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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

DECEMBER 2, 2004

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, December 2, 2004, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

\* \* \* \* \*

CHAIRMAN: Call the meeting to order.

Invite each one of you, if you so desire. We start the meeting with a prayer and pledge of allegiance. If you all so desire, we'd appreciate you joining us.

Marty Warren will have the prayer this evening.

(PRAYER AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Want to welcome all of you to the Owensboro Metropolitan Board of Adjustment this evening.

1                   Each one of you that have anything to  
2 bring up to any item, please come to the speakers on  
3 each one of the podiums. Be sworn in by the attorney  
4 so we get it recorded on the record.

5                   Everybody has a choice to express their  
6 opinions, until we start listening to the same thing  
7 over and over. Then we'll call you out of order.

8                   With this we'll proceed with the first  
9 item this evening which is consideration of the  
10 minutes of the November meeting. They're on record  
11 and filed downstairs at the office. I don't think  
12 we've found anything in them to be added on to them.

13                   MR. NOFFSINGER: No, sir.

14                   CHAIRMAN: With that I'll entertain a  
15 motion to dispose of the minutes of the meeting.

16                   MR. MILLER: Motion to approve the  
17 minutes.

18                   CHAIRMAN: Is there a second?

19                   MS. MASON: Second.

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

22                   (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23                   CHAIRMAN: Motion carries.

24                   Next item, please.

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CONDITIONAL USE PERMITS

ITEM 2

418, 420, 422 East Third Street, in a B-2 zone  
Consider request for a Conditional Use Permit in  
order to operate a rehabilitation facility on the  
property to house seven residents.  
Reference: Zoning Ordinance, Article 8,  
Section 8.2 C1  
Applicant: Owensboro Christian Church, Inc., Kenny  
and Susan McPherson

MR. NOFFSINGER: Mr. Chairman, the  
Planning Staff has reviewed this application. Found  
the application to be in order. The applicant has  
stated that there will be three residents located in  
the facility at 418 and 420 East Third Street and  
there will be four men living in the home at 422 East  
Third Street. There are three addresses at this  
location; however, one of the homes has two addresses.  
It is likely a duplex, but the entire unit will house  
a total of three men. With that it's ready for your  
consideration.

CHAIRMAN: Do we have any opposition in  
the office?

MR. NOFFSINGER: I don't have anything of  
record, no, sir.

CHAIRMAN: Is there anyone that wants to  
speak in opposition to this?

AUDIENCE: Yes.

1                   CHAIRMAN: With that we'll go ahead and  
2 let them start and then you can bring your oppositions  
3 later on.

4                   State your name for the record.

5                   MR. LAMAR: I'm David Lamar. I'm the  
6 attorney for Owensboro Christian Church.

7                   (MR. DAVID LAMAR SWORN BY ATTORNEY.)

8                   MR. LAMAR: With me tonight is David  
9 Mathews who is managing the program, operates the  
10 program. Also are three residents who have  
11 successfully completed the program. Then I have John  
12 Hitchell who sits here and David Simpson who are  
13 elders on the church board.

14                   The first thing I would like to say is ten  
15 years ago we came before this board and asked for  
16 permission to start this program. It was granted. I  
17 told you at that time that I think that Owensboro  
18 Christian would operate a program that you would be  
19 proud of, that the city would be proud of. I think we  
20 have done that. David Mathews can speak in detail  
21 about what the program does and the fact that there  
22 have been absolutely no problems with the program  
23 whatsoever. I think it is a fact that the police have  
24 never ever even once been called to the facilities.  
25 They run a real tight shift.

1 I'd just like to introduce David Mathews  
2 to you. He can take it from there.

3 MR. MATHEWS: I'm David Mathews.

4 (MR. DAVID MATHEWS SWORN BY ATTORNEY.)

5 MR. MATHEWS: I'm David Mathews. I'm the  
6 program director at New Horizons. It's a ministry of  
7 Owensboro Christian Church.

8 We opened in December of 1994 after being  
9 approved by this board. We house men who come out of  
10 drug and alcohol treatment in a long-term housing  
11 plan. They learn how to be husbands, and fathers, and  
12 sons, and contributing citizens again rather than law  
13 breakers and dead beat non-child support men.

14 These guys come here and they learn how to  
15 get up and go to work every day. They learn how to  
16 pay bills. They learn how to do things that other  
17 people take for granted. These guys have to learn to  
18 do that without alcohol and drugs on a daily basis.

19 It's a disease that a lot of people turn  
20 their head the other way until it affects them  
21 indirectly or directly. We've had a major impact on  
22 this community in many, many families, areas. I could  
23 have filled this room tonight with parents, wives,  
24 mothers who have been impacted by these men.

25 We have been located there for ten years.

1 Our facility is upgrade as far as the community goes.  
2 We have never had a complaint from the first neighbor.  
3 We are staffed 24 hours a day. It's a very rigid  
4 program. There is no noise whatsoever in and out.  
5 The judges all work with our program. Probation and  
6 parole works with our program. In some ways we're  
7 being lumped in with some other programs that have  
8 come around on the block. We were not affiliated with  
9 any other program whatsoever.

10 We're only able to house nine residents at  
11 320 Clay where we're at now. If we get these other  
12 two residences, we'll be able to house seven more. It  
13 allows us to treat 16 men instead of just 9. We stay  
14 on a waiting list all the time people wanting to get  
15 in. We're well-known in Frankfort at the Department  
16 of Substance Abuse. We're well-known throughout the  
17 state as a reputable program. I would like very much  
18 for us to have the opportunity to help more people.

19 CHAIRMAN: Any board member have any  
20 questions of Mr. Mathews?

21 MR. MILLER: Mr. Chairman, I have a  
22 question.

23 Mr. Mathews, you stated that you're  
24 staffed 24 hours a day. Could you explain what you  
25 mean by that?

1                   MR. MATHEWS: I have staff on duty that is  
2 there, paid staff that comes in and work 8 or 10 or 12  
3 hour shifts. There's somebody there all through the  
4 night. Somebody there during the day in an office who  
5 supervises the other residents to be sure they're in  
6 bed when they're suppose to be, they're up and gone to  
7 work when they're suppose to be, they're not doing  
8 things they're not suppose to be doing.

9                   MR. MILLER: So are they on site? Is that  
10 what you're saying? There's someone on site 24 hours  
11 a day 7 days a week?

12                   MR. MATHEWS: Yes, sir. And the other  
13 facilities in that neighborhood are not run that way  
14 at all.

15                   Did you want to hear from a resident who  
16 did complete?

17                   MR. NOFFSINGER: Excuse me. I'm somewhat  
18 confused.

19                   When Mr. Miller mentions on site, meaning  
20 you will have someone at 418, 420, 422 Clay Street 24  
21 hours a day or you will have someone on the clock 24  
22 hours a day at 320? Their office is at 320 Clay  
23 Street at New Horizons.

24                   MR. MATHEWS: I understand the confusion.  
25 They will be on the clock and on site at 320 Clay

1 Street. It adjoins with those other properties. So  
2 while they're on duty on site at 320 Clay Street, they  
3 will also be in supervision of those adjoining  
4 properties.

