The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, December 1, 2011, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  Ward Pedley, Chairman
Ruth Ann Mason, Secretary
Gary Noffsinger, Director
Madison Silvert, Attorney
Marty Warren
Sean Dysinger

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CHAIRMAN:  Call the Owensboro Metropolitan Board of Adjustment December 1 meeting to order. We will begin our meeting with a prayer and the pledge of allegiance to the flag. Would you stand, please.
(INVOCAUTION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  I'd like to welcome everyone. Anyone wishing to speak on any item we welcome your comments and questions. We ask that you come to one of the podiums, state your name and you'll be sworn in.

With that the first item on the agenda is consider the minutes of the November 3, 2011 meeting. Are there any additions or corrects?

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CHAIRMAN: Chair is ready for a motion.
MR. DYSINGER: Move to approve.
MS. MASON: Second.
CHAIRMAN: We have a motion and a second. All in favor of the motion raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries unanimously.
Next item.

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CONDITIONAL USE PERMITS

ITEM 2
11901 Highway 951, zoned EX-1
Consider a request for a Conditional Use Permit in order to operate a 60 meter meteorological tower to measure wind speed, wind direction, and vertical wind speed for an additional three years from the original approval in November 2009.
Reference: Zoning Ordinance, Article 8, Section 8.2K6
Applicant: Heartland Wind, LLC, Jesse Bermel; Jerry Winn

MR. SILVERT: State your name, please.
MS. EVANS: Melissa Evans.
(MELISSA EVANS SWORN BY ATTORNEY.)

ZONING HISTORY
The subject property is currently zoned EX-1 Coal Mining. OMPC records indicate there have been no Zoning Map Amendments for the subject property.

This was approved originally for a wind tower

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for temporary to collect the data in November of 2009. They're requesting that this be extended for an additional three years so that they have time to collect more data.

LAND USES IN SURROUNDING AREA

The properties to the north are zoned EX-1 Coal Mining and A-R Rural Agriculture and are used for agricultural purposes. The properties to the south, west and east are zoned EX-1 Coal Mining and are used for agricultural purposes.

SPECIAL CONDITIONS

1. The tower shall be in place for a maximum of three years from the date of approval.
2. Conditional Use Permit approval is for one tower for data collection only. No permit for a wind farm shall be issued until appropriate zoning and conditional use permits are approved for that use.

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

Also, any items approved here tonight do not constitute approval for construction or occupancy. The applicant will need to come to the office to get those appropriate permits for that.

CHAIRMAN: Anyone here representing the applicant?

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APPLICANT REP: Yes.

CHAIRMAN: Anyone would like to speak in opposition or any questions?

(NO RESPONSE)

CHAIRMAN: Do you have any comments you would like to present?

MR. BERMEL: I'm Jess Bermel with Heartland Wind. If you guys have any questions.

MR. SILVERT: Let me swear you in if you're going to state to anything.

(JESSE BERMEL SWORN BY ATTORNEY.)

MR. BERMEL: I just quickly. The reason for an additional three years is two years has quickly gone by and we have collected data, but we're looking to, we need a little bit more data and a little more time to come up with what our long-term plan is going to be.

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

(NO RESPONSE)

CHAIRMAN: If not the Chair is ready for a motion.

MR. DYSINGER: Mr. Chairman, given the findings that this is an ongoing usage, I move that we approve the Conditional Use Permit for a period of

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three more years.

CHAIRMAN: We have a motion. Do I hear a second?

MR. WARREN: Second.

CHAIRMAN: We have a motion and a second. Any comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item.

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VARIANCES

ITEM 3

2306 Windhaven Drive, zoned I-1 (Postponed from the November 3, 2011 meeting)

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

MR. NOFFSINGER: Mr. Chairman, since our last meeting, the Staff has had only one contact with the applicant and that was a request by the applicant to postpone the item until the January meeting. We indicated to the applicant that that was a decision that this board would have to make; however, Staff was
prepared to move forward at this meeting with
additional evidence as well as asking the board to
vote on the item.

   The applicant is here and Ms. Stone is here
which she'll have additional evidence to enter into
the record.

