The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, July 7, 2016, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Judy Dixon, Chairman
                Robynn Clark, Vice Chairman
                Ruth Ann Mason, Secretary
                Brian Howard, Director
                Terra Knight, Attorney
                Jerry Yeiser
                Bill Glenn
                Fred Reeves
                Lewis Jean

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CHAIRMAN: We will call the July 7, 2016 Owensboro Metropolitan Board of Adjustment to order. We will begin with the prayer and pledge to the flag.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: The first item on the agenda is to consider the minutes of the June 2, 2016 meeting. You should all have a copy of the minutes and have had time to peruse them. I will entertain a motion.

MS. MASON: I move for approval.

MR. GLENN: Second.

CHAIRMAN: Move for approval by Ms. Mason. Second by Mr. Glenn. Any 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 unanimously.

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CONDITIONAL USE PERMITS

ITEM 2

3138 Fairview Drive, zoned R-3MF
Consider a request for a Conditional Use Permit in order to construct and operate an assisted living facility.
Reference: Zoning Ordinance, Article 8, Section 8.2C1
Applicant: FMU, LLC

MS. KNIGHT: Please state your name for the record.

MR. HILL: Mike Hill.

(MIKE HILL SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is a portion of a 24-acre parcel that was rezoned to R-3MF Multi-Family Residential in 2009 and was originally intended to be developed as multi-family residential, but that development never occurred. The applicant proposes to construct a 4-story, 33,513 square foot, 120-bed assisted living facility on one parcel in a proposed preliminary subdivision that will be reviewed by the Planning Commission under a separate application. The
concept plan provided by the applicant shows 70
parking spaces, which is 15 more than the minimum for
an assisted living facility. The zoning ordinance
also requires, and the concept plan shows, which are
on the screens in front of you, also shows the
required landscaping around the parking lot, proposed
parking area where it's adjacent to residential
zoning.

The applicant will be required to submit a
site plan, if the Conditional Use Permit is approved.
That will demonstrate compliance with various zoning
ordinance requirements related to parking,
landscaping, signage, building setbacks, etcetera,
before any permits can be issued.

LAND USE IN SURROUNDING AREA

The northern part of this parcel is going to
be the subject of a proposed apartment complex, which
is under a separate application not under
consideration or part of the application that you're
considering tonight.

Adjacent parcels to the east you have a
recently constructed Chandler Park Apartment which are
also zoned R-3MF. To the west you have P-1 zone
property. To the south is the Greenbelt, and beyond
that is residential single-family subdivision.
ZONING ORDINANCE REQUIREMENTS

1. Parking - Assisted Living Facilities - 1 space for every 4 beds plus 1 space for each employee on maximum shift.

2. Landscaping - Where the vehicle use area adjoins neighboring residential property a 3' landscape easement with a 3' tall continuous element and 1 tree per 40 linear feet will be required.

SPECIAL CONDITIONS

1. Approval of a Site Plan.

2. Obtain all necessary building, electrical and HVAC permits, inspections and certificates of occupancy and compliance as required.

MR. HILL: Staff request that the Staff Report be entered into the record as Exhibit A.

CHAIRMAN: Do we have someone here speaking on behalf of the applicant?

MS. KNIGHT: Please state your name for the record.

MR. HAYDEN: Matt Hayden.

(MATT HAYDEN SWORN BY ATTORNEY.)

MR. HAYDEN: If there's any questions, I'm here representing the landowner. We're actually selling it to this group, if this is approved.

CHAIRMAN: Thank you.
Mr. Howard, have we had any questions from the public?

MR. HOWARD: No, ma'am.

CHAIRMAN: Anyone in the audience that has a question of Mr. Hayden or Mr. Hill or Staff?

MR. SYRA: I do.

CHAIRMAN: Would you step the microphone, please.

MS. KNIGHT: Would you please state your name for the record?

MR. SYRA: My name is Stan Syra.

(STAN SYRA SWORN BY ATTORNEY.)

MR. SYRA: The only concern I have is I live at 2849 Silver Creek Loop right across from the Greenbelt. When Chandler Apartments came in they raised everything, all trees and everything clear to the creek that runs behind our house. I was just wanting to see if, you know, in consideration they would leave some of the large trees that are in existence at this point in time, which Gateway did when they came and cleared that. Just to kind of create a buffer between the residential area and the new commercial development.