5 MR. NOFFSINGER: That's the way I  
6 understood it, but I wasn't sure.

7 MR. MATHEWS: That wasn't clear.

8 MR. MILLER: Appreciate the clarification.

9 CHAIRMAN: Any other questions from the  
10 board members at this time?

11 (NO RESPONSE)

12 MR. ELLIOTT: State your name, please.

13 MR. HUNT: My name is Chris Hunt.

14 (MR. CHRIST HUNT SWORN BY ATTORNEY.)

15 MR. HUNT: In April of 1995 I moved to  
16 Owensboro. Came to New Horizons as a resident. Since  
17 then I have been employed by New Horizons for the last  
18 nine years. I've been clean and sober for ten years.

19 I work for Daviess County Schools. I  
20 teach substance abuse awareness. I teach life skill  
21 awareness in all the middle and high schools. I have  
22 a family for the first time.

23 When I first came to New Horizons I was  
24 about \$20,000 in debt in child support. I caught that  
25 up while I was at New Horizons because I was taught



1       how to get a job, how to take care of my  
2       responsibilities.

3                     My children are a big part of my life.  
4       I'm a grandfather now.  Recently my daughter just  
5       moved up here.

6                     I can go on and on and talk about what New  
7       Horizons has done for me, but the best thing it has  
8       done is taught me how to be a responsible father.  I  
9       never knew that until I arrived here.

10                    Since then not only do I work in the  
11       Daviness County Schools now, I've spent five years  
12       working for Owensboro City schools doing the same  
13       thing.  Teaching life skills, substance abuse  
14       awareness in middle and high schools.  I'm very active  
15       in the community teaching substance abuse awareness,  
16       doing motivational speaking.  If it was not for my  
17       stay at New Horizons, not only would I not have the  
18       opportunity to have my family, but I wouldn't have had  
19       the opportunity to impact the lives of the youth and  
20       the families since I've been in Owensboro.

21                    I'd just like for you to consider us.

22                    CHAIRMAN:  Anyone have any questions of  
23       the gentleman at this time?

24                    (NO RESPONSE)

25                    MR. HUNT:  Thank you.

1 MR. ELLIOTT: State your name, please.

2 MR. CLARK: My name is Steve Clark.

3 (MR. STEVE CLARK SWORN BY ATTORNEY.)

4 MR. CLARK: I moved in to New Horizon in  
5 2000. I lived there for approximately 16 months. My  
6 story is a whole lot like Chris'.

7 Methamphetamine had pretty much destroyed  
8 my life. I didn't know how to stay off it. I learned  
9 how to stay clean and sober there and learned how to  
10 be a member of the community, a good employee, and a  
11 son to my mother, a brother to my sisters. I just  
12 learned how to live basically.

13 When I moved there I was deeply in debt.  
14 Had been unemployed for years, except money that I  
15 got, you know, illegally. I learned how to be a good  
16 employee there and I've been employed now for four  
17 years. I'm also on staff at New Horizons. Have been  
18 there for three years. I can't say enough about what  
19 it's done for me. If it hadn't been for New Horizons  
20 I would not be here now. I'd be in jail or dead for  
21 sure. I'd like the opportunity to help more people  
22 with an expansion of New Horizons. Thank you.

23 CHAIRMAN: Any boards member have any  
24 questions?

25 (NO RESPONSE)

1 MR. LAMAR: That's all we have, sir.

2 CHAIRMAN: Thank you.

3 The opposition have any questions or  
4 statements, please.

5 MR. ELLIOTT: State your name, please.

6 MR. MULLIGAN: My name is Ann Mulligan.

7 (MS. ANN MULLIGAN SWORN BY ATTORNEY.)

8 MS. MULLIGAN: I have a hand out. This is  
9 just an overview of the block in question.

10 I want to tell you my story now.

11 Fifteen years ago I was driving to my  
12 mother's home on the east end of town down Fourth  
13 Street. They had tore down every house on Fourth  
14 Street and there was a condemnation notice on my  
15 grandmother's old house on the corner of Fourth and  
16 Clay. I thought, what a crying shame. You go off the  
17 bridge, you turn down Fourth and there's nothing but  
18 rundown and dilapidated houses.

19 At the time we stepped in and bought the  
20 house. Got it up enough to code to keep it from being  
21 torn down. Over the years we've fought meth problems,  
22 prostitutes, transvestites, you name it. I hope you  
23 all remember what Fourth Street and south of Fourth  
24 Street was like years ago.

25 Seven years ago I almost gave up and just

1 said, well, I'm moving out too. Then the city stepped  
2 in and developed these neighborhood alliances. I got  
3 involved and I realized that there was a lot of other  
4 home owners in that immediate area that was scared to  
5 get out of their house and had the same concerns. For  
6 some reason that neighborhood was just tugging at my  
7 heart's string. I didn't have the heart to leave it.  
8 So the neighborhood alliances were really supportive.

9 Kathy Shouse and Bob Bowerly and people  
10 that were on the original board would actually go to  
11 the drug houses and Kathy would confront the people  
12 herself. Then finally we got the police to align with  
13 us and steer us in the right direction of how to  
14 report things and handle things.

15 I'm all for the men in recovery. Our  
16 neighborhood alliance is an alliance in recovery.  
17 It's just amazing what we've been through. Now we're  
18 going in a good direction.

19 I just wanted to give you this handout  
20 more or less to see the block. I'm taking up a very  
21 small area of the block that we're talking about. Do  
22 you understand my drawing here?

23 CHAIRMAN: Yes, ma'am.

24 MS. MULLIGAN: Lighthouse Recovery is  
25 orange. New Horizons' current property is in blue.

1 The McPherson's property that New Horizons is  
2 proposing is buy is stripped in blue. I just wanted  
3 to show you how much of this particular block this  
4 will take up.

5 Two and a half years ago the city, we were  
6 really squeaking, you know, squeaking really good with  
7 the grease and apparently we were really squeaking  
8 because the City of Owensboro came to Old Owensboro  
9 Neighborhood Alliance and asked for people, which I'm  
10 one of now. I'm on the board of the Old Germantown  
11 Redevelopment.

12 The thinking was that if you bring single  
13 families back downtown and do these beautification  
14 products, that all these projects that - - we got the  
15 old and plant seeds for new things to come in. It has  
16 really turned around.

17 I don't know if you've been downtown. In  
18 the last 18 months I can't hardly remember what it  
19 looked like before, but it was really sad. The drug  
20 problems were unbelievable.

21 We are on the same, we're in the same  
22 church. I guess just different pew. The recovery  
23 houses, I'm afraid they're just looking at their small  
24 picture whereas I'm really trying to - - I'm afraid  
25 they can't see the forest through the trees. We're in

1 a recovery process ourself.

2 With this Germantown Redevelopment  
3 bringing people downtown really it's bringing the  
4 property values up. I think if the McPherson's just  
5 kind of held tight for awhile they could sell their  
6 property.