   CHAIRMAN: Anyone here representing the
applicant?

   MR. SILVERT: State your name, please. You're
sworn in already.

   MR. HOLTREY: Travis Holtrey, attorney.
   I would like to make one correction. I
believe an email was sent to Ms. Stone asking her for
some information that she presented to this board at
the first hearing of the matter which was why some of
the other area equipment companies were legally
compliant.

   MS. STONE: The Staff Report.

   MR. HOLTREY: Right. So I had made some
contact at the request of my client to obtain that
information. So just to clarify the record, that was
another communication that I did have with the Staff.

   It is accurate that I did ask for a
continuance of this motion. At this point now it's
public record. At the time it wasn't. I communicated
with counsel and asked counsel if he was the proper
person to ask for a continuance in the matter. I was
directed to the Staff. Sent an email asking for a
continuance, understanding the Staff has no authority
to grant a continuance of the matter.

The basis of that was that I am taking a new
position here in Owensboro with a new firm. Any time
you switch firms there is a question as to what
clients you're going to take with you and what clients
you're not going to take with you. At that time it
was not clear to me.

I do have permission from this client to
continue forward, but I didn't want to take the chance
of not being able to be here tonight and not having
someone here. So out of abundance of caution for this
client I thought it was safest to ask for a
continuance. Nevertheless I'm here and I am prepared
to move forward with a few comments.

I would say this at the outset. Obviously,
this board recalls the fact that this is now the third
time I've been here before you. I appreciate your
time. I appreciate the Staff's time in the efforts
that has been put forward with regards to this motion
for variance or this application for a variance.

I want to thank Gary and Becky and the Staff
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for their energy and their energy and the effort
they've put into trying to look at some alternatives.

My clients over the past 30 days, since this
was carried over, again, thank you for allowing us to
carry over because there was a lot of information
provided that we needed to digest and look at.

Over the last 30 days, I've met twice with
them and they have met on their own and discussed the
plan that was presented. The way I'm going to refer
to that, and I don't know if it's accurate, is that
there has been a plan which would actually require a
variance in and of itself that's a proposed plan. I'm
not quite sure if this board can vote on that because
that is a subsequent or a supplemental request for a
variance. Nevertheless, we will call that an
alternative plan, I guess. We looked at that
alternative plan closely.

Based upon these meetings, I was asked to
gather some additional information to communicate to
my client. We've reached several conclusions that I
would like to just share with the board.

I think if we would all agree, the one thing
we've been able to agree upon the entire time
throughout this process is that whether it is rubber
track equipment or steel track equipment or heavy
equipment, asphalt is going to be an inferior product to pave the lot with. I think that when we looked at this the first thing with the alternate proposal is paving or making concrete a specific portion of the applicable yard. That's a part of that plan.

We again come back to the fact that asphalt would be inferior. Of course, it's the more affordable option, but the client, my client, Mid-South, and the applicant would remind the board that it's just not going to be feasible. So that turns our focus to concrete.

We've looked to two potential options with regards to concrete. There's broom concrete and there's smooth concrete.

Now, if we go with broom concrete, obviously it's safer when on it by foot. The nature of a lot of this equipment is a client wants to come out or a customer wants to come out. They want to test drive it, get on it, operate it there. We've talked about that in the past. They'll be walking around our yard. Broom concrete is much safer to walk on. It's much safer to climb up onto a piece of equipment off of broom concrete because of traction.

The problem with broom concrete is that as the Staff has noted in looking at the yard and observing
the yard over time, some of the equipment has hard rubber tracks. It's not the steel tracks. It's the hard rubber tracks. We've looked into whether or not operating the equipment over broomed concrete over time would void a warranty because of the rubber tracks. There's a genuine concern as to damage that the broom concrete or rough course concrete would do to the rubber tracks.

So then we turned our attention to smooth concrete. To pave this portion of the yard with smooth concrete. Obviously, there's a safety question for us having people walk on the smooth concrete in an exterior environment.

In that situation it would not damage rubber tracks, which would be favorable to us. Still can't get around the fact that the steel tracks on any concrete would do damage to the concrete.

