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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

JANUARY 4, 2001

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, January 4, 2001, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: C. A. Pantle, Chairman
- Marty Warren
- Ruth Ann Mason
- Tim Miller
- Judy Dixon
- Bill Williams
- Ward Pedley
- Gary Noffsinger,
- Planning Director
- Stewart Elliott
- Attorney

* * * * *

CHAIRMAN: Call the meeting to order of the Owensboro Metropolitan Board of Adjustment.

The first item on the agenda tonight is the minutes of the last meeting. They're on record in the office. No corrections that we know of that need to be made. Anybody have any questions?

(NO RESPONSE)

MS. DIXON: Motion to approve.

MR. WILLIAMS: Second.

CHAIRMAN: Motion has been made to approve

1 and a second. All in favor say aye.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries.

4 Next item on the agenda this evening is
5 the election of the officers and I turn it over to our
6 counsel, Mr. Elliott.

7 MR. ELLIOTT: In accordance with our
8 bylaws, the first meeting in January we have the
9 annual election of officers. So at this time the
10 floor is now open for the nomination for the office of
11 chairman.

12 MR. MILLER: I'd like to nominate Audie
13 Pantle.

14 MR. WILLIAMS: Second.

15 MR. ELLIOTT: Are there any other
16 nominations?

17 (NO RESPONSE)

18 MR. ELLIOTT: Do I have a motion that
19 nomination cease.

20 MR. PEDLEY: I make a motion that the
21 nomination cease.

22 MS. MASON: I second.

23 MR. ELLIOTT: Mr. Pantle has been
24 nominated for chairman. All in favor of that signify
25 by raising your hand.

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 MR. ELLIOTT: Mr. Pantle, you are our
3 chairman.

4 Now we have nomination for office of vice
5 chairman.

6 MR. WILLIAMS: I make a motion for Ward
7 Pedley.

8 MR. MILLER: Second.

9 MR. PANTLE: Move the nomination cease to
10 be elected by the commission.

11 MR. ELLIOTT: Have the motion that
12 nomination cease to be elected by the commission. Do
13 I have a second of the motion?

14 MR. WARREN: Second.

15 MR. ELLIOTT: All in favor raise your
16 right hand.

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 MR. ELLIOTT: Now we have the office of
19 secretary. Do I have a nomination for office of
20 secretary.

21 MR. PEDLEY: I nominate Ruth Ann Mason.

22 MR. ELLIOTT: Do I have a second to that?

23 MR. WARREN: Second.

24 MR. ELLIOTT: Are there any other
25 nominations?

1 (NO RESPONSE)

2 MR. PANTLE: Nomination cease to be
3 elected by the commission.

4 MR. ELLIOTT: Is there a second to that
5 motion?

6 MR. WARREN: Second.

7 MR. ELLIOTT: All in favor raise your
8 right hand.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 MR. ELLIOTT: That concludes the election,
11 Mr. Chairman.

12 CHAIRMAN: Thank you. We will try to
13 proceed.

14 Let me set a few guidelines for our
15 meeting this evening. Everyone here can have the
16 opportunity to speak on any item. When you wish to
17 speak, come to one of the microphones, be sworn in by
18 counsel, state your name and then we'll proceed with
19 that. If you have any questions, direct them to the
20 Chair and we'll find out the answer. We won't have
21 any arguments or conversations between people in the
22 audience.

23 With that we'll proceed with Item Number
24 2, Gary.

25

1 CONDITIONAL USE PERMITS

2 ITEM 2

3 805 East Seventh Street, in a P-1 zone (Map N-4)
4 (PONTPONED)

5 Consider request for a Conditional Use Permit for
6 construction of a community based residential housing
7 development containing 5 buildings with 64 beds.
8 Reference: Zoning Ordinance, Article 8, Section 8.2C1
9 Applicant: Wendell Foster Center

10 MR. NOFFSINGER: Mr. Chairman, this
11 application was postponed from the last meeting.
12 There was some issues relating to the lot coverage on
13 the property. Those issues have been resolved. The
14 gross building area for this project will be
15 approximately 47,418 square feet. The net building
16 area will be 34,671 square feet. Now, the net area is
17 based upon some inductions that are allowed in the
18 Zoning Ordinance in counting the lot coverage for a
19 particular piece of property. The maximum allowable
20 lot coverage is 35 percent. The proposed development
21 would have a lot coverage of 30.04 percent. The
22 applicants are here tonight represented and a
23 development plan has been filed with the Planning
24 Commission to detail the site development
25 characteristics of this property and that will be
 considered by the Planning Commission next Thursday.
 With that said this item is in order and it's ready
 for your consideration.

1 CHAIRMAN: First, is there anyone in the
2 audience wishing to speak in opposition of this item?

3 (NO RESPONSE)

4 CHAIRMAN: If not the applicant has the
5 floor.

6 MR. ELLIOTT: State your name, please.

7 MR. COX: My name is Alvin Cox. I'm with
8 Potter & Cox Architects in Louisville, Kentucky. I am
9 speaking on behalf of Brenda Lowry and Jim Riney, and
10 for the sake of brevity I will give - -

11 MR. ELLIOTT: Let me swear you in.

12 (MR. ALVIN COX SWORN BY ATTORNEY.)

13 MR. COX: The proposed development is an
14 effort to execute the beginning of a master plan for
15 Wendell Foster Center and to in a significant attempt
16 to create a new paradigm for the care of the mentally
17 retarded development disabled patients that currently
18 resides in two buildings on their current campus. We
19 are through this design making a strong effort to
20 bring this type of replacement facility into a
21 residential scale creating a community based field to
22 the project.

23 There will be essentially four areas, each
24 containing 16 beds, and 1 young community building in
25 the center that will service those clients of the

1 facility. I think that you can see from the scale of
2 the project that we are making an effort to respect
3 the residential character of the neighborhood as has
4 been the practice in other independent living houses
5 that we've developed on the site.

6 It is the eventual plan of the Wendell
7 Foster Campus to completely surround that site with
8 individual houses as had been started on other parts
9 of the campus with this corp community being in the
10 center of the campus.

11 I would be more than happy to answer any
12 questions that you all might have with specific regard
13 to the issues before you tonight.

14 CHAIRMAN: Thank you, Mr. Cox.

15 Any board members have any questions of
16 the applicant?

17 (NO RESPONSE)

18 CHAIRMAN: Do you have anything else you
19 need to add?

20 MR. COX: No, sir, other than I appreciate
21 this opportunity and want to thank both Gary and Jim
22 for the help that they've given us during this process
23 and Jim Riney and tell you what an extraordinary honor
24 it is for our firm to be associated with the Wendell
25 Foster Campus in this community. It is truly a model

1 facility not only in the State of Kentucky but across
2 the nation. It's something that we value as I'm sure
3 all of you all do. Thank you.

4 CHAIRMAN: Thank you. Chair will
5 entertain a motion to dispose of the item.

6 MR. MILLER: Mr. Chairman, based on the
7 evidence given and Staff recommendation, I make a
8 motion that the Conditional Use Permit be approved.