CHAIRMAN: We'll see if we can get that answered.
Mr. Hayden, you want to come back up and address his concern or question?

MR. HAYDEN: We do plan to meet all buffering requirements per the plan as it will be approved. I think buffering will be required on that side.

CHAIRMAN: Mr. Hill.

MR. HILL: The subject property is zoned R-3MF residential. The property to the south, which is the Greenbelt, and then the single-family residential property is also zoned single-family residential. So there's no perimeter buffer required between the two properties. The only landscaping required would be around the parking lot where it's adjacent to the residential property, but as far as the entire property perimeter with The Brooks and the Greenbelt, there would not be a buffered required.

CHAIRMAN: Do you have anything else you want to add to that? That doesn't seem to be exactly what you asked, is it?

MR. SYRA: Not exactly.

CHAIRMAN: You want to step back up, please.

MR. SYRA: I understand the requirements according to the zoning. You know, as a residents we like to have that aesthetic beauty in our neighborhood. You know, a four-story building right
behind us is not that aesthetic, you know. That is my concern, you know. I know that our neighbor at the end of the street moved out of his house when the Chandler Apartments came in. When you have a four-story building and everybody is staring down into your backyard, you know, that you come home and want to enjoy the privacy of your own backyard. That's my only concern. I didn't think it would be that difficult to leave some of the larger trees that are there at the creek at this point in time in the easement, I'm sure. That's my only concern.

CHAIRMAN: Thank you.

Mr. Hayden, do you have anything to add?

MR. HAYDEN: I would be happy to look at it on site. I know a lot of the trees that remain in that area are in bad shape due to the erosion of the ditch that is in that area. So I'll just be open to try to look into that concern as we develop the site plan, but as far as what could be kept and what could safely be kept, obviously that will have to be determined as the site plan evolves.

CHAIRMAN: Any commission members have questions or comments on this particular item?

MR. REEVES: Question for Mr. Hayden, please, if I could.
This assisted living facility, I assume it's similar to the one in Heritage Park? Is that what you envision?

MR. HAYDEN: Yes.

MR. REEVES: Okay.

CHAIRMAN: Did you have anything else you were going to ask him?

MR. REEVES: No. That was it.

CHAIRMAN: Thank you. Anyone else?

(NO RESPONSE)

CHAIRMAN: Anybody else have anything else they want to say on this matter?

(NO RESPONSE)

CHAIRMAN: I'll entertain a motion.

MR. REEVES: Madam Chairman, I move to approve the application based on the fact that this development would not alter the essential character of this neighborhood as there's similar kinds of developments in other parts of the city; also that the two conditions listed by the Staff be met.

CHAIRMAN: We have a motion by Mr. Reeves. Do I have a second?

MR. JEAN: Second.

CHAIRMAN: Second by Mr. Jean. Any questions on the motion?
(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: Motion carries unanimously.

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VARIANCE

ITEM 3

3801-3953 (Odd) Brookfield Drive, 4061 Little Bluestem Drive, 4077-4127 (Odd) Red Clover Drive, zoned R-1A
Consider request for a Variance in order to eliminate the required 6 foot tall solid wall or fence along the northern boundary of Brookfield Subdivision.
Reference: Zoning Ordinance, Article 17, Section 17.311
Applicant: Deer Valley Subdivision, LLC

MR. HILL: Recently a preliminary subdivision plan for Brookfield Subdivision has been approved with 131 lots contained within it. The applicant, as a part of that plan, is required to provide 6-foot tall solid wall or fence and one tree every 40 feet along the northern boundary of the development where it's adjacent to I-1 zoning. The screening is required in this case to screen the industrial use from the residential. The applicant is requesting the 6-foot tall solid wall or fence be eliminated; however they are proposing to abide by the requirement of one tree every 40 liner feet of the boundary.
The applicant argues that because of the large utility easements along the northern property line where no construction can take place on the adjoining industrial properties, the solid fence is not necessary. By not installing the fence, the developer will be providing more open space for the residents of the planned subdivision.