The third conclusion or concern that we've reached is a turn radius issue. A great deal of the equipment that is delivered to the yard is delivered on semi tractor-trailer flatbeds. We have tried to look at the proposed plan and delivery or the drop-off of equipment for the yard or for my clients and having the equipment delivered and have the turn radius for a semi tractor-trailer where it's not going to drive on.
concrete and then off into a gravel and then back on
because of the question of the weight of that and the
turning on it, chipping off the side of it. There's a
genuine concern for us. I have made a list of the
equipment just over the last 60 days. It has been
delivered to the yard on semi tractor-trailer flatbed.
We've had sky lifts, generators, front end loaders,
tractors, all delivered in the last 60 days on semi
tractor-trailer.

If the alternate proposal is taken seriously
and looked at from a consideration of is it feasible,
we have a significant turn radius issue.

The fourth conclusion that my client has
reached is that this proposal, this alternate proposal
would be difficult. There are some long-term future
expansion plans of Mid-South Equipment. Having it
apportion the way it is, is not I say feasible, but
it's not within the long term plan of expansion of
Mid-South.

That was a conclusion we reached that I said,
well, really before -- I think that you all would be
entitled to asking more specific questions. In all
fairness, the expansion plans are a year or two down
the line and that's assuming certain growth in the
market. I wanted to put that out there because it was
a part of our discussions because we did not take
lightly you guys, the board, allowing us 30 more days.
We wanted to look at every option.

The fifth conclusion we've reached was I was
asked to do some research not only in Owensboro,
because I think we have presented the board with the
area market so-to-speak of our competitors and then
being legally compliant. I wanted to make sure we had
exhausted it. That's why I requested that information
from Ms. Stone.

I was asked to spend some time just on the
internet looking just at one equipment dealer who has
a branch here but is nationwide. That's Erb
Equipment. When I looked at Erb Equipment's website,
what I found was that in all the pictures of their
yards around the country, we have gravel or dirt
storage yards with clear fences.

You're saying, well, we're not going to get
compared to what they do in Memphis, Tennessee. We're
not going to get compared -- the reason I was asked to
point that out is what Mid-South was asking for
unreasonable? In looking at the Variance from this
ordinance, we wanted to see, okay, are we out in left
field on this request? You know, is it maybe just a
thing with Owensboro. So I did spend some time.
Again, we've reached the conclusion that a majority if not everywhere you look you're seeing equipment like this stored in yards with asphalt or dirt storage yards with clear fences.

The sixth item that we've discussed and looked at in depth is that the only harm I can recall that was alluded to, and I will apologize if I'm wrong. The only harm that I think this board has been presented with was that there has been gravel from our storage lot that has made its way out onto Windhaven Drive. The only harm.

My client has given me permission to say to the board that in the event that our Variance is granted we will take the steps necessary. The fix on this seems to be rather easy. Of digging channel and putting a grate to catch the gravel. So if that is the only harm that's been mentioned, I have the authority that represents the board that we can remedy that harm in short order and will.

Those were the six items that we discussed. The reasons that we don't -- I don't want this board to think that we are making light of the proposed alternate. We appreciate that effort. We gave you -- I wanted a chance to look at it closely. Have them look at it and digest it. And these were the thoughts Ohio Valley Reporting

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and conclusions and considerations that Mid-South, the
applicant, came up with.

In short, we still believe we've satisfied the
criteria that is required for a variance. We would
ask the board at this time to vote on the petition,
the application we originally filed for the Variance
based upon all the information now from this, the
third meeting.

I'm open to questions. Would like to hear the
new evidence that's to be proposed and then we're,
again, willing to answer any questions.

CHAIRMAN: Any board members have any
questions of Mr. Holtrey?
(NO RESPONSE)

CHAIRMAN: Staff have any additional
information you can share with us?

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

MS. STONE: Becky Stone.
(BECKY STONE SWORN BY ATTORNEY.)

MS. STONE: First, to respond to his concern
about a partial Variance being granted. We have
advertised a Variance for the whole perimeter of the
outdoor storage area. So if the board decided to
approve only a portion of that, that would be
appropriate.