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

11 MS. MASON: Second.

12 CHAIRMAN: Any other discussion from any
13 board member?

14 (NO RESPONSE)

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

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: Motion carries unanimously.

19 Proceed and good to have you with us.

20 Next item, please.

21 Related Item

22 ITEM 2A

23 805 East Seventh Street, in a P-1 zone (Map N-4)
24 Consider request for a Variance to reduce the front
25 yard setback from 25 feet from the property line to
zero feet from the property line in order to construct
an open sided canopy over the entrance driveway of a

1 proposed community based residential housing
development.
2 Reference: Zoning Ordinance, Article 8, Section
8.5.12(c)
3 Applicant: Wendell Foster Center

4 MR. NOFFSINGER: Mr. Chairman, this
5 variance request has been advertised for public
6 hearing at this time. All adjoining property owners
7 have been notified. The application is found to be in
8 order and it is to reduce the setback along East
9 Seventh Street to allow this canopy to project up to
10 the property line. Staff has reviewed the proposal
11 and found that, yes, there are special circumstances
12 surrounding this development and it would create a
13 hardship on the applicant in order to meet the zoning
14 regulations. The findings are that it will not
15 adversely affect the public health, safety or welfare;
16 will not alter the essential character of the general
17 vicinity; will not cause a hazard or nuisance to the
18 public; and will not allow an unreasonable
19 circumvention of the requirements of the Zoning
20 Ordinance.

21 This recommendation for approval comes
22 with two conditions. That approval of the final
23 development plan by the Owensboro Metropolitan
24 Planning Commission, and two, that the canopy shall
25 not be enclosed.

1 CHAIRMAN: The applicant have anything
2 they want to add?

3 MR. COX: No, sir.

4 CHAIRMAN: You understand the conditions
5 and everything?

6 MR. COX: Yes, sir.

7 CHAIRMAN: Any board members have any
8 questions

9 (NO RESPONSE)

10 CHAIRMAN: Chair will entertain a motion
11 to dispose of the item?

12 MR. PEDLEY: Mr. Chairman, I make a motion
13 that we grant this variance for reasons by the Staff's
14 findings and the Staff recommendation with the
15 conditions stated by Mr. Noffsinger to approve of the
16 final development plan by OMPC and the canopy shall
17 not be enclosed.

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

20 MS. DIXON: Second.

21 CHAIRMAN: A motion has been made and a
22 second. Any other discussion on the item?

23 MR. NOFFSINGER: Yes, sir. I would like
24 to add for the record that in reviewing the master
25 plan of the Wendell Foster Center, there has been some

1 discussion in terms of the closure of East Seventh
2 Street, in that area. We would anticipate that down
3 the road that the Wendell Foster Center will be
4 approaching the City of Owensboro and the Planning
5 Commission to close East Seventh Street. At that time
6 if they are successful in the closure, East Seventh
7 Street would be kind of consolidated into the property
8 and that variance issue would go away. This will
9 allow the applicants to move forward with their master
10 plan without the closure of the street.

11 CHAIRMAN: Any other questions or
12 discussion?

13 (NO RESPONSE)

14 CHAIRMAN: All in favor raise your right
15 hand.

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries unanimously.

18 Next item, please.

19 ITEM 3

20 2311 West Ninth Street, in an R-4DT zone (Map N-2)
21 Consider request for a Conditional Use Permit for
22 construction of a 6.1' x 12' addition and an 8.5' x
23 12' addition to an existing church.
24 Reference: Zoning Ordinance, Article 8, Section 8.2B4
25 Applicant: Zion Baptist Church c/o Whaylon Coleman,
Sr. Trustee

24 MR. NOFFSINGER: Mr. Chairman, this
25 application has been advertised for public hearing at

1 this time. All adjoining property owners have been
2 notified. It has been reviewed by the Planning Staff.
3 The application is in order and it's ready for your
4 consideration.

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

7 (NO RESPONSE)

8 CHAIRMAN: If not the applicant, do you
9 have anything you want to add?

10 APPLICANT: No.

11 CHAIRMAN: Any board member have any
12 questions of the applicant?

13 (NO RESPONSE)

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

16 MR. WILLIAMS: Mr. Chairman, I make a
17 motion we approve this Conditional Use Permit.

18 CHAIRMAN: Is there a second?

19 MR. PEDLEY: Second.

20 CHAIRMAN: Motion been made and a second.
21 Any other discussion?

22 (NO RESPONSE)

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

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries unanimously.

2 Next item, please.

3 -----

4 VARIANCE

5 ITEM 4

6 501 Ford Avenue, in an R-1A zone (Map N-9)(POSTPONED)
7 Consider request for a Variance to reduce the front
8 yard building setback along Ford Avenue from 35 feet
9 from the property line to 24.5 feet from the property
10 line and to reduce the side street yard building
11 setback along McCreary Avenue from 25 feet from the
12 property line to 11.7 feet from the property line.
13 Reference: Zoning Ordinance, Article 8.5.5(c)
14 Applicant: Mike E. Pike

11 MR. NOFFSINGER: Mr. Chairman, this
12 application was postponed from the last meeting in
13 order to give the board members an opportunity to go
14 out and visit the site. At that meeting Staff
15 recommended that the variance along Ford Avenue be
16 approved to allow the covering of an existing porch,
17 but that that porch shall not be enclosed in the
18 future.

19 The second request by the applicant in
20 this application was for a variance to encroach upon
21 the setback and extend up to McCreary Avenue than the
22 setback allows. The applicant submitted pictures for
23 the record that in viewing those pictures it appeared
24 that the existing porch, screened in porch on the
25 subject property setback or it was not as close to

1 McCreary Avenue than a porch on the adjoining
2 property.

3 In an on-site review, it does appear that
4 the porch on the subject property is in line with the
5 porch on the adjoining property and that the porch on
6 that adjoining property does not come any closer than
7 the one on the subject property.

8 With that Staff's position in terms of the
9 variance request has not changed. It's ready for your
10 consideration.

11 CHAIRMAN: Mr. Pike, anything you want to
12 add on the application at this time?

13 MR. PIKE: Yes.

14 MR. ELLIOTT: State your name, please.

15 MR. PIKE: Michael Pike.

16 (MR. MICHAEL PIKE SWORN BY ATTORNEY.)

17 MR. PIKE: My wife, Amy, and I are here
18 again tonight as home owners of the property at 501
19 Ford Avenue to request two variances for building
20 setback line in order to make additions for our
21 home. At the last meeting we surprised you with
22 various exhibits and I will be referring to those
23 exhibits again this evening.

24 It's our hope that in the last month the
25 members of the board have had the opportunity to see

1 firsthand our property and those others which are for
2 reference in the exhibits. Hopefully you can see the
3 neon orange stake in our yard which represents a
4 setback line from McCreary Avenue if you approve our
5 variance request.

