The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, December 6, 2012, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  Ward Pedley, Chairman
Gary Noffsinger, Director
Madison Silvert, Attorney
Shannon Raines
Marty Warren
Fred Reeves

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CHAIRMAN:  Call the Owensboro Metropolitan Board of Adjustment December 6th meeting to order.  We will begin our meeting with a prayer, pledge of allegiance to the flag.  Mr. Noffsinger will lead us in prayer.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  I would like to welcome everyone. We welcome your comments and questions.  Anyone wishing to speak, we ask that you come to one of the podiums and state your name and be sworn in.  We ask that you speak into the microphone.

With that the first item on the agenda is to consider the minutes of the November 1, 2012 meeting.
Are there any additions or corrections?

(NO RESPONSE)

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

MR. REEVES: Move for approval.

MS. RAINES: Second.

CHAIRMAN: We have a motion and a second. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

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CONDITIONAL USE PERMIT

ITEM 2

326 Clay Street, zoned R-4DT (Neighborhood Character Overlay District)

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

Reference: Zoning Ordinance, Article 8, Section 8.2A7

Applicant: Friends of Sinners, Inc., James McBrayer

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

MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

MS. EVANS: First of all, I would like to say that approval items here tonight does not allow the applicant or owner to construct, alter, modify or

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occupy a building on the subject property. It is the
applicant or owner's responsibility to obtain all
approvals and inspections as necessary before
occupancy of the building will be allowed. Please
contact the Building & Electrical Division of the OMPC
prior to beginning any work on the subject property
for applicable requirements.
ZONING HISTORY

The subject property is currently zoned R-4DT
Inner City Residential and is in the Neighborhood
Character Overlay District. OMPC records indicate
there have been no Zoning Map Amendments for the
subject property.

This property is located in the Downtown
Overlay District within the Neighborhood Character
District and is regulated under Article 21 of the
Zoning Ordinance. The application for the operation
of a residential transitional living facility has been
reviewed by the Downtown Design Administrator and a
Certificate of Appropriateness has been issued.

The criteria for conditionally permitted group
housing have been meet.

The applicant is proposing to provide 10 beds
in this facility. To meet the parking requirements,
the applicant is proposing to use seven parking spaces
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located in the parking lot at 400 East Fourth Street.

Approval of a Final Development Plan will be required
since the applicant is proposing off-site parking.

LAND USES IN SURROUNDING AREA

All surrounding properties are zoned R-4DT and
appear to be residential in nature.

ZONING ORDINANCE REQUIREMENTS

1. Parking - 1 for each employee, plus 1 for
every 2 beds. Total parking required = 7 spaces. All
parking is proposed off-site.

2. Landscaping - No additional landscaping is
required.

The following criteria apply to a Conditional Use
Permit for a residential transitional home:

3. Any person residing in the referenced
housing situation shall be subject to all state,
federal or local jurisdiction laws.

4. The facility shall be located within 1/2
mile of public transit.

5. The facility shall not be located within
an identified historic district recognized by the
legislative body.

6. The facility shall employ an on-site
administrator, who is directly responsible for the
supervision of the residents and the implementation of
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7. The applicant shall provide the Board of Adjustment, the Zoning Administrator, the public and the residents a phone number and address of the responsible person or agency managing the facility.

8. A fire exit plan shall be submitted with the Conditional Use Permit application showing the layout of the premises. Escape routes, location, operation of each means of egress, location of portable fire extinguishers, and location of the electric main. The fire exit plan shall be prominently displayed within a common area within the facility.

9. Hallways, stairs and other means of egress shall be kept clear of obstructions.

10. The facility shall comply with all applicable building and electrical codes.

11. A list of the house rules shall be submitted to the Board of Adjustment with the application for a Conditional Use Permit and shall be prominently displayed in a common area within the facility. The rules should be adequate to address the following: Noise control, disorderly behavior, property garbage disposal, and cleanliness of the sleeping areas and common areas.
12. The Owensboro Metropolitan Board of Adjustment may impose additional conditions as may be necessary for the proper integration of the use into the planning area.