The purpose of a public hearing, as you know, is to present evidence so the board can make findings to support their decision regarding the Variance, Conditional Use Permit or Administrative Appeal. It's important to remember that a Variance runs with the land, that's KRS 100.251. A Variance applies to the property for which it is granted and not to the individual who applied for it. A Variance is transferable to any future owner of the land, but it cannot be transferred by the applicant to a different site. KRS states that the board must find that the granting of the Variance will not affect the public health safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the regulations. Because the Variance applies to the land and not to the applicant, KRS states that in making these findings the board shall consider whether:

1. The requested Variance arises from special circumstances which do not generally apply to the land in the general vicinity or in the sudden zone.

Evidence has been entered into the record showing the
businesses in the same area have complied with the zoning regulation relative to outdoor screening. Additionally, evidence has been provided to demonstrate that other like businesses in the same zone in the community have adhere to the zoning regulations. The community is adopted a screening requirement for outdoor storage that is applied with consistency. Every business has varied business activities, but the basis of a variance should, as stated in KRS, consider the characteristics of the site, not the particular business practice, because the variance remains with the land. Not the owner or the applicant. A business practice is not a special circumstance. The cost of doing business in Daviess County includes conforming to adopted regulations of the county. Typically special circumstances would be physical characteristics of the land that differ from other properties in the area or in the same zone. There has been evidence presented to the board by the Staff that there are some special circumstances along the one boundary of the lot as shown on the exhibit that would support a variance in that location only. This evidence was presented by the Staff after visits to the site and not presented by the applicant. The topography in the tree on the lot provide natural Ohio Valley Reporting (270) 683-7383
screening that would be a feature of the lot that is special and provides the intention of the ordinance relative to screening. Otherwise, there are no physical features such as narrowness or shape of the lot to demonstrate a special circumstance that would support a waiver of outdoor screening.

1. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant. As stated above, compliance with the zoning ordinance is a reasonable cost of doing business in Daviess County and has been since the 1970's. The applicant has a choice concerning how much area to screen to accommodate their outdoor storage needs. They can also choose to display products on a paved displayed area, on a size and type that meets their needs and budget. The original site plan submitted by the applicant and approved showed screening around the entire graveled outdoor storage area. The contractual obligation that they're attempting to meet in displaying their product can be met on this site. There's adequate room on the site to create a display area. There are no physical characteristics of the site that would prevent the owners from creating
outdoor storage and display area.

3. The circumstances are a result of actions of the applicant taking subsequent to the adoption of the zoning regulation from which relief is sought. The applicants had an approved site plan that met all the regulations which they choose not to implement. Currently they are under violation of the zoning regulation, but if taken steps to come into compliance by asking for relief of the screening requirements. The Staff does not believe there is evidence entered by the applicant to support a variance of the entire boundary of the outdoor screening. If denied, we anticipate that the applicant will conform to the zoning ordinance regulations immediately.

The applicant's attorney stated in the public hearing that there has been no evidence presented to indicate that the granting of this variance would adversely affect the public health, safety and welfare, would alter the essential character of the general vicinity, would cause a hazard or nuisance to the public, or would allow an unreasonable circumvention of the ordinance.

The Staff disagrees and would argue that the applicant has not presented evidence to support these findings. The community has adopted zoning laws.
regulations expressly to serve to enhance the public health, safety and welfare. The screening requirement is recognized by the community as necessary to enhance the public welfare by increasing the esthetics of the community. The regulation applies to all outdoor storage areas and the burden of proof is on the applicant to demonstrate that a variance can meet the criterias set forth in KRS. As stated earlier, the variance would apply to the land, not the business. So if granted future outdoor storage could occur on this site without screening as well. The character of the general vicinity would be altered as other businesses in the area have complied with the screening requirement in the granting of this variance could affect future businesses and uses in the area by setting a precedent for waiving outdoor screening in the area and affecting the aesthetics, not only in the present but for future uses.

The granting of the variance causes a nuisance to the public by disregarding the community standard for development. And most importantly granting this variance allow an unreasonable circumvention of the zoning ordinance by permitting this waiver where no special circumstance or hardship exist to support the findings.