6 I'd like to review these variance
7 requests. The first request involves the setback line
8 to Ford Avenue and the request is to reduce the
9 setback of the property line from 35 feet to 24.5
10 feet. Our existing setback is currently 27.9 feet
11 which can be seen on the provided site plan. We wish
12 to build a cover over the existing 3 foot by 6 foot
13 stoop, which is highlighted in green on that site
14 plan, in order to provide a shelter area for the front
15 entrance to our home. We don't feel that allowing
16 this variance for this purpose we will be out of
17 character for the neighborhood.

18 We have many homes in our immediate area
19 that have covered front stoops. As you can see on the
20 site plan, our new setback will still be greater than
21 that of the adjacent property at 513 Ford Avenue which
22 is 24.2 feet.

23 The second request involves a setback line
24 from McCreary Avenue. The request is to reduce the
25 setback from the property line of 25 feet to 11.7

1 feet.

2 I want to make it perfectly clear that
3 with this request we are only asking for an additional
4 8 feet. I think there was some confusion about that
5 the last time.

6 When you viewed the property you saw the
7 screened porch on McCreary side of our home. It's our
8 intention to tear that screen porch off and replace it
9 with a new room which will extend the additional eight
10 feet toward McCreary Avenue.

11 The east wall of this room will be at the
12 orange neon stake that you saw in the yard. This will
13 leave 21 feet 9 inches to McCreary Street curb.

14 We feel there are precedence in our
15 immediate area which are in keeping with our requests.
16 The home, which is on a corner lot directly across
17 Ford Avenue from our home, which is 516 Ford Avenue
18 which is picture Exhibit C, is 19 feet 5 inches from
19 the local street curb.

20 The other corner lot home across the
21 street from us is 400 Ford Avenue which is photo
22 Exhibit B. The home at 400 Ford Avenue is 19 feet 6
23 inches from the curb on St. Elizabeth Street. Both of
24 these homes which are on corner lots like our home and
25 back up to homes which face side streets like our home

1 are over 2 foot closer to the curb on their side
2 street than we would be if you grant this variance.

3 I'd like to stress the fact that these two
4 homes are already 2 feet closer to the curb than our
5 house will be. We're only asking for an additional 8
6 feet, and the additional 8 feet is less than what my
7 close neighbor have been allowed.

8 It was evident from our observation that
9 homes on corner lots in our immediate neighborhood
10 have been given relief from the setback rules towards
11 the side street of the property which the home does
12 not face.

13 We feel that you will not be sitting a new
14 precedence for our neighborhood by allowing our
15 variance request. You will only be going along with
16 precedence that are already established with
17 properties on corner lots in our immediate area.

18 We feel that you will not be sitting a new
19 precedence for homes that face McCreary Avenue because
20 our property does not face McCreary Avenue. The only
21 other home that borders McCreary Avenue that does not
22 face McCreary is at the corner of McCreary and
23 Griffith Avenue across from the library, and that home
24 faces Griffith Avenue.

25 We'd like the board to know that we intend

1 to stay at 501 Ford Avenue. We don't ask for these
2 variances so we can increase the value so we can sell
3 the home. Unless unforeseen circumstances should
4 arise, we plan on staying there as long as we
5 physically are able to. We've put a lot of time,
6 sweat equity into this home, the yard, the herb
7 garden, and we only wish to enhance our home in the
8 neighborhood with additions that will be in keeping
9 with the architecture and style of existing
10 properties.

11 We in no way feel that we are asking for
12 anything that goes against the character of the
13 neighborhood, nor do we feel like that we're asking
14 for anything that our immediate neighbors don't have
15 already. We've had no comments or complaints from any
16 of our neighbors that have been notified about this
17 and to our knowledge the board has not either. With
18 all this in mind we ask that the board approve both of
19 these variance requests.

20 CHAIRMAN: Does anyone on the board have
21 any questions of the applicant?

22 (NO RESPONSE)

23 CHAIRMAN: Staff have any other comments?

24 MR. NOFFSINGER: I have one question. At
25 the last meeting there was a question raised whether

1 or not this would be a one or a two-story addition.
2 Have you - - I think you were undecided at that time.

3 MR. PIKE: We are still undecided at this
4 point. We've considered both. We don't know what the
5 difference in cost will be between a one and
6 two-story. We haven't really made any long range
7 plans due to the fact that we didn't know whether we
8 could get this variance approved. So we haven't gone
9 any further. Two-story is a possibility. You know,
10 definitely one-story.

11 MR. NOFFSINGER: This addition, is this a
12 porch addition or is this a brick building?

13 MR. PIKE: It will be a brick wall
14 addition. Will look similar to the rest of the house.
15 The porch will no longer be an issue.

16 MR. WILLIAMS: It's completely a closed
17 in addition then?

18 MR. PIKE: Yes. It will be like part of
19 the existing house will be.

20 MS. MASON: With windows and so forth?

21 MR. PIKE: With windows.

22 CHAIRMAN: The dimension of that room when
23 finished will be 16.1 x 21.9?

24 MR. PIKE: Right. That's correct.

25 CHAIRMAN: You're not asking for 24 like

1 it kind of looks here in the addition? The room will
2 be 16. The way the drawing shows it could be 24, but
3 you're just wanting to go 16 foot?

4 MR. PIKE: Right. It goes 8 feet beyond
5 the porch.

6 CHAIRMAN: Eight feet beyond the porch?

7 MR. PIKE: Correct. The 8 feet be be torn
8 off and 16 feet put back.

9 CHAIRMAN: That's what I wanted to be sure
10 of.

11 Board members have any questions of the
12 applicant?

13 (NO RESPONSE)

14 CHAIRMAN: Any other discussion?

15 (NO RESPONSE)

16 CHAIRMAN: Chair will entertain a motion
17 to dispose of the item one way or the other.

18 MR. PEDLEY: Mr. Chairman, I have a few
19 comments on that.

20 CHAIRMAN: Go ahead.

21 MR. PEDLEY: I did drive by your property.
22 I saw the stake where you intend to build out to. I
23 drove down McCreary all the way. All of those homes
24 sit back considerable distance. I don't have any
25 problem with Ford Avenue because most of those homes

1 they are out closer than you intend to be, but what
2 happens when we grant you this variance then it opens
3 it up for everyone down McCreary Avenue to come down
4 here before this board and then we are obligated to
5 give those people that variance. They will do the
6 same that you did. They will drive around and take
7 pictures and they'll take a picture of your property
8 and come down here and say, well, you gave the
9 variance on this. I think it does alter the essential
10 character of the general vicinity and by allowing you
11 to do it I think it obligates us to let anyone do it.
12 That's the problem I have with it. It's not exactly
13 what it does to your piece of property. It's what it
14 does to the general area of McCreary Avenue.