7 Let me show you - - my house was being  
8 condemned. This is my house now. It was on the front  
9 page of the Lifestyle of the Messenger-Inquirer. I  
10 don't have very much money in this house because I was  
11 able to buy it really cheap. It's got thousands of  
12 dollars worth of sweat equity in it. I was cured of a  
13 brain tumor and if I can run a paint brush, anybody  
14 can run a paint brush. I'm saying that this is a  
15 great opportunity for people to get into a home  
16 cheaply.

17 This duplex that the McPhersons own would  
18 be a great owner duplex. They could have their  
19 in-laws next door. The corner property could - - my  
20 lot is 36 by 50. Nobody in Owensboro has a lot 36 by  
21 50. The corner property the McPhersons own has a  
22 beautiful yard. I don't have a yard. I'm saying that  
23 this neighborhood is changing for the better. We're  
24 really on a roll. I would just hate to see so much of  
25 this block being consumed by drug rehab when we're

1       trying to rehab. We've been there and done that on  
2       the drug thing. We're on the same page too. We're  
3       trying to bring things up. I'm afraid this would be  
4       detrimental. It's a density issue. The crime, the  
5       prostitutes. You couldn't believe the problems we  
6       have faced in this neighborhood. One of the things we  
7       realized, the Chamber of Commerce said, don't you know  
8       that your precinct are the lowest voter turn out. So  
9       when we started going door to door we realized the  
10      reason the voter turn out was so low is people moved  
11      all the time. They weren't ever at the same address.

12                        So we'd really like to encourage people to  
13      move downtown. Like tomorrow night we're going to the  
14      trolley hop. I just have to go out my front door and  
15      get on the trolley. I can walk to church. Dollar  
16      General Store has built a building. That shows that -  
17      - they're a publicly traded company. They wouldn't  
18      come downtown if they didn't think that things were on  
19      the upswing.

20                        That's really all I have. I just don't  
21      want to be run out of my own neighborhood. It's a  
22      cool little neighborhood and I really want to help  
23      encourage people to join the neighborhood alliance and  
24      get back downtown. That's all I have.

25                        CHAIRMAN: Any board member have any

1 questions of Ms. Mulligan?

2 MR. MILLER: Yes, I have a question.

3 Ms. Mulligan, some of the unlawful events  
4 that have taken place over the years that you  
5 mentioned, can you contribute any of those directly to  
6 the New Horizons or Lighthouse Recovery program to  
7 those houses?

8 MS. MULLIGAN: No. I'm not complaining  
9 about their houses. I'm just saying that this  
10 neighborhood was - - we are going through a recovery  
11 process. To help us in that recovery process we  
12 really need you guys to help us keep the density down  
13 in these neighborhoods. Through the Neighborhood  
14 Alliance we've really been encouraging single family  
15 ownership. You need to drive through. It's just  
16 amazing these new houses that are being built.

17 I feel like I would be a hypocrite if on  
18 one side of all these streets - - here I'm saying,  
19 single-family, single-family, low density, low  
20 density, and then right behind me, you know, it'd be  
21 higher density. That's not what - - there's a fine  
22 line in this neighborhood. We're on the upswing now.  
23 It wouldn't take much to go back down, but the city is  
24 bearing utilities with some private investment money  
25 on Second going all the way up to Clay. Putting



1 decorative lighting and the decorative sidewalks all  
2 the way down through Clay Street, the next block down  
3 from this.

4 Keith Free with this Germantown  
5 Redevelopment has hundreds of thousands of dollars in  
6 federal money that he's secured. Private investments  
7 is going on all around here. To me all these  
8 investments are going on. The whole is just a lot  
9 bigger picture than just this one area that would be  
10 affected.

11 MR. DYSINGER: Mr. Chairman, may I ask a  
12 question?

13 So your objection isn't the fact that it's  
14 a rehabilitation center as much as it's a density  
15 issue? The amount of people and not necessarily the  
16 reason why they're there?

17 MS. MULLIGAN: My objection is to drug  
18 rehab facilities taking up this much of the block. I  
19 think it would reach a point - - I wish you'd tell me.  
20 It looks like to me there would be a point in time  
21 when my residential area would quit looking like a  
22 resident and look more like rehab. Instead of kids  
23 walking down the street you have exit signs and  
24 emergency exits where they've been brought up to code.

25 CHAIRMAN: Any other board members have

1 any comments or questions of her?

2 MR. NOFFSINGER: I just have an  
3 observation, if I might. Just to remind the board and  
4 Ms. Mulligan.

5 This property is zoned B-2 Central  
6 Business. It could be used for commercial activity or  
7 it could become a parking lot as what you have at  
8 Third and Crittenden Street, which is a very  
9 attractive parking lot. However, this board has heard  
10 from time to time again that parking lots adjoining  
11 residential areas are generally not that attractive  
12 because it brings people to congregate and you have  
13 activities that normally residential activities  
14 wouldn't like to see next door, but the property is  
15 zoned B-2 Central Business.

16 This even though it's classified as a  
17 rehab facility and there will be rehab work going on  
18 here and counseling, this is still structured as a  
19 residence. If you have a home that has four residents  
20 and then a home that has three, that's not out of line  
21 with the density you have in most residential  
22 structures or many residential structures. Any more  
23 with the family, what average family size of 2.1, 2.3  
24 occupants per household, here we're looking at 4 and  
25 3; although, in my household there's four. This may

1 be in terms of looking at the uses in that  
2 neighborhood and promoting a residential use. This  
3 might be more attractive than if you have a commercial  
4 business there or another parking lot. I certainly  
5 understand your concerns in terms of concentration of  
6 this type of facility, but we do not have anything in  
7 terms of a regulation or anything regulatory we can go  
8 on to take a look at concentration of types of  
9 facilities and say, no, this is too many or we need  
10 more in this area. There's not anything like that  
11 that we have to go on.

12 MS. MULLIGAN: Once a house is a rehab  
13 facility, is it possible to be turned back into a  
14 single-family residence without a lot of - -

15 CHAIRMAN: If somebody buys it, yes.

16 MS. MULLIGAN: Say New Horizons gets a  
17 conditional use permit, is that transferable?

18 CHAIRMAN: No, ma'am.

19 MR. NOFFSINGER: Well, except it is  
20 transferable so long as they abide by the same  
21 conditions and by the same information that's  
22 submitted in the application. In other words,  
23 everything they say they're going to do in this  
24 application, they have to do or anyone else. So it  
25 can be transferable. The conditional use permit, in

1 this particular case, and Mr. Elliott, correct me if  
2 I'm wrong, is required because these residents, some  
3 of them will be court ordered. If these residents  
4 were not court ordered, then a conditional use permit  
5 would not be required.

6 MR. ELLIOTT: You're right. I don't know  
7 if all the residents are court ordered.

8 MR. NOFFSINGER: Some of these residents  
9 are court ordered. Therefore, a conditional use  
10 permit is required, but if they weren't, if there  
11 weren't any of the residents, occupants court ordered,  
12 then a conditional use permit likely would not be  
13 required.