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The granting of this variance will set a precedent for future outdoor storage lots seeking the same relief and contribute to unsightly development in the community. Each business could offer some basis for why they do not want to screen their storage, but the OMBA needs to act in accordance with KRS and consider the circumstances of the land, not the business practice. If the OMBA chooses to consider the individual business practices and contractual agreements as support of granting this variance, then they should request that the Planning Commission recommend to the legislative bodies that the outdoor screening requirement be eliminated from the zoning ordinance because every business will have some reason that does not apply to the physical site as to why they cannot provide the screening. Keep in mind that the variance stays with the land, not the applicant, and that findings made to support any variance should be based on the characteristic of the land and zone.

We would like enter this as Exhibit B.

CHAIRMAN: Any board members have any questions of the Staff?

(NO RESPONSE)

CHAIRMAN: Mr. Noffsinger, do you have any comments you would like to make?
MR. NOFFSINGER: The only comment I would like to make, I think I already have this in the record, but we just need to recognize that East Parrish Avenue is a major corridor into our community and through our community.

Based upon the flexibility of our comprehensive plan and our own zoning ordinance, we allow these types of industrial activities to be located along our major corridors. By doing that we have a requirement for screening. It is Staff's belief and it has been the belief of this community, based upon the standards they've adopted, that outdoor storage areas should be screened from the public's view.

Here you have a major thoroughfare through our community where you have industrial type storage, as well as equipment, being stored and displayed on the lot.

Again, we've made provisions for that activity to occur in an area that really has a mixture of professional and retail uses and some industrial, but we allow those industrial uses on those major corridors because I believe we have a good ordinance that protects neighbors, that protects the public from view of these types of activities.

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Again, this variance runs with the land. KRS states that the variance should not be considered based upon a particular business practice.

For so many times I've heard about uses out on Highway 60 East that are unsightly. Outdoor storage. People come in and they're storing old manufactured homes out in plain view with no screening. Those uses were grandfathered in. There are folks that say simply, we need to do something about that. Isn't there an ordinance against that?

Well, there is and if it's not grandfathered in or if the Board Adjustment doesn't grant a variance, then those types of activities will be screened from the public view and from visitors coming into our community. We've heard that time and time again from people.

That's what the applicant is asking you to do here. He's asking you to take the screening requirements and totally do away with them, as well as the paving requirements and for this business to be able to operate here at this location.

Staff would certainly recommend that the variance not be approved. That you deny the applicant's request. We do believe we had a very fair compromise that we thought would help the applicant.

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and also adhere to the requirements of KRS in terms of what you should consider in granting the variance. We believe that was a good option. The applicant is here tonight to tell you that they're not acceptable to that and they want you to waive the entire requirements. Staff would certainly hope that you uphold the ordinance and those regulations that have been adopted and deny the applicant's request.

CHAIRMAN: Mr. Holtrey, I'm going to give you one final chance to make comments, make your argument, and then I'm going to ask for a motion.

MR. HOLTREY: I have no further comments.

CHAIRMAN: Is the answer "no?"

MR. HOLTREY: Yes. The answer is, no, I have no further comments.

CHAIRMAN: Okay.

Any board members have any comments or questions?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. NOFFSINGER: Mr. Chairman, before you do that, we had findings from the last meeting. Did you submit those? Do the board members have those?

MS. STONE: They should be in the file. Are they not in the file?

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MS. MASON: I have mine from the last meeting.

MR. NOFFSINGER: I just want to make sure the board members have the findings that we did recommend.

CHAIRMAN: Yes, I think everyone has those.

MR. SILVERT: I also want to remind the chair for a consistency standpoint, given that this is the third meeting, at our first meeting the chair stated that he was going to abstain on this up front and for consistency sake I just want to remind the chair.

CHAIRMAN: I will state that when I ask for a vote.

The chair is ready for a motion.

MS. MASON: I'm ready for a motion.

First, I want to commend the Staff for what you all tried to do to work through this with the applicant.

With that the variance to waive the screening requirement for a portion of the outdoor storage boundary should be approved along the southeast boundary as indicated on the exhibit plan from the November meeting.

