of the general vicinity because
other businesses in the immediate vicinity do not have
unscreened outdoor storage. It will cause a hazard or
nuisance to the public because outdoor storage is
unsightly. And it will allow an unreasonable
circumvention of the requirements of the zoning
regulations because similar outdoor storage lots on
like zoned property have been required to provide the
6 foot high solid wall or fence.

The Staff recommendations would be for denial.

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

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

MR. PEDLEY: Mr. Chairman, I need to
disqualify myself from this item because of my
business association with Mid South.

CHAIRMAN: So noted.

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

MR. NOFFSINGER: No, sir.

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

CHAIRMAN: Thank you.

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

(NO RESPONSE)

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

(NO RESPONSE)

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

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

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

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actions on the part of the applicant?

CHAIRMAN: Staff have any comments, please?

MR. NOFFSINGER: Ms. Stone.

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

CHAIRMAN: Thank you.

Does any board member have any questions of the applicant?

MS. RAINES: Mr. Chairman, I have a question. I'd like to clarify, I guess, trying to make sure that I understand. The original request was stating that they were going to be using that area, the graveled area as a storage space; is that right?

MR. NOFFSINGER: That is correct.

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

MR. NOFFSINGER: Well, the original

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

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

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

MS. RAINES: It is being used as sales?

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

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

Also, the equipment weighs a lot. Movement of the equipment with that kind of weight over time is also going to continually be a perpetual cost of repairing the pavement and the concrete. They're so cognizant of this damage that it does. If any of you
have been by that place, that they display some of
their equipment out on the front lawn that they own
where when you go by on 54 you'll see some of their
equipment.

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

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

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

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

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

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

There was one property owner that we had sent an affidavit to that did not supply the affidavit in time for me to get it in the application. Notice did go to Dale Buskill of Buskill Properties. Notice did go to Mr. Buskill and just today -- I was out of town. Just got in a few minutes ago. I understand that Mr.
Buskill drop off a note indicating that he is not in opposition of this application for variance and he signed it. I would like to make it a part of the record because I do represent to the board that all adjacent owners do not object to this. I did want to add this to the record.

CHAIRMAN: No noted.

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

CHAIRMAN: So noted.

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

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

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

MR. HOLTREY: I don't dispute. I'd like a clarification on what you just said. I think you said that the adjacent property owners are legally
compliant. I don't want anybody to think I'm representing that all of these competitors are adjacent property owners. The competitor's pictures that were shown are locations throughout town. So I don't want to even remotely think I represented that they were adjacent property owners.

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

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

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

MR. DYSINGER: Mr. Chairman, counselor talked
about the distributorship agreement that kind of has
his client in a bind.

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

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

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

MR. DYSINGER: That seems peculiar to me. The
site plan shows something. I'm just trying to make
the connection between why it shows that and no one
seems to have any intentions of complying with the
site plan.

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

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

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

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

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

MR. NOFFSINGER: No, other than what the
development plan shows. It mean it clearly shows that
there was going to be a solid fence all the way around
the area. Going to be gravel. Before that it was to
be paved. When they changed the development plan for
some reason, obviously it's, as Mr. Holtrey has
identified to you.

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

FATHER HOSTETTER: Quick question just to
understand.

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

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

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

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

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the road?

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

MS. MASON: I think so, yes.

CHAIRMAN: Any other questions or comments?

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

MR. NOFFSINGER: Back years ago there was an
exception made in the zoning ordinance for those
particular uses only. Their aisles were to be paved
and the area that the actual machinery or the
manufactured homes would sit would be gravel because
they weren't being moved that frequently. So the
exception was granted and the study was done to allow
exception for manufactured housing and large farm
vehicles.

MR. DYSINGER: That exception still exist?
MR. NOFFSINGER: That exception is still
current, yes, sir.

MS. STONE: And requires a development.
MR. NOFFSINGER: And it requires a development
plan. Which they have a development plan here as
well.

MS. STONE: They have a site plan.
MR. NOFFSINGER: They have a site plan. Not a
development plan.

MS. STONE: Yes.
MR. DYSINGER: Mr. Chairman, can counsel shed
some light on why the applicant isn't pursuing that
avenue?

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

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

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CHAIRMAN: Staff have other comments?

Jim, do you have anything to add there?

MR. MISCHEL: Jim Mischel.

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

CHAIRMAN: Any board member have any questions of Jim?

(NO RESPONSE)

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

MR. HOLTREY: No thank you.

CHAIRMAN: Board members have any other questions?

MS. MASON: Mr. Chairman, I have a question. Maybe I didn't listen very well when Shannon was asking her question earlier. Are they asking for a variance to remove the 6 foot high solid wall around it or are they asking for a variance to not pave it? I'm confused.

MR. NOFFSINGER: Well, I think they're asking for both.
MS. MASON: Both. Not to pave it and not to put the fence around it?

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

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

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

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

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

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

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

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

MR. HOLTREY: Travis Holtrey.

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

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

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

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

Let me start with a statement and then I'll
get to the question. I know everybody loves it when I do that.

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

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

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

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

CHAIRMAN: We need to make a decision.

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

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

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

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

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

       MS. RAINES: Question for the applicant, I
The items that are for sales for rent, are they moved about very often or are they stationary?

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

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

MR. DYSINGER: I'm confused entirely by the this exemption. The fact that the equipment does not move often seems not a reason to grant the exemption. It seems reason to not grant it.

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

I don't have any further questions, Mr. Chairman.
CHAIRMAN: Board member have any other comments or questions?
(NO RESPONSE)
CHAIRMAN: Staff have anything to add?
MR. NOFFSINGER: No, sir.
CHAIRMAN: The applicant have anything you can help us on?
MR. HOLTREY: I've tried to answer the questions. I think the application I hope everybody would agree was thorough and sets forth the photographs.