15 MR. PIKE: Will I be allowed to respond to
16 that?

17 CHAIRMAN: Do you have a statement, sir?

18 MR. PIKE: Yes, I do.

19 It's like I said before, when you look at
20 McCreary Avenue all the homes you're talking about
21 their front door faces McCreary Avenue. My home the
22 front door faces Ford Avenue, which in my mind makes
23 it a totally different animal than the other homes on
24 that street other than one which is down on the corner
25 of McCreary and Griffith Avenue. I contend that homes

1 that are on corner lots on Ford Avenue directly across
2 the street from me not 50 feet away have been allowed
3 to do what I want to do and are actually two feet
4 closer to their side streets than I want to come. I
5 don't think that in my mind the board would be
6 obligated to let someone build on to the front of
7 their home on McCreary and use my house as a reference
8 because my house doesn't face McCreary like those
9 homes do. You know, I don't see it the same way you
10 do I guess.

11 MR. PEDLEY: What these ordinances are for
12 is to protect us from one another.

13 MR. PIKE: I understand that.

14 MR. PEDLEY: You build yours out and maybe
15 your neighbor is not protesting this from the
16 opposition of it, but probably he doesn't like it
17 because in reality you're doing a certain amount of
18 damage to him. That's what we have to look at when we
19 sit here. That's what the ordinances are all about.
20 That's what the setbacks are all about. If we do
21 this, in reality we might as well throw the ordinances
22 out the door and the setbacks.

23 If any other board members have any
24 opinion, I would like to hear it.

25 MR. NOFFSINGER: I have a comment.

1 Mr. Pike, I'm not aware of any variance
2 requests that have been approved within that area
3 along Ford Avenue. Now, I can be incorrect. I'm just
4 not aware of any that have been approved. I think
5 what you're seeing there, there are some
6 encroachments. Those encroachments and those homes
7 were built prior to the adoption of the Zoning
8 Ordinance. They have existed that way for a number of
9 years, but I'm not aware of any allowances that have
10 been made since the Zoning Ordinance has been adopted
11 within that section of Ford Avenue. Now, Mr. Jim
12 Mischel, the zoning administer, and the building
13 inspector is here tonight. I'm not sure if he has
14 anything he would like to add to that, if he has any
15 information where I may be in error.

16 CHAIRMAN: Mr. Mischel, come forward and
17 be sworn in, please.

18 MR. ELLIOTT: State your name for the
19 record, please.

20 MR. MISCHEL: Jim Mischel.

21 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

22 MR. MISCHEL: I am zoning administrator
23 for the city, for the planning office.

24 Off the top of my head, I don't know of
25 any permits that have been issued or variances issued

1 in this area for houses on corner lots. I'm trying to
2 think of all the streets going up and down McCreary,
3 Littlewood. I can't think of any. I think Mr.
4 Noffsinger is probably correct. Most of those houses
5 have been there for a number of years. They were
6 probably there prior to the adoption of the ordinance.
7 I don't believe we've had any permits since that.

8 CHAIRMAN: Most of those have been
9 grandfathered in because of the age of the development
10 in that area.

11 MR. MISCHEL: That's correct.

12 CHAIRMAN: Any other questions or
13 comments?

14 (NO RESPONSE)

15 CHAIRMAN: Do you have anything else you
16 want to add, Mr. Pike?

17 MR. PIKE: I think I've explained it as
18 well as I could.

19 CHAIRMAN: I appreciate it.

20 Any other board member have any comments?

21 (NO RESPONSE)

22 CHAIRMAN: Staff have anything else they
23 want to add?

24 MR. NOFFSINGER: No, sir.

25 CHAIRMAN: Chair will entertain a motion.

1 MR. PEDLEY: Mr. Chairman, I make a motion
2 to approve covering the existing porch facing Ford
3 Avenue, and the front porch facing Ford Avenue shall
4 not be enclosed.

5 I make a motion for denial of the variance
6 on McCreary for reason that it will alter the
7 essential character of the general vicinity of
8 McCreary Avenue.

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

11 MR. WILLIAMS: Second.

12 CHAIRMAN: Any other discussion or
13 comments?

14 (NO RESPONSE)

15 CHAIRMAN: All in favor of the motion that
16 the Ford Avenue variance be granted, and McCreary
17 Avenue be denied raise your right hand?

18 MR. WARREN: Say that again.

19 CHAIRMAN: All in favor - - the motion
20 states that Ford Avenue variance be granted and
21 McCreary Avenue variance be denied.

22 MS. MASON: Can we split up those motions?

23 CHAIRMAN: There's one motion and a
24 second. If you want to split the motion and second we
25 will make it two separate motions. We can do that or

1 we can keep it as it is. He'll have to withdraw the
2 second and the motion. You can withdraw the motion if
3 the motionee and the secondee so desires.

4 MR. ELLIOTT: There is a possibility that
5 somebody may want to vote to deny them both or approve
6 one. Split the motion if you'd like of Ford Avenue.

7 MR. PEDLEY: I withdraw my motion.

8 MR. WILLIAMS: I withdraw my second.

9 CHAIRMAN: Now the floor is open for a
10 motion. Let's take the Ford Avenue one first.

11 MR. PEDLEY: Make a motion for approval
12 for the Ford Avenue existing porch and the front porch
13 facing Ford Avenue shall not be enclosed.

14 CHAIRMAN: Is there a second?

15 MR. MILLER: Second.

16 CHAIRMAN: Any discussion?

17 (NO RESPONSE)

18 CHAIRMAN: All in favor raise your right
19 hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: That's unanimous.

22 Now we'll entertain a motion on the
23 McCreary Avenue.

24 MR. PEDLEY: Make a motion to deny the
25 variance on McCreary Avenue for reason it will alter

1 the essential character of the general vicinity of
2 McCreary Avenue.

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

5 MR. WILLIAMS: Second.

6 CHAIRMAN: We have a second. Any other
7 discussion?

8 (NO RESPONSE)

9 CHAIRMAN: All in favor raise your right
10 hand.

11 (C.A. PANTLE, JR., JUDY DIXON, BILL
12 WILLIAMS AND WARD PEDLEY RESPONDED AYE.)

13 CHAIRMAN: Opposed like sign.

14 (MARTY WARREN, RUTH ANN MASON AND TIM
15 MILLER RESPONDED NAY.)

16 CHAIRMAN: Three to four, motion is
17 denied.

18 Next item, sir.

19 -----

20 ADMINISTRATIVE APPEAL

21 ITEM 5

22 2900 Fairview Drive, in an A-U zone (Map N-56)
23 Consider request for an administrative review
24 concerning compliance with the conditions and site
25 plan for the conditional use permit and variance
granted for landscaping services to be conducted on
the subject property. Approval granted on January 22,
1998.

1 Reference: Zoning Ordinance, Article 8, Sections
2 8.2H8 and 8.4/33a, Article 7, Section 7.34
3 Applicant: James West

4 MR. NOFFSINGER: Mr. Chairman, this appeal
5 has been advertised for public hearing at this time
6 and all parties of record have been notified. Mr. Jim
7 Mischel, the zoning administrator for the City of
8 Owensboro and the County of Daviess, is here tonight
9 to speak on behalf of the Planning Staff and to make a
10 brief presentation.