The findings that support of this is granting of this variance will not adversely affect the public health, safety or welfare because the natural topography and the tree lines screen the outdoor...
storage area from public crew along Parrish Avenue.

The granting of this variance will not alter the essential character of the general vicinity because the storage is as affectively screened by the natural elements in this location as other screened storage in the vicinity.

The granting of this variance will not cause a hazard or nuisance to the public because in this location the outdoor storage cannot be seen from the public right-of-way.

The granting of this variance will not be an unreasonable circumvention of the zoning ordinance at this particular location because the change in elevation provided by the natural topography and the heavy tree line affectively provide screening comparable or exceeding the zoning ordinance requirements and serve to meet the intent of the zoning ordinance requirements.

With that the variance request to waive the outdoor storage area screening on the remaining boundary of the graveled area should be denied. If the outdoor storage lot extends to the fence, access points on Windhaven, a paved area, a minimum of 50 by 50 should be provided to prevent rock from entering the public right-of-way.

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Findings in support of this denial of the remaining outdoor storage area boundary are:

Granting this variance will affect the public health, safety and welfare because visible outdoor storage is required to be screened for the aesthetics of the community.

I will say that the applicant has a choice to pave an area that can be used for the display of the equipment with a three foot high element and one tree every 40 linear feet of boundary. A pavement section could be comparable to the public improvement specifications for streets and it would accept the weight of heavier equipment if the applicant chooses to display heavy equipment outside the screened storage area. In observations of the lot, it appears that a portion of this area is currently paved to store particular equipment item and smaller items of a weight that would not damage pavement are also stored in the graveled area near the front of the lot.

Granting this variance will alter the essential character of the general vicinity because other businesses in the immediate vicinity, notably like for instance Kight Lumber, have screened their outdoor storage along public road frontage. Additionally equipment can be seen from neighboring Ohio Valley Reporting

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owners. I know that the attitude of the current owner at this time regarding the storage, the ownership can change and, as was stated earlier, the variance runs with the land.

Granting this variance will cause a hazard or nuisance to the public because outdoor storage is unsightly and would be visible from Windhaven right-of-way and the Hill Valley Circle right-of-way and the adjoining properties.

Granting of this variance will allow an unreasonable circumvention of the requirements of the zoning ordinance because similar outdoor storage lots on light zone properties in the community with similar uses have been required to provide the six foot high solid wall or fence.

The exhibits from the November meeting need to be entered into the record.

CHAIRMAN: We have a motion. Do I hear a second?

MR. DYSINGER: I will second.

CHAIRMAN: I disqualified myself at the very first meeting on the item so I will abstain from voting on this item.

The chair is ready a vote. All in favor raise your right hand.
ITEM 4

401 West 2nd Street, zoned B-2, (Riverfront Core Overlay District)

Consider a request for a Variance in order to increase the build-to setback from 10 feet maximum along Locust Street to 30 feet, to reduce the required building frontage along St. Elizabeth Street from 70 percent to 33 percent, and to reduce the required building frontage along Locust Street from 70 percent to 33 percent, and to reduce to the required building frontage along West Second Street from 70 percent to 0 percent, and to reduce the parking setback from the required 3 feet behind the building facade along the street to 2 feet 9 inches in front of the building facade along St. Elizabeth Street and 24 feet 4 inches in front of the proposed building facade along Locust Street.


Applicant: Bryant Downtown Hotel, LLC

MS. EVANS: We have prepared three Staff Reports for this item so that we can vote on these three items individually so that everything is understood and clear on what is being approved or denied on these items.

First of all we'll consider the build-to setback from a maximum of 10 feet along Locust Street, to increase the build-to setback from a maximum of 10 feet on Locust Street to 30 feet.

The subject property is located within the Ohio Valley Reporting (270) 683-7383
Riverfront Core Overlay District. Article 21 of the Zoning Ordinance establishes build-to zones and setbacks for buildings in the Downtown Overlay Districts. The purpose of the maximum setback is to create buildings near the sidewalk encouraging pedestrian oriented development and continuing the historic fabric of the downtown area.