14 MS. MULLIGAN: I just wanted to bring you  
15 up to speed where we were at because the other day the  
16 lady at the Messenger-Inquirer knocked on my door for  
17 an interview. She said, it would be a lot easier for  
18 them to come down here where there's already drug  
19 rehab houses versus going into a residential  
20 neighborhood. Then I thought, this is a residential  
21 neighborhood. I thought, well, surely Owensboro  
22 hadn't already started thinking along the lines that  
23 we're not a residential area.

24 CHAIRMAN: Do you have anything else new  
25 to add at this time?

1 MS. MULLIGAN: No.

2 CHAIRMAN: Does anyone else have any  
3 opposition or comment to bring in at this time,  
4 please?

5 (NO RESPONSE)

6 CHAIRMAN: Any board members have  
7 anything?

8 MS. MASON: I have a question for the  
9 applicant.

10 CHAIRMAN: Come back, please.

11 MS. MASON: Are you all planning to do any  
12 remodeling or any fixing up of the homes?

13 MR. MATHEWS: We will definitely fix up  
14 the exterior. When we took 320 Clay Street, we did  
15 the exterior and it looked better in the front and  
16 back than it did when we got it. With these two  
17 properties we will definitely upgrade the exterior and  
18 probably tear out most of the interior in both  
19 residences and rebuild in those.

20 MS. MASON: I didn't go, of course,  
21 inside, but I did drive by the outside.

22 MR. MATHEWS: Sure. Definitely. If you  
23 look at 320 Clay Street, you will notice that it looks  
24 as good or better than most properties in the block,  
25 except for this lady's. Hers is definitely the nicest

1 looking property in the area, but other than hers we  
2 look as good or better than any other properties in  
3 the area.

4 CHAIRMAN: Is there anyone for or against  
5 have anything else to add at this time?

6 Come forward, please. State your name at  
7 the podium and be sworn in, please.

8 MR. ELLIOTT: State your name, please.

9 MS. CASSIDY: Violet Cassidy.

10 (MS. VIOLET CASSIDY SWORN BY ATTORNEY.)

11 MS. CASSIDY: I live in the neighborhood  
12 also. My apology. I thought this was suppose to  
13 start at 6:30.

14 We have the motel across the street. We  
15 have the Dollar Store and just the immediate traffic.  
16 The addition of another place, most people in there, I  
17 think the letter said seven or eight, it's going to  
18 make our streets quite busy. I don't get home until  
19 about 5:30. I'm not really interested in getting home  
20 and having additional people wondering around.

21 CHAIRMAN: I didn't understand your name.

22 MS. CASSIDY: Cassidy. Violet Cassidy.

23 CHAIRMAN: You're on 401?

24 MS. CASSIDY: I'm at 331 Crittenden.

25 CHAIRMAN: Thank you. Appreciate that.

1 MS. CASSIDY: Thank you.

2 CHAIRMAN: Anybody else have anything new  
3 for or against the application at this time?

4 (NO RESPONSE)

5 CHAIRMAN: Staff.

6 MR. NOFFSINGER: Mr. Chairman, if this  
7 application is approved, it should be approved with  
8 the condition that a development plan be submitted to  
9 planning office for approval because the parking for  
10 422 will be on 418 and 420 East Third Street. So they  
11 will have to tie the parking down by the development  
12 plan for those three or actually two facilities by  
13 development plan.

14 CHAIRMAN: At this time does any other  
15 board member or staff have anything else to add?

16 (NO RESPONSE)

17 CHAIRMAN: Hearing none the chair  
18 entertain a motion to dispose for or against the item.

19 MR. PEDLEY: Mr. Chairman, I make a motion  
20 for approval based on findings it is compatible with  
21 the activities in the neighborhood. It will not have  
22 an adverse influence of the neighborhood. It meets  
23 the requirements of the zoning ordinance; with the  
24 condition that a development plan be submitted to the  
25 Planning Staff.

1                   CHAIRMAN: Is there a second to the  
2 motion?

3                   MR. DYSINGER: Second.

4                   CHAIRMAN: Is there any other questions or  
5 comments from the board members or the staff?

6                   MR. DYSINGER: I have a question, Mr.  
7 Chairman. Does that condition have to state for  
8 approval or is that inherent into the submission of a  
9 development plan?

10                  MR. NOFFSINGER: It's fine.

11                  CHAIRMAN: Thank you.

12                  Does the applicant understand the  
13 conditions?

14                  MR. LAMAR: Yes, we do. We were  
15 anticipating that would be a requirement and that's no  
16 problem.

17                  CHAIRMAN: Thank you, sir.

18                  Hearing no other comments or questions,  
19 all in favor raise your right hand.

20                  (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21                  CHAIRMAN: Motion carries.

22                  Next item, please.

23                  ITEM 3

24                  710, 714 East Third Street, in an R-4DT zone  
25 Consider request for a Conditional Use Permit in  
order to operate a type 1 child care center for 27 to



1 28 children ages 6 weeks to 12 years old.  
Reference: Zoning Ordinance, Article 8, Section 8.2B3  
2 Applicant: Duane C. Ward, III and Bridgett Ward,  
Owensboro Grain Company, LLC  
3

4 MR. NOFFSINGER: Mr. Chairman, this  
5 application has been reviewed by the Planning Staff.  
6 It's found to be in order.

7 This application came before the Board of  
8 Adjustment back some time ago; however, the board was  
9 not in a position to approve the permit because there  
10 was no on-site parking available at that time and what  
11 was available was limited and there was a shared  
12 driveway between this property and the adjoining  
13 property owned by Owensboro Grain.

14 The applicant has negotiated with the  
15 co-applicant, Owensboro Grain, to lease the adjoining  
16 property and create a parking area and drive off of  
17 Third Street to the property. With that it's ready  
18 for your consideration. This too, if approved, should  
19 be subject to a development plan to be submitted to  
20 the OMPC for consideration because we do have a leased  
21 area that will tie that leased area up and join with  
22 this day care property so that they have parking for  
23 many, many years.

24 CHAIRMAN: Was there any comments come to  
25 the office at this time?

1 MR. NOFFSINGER: No, sir.

2 CHAIRMAN: Is anyone wishing to speak in  
3 opposition at this time?

4 (NO RESPONSE)

5 CHAIRMAN: Does the applicant want to come  
6 forward and present anything at this time?

7 State your name?

8 MR. WARD: Duane Ward.

9 (MR. DUANE WARD SWORN BY ATTORNEY.)

10 MR. WARD: You said something about the  
11 development plan. I believe we're already in the  
12 works for that. We also have the contract signed with  
13 Owensboro Grain so it will be a contract that states  
14 that we can use the property as long as we have a day  
15 care facility there. So we are already taking care of  
16 all the loose ends. That's the only thing I have. I  
17 just wanted to let you know that we are working on  
18 that already.

19 MS. MASON: I have a question.

20 What are your hours and days of operation?

21 MR. WARD: We're going to be open Monday  
22 through Friday and we're planning on being open from  
23 six in the morning to midnight. We're going to run  
24 two shifts is the plan.

25 MR. NOFFSINGER: You wish to make that a

1 part of your application in this consideration be  
2 based upon those days and hours of operation?