SPECIAL CONDITIONS

Approval of a Final Development Plan.

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

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anyone here that would like to speak in opposition or have any comments on this application?

(NO RESPONSE)

CHAIRMAN: Any board members have any question or comments?

(NO RESPONSE)

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

MR. WARREN: Mr. Chairman, I make a motion to grant the Conditional Use Permit based on the following findings:

That the criteria for group housing has been met and that there has been a Certificate of Ohio Valley Reporting

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Appropriateness issues by the Downtown Design Administrator, with the condition of an approval of a Final Development Plan.

CHAIRMAN: We have a motion by Mr. Warren.

MR. REEVES: Second.

CHAIRMAN: We have a second by Mr. Reeves.

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.

ITEM 3

9546 Highway 144, zoned R-1A

Consider a request for a Conditional Use Permit in order to operate an existing school and construct an accessory structure.

Reference: Zoning Ordinance, Article 8, Section 8.2B14

Applicant: Mary Carrico School

ZONING HISTORY

The subject property is currently zoned R-1A Single Family Residential. OMPC records indicate there have been no Zoning Map Amendments for the subject property.

The applicant has been operating a school with related structures on the subject property since before the establishment of the zoning ordinance.

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Currently the applicant is proposing to construct a 40 foot by 50 foot pole type building for storage of gymnasium equipment. In order to bring the property more into compliance with the zoning ordinance, the applicant is seeking a Conditional Use Permit for the school and the proposed new structure. Some landscaping is provided for the property in proportion to the extent of the expansion, but not for the entire property as required under Article 17, Section 17.22.

LAND USES IN SURROUNDING AREA

The properties to the north are zoned B-4 General Business and R-1A Single Family Residential. The properties to the south are zoned R-1A Single Family Residential. The properties to the west are zoned R-1A Single Family Residential and A-U Urban Agriculture. The properties to the east are zoned B-4 General Business and R-1A Single Family Residential.

ZONING ORDINANCE REQUIREMENTS

1. Parking - 1 for each employee, plus 1 for every classroom. Total parking required = 24 spaces. The applicant shows 106 parking spaces provided on site.

2. Landscaping - A 3 foot continuous element with 1 tree every 40 feet of the linear boundary along the southwest side of the access point on Monarch

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Road.

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

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anyone here like to speak in opposition or have any comments or questions on the application?

(NO RESPONSE)

CHAIRMAN: Board members have any questions or comments?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. REEVES: Mr. Chairman, I will move for approval of the Conditional Use Permit based on the facts that this is a consistent use of this property prior to the zoning regulations going into place. That it is not anything different than what they've been doing with the exception of this one utility building which is an appropriate use for the building out on the site, and that they fulfill the zoning ordinance requirement.

CHAIRMAN: We have a motion by Mr. Reeves.

MS. RAINES: Second.

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CHAIRMAN:  Second by Mrs. Raines. 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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VARIANCE

ITEM 4

4600-4700 Block Free Silver Road, zoned EX-1
Consider a request for a Variance in order to eliminate the required 100 foot buffer from the public right-of-way for a portion of Free Silver Road per agreement with Daviess County Fiscal Court dated July 4, 2012

Reference:  Zoning Ordinance, Article 12, Section 12a.52
Applicant:  Western Kentucky Minerals, Inc.; Daviess County Fiscal Court

MS. EVANS:  The properties in the area were rezoned from A-R Rural Agriculture to EX-1 Coal Mining at the March 2012 Planning Commission meeting. Mining activities are not allowed within 100 feet of the public right-of-way per the zoning ordinance unless a variance is granted.

The applicant is proposing to mine through the road in this area causing the relocation of Free Silver Road while the mining takes place. A Public Ohio Valley Reporting (270) 683-7383
Facility review was performed by the office staff as requested by Daviess County Fiscal Court regarding the relocation of Free Silver Road in this area in June 2012.