11 CHAIRMAN: Mr. Mischel, you come forward
12 and state your name for the record, please.

13 MR. MISCHEL: My name is Jim Mischel,
14 Zoning Administrator for the Planning Office.

15 On January 22, 1998, James West applied
16 for a Conditional Use Permit, just a little background
17 information.

18 Applied for a Conditional Use Permit to
19 operate a landscaping service business. On that night
20 the Board approved that Conditional Use Permit with
21 certain conditions. He has been operating at that
22 location since then.

23 Some time ago we received a complaint that
24 Mr. West was not in compliance with the conditions
25 that was set forth at that meeting. I went out there
to take a look at it and I'd say the major concern was

1 an outdoor storage and the landscaping. The
2 landscaping that was suppose to be done was suppose to
3 be some pine trees as a buffer between neighbors and
4 the parking areas. A point in doing my inspection I
5 came back and called Mr. West and we talked about it.
6 He had agreed to go ahead and do the landscaping, to
7 do everything except for the parking areas. He did.
8 I have been out there. The pine trees have been put
9 in all the way down the boundary line and everything.
10 I'd say the conflict comes into the parking areas.

11 I went on and gave Mr. West a notice on
12 that, on the violation and he's applied for
13 Administrative Appeal on my decision.

14 I've got some handouts here I'd like to
15 show you. First I'm going to show you some pictures
16 we took. These pictures do have snow, the ground is
17 covered in snow, but underneath that snow it's got the
18 gravel parking out front, but it will show you where
19 they're parking the vehicles. One of the pictures it
20 shows some of the gravel. You will see where we took
21 picture of the pine trees showing that he has put
22 those in. So that is in compliance.

23 MR. WARREN: This is the front of the
24 building?

25 MR. MISCHEL: Yes. Where the vehicles

1 are, that's the front of it. There are some vehicles
2 and I think there's a trailer with says Evergreen
3 Landscaping on it.

4 Also would like to give a handout of - -
5 that night Mr. West had turned in a drawing for his
6 Conditional Use Permit and Variance. A site plan is
7 required at these meetings so the Staff and the board
8 has an accurate description of what's going to be done
9 at that site. I'd like to put one in the record. I'd
10 probably like to go on and put the pictures into the
11 record too.

12 The first page shows the drawing that was
13 turned in. The second page of the minutes of the
14 meeting, one page of the minutes. As you can see on
15 that drawing, the parking I've highlighted in yellow
16 it shows ten parking spaces to the rear of the
17 building. There is no parking on this drawing shown
18 on the front.

19 On the second page, at that meeting that
20 night Mr. Malone was representing Mr. West and on the
21 second page you will see where Mr. Malone - - I've
22 just highlighted parts of it. It says, "As you will
23 see, the parking spaces will be in back there." So we
24 assumed that the parking, all parking would be in the
25 rear.

1 Now, if we had known at that meeting,
2 prior to the meeting or at that meeting that the
3 parking was going to be in the front, the Staff
4 assumed that the parking would be in the rear so we
5 had no comments. That was fine with us. The way it
6 was shown we didn't have any problems with it, but if
7 we had known that the parking was going to be in front
8 we would have concerns and we would have made or
9 proposed that any parking in the front would be paved
10 and landscaped.

11 Reasons you have a residential subdivision
12 across the road from this. Fairview Drive is fairly
13 well traveled. There are businesses starting to come
14 in that area that we, you know, in the future we will
15 be enforcing the paving and landscaping requirement
16 for any type of business. So we would have those
17 concerns, that any parking in the front would meet the
18 paving and landscaping requirements, but at that time
19 we didn't see that. We didn't have any concerns about
20 it. At this time that's all I have to say. If you
21 have any questions I might come back later.

22 CHAIRMAN: Any board member have any
23 questions of Mr. Mischel?

24 MR. NOFFSINGER: I just have a point of
25 clarification for the record. Mr. Mischel, you are

1 stating that the applicant has complied, has recently
2 complied with the conditions to the Conditional Use
3 Permit; however, the question, the only remaining
4 issue would be the parking area, and the location of
5 that parking area is not in compliance with the site
6 plan that was approved by the Board of Adjustment on
7 January 22, 1998, for the variance request and the
8 Conditional Use Permit?

9 MR. MISCHEL: That's correct. The drawing
10 turned in by the applicant shows the parking in the
11 rear and the staff believe that's where it was and I
12 believe that was voted on that night, to allow this
13 Conditional Use Permit to occur.

14 MR. NOFFSINGER: And the applicant was
15 represented by counsel which stated that the parking
16 spaces would be to the rear of the building, will be
17 in the back?

18 MR. MISCHEL: Yes, sir.

19 MR. NOFFSINGER: Thank you.

20 CHAIRMAN: Any board member have any
21 questions of the staff?

22 (NO RESPONSE)

23 CHAIRMAN: Mr. Malone.

24 MR. ELLIOTT: State your name for the
25 record, please.

1 MR. MALONE: Phil Malone.

2 (MR. PHIL MALONE SWORN BY ATTORNEY.)

3 MR. MALONE: Does everyone have the site
4 plan in front of them because I think it's easier to
5 kind of understand the layout of this property because
6 it is a very unusual and irregular tract?

7 As Mr. Mischel stated, Mr. West owns and
8 operates the Evergreen Lawn Care service which is a
9 landscaping and lawn maintenance business. He owns
10 the entire four acre tract. The area that is of
11 concern is only the half acre portion of the tract
12 which is what I think is commonly referred to as a
13 flag tract; that is the long, narrow portion that goes
14 down that has the frontage on Fairview Drive. To kind
15 of orient you to the site plan, that was filed with
16 the application for the Conditional Use Permit back in
17 1997. It has really two different scales. The first
18 scale shows the entire four acre tract and the
19 adjoining property owners' tracts to show you what the
20 existing properties were at that time. Then the other
21 portion on the right is a different scale just showing
22 the narrow 83 foot section of that flat to kind of get
23 you oriented.

24 This property has a rather laborious
25 zoning history to it because initially when Mr. West

1 bought this property it was zoned R-1. The property
2 immediately to the north is zoned I-2, heavy
3 industrial. Because of the existing definitions for
4 the type of business that he planned to conduct in
5 1997, the landscaping type business was not permitted
6 within an R-1 or even an A-U zone. So he applied for
7 an I-1 light industrial zoning, rezoning, so that he
8 could on just half acre of the front of the flag
9 there's narrow on Fairview Drive so that he could
10 build an accessory type metal storage building where
11 he basically operates his business.

12 That zoning application was approved by
13 the Owensboro Metropolitan Planning Commission. The
14 Daviess Fiscal Court however remanded that back to the
15 Owensboro Planning Commission because of some
16 objections and concerns of the property owners
17 immediately to the south who had some concerns that if
18 this property was zoned I-1 that that - - they didn't
19 agree with the Staff's conclusion, that was a logical
20 expansion of the adjacent industrial zone. So
21 therefore they were concerned that - - they had no
22 objection to the type of business that Mr. West was
23 going to be operating there, but they were concerned
24 that if Mr. West ever sold his business that that
25 property would then be zoned I-1. So the Staff I

1 think came up with a very ingenuous solution to the
2 problem. They essentially came up with a new
3 definition for horticultural services that could be
4 allowed in agricultural A-U zone. That definition
5 essentially says that this type of business used can
6 be located in an A-U zone if it is conditionally
7 permitted. So that then required Mr. West to come to
8 the Board of Adjustment and apply for his Conditional
9 Use Permit; and in fact, that was approved.