3 MR. WARD: Yes. It should be on there, I  
4 believe.

5 CHAIRMAN: Any board members have any  
6 question of the applicant?

7 MR. MILLER: Gary, just want to make sure  
8 the applicant understand that if those hours are read  
9 in then, is it not true, that if he fails to continue  
10 operation during those hours then the conditional use,  
11 if approved, could be - -

12 MR. NOFFSINGER: They would have to come  
13 back before this board.

14 MS. DIXON: It's in there.

15 CHAIRMAN: You understand if you change 6  
16 to 12 Monday through Friday and start on Saturday  
17 you'll have to come back and ask for another  
18 condition?

19 MR. WARD: Yes, we understand that.

20 CHAIRMAN: Just wanted to be sure.

21 MR. WARD: So if we do decide to do around  
22 the clock child care then we would need to approach  
23 you guys for a additional conditional use permit?

24 CHAIRMAN: Yes.

25 MR. WARD: At this time that's our plan,

1 to close at midnight. It could change depending on  
2 the demand.

3 CHAIRMAN: Any other questions?

4 (NO RESPONSE)

5 CHAIRMAN: Anybody else have anything to  
6 or against?

7 (NO RESPONSE)

8 CHAIRMAN: If not entertain a motion to  
9 dispose of the item.

10 MR. DYSINGER: Move to approve the  
11 Conditional Use Permit given that there appears to be  
12 no opposition and it's compatible with the master  
13 plan.

14 CHAIRMAN: Is there a second?

15 MS. MASON: Second.

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

18 (NO RESPONSE)

19 CHAIRMAN: You all understand everything?

20 MR. WARD: Yes.

21 CHAIRMAN: All in favor raise your right  
22 hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries.

25 Next item, please, sir.

1       ITEM 4

2       5141 Windy Hollow Road, in an A-R zone  
3       Consider request to amend a Conditional Use Permit  
4       to construct two buildings for the purpose of  
5       equipment storage at a maximum size of 60x80 feet.  
6       One building will also include an 800 square foot  
7       campground store and registration area.  
8       Reference: Zoning Ordinance, Article 8, Section 8.2K7  
9       Applicant: Sharon and Devon Castle

10                   MR. NOFFSINGER: Mr. Chairman, this  
11       application has been reviewed by the Planning Staff.  
12       Found to be in order and ready for consideration.

13                   CHAIRMAN: Any comments filed in the  
14       office?

15                   MR. NOFFSINGER: No, sir.

16                   CHAIRMAN: Is anyone wishing to object to  
17       this item?

18                   (NO RESPONSE)

19                   CHAIRMAN: The applicant have anything  
20       you'd like to bring forward at this time, please?

21                   State your name for the record, please.

22                   MS. CASTLE: Diane Castle.

23                   (MS. DIANE CASTLE SWORN BY ATTORNEY.)

24                   CHAIRMAN: I just wanted to let you know  
25       that we have been there about nine years. About four  
26       years we did put a new bathhouse in and we're slowly  
27       trying to make it nice out there. It already is nice,  
28       but just have a nice front entrance up there. It'd be

1 nice to have something so we could not have dirt floor  
2 to the garage. We appreciate to be able to do this  
3 hopefully. That's all I have.

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

6 (NO RESPONSE)

7 CHAIRMAN: Staff have any comment?  
8 Nothing else to add?

9 MR. NOFFSINGER: No, sir.

10 CHAIRMAN: Will entertain a motion to  
11 dispose of the item at this time, please.

12 MR. DYSINGER: Move to approve the  
13 conditional use permit given that there appears to be  
14 no opposition and appears to be compatible with the  
15 master plan.

16 CHAIRMAN: Is there a second?

17 MS. DIXON: Second.

18 CHAIRMAN: Motion been made and a second.  
19 Any other comments or questions from the board?

20 (NO RESPONSE)

21 CHAIRMAN: Staff have anything else to  
22 add?

23 MR. NOFFSINGER: No, sir.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion passes.

3 Next item, please.

4 -----

5 VARIANCES

6 ITEM 5

7 3784 Pleasant Ridge Lane, in an A-U zone  
8 Consider request for a Variance to reduce the front  
9 yard setback from 30 feet to 10 feet in order to place  
10 a manufactured home on the property.

11 Reference: Zoning Ordinance, Article 8,  
12 Section 8.5.2(c)

13 Applicant: Clayton Homes, Tina J. Mattingly.

14 MR. NOFFSINGER: Mr. Chairman, the  
15 Planning Staff has reviewed this application. It's  
16 found to be in order. It's ready for consideration.

17 We have found based upon our staff report  
18 that there are a number of residences in the area, in  
19 the rural growth area of Pleasant Ridge that do  
20 encroach upon the front building setback. These  
21 addresses noted by the Staff are 4094, 4110, 4124,  
22 4125 and 4133 Kentucky 764. There are no record of  
23 permits issued for these structures; however, it  
24 appears that many of these structures predate the  
25 adopted zoning ordinance. With that it's ready for  
your consideration.

CHAIRMAN: Any comments sent to the office  
for or against?

1 MR. NOFFSINGER: No, sir.

2 CHAIRMAN: Anyone wishing to speak in  
3 opposition of this item?

4 (NO RESPONSE)

5 CHAIRMAN: Does the applicant have  
6 anything he'd like to add at this time?

7 State your name, please.

8 MS. MATTINGLY: Tina Mattingly.

9 (MS. TINA MATTINGLY SWORN BY ATTORNEY.)

10 MS. MATTINGLY: I just wanted to say that  
11 we removed an old mobile home from this property. The  
12 new one is actually set back further from the road  
13 than the old one was by about 15 feet. As the  
14 application stated, there are many residences in that  
15 area and they're all just right on the road. Because  
16 of the way the land is set up, it would be very  
17 difficult to move this mobile home any other way to  
18 still fit on that property. I'm just asking for some  
19 consideration to be able to leave it like it is.

20 I talked to the neighbors and they don't  
21 really have a problem with it being there because the  
22 one that we removed was even closer to the road. They  
23 didn't express any problem with it. We would just  
24 like you to consider for us to leave it there.

25 MR. NOFFSINGER: Ms. Mattingly, what would



1 be the circumstances if you were to move the home back  
2 further away from the road? Could you do that the way  
3 the property lays?

4 MS. MATTINGLY: The way the property is  
5 made it gets more narrow as you get toward the back of  
6 the property. I'm afraid moving it back would put it  
7 too close on the sides to the other properties that  
8 are on each side because I have property on both sides  
9 that are owned by other home owners.

10 MR. NOFFSINGER: Where is the septic  
11 system located on your property?

12 MS. MATTINGLY: It's behind where the  
13 current mobile home will be sitting. Approximately 15  
14 feet, I guess, from the back of the mobile home.