The applicant is developing the entire block with plans to construct a hotel and parking lot.

The applicant is requesting this Variance because of an RWRA sewer easement that is located along the west property line, along Locust Street which extends 27.85 feet into the subject property in the location of the proposed hotel. The Zoning Ordinance, Article 3, Section 3-5(c)(1) prohibits construction within a public utility easement.

The application must receive a recommendation from the Historic Preservation Board to alter these setbacks before the OMBA can act. The HPB met on October 19, 2011 and made a favorable recommendation to approve this dimensional variance.

Granting this Variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because construction within a public utility easement is prohibited in the Zoning.
Ordinance. It will not alter the essential character of the general vicinity because this is a redeveloping area where the entire block front is being developed as one project adjacent to the proposed Convention Center being built by the City and County. Both projects will benefit the redevelopment and character of the downtown area.

Staff would recommend approval.

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

CHAIRMAN: Do we hear all of these at one time or individually?

MR. DYSINGER: Mr. Chairman, if it's all right, I'd like to take them one at a time just for clarity.

MR. SILVERT: We certainly can.

CHAIRMAN: One at a time?

MR. SILVERT: Can we ask.

CHAIRMAN: Okay.

MR. NOFFSINGER: The first variance would be to increase the build-to setback from 10 feet maximum along Locust Street to 30 feet.

CHAIRMAN: Okay. On the first item stated by Mr. Noffsinger.

We have anyone here representing the Ohio Valley Reporting
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applicant?

MR. BRYANT: Yes.

CHAIRMAN: Mr. Bryant, do you have anything you would like to share with us?

MR. SILVERT: State your name, please.

MR. BRYANT: William Malcolm Bryant.

(WILLIAM MALCOLM BRYANT SWORN BY ATTORNEY.)

MR. BRYANT: To clarify I think to understand on the Locust Street side, which is the west side of the property, there's this large RWRA easement.

The intent of Article 21, the Downtown Progressive Plan, was to bring buildings up as close as you can to the street for that urban fill, but the RWRA easement won't allow us to do that. So we're bringing it up as close as we can.

Just one clarification is on the drawing that I think we've have submitted, the building was shown to be 27.85 feet off of the property line or actually 30 feet off. We could go up to 27.85 feet. So we may close that gap of a couple of feet for some mechanical needs that we have, just as long as we don't get over the easement is the clearance that RWRA wants to make sure we do. I didn't want our numbers to lock us in. We were down there measuring and saying, why aren't you 27.85? Does that make sense?
MR. NOFFSINGER: We need to get that cleared up because numbers matter.

MR. BRYANT: Whatever you want to do. As long we don't go further past the easement.

MR. NOFFSINGER: We can't grant a Variance that would give you more leeway than what was advertised.

MS. STONE: What was advertising, this would give him less. He would be getting less of a variance if he came into that 30 foot.

MR. NOFFSINGER: As long as we're covered there. We just can't go beyond.

MR. BRYANT: Right. I'm not asking for more. Actually it's less. That's all I wanted to clear up.

CHAIRMAN: Any board member have any questions of Mr. Bryant?

(NO RESPONSE)

CHAIRMAN: Any comments or questions on this first item?

(NO RESPONSE)

CHAIRMAN: Staff have any more?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Chair is ready for a motion.

MR. DYSINGER: Mr. Chairman, given the specifics of this particular portion of this
particular property and given the findings that granting the Variance will not adversely affect the public health, safety or welfare because a development will be moved away from the public utility easement which is required. Further, it will not alter the essential character of the general vicinity because this is a developing area where the entire block front is being developed as one project. Adjacent to the proposed convention, adjacent and in conjunction with I might add, the proposed Convention Center being built by the city and county. Both projects will benefit the redevelopment and the character of the downtown area, I move that we grant the variance.

Mr. Warren: Second.

Chairman: We have a motion and a second. Comments or questions on the motion?

(NO RESPONSE)

Chairman: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

Chairman: Motion carries unanimously.

The next Variance.

Ms. Evans: The second variance will be to reduce the required building frontage along St. Elizabeth Street from 70 percent to 33 percent and to reduce the required building frontage along Locust.