10 Now, I think the issue is the
11 interpretation that Mr. Mischel is making on the
12 Conditional Use Permit that was granted by the board.
13 We believe that his interpretation is wrong because
14 essentially he's adding another condition to the
15 Conditional Use Permit that was not expressly added by
16 the Board of Adjustments. There were essentially four
17 conditions that were set forth in the Conditional Use
18 Permit and they are, and I'll just read them to you,
19 The Conditional Use Permit was approved, conditioned
20 upon: 1) Access being limited to Fairview Drive; 2)
21 No access to the existing private driveway, and that
22 is shared by a number of residents. That's referred
23 to on the site plan as the 20 foot private drive. 3)
24 Screening with evergreen trees five feet tall at
25 planting space 25 feet apart along the south property

1 line; 4) No outdoor storage on site.

2 Now, the concern of the neighbors was
3 mainly that there would be adequate screening and that
4 there be no outdoor storage of equipment. That was
5 stated and proposed by the applicant, Mr. West, that
6 he would screen this property on the south side and
7 that he would also would not have any outdoor storage
8 of equipment.

9 We admit that he was dilatory in getting
10 his planting done. It was an oversight. It has been
11 done and that's no longer an issue. We contend that
12 Mr. Mischel is interpreting the site plan as a new
13 expressed condition at the time that the application
14 for the Conditional Use Permit was submitted. It was
15 originally proposed that that's where the parking
16 would go. After the construction started, Mr. West
17 and his contractor discovered that the area that would
18 be from where the parking area that's shown on the
19 site plan toward Fairview Drive was much lower and had
20 a drainage problem that they had not anticipated.
21 That necessitated somewhat of a change to move the
22 building further back. They came in with a great deal
23 of fill material for the foundation of the building
24 and also back in the area where it's indicated as
25 parking. At that time the building had to be moved

1 back.

2 So for two reasons after the application
3 was submitted, Mr. West had to change the location of
4 his parking. The second reason in addition to the
5 drainage problem was his concerns for security. He
6 realized that this area back in here was not going to
7 be well lit and because of the concern that some of
8 the neighbors had for lighting he decided that instead
9 of putting more lights back there, the logical and
10 simple thing to do was to have the parking between his
11 building and Fairview Drive. The orientation of the
12 building is that's really the side of the building and
13 the opening to the building as shown on the site plan
14 there.

15 Mr. West does not attempt to circumvent or
16 mislead the Staff or mislead the Board of Adjustment.
17 He incurred these conditions and he did not interpret
18 the Conditional Use Permit as restricting his parking
19 to the rear.

20 This area now has been graveled. It is
21 more than within the parameters allowed off street
22 parking allowing this gravel area to be used for
23 off-street parking. It is consistent with the Zoning
24 Ordinance for off-street parking. This is an
25 unincorporated area and it's in the county. It's an

1 A-U zone. I believe the Zoning Ordinance specifically
2 says that if it's an A-U zoning it does not have to be
3 paved. So Mr. West was not trying to mislead the
4 Staff. He submits that now to restrict his parking
5 and prohibit him from using that area, to require him
6 to go back and remove a considerable amount of gravel
7 and to then go rebuild a new parking area in the back,
8 is going to be somewhat of an economic hardship for
9 him.

10 We would submit that if the board believes
11 that the site plan was intended to be a condition,
12 even though it was not expressed that way, and that
13 the parking is going to be placed on the front, that
14 there has to be any modification to that Conditional
15 Use Permit we would request that the board modify
16 that. Otherwise, I think the only requirement would
17 be that maybe there may be some landscaping buffering
18 there on Fairview Drive that's consistent with the
19 landscape article.

20 For those reasons we would submit that Mr.
21 Mischel had made an error in interpreting the
22 Conditional Use Permit and that we ask this board to
23 overrule his decision and to allow this parking to be
24 placed where it is right now as shown in the pictures
25 that have been submitted in the record.

1 Mr. West is here and will be available to
2 answer any questions that may come up or if there's
3 any other questions that I can answer I'll be glad to
4 answer them at this time.

5 CHAIRMAN: Mr. Malone, let me ask, I want
6 to be sure that I heard you correctly. You said that
7 Mr. West when he started building moved the building
8 site from the original plan and changed the location;
9 is that correct?

10 MR. MALONE: That is correct. I believe,
11 and we were discussing that and trying to recall. We
12 believe that that occurred because - -

13 CHAIRMAN: From what you've submitted?

14 MR. MALONE: What we submitted is the
15 original site plan. That's the only one that's been
16 submitted to this board.

17 CHAIRMAN: But you have changed, deviated
18 from this plan?

19 MR. MALONE: It's my understanding that
20 the building has been moved back and that it's further
21 away from Fairview Drive than shown on here. We were
22 trying to recall. We believe that there was a
23 question that came up after the Conditional Use Permit
24 that maybe that the building was too close to Fairview
25 Drive in an A-U zone, but we can't recall specifically

1 whether that was a comment from the Staff that came up
2 after the hearing, but anyway the building has been
3 moved west from where it is shown. So it's further
4 from Fairview Drive than is shown on this site plan.

5 CHAIRMAN: Thank you.

6 Any board member have any questions or
7 comments?

8 MR. WILLIAMS: Phil, how far back was it
9 moved?

10 MR. MALONE: Mr. West can speak to that,
11 Mr. Williams, but we believe that it is 120 feet back
12 from the paved area of Fairview Drive. This site plan
13 shows that that's a 60 foot right-of-way and I'm
14 assuming there's a 20 foot paved area. It's at least
15 110 feet from the edge of Fairview right-of-way,
16 Fairview Drive right-of-way.

17 MR. NOFFSINGER: So that's 110 feet from
18 the property line?

19 MR. MALONE: That would be correct. Mr.
20 West can speak to that, Mr. Noffsinger, if you need
21 something more specific on that.

22 MR. NOFFSINGER: That's fine. Thank you.

23 MR. MALONE: Maybe Mr. Mischel has some
24 more information because he has inspected that so he
25 may have some comment on that.

1 CHAIRMAN: Any board member have anything
2 to ask Mr. Malone or Mr. West?

3 MR. WARREN: Mr. Malone, what was the
4 fourth condition on that Conditional Use Permit?

5 MR. MALONE: The fourth condition was that
6 there be no outdoor storage on the site.

7 MR. WARREN: No outdoor storage?

8 MR. MALONE: Right.

9 MR. WARREN: Are the vehicles that are
10 parked on there, are they company vehicles?

11 MR. MALONE: That's correct. At the
12 present time I believe there are seven company
13 vehicles and they're the only ones. This business
14 does not offer a walk-in service to the public so
15 these would be company owned vehicles and these
16 vehicles are not taken home at night. I believe, Jim,
17 am I correct, there is maybe seven vehicles in total
18 and five parked there in the evening?