In July 2012, Daviess County Fiscal Court granted the applicant's petition to alter Free Silver Road while coal mining activities take place. Granting this Variance will not adversely affect the public health, safety or welfare because the road will be relocated during coal mining activities, diverting traffic away from the mining. It will not cause a hazard or a nuisance to the public because the relocated roadway will remain 100 feet from the coal mining activity. It will not be an unreasonable circumvention of the requirements of the zoning regulations because the relocated roadway will remain 100 feet from the coal mining activity.

Staff would recommend approval of this item and we would like to enter the Staff Report into the record as Exhibit C.

CHAIRMAN: Anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Anyone here like to speak in opposition of the application?
CHAIRMAN: Does the applicant have anything you would like to present?
APPLICANT REP: No.
CHAIRMAN: Board members have any questions or comments?
CHAIRMAN: If not the Chair is ready for a motion.
MR. WARREN: Mr. Chairman, I'd like to make a motion to grant the variance based on the following Findings of Fact:
That granting this Variance will not adversely 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; it will not allow an unreasonable circumvention of the requirements of the zoning regulations because the Daviess Fiscal Court has approved a permit to relocated Free Silver Road during coal mining activities. Therefore, traffic will be diverted from the mining area and the road will be more than 100 feet from the coal mining activities.
CHAIRMAN: We have a motion by Mr. Warren.
MR. REEVES: I'll second that.
CHAIRMAN: Second by Mr. Reeves. Any comments or questions on the motion?
(NO RESPONSE)
CHAIRMAN: All in favor of the motion raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries unanimous.
Next item.

ITEM 5
1916 Stratford Drive, zoned R-1A
Consider a request for a Variance in order to reduce the interior side yard building setback line from 10 feet to 5 feet along the east property line.
Reference: Zoning Ordinance, Article 8, Section 8.5.5(d)
Applicant: Ryan Ruttman; Chivonne Ruttman

MS. EVANS: The applicant is proposing to construct a 17.58 foot by 30.8 foot attached addition to the east of the existing structure. The proposed addition would leave approximately 5 feet between the structure on the subject property and the property line, thus requiring a variance.

There have been two previous variance requests granted in the area; at 1629 and 1664 Roosevelt Road. The Variance granted at 1629 Roosevelt Road was approved in 1982 to reduce both interior side yard building setback lines to 2 feet on the west side and 7.6 feet on the east side. Upon inspection of the...
area and review of the aerial photographs on GIS, it appears there may be other instances of side yard building setback encroachments in the area.

Granting this Variance will not adversely affect the public health, safety or welfare because there will be adequate room between the structures on 1900 and 1916 Stratford Drive for emergency services to gain access between them. It will not alter the essential character of the general vicinity or allow an unreasonable circumvention of the requirements of the zoning regulations because other variances have been granted in the area and there appear to be other side yard encroachments in the area that may predate the zoning ordinance.

Staff would recommend approval with the following Condition:

1. Obtain all necessary building, electrical and mechanical permits, inspections and certificates of occupancy and compliance.

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

CHAIRMAN: Is anyone here representing the applicant?

APPLICANT REP: Yes.

CHAIRMAN: Is there anyone here that would
like to speak in opposition to this application?

(NO RESPONSE)

CHAIRMAN: Does applicant have anything you would like to state?

APPLICANT REP: No.

CHAIRMAN: Board members have any questions or comments?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MR. WARREN: Mr. Chairman, I make a motion to grant this Variance based on the findings of fact that granting the Variance will not adversely affect the public health, safety or welfare because there will be adequate room between the 1900 and 1916 for any type of emergency vehicles if needed; also it will not alter the essential character of the general vicinity because of the previous variances that have been granted in that area, and there are lots of other encroachments in that area; it will not allow an unreasonable circumvention of the requirements of the zoning regulations for the same reason, the variances that have been granted in the other obvious encroachments. And with the Condition to obtain all necessary permits and certificates of occupancy and compliance.
CHAIRMAN: We have a motion by Mr. Warren.