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Street from 70 percent to 33 percent and to reduce to
the required building frontage along West Second
Street from 70 percent to 0 percent.

The Historic Preservation Board also met on
this item on October 19, 2011, and made a favorable
recommendation to approve the dimensional variance.

Granting this Variance will not allow an
unreasonable circumvention of the requirements of the
zoning regulations because the scenario of developing
an entire city block that was selected by the City of
Owensboro for development in this case as not the
anticipated development pattern and creates a special
circumstance not applicable to other blocks where
existing buildings are currently in place forming a
pedestrian building wall.

Staff would recommend approval on this
Variance as well and we would like to enter this into
the record as Exhibit D.

CHAIRMAN: Mr. Bryant, do you have any
comments on this one?

MR. BRYANT: No.

YOUR HONOR: Staff have any comments?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Board members have any questions or
comments?
CHAIRMAN: Chair is ready for a motion.

MS. MASON: Mr. Chairman, I move for approval on the Variance with the findings that it will not adversely affect the public health safety or welfare because the construction in this matter will allow adequate and safe parking for the hotel quests; it will not alter the essential character of the general vicinity because this is a redeveloping area where the entire block front is being developed as one project adjacent to the proposed Convention Center being built by the city and county. Both projects will benefit the redevelopment and the character of downtown area. It will not cause a hazard or nuisance to the public because this will allow development to occur on one end of the property and provide much needed parking on the other end. It will not allow an unreasonable circumvention of the requirements of the zoning regulations because the development of the entire block is not typical of the anticipated infill development regulated in Article 21.

CHAIRMAN: We have a motion.

MR. WARREN: Second.

CHAIRMAN: We have a motion and a second. Any other comments or questions on the motion?
(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next variance.

MS. EVANS: The last Variance is to reduce the parking setback from the required 3 feet behind the building facade along the street to 2 feet 9 inches in front of the building facade along St. Elizabeth Street and 24 feet 4 inches in front of the proposed building facade along Locust Street.

This item also went before the Historic Preservation Board and they acted on October 19, 2011, and made a favorable recommendation to approve this dimensional variance as well.

Granting this Variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the hotel site is being developed as an entire block as one project differing from the anticipated infill development in downtown, and the site was selected by the City of Owensboro creating a special circumstance that can only be addressed by a Variance from the strict application of the Zoning Ordinance Requirements.

Staff would also recommend approval of this.
Variance and we would like to enter the Staff Report into record as Exhibit E.

    CHAIRMAN: Mr. Bryant, do you have any comments on this one?

    MR. BRYANT: No, sir.

    CHAIRMAN: Any board members have any questions or comments?

    (NO RESPONSE)

    CHAIRMAN: Staff have any questions or comments?

    MR. NOFFSINGER: No, sir.

    CHAIRMAN: Chair is ready for a motion.

    MR. WARREN: Motion to approve the Variance with the findings that it will not adversely affect the public health, safety or welfare. It's actually increasing the public safety by adding the provided needed parking on the site for the hotel guest. It will not alter the essential character of the general vicinity because this is a redeveloping of the area where the entire block frontage is being developed as one project adjacent to the proposed Convention Center. It will not cause a hazard or a nuisance to the public because it will be providing a need for the hotel guests and the community by allowing more parking on the site. It will not allow an

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unreasonable circumvention of the requirements of the zoning regulations because there is a signed contract with the City of Owensboro and the applicant requiring 150 parking spaces.

CHAIRMAN: We have a motion. Do I hear a second?

MR. DYSINGER: Second.

CHAIRMAN: We have a motion and a second.

Comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

MR. WARREN: Motion to adjourn.

MS. MASON: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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STATE OF KENTUCKY )
)SS: REPORTER'S CERTIFICATE
COUNTY OF DAVIESS )
I, LYNETTE KOLLER FUCHS, Notary Public in and
for the State of Kentucky at Large, do hereby certify
that the foregoing Owensboro Metropolitan 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 30 typewritten pages; and that no signature
was requested to the foregoing transcript.
WITNESS my hand and notary seal on this the
30th day of December, 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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