15 MR. NOFFSINGER: So if you were to move  
16 this unit back further, you would be over your  
17 existing septic?

18 MS. MATTINGLY: Yes. We would have to  
19 move the septic tank also.

20 CHAIRMAN: Staff have anything else,  
21 questions?

22 MR. NOFFSINGER: No, sir.

23 CHAIRMAN: Board members have any  
24 questions or comments?

25 (NO RESPONSE)

1                   CHAIRMAN: Hearing nothing anyone else  
2                   have anything else to add on?

3                   (NO RESPONSE)

4                   CHAIRMAN: If not entertain a motion to  
5                   dispose of the item.

6                   MS. DIXON: Move to approve the variance  
7                   based upon findings that it will not adversely affect  
8                   the public health; will not alter the essential  
9                   character of the general vicinity; will not cause a  
10                  hazard or a nuisance to the public; will not allow  
11                  unreasonable circumvention of the requirements of the  
12                  zoning regulations.

13                  CHAIRMAN: Is there a second?

14                  MR. MILLER: Second.

15                  CHAIRMAN: Motion been made and second.  
16                  Staff have any other comments?

17                  MR. NOFFSINGER: No. She did a fine job  
18                  of describing it.

19                  CHAIRMAN: Any other board members have  
20                  any comments or questions at this time?

21                  (NO RESPONSE)

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

24                  (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25                  CHAIRMAN: Motion carries.

1 Next item, please.

2 ITEM 6

3 1741 Scherm Road, in a B-4 zone  
4 Consider request for a Variance to reduce the amount  
5 of interior landscaping on the property from the  
6 required 6,805 square feet to 5,700 square feet.  
7 Reference: Zoning Ordinance, Article 17,  
8 Section 17.32  
9 Applicant: Neel Properties, LLC

10 MR. NOFFSINGER: Mr. Chairman, Planning  
11 Staff has reviewed this application. Found the  
12 application to be in order.

13 The applicant is constructing a fueling  
14 station at this location in conjunction with the  
15 grocery store which already exist at the site, as many  
16 of you are aware. Most of you or all of you are  
17 aware. There are other shopping activities, retail  
18 sales and office uses located on the property.

19 Since they are making an addition to the  
20 property, we asked the applicant to take a look at  
21 ways to increase the amount of interior landscaping  
22 that will be located on this property. The applicant  
23 has done what the Staff feel is a fair job in trying  
24 to add additional interior landscaping.

25 The perimeter landscaping along Scherm  
Road will remain as it is. They will be required to  
provide three foot high continuous element and one  
tree per 40 feet. They will be adding interior

1 landscape islands, some trees, green space within the  
2 interior areas of the parking lot. That will be about  
3 1105 square feet shy of what's required.

4 Given the fact that they are making an  
5 effort to significantly increase the amount of  
6 landscaping in the area, and the fact that the  
7 existing fueling station is a permitted use in this  
8 zone, Staff feels that this variance warrants  
9 consideration by this board.

10 CHAIRMAN: Any comments filed with the  
11 office for or against?

12 MR. NOFFSINGER: No, sir.

13 CHAIRMAN: Is anyone wishing to speak in  
14 opposition this evening?

15 AUDIENCE: Yes.

16 CHAIRMAN: Sir, let the applicant come  
17 first and then you can state your opposition.

18 The applicant, state your name for the  
19 record, please.

20 MR. NEEL: Rick Neel.

21 (MR. RICK NEEL SWORN BY ATTORNEY.)

22 MR. NEEL: My name is Rick Neel. We are  
23 submitting for application for the fueling station for  
24 one of our applicants or tenants in the center which  
25 is Foodland. Gary pretty has pretty well taken care

1 of it.

2 CHAIRMAN: Any board member have any  
3 questions of the applicant?

4 (NO RESPONSE)

5 CHAIRMAN: Staff have any other comments?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: Those that are opposed come  
8 forward at this time, please.

9 State your name for the record.

10 MR. SIMS: My name is Steve Sims.

11 (MR. STEVE SIMS SWORN BY ATTORNEY.)

12 MR. SIMS: I would like to thank the  
13 chairman and the board for this opportunity.

14 I own and run a business at 1701 Scherm  
15 Road. We bought the business some five years ago.  
16 Understood that there were rules and regulations and  
17 variances and ordinances to be taken into  
18 consideration when we bought and maintain those as  
19 required.

20 All we are asking is that everyone else  
21 maintain a level playing field by your actions and  
22 with the response that you will have for this  
23 variance.

24 Again, I appreciate the time that you've  
25 put into this and the time that you've given to us to

1           come and speak before you. Thank you very much.

2                   CHAIRMAN: Are you east or west?

3                   MR. SIMS: I'm east of the shopping  
4           center.

5                   CHAIRMAN: Thank you.

6                   Any other questions of the gentleman  
7           speaking at this time from the board or staff?

8                   (NO RESPONSE)

9                   CHAIRMAN: Thank you.

10                  State your name, please.

11                  MR. EMMICK: Gary Emmick.

12                  (MR. GARY EMMICK SWORN BY ATTORNEY.)

13                  MR. EMMICK: We are the landlord for Sims  
14           here at their location. Basically just to reaffirm  
15           what they said. Feel like everybody should play on  
16           the same level of playing field. Just recently we  
17           supply locations around the City of Owensboro. We've  
18           had to just recently go out and replace a few shrubs.

19                  CHAIRMAN: They improved it too. Thank  
20           you.

21                  MR. EMMICK: I understand that. Just like  
22           to make sure everybody is on the same page.

23                  CHAIRMAN: Thank you.

24                  Any questions of this gentleman?

25                  (NO RESPONSE)

1                   CHAIRMAN: Thank you.

2                   Anyone else have any comments? Come  
3 forward, please, ma'am.

4                   MR. ELLIOTT: State your name, please.

5                   MRS. SIMON: Jenny Simon.

6                   (MRS. JENNY SIMON SWORN BY ATTORNEY.)

7                   MRS. SIMON: I'm a resident property owner  
8 on Royal Drive which is three houses off Scherm Road.  
9 I can look out the front door and see Foodland.

10                  I think with the fueling station there  
11 it's going to cause a lot more traffic. There are  
12 three residential streets that go out on to Scherm  
13 Road. The traffic is really bad. Like here is  
14 Foodland, the three streets that come out are Royal,  
15 Queenway and Imperial Drive. Sometimes it is very,  
16 very hard to see. If we have another fueling station  
17 right there with more trucks, more traffic, I think  
18 it's really going to like hinder our neighborhood.  
19 It's also going to take away the neighborhood look and  
20 feel. I really think it's - - I don't know how to say  
21 this. I think a big store like that moving into a  
22 small store owner's path where that is their  
23 livelihood is kind of like the difference between free  
24 enterprise and greed. I think that this would not be  
25 a good thing for our neighborhood. Thanks for letting

1 me stand here and say it.

2 CHAIRMAN: Any board member have questions  
3 of her?

4 (NO RESPONSE)

5 CHAIRMAN: Staff?

6 (NO RESPONSE)

7 CHAIRMAN: Thank you, ma'am.

8 Next please, sir.

9 MR. SIMON: My name is Ed Simon.

10 (MR. ED SIMON SWORN BY ATTORNEY.)

11 MR. SIMON: I'd just like to say along the  
12 lines of what the other people have already said.  
13 These two people are trying to make a living. Part of  
14 their living is the service station or gas station.