MS. RAINES: Second.

CHAIRMAN: Second by Mrs. Raines. Comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

Next item.

ITEM 6

200 East 18th Street, zoned B-4

Consider a request for a Variance in order to eliminate the roadway buffer along East 18th Street and to eliminate the roadway buffer along J.R. Miller Boulevard for a distance of approximately 250 feet from the intersection of J.R. Miller Boulevard and East 18th Street south to the existing access point along J.R. Miller Boulevard.

Reference: Zoning Ordinance, Article 13, Section 13.6221

Applicant: MW Parrish, LLC

MS. EVANS: The applicant is redeveloping the subject property and wishing to eliminate the roadway buffer along East 18th Street and a portion of the roadway buffer along J.R. Miller Boulevard from the intersection with East 18th Street approximately 250 feet south to the first access point on the property. According to the applicant the elimination of the roadway buffers would allow them to continue to

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use the property as previously used without losing any
of the existing parking.

In 1994, a variance was approved to eliminate
the required landscaping along East 18th Street for
the subject property.

In 1992, the property owners at 215 East 18th
Street petitioned the City of Owensboro for closure of
approximately forty (40) feet of right-of-way on J.R.
Miller Boulevard at East 18th Street. The OMPC held a
public hearing on the request with recommendations by
GRADD, OMPC Staff, and the City Staff to retain the
right-of-way at this major intersection for future
transportations improvements.

The OMPC recommendation to the City of
Owensboro was to retain the right-of-way and it was
not closed. Similarly, the fifty (50) foot
right-of-way at the intersection of East 25th Street
and J.R. Miller Boulevard was retained when 217 East
25th Street was developed as a convenience store.

Two previous roadway buffer reductions have
been approved to reduce the roadway buffer along J.R.
Miller Boulevard from 50 feet from the centerline of
the road to 40 feet from the centerline of the road at
1212 J.R. Miller Boulevard and 303 East 14th Street
and 1200 Moseley Street. Both were approved in 2009
with the condition that the reduced roadway buffer be
dedicated as right-of-way.

The OMPC Staff has submitted the site plan
documenting the variance requests to the City
Engineer's office for review concerning the
elimination of the roadway buffers in this area.
According to the City Engineer's office, East 18th
Street is on the long range infrastructure improvement
plans to be widened from Frederica Street to
Leitchfield Road. In conjunction with the future
improvement to East 18th Street, improvement will need
to be made at J.R. Miller Boulevard which affects the
roadway buffer of J.R. Miller Boulevard.

Additionally, there are future improvement
plans for J.R. Miller Boulevard to be widened. If
that occurs, all widening will occur on the west side
of the street in the area of the subject property due
to the fact that there is additional right-of-way on
that side of the street.

The City Engineer's office would recommend the
Variance on East 18th Street be denied due to the
future plans to widen the street and would recommend
the Variance along J.R. Miller Boulevard be reduced by
only 6 feet. A reduction of only 6 feet would leave
the roadway buffer in this area at 44 feet from the

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centerline of the road and still affect the parking area the applicant is trying to keep intact by requesting the roadway buffer be eliminated.

Granting this variance may adversely affect the public health, safety or welfare because if the roadway buffers are eliminated, it will hamper the City of Owensboro's ability to widen East 18th Street and J.R. Miller Boulevard in this area. It may also allow an unreasonable circumvention of the requirements of the zoning regulations because roadway buffers exist to allow for future expansion of infrastructure, and if they are eliminated in this area, it could affect the ability of the City of Owensboro to accomplish necessary roadway improvements.

Staff would recommend denial of the Variance request.

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

We also have communications from the City Engineer's office through e-mail. In there, in the communication we asked them to review the site plan. Their response was that after review by the City Engineer and Staff, the City Engineer's Office has denied the proposed roadway buffer zone elimination.