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

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

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

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

CHAIRMAN: So you got caught in-between.

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

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

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

So the grandfathering, you're exactly correct on the grandfathering issue. In this situation, it
kind of does work to the favor of Mid South from the standpoint that there's nobody left in town that can go and change what they already have.

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

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

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

MS. RAINES: Mr. Chairman, I'm certainly not an expert in concrete. I don't know much about how much it can hold. I would like to know, I guess, in
paving a lot what weight. You know, maybe that would
be helpful if we could find out some information as to
the maximum weight and hold before it breaks. I know
we do have also some things that could damage it
regardless, but it would be good to know and maybe
have the equipment that weighs more than -- I don't
know.

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

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

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

MR. WARREN: I think I have a question.
I don't even know whether it's a possibility.

I guess it's a possibility.

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

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

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

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

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

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

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

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

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

MR. NOFFSINGER: Well, staff believes that's a
real concern. That's a genuine concern. We would
agree that you're going to have to have concrete
that's pretty deep to sustain the weight of these vehicles. That's why we gave them the option of using the 6 foot high fence. So we opted an option there. But that presents a problem for them because they want everyone to be able to see what they have to sell.

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

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

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

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

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

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

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

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

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

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

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

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

MR. DYSINGER: Exactly. Right.

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

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

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

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

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

MR. DYSINGER: Because of the farm equipment?

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

Am I correct, Staff?

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

MS. STONE: I think that they would have to appeal Jim's interpretation of the zoning ordinance.
which would be, I mean it obviously says, large farm
equipment and manufactured housing.

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

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

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

MR. HOLTREY: In a given month, about 40
percent of the traffic is sales and 60 percent of the
traffic on the yard is rental. Obviously there's a
market there. That is the best breakdown that I could
get from speaking to the manager of Mid South. I
don't mean to complicate, but that's the best I can
clarify.
MR. WARREN: I'm making the assumption from what I know of it, all of your equipment leaves there on a trailer?

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

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

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

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

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

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

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


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

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

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

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

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

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

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

CHAIRMAN: I'll entertain it.

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

MR. WARREN: I'll second that motion.

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

MR. DYSINGER: The only thing I would say is that I would encourage the applicant to think in terms of the exemption, those sorts of things, to
accompany the nature of your business, but further
keep in mind that we must respect the other applicants
that have had to comply with this ordinance. Our
hands are tied with that.

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

CHAIRMAN: Yes.

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

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

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

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

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

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

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

CHAIRMAN: Any other comments?

(NO RESPONSE)

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

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

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CHAIRMAN: Motion carries.

ITEM 8

104 West Ninth Street, 1010 Allen Street, zoned B-2

Consider a request for a Variance in order to waive

the required perimeter vehicular use area landscaping

along Allen Street

Reference: Zoning Ordinance, Article 17,

Section 17.3121(b)

Applicant: Bryant Commercial Multiple, LLC

FATHER HOSTETTER: Mr. Chairman, as Brescia is

adjoining this property I need to excuse myself.

CHAIRMAN: So noted.

MS. STONE: A final development plan was

approved on this property in July 2001 showing the

required 3 foot high continuous vehicular use

landscaping along Allen Street with one tree per 40

linear feet in the appropriate location within the

applicant's property. A revised plan was approved in

2009 when the property was rezoned.

In 2011 the portion of the property that was

stilled I-1 was zoned to B-2 so that a church could

occupy that property. A condition of that zoning was

another revised development plan.

In preparing to submit that plan, it was noted

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

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

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

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

CHAIRMAN: Thank you.

Has there been any opposition or comments in the office?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

CHAIRMAN: Are you going to speak in opposition?
MR. BLAKE: I have some concerns about it.

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

MR. BLAKE: Terry Blake.

(TERRY BLAKE SWORN BY ATTORNEY.)

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

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

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

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

Also, I think Ms. Stone has addressed it. If
the city takes the landscaping property, if the city
takes the landscaping property will new landscaping be
installed? If I understand the answer to that it's,
yes, it will be installed on the property.

Any questions if you have about my concerns.

CHAIRMAN: Board member have any questions?

(NO RESPONSE)

CHAIRMAN: Staff have any comments on what he said?

MR. NOFFSINGER: I think so.

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

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

MR. SILVERT: State your name, please.

MR. HAMILTON: Greg Hamilton.

(GREG HAMILTON SWORN BY ATTORNEY.)

MR. HAMILTON: I prepared the application for
Malcolm Bryant on this property. I discussed replacing of the landscaping if it is taken out by the city. He is in agreement with that. He has no problem with that.

CHAIRMAN: Any board members have a question of him at this time?
(NO RESPONSE)
CHAIRMAN: Staff have any comments or questions?

MR. NOFFSINGER: No, sir.
CHAIRMAN: Entertain a motion to dispose of the item.

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

MR. DYSINGER: Second.

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

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

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

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

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

CHAIRMAN: Any other comments or questions from the board or staff?
(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT - WITH THE DISQUALIFICATION OF FATHER LARRY HOSTETTER - RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item.

MS. MASON: I make a motion to adjourn.

MR. WARREN: Second.

CHAIRMAN: All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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)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 Board of Adjustment meeting was held at the time and place as stated in the caption to the foregoing proceedings; that each person commenting on issues under discussion were duly sworn before testifying; that the Board members present were as stated in the caption; that said proceedings were taken by me in stenotype and electronically recorded and was thereafter, by me, accurately and correctly transcribed into the foregoing 73 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 27th day of October, 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, KY

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