In looking at the exhibit on the screen, the applicant has highlighted in various colors the different easements that run along the northern property line. The pink easement is 100-foot overhead electric easement. The yellow is an 80-foot Kentucky Utility overhead easement. The green is a 50-foot pipeline easement. The orange is a 115-foot OMU easement. Some of these easements overlap, as you can see. Their width on the western edge varies from 260 feet and it goes on up as you move eastward, to give you an idea of what the easements are adjacent to their site that the applicant is referring to.

Staff does not feel that there is a hardship in this case. The installation of the fence required by the ordinance, the fence could be installed if the variance was denied. So we don't feel that there's a hardship, as far as that component of the request.

Staff feels that the applicant did not take
willful actions in violation of the zoning regulations.

Granting of this Variance Staff believes will not adversely affect the public health, safety or welfare because the existing easements will provide a natural buffer between the industrial and residential uses.

Granting the Variance will not alter the essential character of the general vicinity because the subject property is located in an area that includes a variety of land uses such as residential, agricultural, industrial and professional.

Granting the Variance will not cause a hazard or a nuisance to the public because required trees will still be installed.

Granting the Variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because although there will be no fence, some screening will be provided by the installation of the required trees and the distance created by the easements.

Staff recommends approval and Staff request that the Staff Report be entered into the record as Exhibit B.

CHAIRMAN: Is there anyone here wishing to
speak on behalf of the applicant?

MR. KAMUF: Yes. Charlie Kamuf.

MR. KNIGHT: Mr. Kamuf, you're sworn as an attorney.

MR. KAMUF: I'm here to answer any questions that you have. We have Bill Jagoe here. He owns Deer Valley Subdivision. We are here to answer any questions. We have exhibits if you want to see them, but we're here to answer any questions.

CHAIRMAN: Let's hold off and see if we have any questions before you pull it all out.

Do we have any questions from anyone in the audience?

(NO RESPONSE)

CHAIRMAN: Have there been any questions in the office?

MR. HOWARD: No.

CHAIRMAN: Do any commission members have any questions of the applicant?

(NO RESPONSE)

CHAIRMAN: Looks like we're good to go for a motion.

MS. MASON: Ms. Chairman, I move for approval based on the findings that Mr. Hill mentioned earlier, 1 through 4. It will not adversely affect the public
health, safety or welfare because the existing
easement will provide a natural buffer between the
industrial and residential uses; it will not alter the
essential character of the general vicinity because
the subject property is located in an area that
includes a variety of land uses such as residential,
agricultural, industrial and professional; it will not
cause a hazard or nuisance to the public because the
required trees will be installed; and it will not
allow an unreasonable circumvention of the
requirements of the zoning regulations because
although there will be no fence, some screening will
be provided by the installation of the required trees
and the distance created by the easements.

CHAIRMAN: We have a motion by Ms. Mason. Is
there a second on the motion?

MR. GLENN: Second.

CHAIRMAN: Second by Mr. Glenn. Any questions
on the motion?

(NO RESPONSE)

CHAIRMAN: If not all those in favor of the
motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

ITEM 4
101 Frederica Street, zoned B-2, Riverfront Crossing Overlay District

Consider request for Variances in order to eliminate the required 10 foot building setback along Veterans Boulevard, to reduce the required setback at the corner of Veterans Boulevard and the Paseo from 30 feet to 15 feet, to eliminate the required setback for the 4th floor along the Paseo frontage and to increase the maximum encroachment over the Paseo from 3 feet to 6 feet.

Reference: Zoning Ordinance, Article 21, Sections 21.84(a)(ii), 21.84(b)(ii)#4, 21.84(f)(i)#11

Applicant: Riverfront Jam, LLC; Robert Glyer

MR. HILL: The subject property is located within the Riverfront Crossing Overlay District.

Article 21 of the Zoning Ordinance establishes minimum setback and build to zones for buildings in the Downtown Overlay District. The purpose of this requirement is to insure infill development would be in character with the existing building and allow for walkability within the downtown area.

In this case, the applicant is proposing the construction of a new building known as The Enclave at Riverfront, that will include a restaurant and residential uses. The design of the building requires approval of the four dimensional variances listed above. Variances within the Downtown Overlay Districts are required to receive a recommendation from the Historic Preservation Board before the Board of Adjustment can act on them.