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along East 18th Street at 200 East 18th Street. As far as the elimination of the roadway buffer along J.R. Miller Boulevard for 250 feet south of East 18th Street, the City Engineer denies the request to eliminate the buffer zone after evaluation. The buffer zone can be reduced by 6 feet for a total buffer of 44 feet for that 250 foot stretch.

We would like to enter this e-mail communication into the record as Exhibit F.

CHAIRMAN: Anyone here representing the applicant?

MR. BAKER: Yes.

CHAIRMAN: Anyone here like to speak in opposition of this application of have any comments or questions?

(NO RESPONSE)

CHAIRMAN: Does the applicant have a presentation you would like to do or any comments?

MR. BAKER: Yes.

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

MR. BAKER: Jason Baker.

(JASON BAKER SWORN BY ATTORNEY.)

MR. BAKER: I'm here on behalf of Bryant Engineering. Work with the applicant to help prepare Ohio Valley Reporting

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the site plan that's submitted with the application.

The applicant is here as well who can answer any questions.

They recently purchased the entire property with the intent of turning it into a good useable property.

As you know, this is a site that's been here for many years. Operated as a car lot in total. It was owned and operated by Roberts Motors.

The building closest to this variance was used as their used car lot. I believe that building is probably the latest building that's been built on the site.

The location of the building and the space between the building and the J.R. Miller Boulevard right-of-way only allows a certain amount of space for there to be display space for vehicles.

The issue is when we set and met with planning on this we were talking about what we needed to do to bring the site into compliance with the ordinance. There was some, I believe some landscape issues that the previous owner may or may not have fully implemented. We were trying to bring that forward while still keeping the site as a useable car lot.

The roadway buffer, I think the city engineer
said that they requested 44 feet. With 44 feet that reduces the total amount of area or lane width behind where the cars would be parked to around 15 feet, if my math is right there, which would make it very difficult, if you look at the exhibit to get those cars in those display spaces.

The intent of the applicant was to bring this area into compliance with the landscape ordinance by putting in a low shrub area in compliance with the vehicular sales area. In order to do that, we know that you cannot put landscape within the roadway buffer. So the roadway buffer had to be reduced down to the right-of-way. If we move it any further back, it renders it, it severely affects our ability to use this as a display area for vehicles.

We request your consideration.

You want to talk at all?

MR. WALKER: No.

CHAIRMAN: Any board members have any questions of Mr. Baker?

MR. REEVES: I do.

When Roberts was there, the previous owner, did they park cars where you're showing these, set back from the roadway before? Did they honor that buffer I guess is what I'm saying?
MR. BAKER: No, sir. The actual configuration that's out there right now, if you look at the blow up detail at the bottom of the exhibit, you'll see an area there that says "curb to be removed." That actually shows curb that's currently on the right-of-way. This is another condition we'll be fixing as part of this application being granted. Yes, they parked cars all the way up to that curb line that I just mentioned.

CHAIRMAN: Any other board members have any questions of Mr. Baker?

MS. RAINES: Mr. Chairman, I just want to make sure I understand.

So before this was used as a car lot, and the intent is to continue to use it as a car lot, we're just trying to get into compliance, get it updated into compliance for the landscaping, and if we do that we can't do the parking getting them in and out; is that right?

MR. BAKER: Correct. If we position the landscaping outside of the roadway buffer at 44 feet from the center line, that would push the curb line further back. So we have to create, we have the roadway buffer and then another 3 foot strip for landscape, and then the new curb.
Effectively we're talking about, I think we have 18 feet of area of lane width behind where the cars will be parked for sale. So there's 15 foot wide strip there in-between where the back of the cars would be and the building itself. We would be reducing that down to 15 feet.

MR. REEVES: One other questions if I could, Mr. Chairman.

On your drawing here, do I see currently some trees that are in that buffer that would have to be removed?

MR. BAKER: Those are existing trees that are there. I'm not sure when they were put there. They are planted in the right-of-way. We have no reason to remove them.