15 I think Wyndall's already has two other  
16 pieces of property that have gas pumps with them now.  
17 I think they - - don't they have five pieces of  
18 property. Two of those already have I think. One on  
19 25th Street and Fairview Drive.

20 Are they asking for just a variance on  
21 landscaping?

22 MR. NOFFSINGER: Yes, sir. It's interior  
23 landscaping. The perimeter landscaping will meet the  
24 requirements, meaning the perimeter along Scherm Road  
25 will be screened with three foot high scrub row of



1 trees. Then there also as a part of this expansion  
2 being required to add interior landscaping and islands  
3 and other areas on the property. They're asking for  
4 allowance to put the landscaping in about 1100 square  
5 feet shy of what the ordinance requires. Right now  
6 they don't have any interior landscaping to my  
7 knowledge. If they do have any, it's right along the  
8 perimeter along Scherm Road. With this they'll be  
9 adding what looks to be about 5500 square feet of  
10 interior landscaping.

11 Now, the applicant's engineer is here to  
12 prepare the plan. I don't have those exact figures,  
13 but I can tell you in the areas on these plans, I'd be  
14 glad to give you a copy of one of these plans. You  
15 can see where they're adding islands with trees right  
16 along the front of the stores.

17 The drive aisle, if you have the stores,  
18 then you have the drive aisle. Where parking starts  
19 they will be cutting out some parking areas pavement  
20 and adding interior landscaping islands there with  
21 trees to dress it up. That's the only issue this  
22 board is considering tonight. It's not whether or not  
23 they can have a fueling station here, if it's proper  
24 or if we have too many. This board does not consider  
25 that because it's permitted in that zone and they have

1 a right to install this fueling station. They may  
2 very well be able to meet their interior landscaping  
3 requirement, the additional 1100 square feet that they  
4 need. They can likely meet it to the rear of the  
5 building. In that case, it's probably not going to do  
6 at least the public along Scherm Road and where the  
7 public is actually to receive the benefit that  
8 interior landscaping any good. That's for the board  
9 to decide through this public hearing and hearing the  
10 evidence.

11 MR. SIMON: Is there also, has it already  
12 been considered about the parking spaces? You  
13 mentioned parking spaces. With so many square feet of  
14 building are you required to have a certain number of  
15 parking spaces?

16 MR. NOFFSINGER: Yes, sir.

17 MR. SIMON: Will the fuel pumps be counted  
18 as taking up so many parking spaces?

19 MR. NOFFSINGER: No. They're going to  
20 park right at the fuel pump. It's not calculated at a  
21 different classification. It would be counted with  
22 the stores that are already in there, but to give you  
23 an idea, parking space is required 193. Total parking  
24 provided 193. So they're right at the required  
25 amount.

1                   MR. SIMON: Is that right now or is that  
2 with the - -

3                   MR. NOFFSINGER: That's with the fueling  
4 station and all uses considered.

5                   MR. SIMON: So they will meet the  
6 requirement.

7                   CHAIRMAN: They'll meet all the  
8 requirements at this time except shy a little bit of  
9 the landscaping.

10                  MR. SIMON: I guess that's all.

11                  Does it matter if a person is opposed to  
12 it or not?

13                  CHAIRMAN: That's what you're stating now,  
14 isn't it?

15                  MR. DYSINGER: Sure it does, sir. Let me  
16 interrupt real quick.

17                  Mr. Noffsinger, are you saying that if  
18 they were to use up parking spaces to meet the  
19 landscaping requirement they would end up violating  
20 the parking space requirement. Is that what you guys  
21 just said pretty much? They can't give up any more  
22 parking spaces to meet interior landscaping because  
23 they're already at the minimum amount.

24                  MR. NOFFSINGER: There are other areas  
25 which would get it. They are making an effort to add

1 that interior landscaping in areas where it will meet  
2 the intent of the ordinance. It's not to say they  
3 should be given a variance, but that's one  
4 consideration in this. You know, we realize in  
5 working with property owners that with existing  
6 developments if they want to expand they can't always  
7 come in to complete compliance with the zoning  
8 ordinance. In many cases, they wouldn't be able to  
9 expand at all. Parking, they have to meet the  
10 required number of parking spaces or they couldn't  
11 expand, but there are many cases where landscaping is  
12 negotiated. For example, the fuel station next-door  
13 and the video store next-door to that is pretty much  
14 wide open access with no landscaping. If they wanted  
15 to add on, do something different, we would be having  
16 the same talks with those owners in terms of improving  
17 the site. That's what we're doing here. They're just  
18 not coming into complete compliance. So they're  
19 asking for the variance on that interior landscaping.

20 MR. DYSINGER: Part of the problem here,  
21 and this may be a question for the applicant. I don't  
22 know. If it is, I'm sure you'll correct me.

23 Part of the problem here is that this site  
24 was designed before the ordinance took affect so it's  
25 an odd shape anyway. I mean it's difficult to - -

1 without going out back where it makes no difference  
2 anyway.

3 MR. NOFFSINGER: Mr. Riney is wanting to  
4 talk.

5 CHAIRMAN: Mr. Riney, do you have any  
6 comments at this time to help us?

7 MR. ELLIOTT: State your name, please.

8 MR. RINEY: Jim Riney.

9 (MR. JIM RINEY SWORN BY ATTORNEY.)

10 MR. RINEY: I'm not wanting to talk, Mr.  
11 Noffsinger, but I thought I may have a little history  
12 that might help the board.

13 The original development plan for this  
14 site, Shawnee Park Shopping Center, was prepared in  
15 1967. I think that goes to the heart of the issue of  
16 what you all are speculating on. The development in  
17 the plan occurred prior to the requirements for  
18 landscaping and so forth.

19 Basically the site, as we see it today in  
20 terms of pavement and parking area, is the same as  
21 what was prepared back in 1967. Through the years  
22 there have been some expansions, as you all have  
23 touched upon tonight. Through those expansions  
24 parking has been adjusted. Some landscaping has been  
25 added. That brought us to where we are tonight. We

1 still have a site that even though it's grandfathered  
2 in, Planning Staff tries to go ahead and get some of  
3 the parking and some of the requirements to be  
4 satisfied in each expansion.

5 As we stated earlier, I suspect that all  
6 of the properties along that area there of Scherm Road  
7 are short on parking requirements. Even the other two  
8 businesses that were mentioned. We did go back in.  
9 We looked at areas where we could have parking that  
10 would do some good for the area for traffic control as  
11 well as for the esthetics for the neighborhood. Yes,  
12 there are some areas around the rear that you could  
13 put some bushes and some ground cover, but it served  
14 no functional purpose. I won't say it's a waste of  
15 money, but it's not going to accomplish the intent of  
16 the zoning ordinance. As I said, the landscaping  
17 ordinance came after this was developed. We're just  
18 trying to meet the intent of the regulation and still  
19 keep it something that's functional with traffic and  
20 the esthetics of the neighborhood.

21 CHAIRMAN: Do we have any questions for  
22 Jim?

23 MR. PEDLEY: Jim, is there any interior  
24 landscaping being added now?

25 MR. RINEY: Yes, sir. Within the plan

1 there are some islands up near the store front that  
2 are being added as well as some - - if you look at the  
3 plans, some triangular areas at the south end of the  
4 parking bay. Then there's interior landscaping that's  
5 added kind of as a buffer to the adjoiners on the east  
6 side. I may have missed one.