19 MR. WEST: Seven vehicles.

20 MR. MALONE: Seven vehicles there parked
21 at night.

22 MR. WARREN: I notice that Mr. Mischel has
23 a picture of a trailer that has the Evergreen Lawn
24 Service logo on the back of the trailer and it's
25 parked out front as well?

1 MR. MALONE: I assume that's temporary,
2 but let me ask Mr. West. Mr. West, will be glad to
3 answer that question, but I believe he says that that
4 was a temporary, just at the moment that picture was
5 taken. That's not a frequent thing.

6 CHAIRMAN: Mr. Malone, in the statement
7 that night his employees will take these vehicles home
8 in the evening. That's Mr. West's statement.

9 MR. MALONE: If that was the statement he
10 made at the time, that was what was planned at that
11 time, Mr. Chairman.

12 CHAIRMAN: That was one of the conditions,
13 wasn't it?

14 MR. MALONE: Well, I'm not trying to
15 belabor the point, but - -

16 CHAIRMAN: Just want to be sure we
17 understand it.

18 MR. MALONE: Right. We did not interpret
19 that the discussion of the location of the parking was
20 going to be and as was going to be intended to be
21 restricted, could never be changed.

22 The statements that I made, were made on
23 the record, it was made based upon the plans that were
24 in effect at that time. The discussion of the
25 location of the parking I believe was intended to

1 inform the board at that time of the use of that area
2 because of the concern of the neighbors for lighting
3 and the fact that there may be equipment stored there.
4 So that was basically said at that time, that was the
5 proposed use for that area behind the building. We
6 believe that parking in front of the building if it
7 has any effect at all on the adjacent neighbor, who I
8 understand has no complaints, would be less offensive
9 to the eye than having an area in the back. You can
10 see from the site plan there are two neighbors that
11 are effected. We understand they have no objection to
12 the parking as it now exists and has been since the
13 building was built which was about 18 months.

14 CHAIRMAN: Any other questions of Mr.
15 Malone?

16 (NO RESPONSE)

17 CHAIRMAN: Jim.

18 MR. MISCHEL: I believe even if the area
19 in front was paved and landscaped Mr. West will still
20 receive some relief. His original intent was to
21 rezone this property to I-1 light industrial. If that
22 had occurred in the front and the rear, all vehicular
23 use areas would have to be paved, and that was his
24 original intent was to rezone that property to I-1.
25 We're just asking that the front as a condition shown

1 on his plan that he did not have parking out front.
2 If it is, you know, in that area we believe it should
3 be paved.

4 MR. NOFFSINGER: Mr. Chairman, just to
5 respond to some of the comments that Mr. Malone made.
6 The site plan for a Conditional Use Permit was an
7 essential part of the application. That is the plan
8 that this board approves and is the plan and you're to
9 develop the property as approved on that plan. This
10 board may set conditions to the approval of the
11 Conditional Use Permit above and beyond what you
12 submitted in your application. The Planning Staff,
13 the reason this was written as it is is that we're not
14 contending with the parking that he's in violation of
15 the conditions of the Conditional Use Permit. That
16 spoke to the landscaping that was recently installed
17 and he's corrected that and has met that condition, or
18 so I'm told.

19 The issue now is that he is not in
20 compliance with the site plan that was approved by
21 this board and as presented to this board. Now, there
22 are two options. You either come into compliance with
23 the site plan that was approved with the Conditional
24 Use Permit or you submit an application to redo your
25 Conditional Use Permit to modify the parking area.

1 Those are the two options, but we're not contending
2 that he's in violation of the condition. We're
3 contending that he's in violation of the Conditional
4 Use Permit as approved by this board.

5 MR. MALONE: Mr. Noffsinger, if I
6 understand you're saying that the site plan is
7 essentially the same as a preliminary development plan
8 and that becomes an expressed condition of the
9 Conditional Use Permit even though it's not stated
10 that way; is that correct?

11 CHAIRMAN: You are correct.

12 MR. NOFFSINGER: Except I would add that
13 it's more in the form of a final development plan as
14 opposed to a preliminary plan. It is a final
15 development plan that shows how you are going to
16 develop that property. It's not in detail as you
17 would see a final development plan, but the way the
18 property is going to be developed and the character of
19 that property. The essential part of the application
20 for the Conditional Use Permit is the site plan. From
21 that it generates comments from the public, from
22 adjoining property owners, and it gives this board the
23 idea and they have an understanding as to how the
24 property is going to develop and then they make their
25 decision to approve or to deny or modify the

1 Conditional Use Permit based upon the application that
2 you've submitted and they have an opportunity to add
3 conditions in addition to what's shown in the
4 application.

5 Now, Stewart, you may want to speak to
6 that if I stated it incorrect.

7 MR. ELLIOTT: No. I agree with what
8 you've said.

9 MR. NOFFSINGER: That's the reason for a
10 Conditional Use Permit.

11 CHAIRMAN: Mr. Malone, all applications
12 come in for variances and Conditional Use Permits have
13 development plans or plans with them and we work off
14 them or refer to them. That's the reason I questioned
15 you on your statement that you varied from the
16 original plan which is improper.

17 MR. MALONE: Well, Mr. Chairman, again Mr.
18 West was not trying to circumvent the conditions as it
19 was set forth in the Conditional Use Permit.
20 Obviously, the parking in the rear was of no major
21 concern that was expressed and raised at the time
22 either by the Staff or by the neighbors or that would
23 have been made an expressed condition. We're not here
24 to debate whether or not the Staff is interpreting
25 correctly, but I think you'll have to agree, Mr.

1 Noffsinger, that the Conditional Use Article of the
2 Zoning Ordinance does not set forth in detail the
3 interpretation that's apparently the practice that's
4 been followed by the board in terms of the way that
5 the site plan is interpreted to be an expressed
6 condition. That it cannot be varied without coming
7 back for a modification of that Conditional Use
8 Permit. If that's been the practice of this board,
9 we're not going to challenge that. We're here to
10 comply with the Conditional Use Permit. We would ask
11 the board if that is the practice and interpretation
12 it's making of the Zoning Ordinance, that the
13 Conditional Use Permit be modified to allow off-site
14 or off-street vehicular use in the side of the
15 building rather than in the rear of the building, but
16 we would disagree that this should be a paved area.

17 I believe that Article 13 says that "All
18 zones except A-U do not have to be paved." If this
19 board procedurally wants to proceed in that way, we'll
20 be glad to comply with submitting another Conditional
21 Use Permit. We'd like to avoid having to do that. I
22 believe all the interested parties are here tonight
23 and I don't know procedurally whether or not you can
24 consider this based upon the facts that have been
25 stated and the representation that the applicant make.

1 We could ask for a modification of the Conditional Use
2 Permit to allow the parking to be placed in the front
3 and that the gravel area that's there be retained as
4 parking area and that any other requirements of a
5 vehicle use area in an A-U zone and any landscaping
6 requirement to be complied with.