MR. REEVES: Am I correct, Mr. Noffsinger, that they would not be allowed to meet the landscaping requirement by putting them in that same area and other places here now; is that correct?

MR. NOFFSINGER: That is correct. They are existing. As long as the city okayed them to remain, they could remain, but it would not count toward their required landscape materials because they're in the city right-of-way.

MR. REEVES: Let me ask: How big of a hurry
are you to have this resolved? I mean if this were not resolved at this meeting, would it interfere with any kind of time schedule you have going on?

MR. BAKER: That's probably a better question for the client.

MR. WALKER: The sooner the better.

MR. SILVERT: I'm sorry, I need to swear you in.

Would you state your name for the record, please?

MR. WALKER: Marty Walker.

(MARTY WALKER SWORN BY ATTORNEY.)

MR. WALKER: I don't know if you're talking a week or if you're talking another month. Another month would be too long probably.

MR. REEVES: I guess my concern, Mr. Walker, is I would like to have City Engineer's Staff here to ask them questions why they recommended denial. I'd feel more comfortable if I could hear from them. They obviously aren't here this evening. This is not an unimportant decision for either you or them I guess is what I'm thinking.

MR. BAKER: Can we take a minute?

MR. NOFFSINGER: Yes.

(MR. BAKER AND MR. WALKER CONFER.)

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CHAIRMAN: We're back on record.

MR. WALKER: To answer your question. Currently we're working with a party on a car lot. Losing that space and that ability to park cars out front by the building would probably affect that deal. We need an answer. I would like to say, yes, we could wait for the engineer, but the party we're working with will probably want an answer here pretty soon.

MR. REEVES: I guess what I'm struggling with is we've got some trees that are grandfathered in here so-to-speak, and yet you can't put the new ones in there. I want to be fair to everybody, but at the same time I will tell you I'm very, very sensitive to J.R. Miller Boulevard. That is a major artery that is going to get nothing but more use. I'm very reluctant to do anything that might impact our ability to improve it or to make sure that that's a safe intersection and safe thorough way.

MR. BAKER: We didn't apply for a Variance on the landscape portion of this application. Again, we were trying to do our best to bring it into compliance.

One potential solution might be to give variance on the landscape there and then I pick back
up with 3 feet that we lost in the buffer. We could
honor the 44 foot buffer and put the curb line
directly in that location, if that would be an option.

MS. RAINES: I would like to hear how Staff
feels about that.

MR. NOFFSINGER: Mr. Chairman, if I may. That
would require a separate application because the
applicant has not made an application to reduce the
landscape elements. It's to reduce the roadway
buffer. They are not required to put in any
landscaping along 18th Street because they received a
variance some time ago.

The Staff, as well as the City Engineer's
office, we're very concerned about 18th Street because
we realize that improvements to 18th Street will be
coming in the near future.

The existing building that's within the
roadway buffer will remain. Were not telling them
they have to put any landscaping in along 18th Street
because they received a variance. It's a question of
whether or not this board is going to eliminate that
roadway buffer to allow them to park vehicles within
that roadway buffer. At the point of -- if you
approved that roadway buffer on 18th Street, at the
point of acquisition of right-of-way by the City of
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Owensboro, then they are going to have to compensate
the applicant for the variance that you approve
because you've allowed them to keep that asphalt in
that roadway buffer.

Keep in mind, even though this was a car lot,
it's gone unused for a period of over 18 months so
they've lost their nonconforming status.

Now, on J.R. Miller Boulevard it's my
understanding the city engineer is recommending a
roadway buffer reduction from 50 feet down to 44 feet.
The Planning Staff would support that provided that 6
foot area of the roadway buffer is dedicated as
right-of-way by the applicant. That is consistent
with what's taking place on other corners along J.R.
Miller Boulevard.

For example, the new Huck's store as well as
the block which Family Video located at J.R. Miller
Boulevard and Parrish, they dedicated that roadway
buffer, but they also installed the required landscape
materials as well. So certainly the Staff would not
recommend a reduction in the landscaping, but we would
recommend that a 6 foot, a reduction from a 50 foot
down to a 44 foot roadway buffer be granted provided
the applicant dedicates that right-of-way.