7 On your plan they're shown as unshaded  
8 areas. I see five islands that are just south of the  
9 store, Mr. Pedley, with trees and the curb. Then  
10 there's landscaping that's added at the proposed  
11 fueling station area to help soften the impact as well  
12 as a couple of areas over near the entrance where we  
13 have some traffic control. It's also something that's  
14 visible from the street from the neighborhood.

15 MR. PEDLEY: So you've used all the  
16 available spaces without taking out parking spaces?

17 MR. RINEY: Yes, sir, we feel we have.  
18 Just to address that for the record. The parking  
19 spaces, there have been some parking spaces added in  
20 order to be sure that we comply as was stated earlier  
21 as you look at the plan based on the current use. 193  
22 plus parking places are required and we are able to  
23 provide 193 parking spaces on site. So we do meet  
24 that requirement.

25 MS. MASON: I have a question. I've been

1 on that property ump-teen million times. I don't  
2 remember the back of the property. Is there a fence  
3 back there?

4 MR. RINEY: No, ma'am. There's a cable  
5 back there, but there's not a fence or a visual  
6 barrier.

7 MS. MASON: But you're saying no  
8 landscaping was put in the back. Would the  
9 landscaping in the back maybe benefit the adjoining  
10 property in the back?

11 MR. RINEY: Well, to the rear of that are  
12 apartments and a parking area back there.

13 MS. MASON: I haven't driven to the back  
14 of it. I'm always in the front of it.

15 MR. RINEY: The rear is where they have  
16 deliveries and so forth, big tractor-trailers. So  
17 they have to have room to maneuver. Most likely the  
18 landscaping would need to be up against the building  
19 which is not going to provide much space. If you put  
20 landscaping along the property line next to the  
21 adjoining parking lot, it would force parking area,  
22 the dumpster and so forth, out into the travelway for  
23 the delivery trucks and the tractor-trailers.

24 CHAIRMAN: Back of the property on behind  
25 it, the area in the back that owns the apartments they



1 back all the way up to the cable there on one side and  
2 the trucks are on the other side.

3 MR. RINEY: That's correct. The picture  
4 I'm trying to print is you've got two parking lots  
5 backing up to each other along a common property line.  
6 You're exactly right.

7 CHAIRMAN: Hard surface on both sides.

8 MR. RINEY: Yes, sir.

9 CHAIRMAN: Any other questions of him?

10 (NO RESPONSE)

11 CHAIRMAN: Anyone have anything else to  
12 add at this time that is new?

13 MR. SIMON: Just a question, if I can.  
14 Did I understand that the gas pumps and gas islands or  
15 whatever are counted as parking spaces?

16 CHAIRMAN: No.

17 MR. SIMON: They're not counted as parking  
18 spaces.

19 CHAIRMAN: No, sir. They have landscaping  
20 on each end of it.

21 MR. SIMON: Is the proposed fueling  
22 station in relation to Scherm Road being on the north,  
23 the apartments being - - the apartments on the north  
24 of Scherm Road being south and Mr. Sims being on the  
25 east, where is the - -

1                   CHAIRMAN: Come up here and look at this  
2 map, please, sir.

3                   (MR. SIMON APPROACHES BOARD.)

4                   - - (INAUDIBLE CONVERSATIONS) - -

5                   CHAIRMAN: Does that answer your question,  
6 sir?

7                   MR. SIMON: I think so, yes.

8                   CHAIRMAN: Anything else to add?

9                   MR. SIMON: I've just got one more  
10 question. Mr. Noffsinger said that the only  
11 consideration this board is giving here is to do with  
12 landscaping. As a business, they already have the  
13 right to put pumps there. If they wanted to put pumps  
14 there, ten years ago they would have put pumps there.  
15 Thank you.

16                   CHAIRMAN: Any board member have any other  
17 comments or questions?

18                   (NO RESPONSE)

19                   CHAIRMAN: Staff have anything else?

20                   MR. DYSINGER: I have one question real  
21 quick.

22                   Are the parking spaces behind the  
23 building, are those counted in your minimum parking  
24 space requirement? You are including those in that  
25 number?

1 MR. RINEY: Yes.

2 CHAIRMAN: Thank you.

3 Any other comments?

4 MR. SIMON: How can you park in the back  
5 of the store with delivery trucks? I've been back  
6 there several times.

7 MR. RINEY: There is an area where they  
8 can park some vehicles.

9 CHAIRMAN: From the dumpster west.

10 MR. RINEY: Right. Between dumpster  
11 location. We looked even further west at some parking  
12 spaces and that started to cramp the traffic movement  
13 for delivery trucks, but there is an area where you  
14 can fit some parking back there. Be primarily  
15 employee parking. Obviously, your patrons and  
16 customers are not going to go back there. It's too  
17 far to walk. Get the employees from the side of the  
18 building and out front, the furthestest point out front  
19 and get them back to the rear where you have more room  
20 for your customers.

21 MR. SIMON: Talking about screen the  
22 northwest side around the back?

23 MR. RINEY: Yes. Along the northwest  
24 side, that's correct.

25 CHAIRMAN: I think we've pretty well

1 covered the item at this time. Entertain a motion to  
2 dispose for or against.

3 MS. DIXON: Mr. Chairman, move to approve  
4 the granting of the variance because it will not  
5 affect the public health, safety or welfare; will not  
6 change the essential character of the general  
7 vicinity; will not cause a hazard or a nuisance to the  
8 public; and will not allow an unreasonable  
9 circumvention of the requirements of the zoning  
10 regulation.

11 CHAIRMAN: Is there a second?

12 MR. WARREN: Second.

13 CHAIRMAN: Any other board members have  
14 any other comments or questions?

15 (NO RESPONSE)

16 CHAIRMAN: Staff have anything else?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: The applicant, do you  
19 understand?

20 MR. NEEL: Yes.

21 CHAIRMAN: Do you have anything else to  
22 add?

23 MR. NEEL: No.

24 CHAIRMAN: With that all in favor raise  
25 your right hand.

1 (SIX BOARD MEMBERS - MARTY WARREN, RUTH  
2 ANN MASON, C.A. PANTLE, JUDY DIXON, TIM MILLER AND  
3 WARD PEDLEY - RESPONDED AYE.)

4 CHAIRMAN: All opposed.

5 (ONE BOARD MEMBER - SEAN DYSINGER -  
6 RESPONDED NAY.)

7 CHAIRMAN: Six for and one against. The  
8 motion carries.

9 Want to wish everyone a Merry Christmas  
10 and prosperous and healthy New Year.

11 I need one final motion.

12 MS. DIXON: Move to adjourn.

13 MR. DYSINGER: Second.

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

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: We are adjourned.

18 -----

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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 53 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 December, 2004.

18

19

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

22 COMMISSION EXPIRES:  
23 DECEMBER 19, 2006

24 COUNTY OF RESIDENCE:  
DAVIESS COUNTY, KENTUCKY

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