The Historic Preservation Board met on June 1,
2016 and made favorable recommendations to approve the
dimensional variances finding that the building meets
the overall goals and intent of the Downtown Master
Plan as it promotes downtown development and
encourages mixed-use commercial and residential
property.

Your packet on the screen includes a layout, I
think it's just the first floor layout, but it shows,
for those that are curious, three restaurant spaces.
The upper floors, 2 through 4, and the proposed
building is proposed to be 6 condominium units.

As far as the hardship with this case, the
Staff does not feel there's a hardship related to the
request.

If the application is denied, the applicant
could design another structure that complies with the
Zoning Ordinance requirements.

The Staff also does not feel that the
applicant took any willful actions to violate Zoning
Ordinance regulations.

The Staff believes that granting these
Variances will not adversely affect the public health,
safety or welfare because the building as designed
will provide much needed residential and restaurant
space available in the downtown area.
Granting the Variances will not alter the essential character of the general vicinity because the proposed building fits within the adjoining design context by making appropriate transitions to existing structures, many of which also maintain a zero lot line development pattern.

Granting the Variances will not cause a hazard or a nuisance to the public as there will be more than adequate sidewalk room for pedestrians to maneuver around the building even with the reduced setbacks.

Granting these Variances will not allow an unreasonable circumvention of the requirements of the zoning regulations because the design complies with the goals and the intent of the Downtown Master Plan and similar variance requests have been approved in the downtown area in the past.

Staff recommends approval of the four variances and we request that the Staff Report be entered into the record as Exhibit C.

CHAIRMAN: Is there anyone here wishing to speak on behalf of the applicant?

MS. KNIGHT: State your name for the record.

MR. WELLS: David Wells.

MS. KNIGHT: Mr. Wells, are you an attorney?

MR. WELLS: No. I'm an architect.
MR. WELLS: Like Mr. Kamuf before me, I'm here to answer any questions the commissioners may have on this matter.

I do have copies of the information that was provided to the Historic Preservation Commission which has a much better picture of the building, if you're interested. With that I'll answer any questions.

CHAIRMAN: Thank you.

Is there anyone in the audience that has questions?

(No response)

CHAIRMAN: Any commission members have questions?

MR. REEVES: Just a comment.

In my position when this particular plan was written, as far as downtown, as far as what the requirements were going to be, while they are asking for Variances, this is very consistent with the outcome we were hoping for. I would say that it is not anything that we wouldn't be pleased to have happen to downtown.

CHAIRMAN: I agree with you.

All right. I think we're ready for our motion.
MR. REEVES: I move to approve this Variance, the four Variances that have been applied for based on the findings read into the record by Mr. Hill.

CHAIRMAN: Do we have a second for the motion?

MS. MASON: Second.

CHAIRMAN: Motion by Mr. Reeves and second by Ms. Mason. Any 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 unanimously.

MR. WELLS: Thank you very much.

ITEM 5

1564 River Road, zoned I-2
Consider request for a Variance in order to eliminate the required screening along the south and west property lines and to remove the stacking height restriction approved on a previous Conditional Use Permit.
Reference: Zoning Ordinance, Article 17, Section 17.311
Applicant: Dixieland Properties, LLC

MR. HILL: The applicant in this case has recently acquired this 7.445 acre parcel and proposes to expand their existing recycling business which is located at 1600 River Road just south of the subject property.

In 2009, a variance was approved for this
property to eliminate all screening requirements with
a condition that no material may be stacked above 8
feet tall. The applicant is now requesting the
condition limiting the stacking to 8 feet high be
eliminated with this new variance request.

The applicant has submitted letters from the
Owensboro Riverport Authority and Helena Chemical, the
adjoining property owners, voicing their approval of
the request.

Staff does not feel there is a hardship in
this case. The installation of the screening as
required by ordinance would not create an unnecessary
hardship on the applicant nor would abiding by the
required stacking height.

Staff feels that the applicant did not take
willful actions in violating the Zoning Ordinance.

Staff feels that the granting of this Variance
will not adversely affect the public health, safety or
welfare because this is an existing ongoing use
separated from neighboring properties by topography
and existing screening.