The building that appears to be the problem
was recently -- well, it was constructed, the most recent building constructed on the property. Certainly it was constructed in that location by the applicant to maximize the area of land. We feel in terms of the traffic safety, the increase traffic that this project will generate, and the fact that they are actually increasing the number of lots, the number of tenants, and the number of activities that are going to be located here, we feel like the roadway reduction that we're proposing would be beneficial to the applicant, as well as the community, and it will also allow the City of Owensboro to make needed improvements to the transportation infrastructure that exist and that the applicant will create as well add to the traffic generations in that area. We're not asking at this time to my knowledge that applicant make any roadway improvements, which we have asked of other applicants in the past, but we would ask that that right-of-way be dedicated.

CHAIRMAN: Mr. Noffsinger, you're asking to dedicate the additional 4 feet. They have 40 feet now. They would dedicate an additional 4 feet?

MR. NOFFSINGER: Right. Well, dedicate an additional 6 feet. It would go from, the roadway buffer would go from 50 feet down to 44 feet. So they
would dedicate an additional 6 feet.

    MR. BAKER: Between five and six.

    CHAIRMAN: Mr. Baker, your 3 foot landscape, your curb would take up that 4 feet, what I'm seeing here on this plat. It would actually be in the 44 feet.

    MR. BAKER: In the scenario that I mentioned as a potential option, you would be putting the curb line directly on the right-of-way line. It would not be setback off the right-of-way.

    Now, the existing condition out there, the curb that's out there is actually 3 feet into the right-of-way.

    CHAIRMAN: And you're removing that section of the curb and moving back?

    MR. BAKER: Correct.

    CHAIRMAN: That's what you're showing on your plat here. Your existing property line from the center of the road right now is 41 feet?

    MR. BAKER: Yes.

    CHAIRMAN: When you add the additional 3 feet for landscape and the curb, you've taken up the 44 feet. So actually 4 feet is going to be in -- the city is asking that you dedicate that 4 feet to the city. Is that the way you understand that, Mr. Baker?
MR. BAKER: Yes.
You understand that, right?
It's important that he understands it. Yes, but your numbers are correct.

CHAIRMAN: In your agreement, you agree to install the required landscape according to the ordinance from 18 Street to your access point to the south of 250 some feet. You're going to meet the landscape requirement?

MR. BAKER: Yes. If we could get the full approval of the variance, we would be able to put in the landscape and maintain use of the property. We would have a 3 foot strip just outside the roadway buffer, which we're proposing would be the right-of-way line, and then we would have a curb just inside of that.

CHAIRMAN: And everything south of that you would meet the 50 foot?

MR. BAKER: Yes. Anything south of that would be considered future development area. Yes, we would honor the roadway buffer.

CHAIRMAN: You would honor the 50 foot buffer?

MR. BAKER: Yes.

CHAIRMAN: That's the way I understand your application.

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Any board members have any additional questions or comments?

MR. WARREN: I just have a question of Mr. Noffsinger.

So let's say that we did approve this variance for one reason or another, I mean it looks like the city engineer is saying, you're not going to do this no matter what.

MR. NOFFSINGER: No. What would happen, if you approve the variance as they've asked, then that buffer, roadway buffer would no longer exist and they would be able to develop the property within that roadway buffer and the city engineer would not have a say in it because it's their property. That roadway buffer is there as a reservations for protect that future improvement.

What I was saying, I need to correct to make sure it's correct on the record. That it would go, our recommends from 50 to 44. So it would be a 6 foot dedication.

MS. RAINES: Is that optional, Mr. Noffsinger?

MR. NOFFSINGER: Pardon?

MS. RAINES: Is that 6 foot dedication optional?

MR. NOFFSINGER: What we're recommending is Ohio Valley Reporting
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that if you grant that 6 foot right-of-way buffer to
them that it be dedicated as right-of-way.