7 CHAIRMAN: One question of our counsel.
8 They'd have to submit an application be
9 advertised before we can consider any changes?

10 MR. ELLIOTT: That would be my opinion.
11 They'd have to do that. They'd have to come before
12 this board by way of application. I think it joins
13 residential which requires public notice to the
14 adjacent property owners.

15 MR. NOFFSINGER: All adjoining property
16 owners would be notified.

17 MR. ELLIOTT: So, yes, it would have to
18 come by way of application before the board.

19 CHAIRMAN: What we need to consider right
20 now is whether the board upholds Mr. Mischel's
21 Administrative Review, whether he was correct in his
22 assessing of the situation.

23 Any board member have any questions?

24 (NO RESPONSE)

25 CHAIRMAN: Mr. West you want to add

1 anything?

2 MR. WEST: No.

3 CHAIRMAN: Staff have anything else to
4 add?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: Any board members have any
7 questions?

8 (NO RESPONSE)

9 CHAIRMAN: Mr. Malone, you have anything
10 else to add?

11 MR. MALONE: No, I don't, Mr. Chairman.

12 CHAIRMAN: Does anyone else in the
13 audience wish to speak on the item?

14 MR. McPHERSON: Yes.

15 CHAIRMAN: Come forward, sir. State your
16 name for the record and be sworn in, please.

17 MR. McPHERSON: I'm Virgil McPherson. I
18 live at 2909 Pleasant Heights Lane.

19 (MR. McPHERSON SWORN BY ATTORNEY.)

20 MR. McPHERSON: My complaint, I was the
21 one that complained. I hope Mr. West don't get mad at
22 me. I'd like to have him as a neighbor.

23 Two years in a row I've complained about
24 grass, leaves. He hauls his trash and leaves up on
25 that property next to me. Year before last there was

1 smoke going day and night up there where he was
2 burning and nobody attending it. This year it was the
3 same thing. He cleaned it up last year and then this
4 year same thing happen again. He just dumping his
5 grass and leaves that he gets up there on that
6 property and that's not a commercial property. That's
7 a private lane coming up through there and it can't be
8 used as a commercial driveway.

9 CHAIRMAN: Anything else you want to add?

10 MR. McPHERSON: No.

11 CHAIRMAN: Thank you, sir.

12 Anyone else have any comments, pro or con?

13 (NO RESPONSE)

14 MR. MALONE: Mr. Chairman, may we respond
15 to that?

16 CHAIRMAN: Yes, sir, briefly.

17 MR. MALONE: Tonight was the first time
18 that we were aware that Mr. McPherson who if you look
19 at the site plan I believe lives right at the back of
20 the property on the I guess it would be the north side
21 of the private drive. After discussing his complaint
22 tonight, because I understand he has no concern or
23 complaint about the fact that the parking is in the
24 front rather than the rear because if anything that
25 puts the parking further away from him than it was

1 originally proposed. His concern has to do with, I
2 believe, an incident where there was some brush that
3 had been cleared off by Mr. West on the rear of the
4 area which at one time was being considered as the
5 home site. I believe he did burn some brush there.
6 He acknowledge that there was a complaint filed and he
7 responded to that when someone from the city came out
8 to investigate that. He can speak to that again
9 tonight.

10 As far as the area that he referred to as
11 dumping, I believe that that is refers to as a low
12 spot on the lot that he had been using to try to fill
13 up with dirt and other materials. So I'd be glad to
14 let Mr. West respond to that. He certainly wants to
15 be a good neighbor. Again, he's going to comply with
16 the ordinances in terms of that this is not being used
17 as a commercial dump. He takes most of his trimmings
18 and cuttings from his lawn maintenance to the
19 landfill. I think he can tell you how much his
20 expenses are for that. I'll be glad to let Mr. West
21 respond to that if this board wants to consider that;
22 although, I don't think that issue is before the
23 board.

24 CHAIRMAN: I don't think that issue is
25 pertaining to the Administrative Appeal.

1 What's the board's pleasure on upholding
2 or how you want to rule on the Administrative Appeal?

3 MS. DIXON: Mr. Chairman, I move to
4 support the review of our Staff and to deny the
5 appeal.

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

8 MR. MILLER: Second.

9 CHAIRMAN: A motion has been made and a
10 second. Any other discussion or comments from the
11 board?

12 (NO RESPONSE)

13 MR. MALONE: Excuse me, Mr. Chairman.
14 Could you repeat the motion again?

15 CHAIRMAN: Motion has been made to uphold
16 the Staff's review and deny the appeal of his
17 decision, support his decision. Okay?

18 MR. MALONE: Thank you.

19 CHAIRMAN: Any other comments?

20 (NO RESPONSE)

21 CHAIRMAN: If not all in favor of
22 upholding the Staff's review raise your right hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries unanimously.

25 MR. MALONE: Mr. Chairman, may I have one

1 point of clarification?

2 CHAIRMAN: Yes, sir.

3 MR. MALONE: In the interim between
4 tonight and when Mr. West would proceed with an
5 application for a modified Conditional Use Permit, am
6 I correct that he can continue to use that area that's
7 now being used for parking? I know this decision
8 wouldn't become final for 30 days. We don't at this
9 time want to take issue with that in terms of any
10 further appeal. We want to address this straight
11 forward by filing an application. So we would ask the
12 board that he be permitted to continue to use that on
13 a temporary basis until we can file an application for
14 an amended Conditional Use Permit.

15 MR. ELLIOTT: Thirty 30 days is the appeal
16 time so this decision doesn't become final until the
17 appeal time runs out.

18 CHAIRMAN: He'll have that 30 days.

19 MR. ELLIOTT: It'll be 30 days.

20 MR. MALONE: Fine. We just want to
21 clarify that.

22 CHAIRMAN: Thank you.

23 Any other items of business come before
24 the board?

25 MR. NOFFSINGER: No, sir

1 CHAIRMAN: Hearing none entertain a motion
2 to adjourn.

3 MS. MASON: Motion to adjourn.

4 MR. MILLER: Second.

5 CHAIRMAN: All in favor raise your right
6 hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Meeting adjourned. Thank you.

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1 STATE OF KENTUCKY)
) SS: REPORTER'S CERTIFICATE
2 COUNTY OF DAVIESS)

3 I, LYNNETTE KOLLER, Notary Public in and for
4 the State of Kentucky at Large, do hereby certify that
5 the foregoing Owensboro Metropolitan Board of
6 Adjustment meeting was held at the time and place as
7 stated in the caption to the foregoing proceedings;
8 that each person commenting on issues under discussion
9 were duly sworn before testifying; that the Board
10 members present were as stated in the caption; that
11 said proceedings were taken by me in stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 54 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this
17 the 15th day of January, 2001.

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25

LYNNETTE KOLLER, NOTARY PUBLIC
OHIO VALLEY REPORTING SERVICE
202 WEST THIRD STREET, SUITE 2
OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES:
23 DECEMBER 19, 2002

24 COUNTY OF RESIDENCE:
25 DAVIESS COUNTY, KENTUCKY