It will not alter the essential character of
the general vicinity because this is an expansion of
an existing use in an industrial area.

The Variance will not cause a hazard or a
nuisance to the public because this is an existing
industrial use and an industrial area where the
adjoining property owners are supportive of the
request.

Granting the Variance will not allow an
unreasonable circumvention of the requirements of the
zoning regulations because of the tree and fence
waiver in the past and the similar land uses in the
area.

Staff recommends approval of the request and
request that the Staff Report be entered into the
record as Exhibit D.

CHAIRMAN: Thank you, Mr. Hill.
Is there anyone here wishing to speak on
behalf of the applicant?

MR. KIRKLAND: Yes.

MS. KNIGHT: Please state your name for the
record.

MR. KIRKLAND: I'm John Drew Kirkland.
(DREW KIRKLAND SWORN BY ATTORNEY.)

MR. KIRKLAND: I'm John Drew Kirkland. I'm
president of Dahl & Groezinger and also part of
Dixieland Properties or helping them do their
application.

I want to thank the Board or the Commission.
I want to thank Brian Howard. We were on a very, very tight time frame to get this done and Brian and his office was very good in working with us in getting this application prepared and ready for you all.

That's my only comments.

I want to thank Mr. Howard for doing that. I think the Commission should be well aware of how much they do help, and in this case was very helpful on a very, very tight time frame.

If anybody has any questions, I'm willing to answer those questions, but I wanted to make that statement.

CHAIRMAN: I don't think there's anyone in the audience left to ask a question, but does anyone on the Board have a question?

MS. CLARK: I have a question.

On the property, do you guys have certain stacking requirements that you abide by there; that you won't stack any material higher than any certain feet?

MR. KIRKLAND: On the other property we have or on this property?

MS. CLARK: On this property and on previous property.

MR. KIRKLAND: The previous property we do not
have a stacking requirement at all. We can stack it to the sky.

MS. CLARK: I was just concerned about safety. If somebody were to walk through there and something were to tumble over.

MR. HOWARD: So are you asking do they have -- do you all have your own standard that you say, not a requirement from anybody else, but do you all say, well, just for safety purposes we won't go above 20 feet or something like that in your operations.

MR. KIRKLAND: Just to answer that very simply, every year we have a voluntary OSHA inspection. We have OSHA come into our entire premises and go completely through all of our operations and spend one whole day there. So they pretty much oversee our safety requirements, and we have two ring-binders about this full of all our safety requirements. So we're very much aware of that. No, we don't stack it where it would be unsafe.

CHAIRMAN: Does that answer your question?

MS. CLARK: Yes, ma'am.

CHAIRMAN: Anyone else have a question, comment?

(NO RESPONSE)

CHAIRMAN: If not I'll entertain a motion.
MR. GLENN: I'll make a motion we approve this request based on Staff Findings that 1) it won't adversely affect the public health, safety or welfare because this is an existing ongoing use separated from neighborhood properties like topography and existing screening; and 2) it will not alter the essential character of the general vicinity because this is an expansion of an existing use in an industrial area; 3) it will not cause a hazard or a nuisance to the public because this is an existing industrial use in an industrial area where the adjoining property owners are supportive of the request; and 4) it will not allow an unreasonable circumvention of the requirements of the zoning regulations because of the tree and the fence waiver in the past and the similar land uses in this area.

CHAIRMAN: We have a motion by Mr. Glenn. Is there a second to the motion?

MR. JEAN: Second.

CHAIRMAN: Second by Mr. Jean. Any questions on the motion?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries unanimously.

Is there any more business, Mr. Howard?

MR. HOWARD: Not that I'm aware of.

CHAIRMAN: Seeing none I'll entertain one more motion.

MR. GLENN: Move to adjourn.

CHAIRMAN: Move to adjourn by Mr. Glenn.

MS. MASON: Second.

CHAIRMAN: Second by Ms. Mason. 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 24 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the
30th day of JULY, 2015.

LYNETTE KOLLER FUCHS
NOTARY ID 524564
OHIO VALLEY REPORTING SERVICES
2200 E. PARRISH AVE., SUITE 106-E
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES: DECEMBER 16, 2018
COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

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