MS. RAINES: But if they don't?

MR. NOFFSINGER: They're going to dedicate a 6
foot area, but they're going to gain a 4 foot area in
which to develop.

MR. WALKER: Yes. To be able to use.

MR. NOFFSINGER: Yes.

MR. BAKER: Again, I think what we're talking
about here, the dedication of that right-of-way would
be a problem dedicating up to the 44 as requested by
engineering. Again, in order to maintain the use of
the property, we need to, actually we really need to
reduce it down to the right-of-way.

CHAIRMAN: Addressing the J.R. Miller
Boulevard issues.

Now we've got to go to the 18th Street. We've
got two different things here. Not sure what the
process would be on a motion, but you might deny the
18th Street and approve the J.R. Miller.

Counselor or Mr. Noffsinger, would you have a
direction on that.

MR. SILVERT: You can grant less of the
variance that's requested by the application, but not
more. So if variance wants to be partial on one side
and not on the other and could justify that with your findings of fact, you can do that. You just can't grant more than what's requested. We haven't advertised that.

MR. NOFFSINGER: I have a question of the applicant.

On 18th Street, if that variance is denied, could you -- let's say that's denied and the variance along J.R. Miller Boulevard would be approved as requested by the engineer and you transfer the landscape materials from that section of J.R. Miller to 18th Street, is that an option for you? Does that help you in terms of traffic movement?

The reason I'm asking that, this property has already been given relief, a tremendous amount of relief in the past that other properties haven't necessarily received. So there's no landscaping requirement along 18th Street. Could we shift the required landscaping to 18th Street? I'm just looking at that as an option. Not that I would suggest that you do that. It's just is that a possibility?

MR. WALKER: How far along 18th Street?

MR. NOFFSINGER: You would need to honor the 50 foot roadway buffer and then that landscaping would start at that roadway buffer and go into the property.

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3 feet.

MR. WALKER: I appreciate the feedback, but I don't think that will work. I mean that's going to push the cars back. Also, we're going to have the same problem on a different side of the building it looks like.

MR. NOFFSINGER: Except that you have more room between the roadway buffer and the building on 18th Street than you have on J.R. Miller Boulevard.

MR. WALKER: Right.

MR. NOFFSINGER: You still maintain, you're not going to have necessarily a double display there, but you would have display plus an aisle for vehicular move.

MR. WALKER: We wouldn't lose the double display and then also that's going to affect the old showroom where we're working with a different party on developing that piece of property. It certainly is going to affect the parking in that area. It's just hard to look at it here kind of on the fly.

MR. REEVES: Mr. Noffsinger, my motion is going to probably be unpopular, but I'm going to make it anyway. Because I think in the end it's the best. I'm very uneasy with either side of this issue because of the nature of 18th Street and J.R. Miller
Boulevard, and also the fact that the city engineer have expressed some concerns. I hate to see us make a motion just on the fly that we might all live to regret.

I know this is probably very important to you. I also know the business decisions kind of get slowed down during the holiday season. I would prefer to suggest that maybe you and the city engineer and the Staff get together and see if you can come up with an accommodation that will work. As board members, we have a much more black and white issue to address as opposed to one that so many factors have been pitched to us as we've been sitting down here.

I'm going to move that this application be postponed until the January meeting which I think is early in January, Mr. Noffsinger.

MR. NOFFSINGER: The 1st is on a Tuesday. So it will be the 3rd of January.

MR. REEVES: I move that it be postponed to the January 3rd meeting then.

CHAIRMAN: There's a motion on the floor by Mr. Reeves to postpone it until the January meeting.

MR. WARREN: I'll second that motion.

CHAIRMAN: We have a second by Mr. Warren.

Comments or questions on the motion?

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(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously to postpone.

We need one more motion.

MR. WARREN: Move to adjourn.

MR. REEVES: Second.

CHAIRMAN: All in favor raise 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 37 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 2nd day of January, 2013.

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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