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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

MARCH 2, 2006

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, March 2, 2006, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: Ward Pedley, Chairman
- Gary Noffsinger
- Ruth Ann Mason
- Marty Warren
- Judy Dixon
- Sean Dysinger
- Madison Silvert
Attorney
- Stewart Elliott
Attorney

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CHAIRMAN: We will begin our meeting with a prayer and pledge of allegiance to the flag. Ms. Mason will lead us in prayer.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: I would like to welcome everyone to the meeting tonight. Anyone wishing to speak on any item may do so. We ask that you step to one of the podiums, state your name and be sworn in.

First item on the agenda is to consider the minutes of the February 2, 2006 meeting. They

1 have been read and they're on file in the planning
2 office. Are there any additions or corrections?

3 (NO RESPONSE)

4 CHAIRMAN: If not, the chair is ready for
5 a motion.

6 MS. DIXON: Move to approve.

7 MR. DYSINGER: Second.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries.

12 Next item.

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14 CONDITIONAL USE PERMITS

15 ITEM 2

16 5741 KY 144, zoned R-1A, A-U
17 Consider request for a Conditional Use Permit to
18 construct an approximately 30,000 square foot addition
19 to an existing church facility to house multipurpose
20 uses of pre-school area, fellowship space, recreation
21 area, kitchen, offices and future Sunday School and
22 training space.
23 Reference: Zoning Ordinance, Article 8, Section 8.2B4
24 Applicant: Yellow Creek Baptist Church

21 MR. NOFFSINGER: Mr. Chairman, this
22 application has been reviewed by the Planning Staff.
23 The application is found to be in order.

24 They are adding a 30,000 square foot
25 addition to the existing church facility which has

1 been located here for many years. They are adding a
2 significant amount of landscaping as shown on the site
3 plan. With that it is ready for your consideration.

4 CHAIRMAN: Has there been any
5 correspondence in the planning office?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: Anyone here wishing to speak in
8 opposition of this item?

9 (NO RESPONSE)

10 CHAIRMAN: Does the applicant have
11 anything that they would like to add?

12 APPLICANT REP: No.

13 CHAIRMAN: Anyone wishing to speak on the
14 application?

15 MR. NOFFSINGER: Mr. Chairman, there was
16 some issue as to whether or not the site plan was in
17 order this afternoon; however, all landscaping issues
18 and parking issues, including access, vehicular access
19 points have been addressed.

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

22 (NO RESPONSE)

23 CHAIRMAN: Chair is ready for a motion.

24 MR. DYSINGER: Mr. Chairman, move to
25 approve the Conditional Use Permit given the findings

1 that it will be a benefit to public welfare as it will
2 serve for a recreational use and preschool area and
3 will not compromise the character of the neighborhood
4 because no one has appeared to put that into evidence.

5 CHAIRMAN: Do we have a second?

6 MS. MASON: Second.

7 CHAIRMAN: We have a motion and a second.

8 Any questions on the motion?

9 (NO RESPONSE)

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

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimous.

14 ITEM 3

15 1315, 1329 Reid Road, zoned A-U
16 Consider request for a Conditional Use Permit to
17 construct and operate a private school including two
18 40' by 60' classroom areas, a 40' by 60' multi-purpose
19 building and a 70' by 100' future gymnasium for 160
20 children with operating hours from 7:30 a.m. to
21 5:00 p.m.

Reference: Zoning Ordinance, Article 8,
Section 8.2B14

Applicant: Majestic Academy, Inc., Daniel L. Turley &
Marian R. Turley

21 MR. NOFFSINGER: Mr. Chairman, Planning
22 Staff has reviewed this application. The application
23 is found to be in order. You have received a copy of
24 the application as well as the site plan that's being
25 proposed for this facility. There have not been any

1 issues raised in the office by anyone from the area.
2 There may be some folks here tonight to comment on the
3 application, but Staff has reviewed and find it to be
4 in order.

5 CHAIRMAN: Anyone here wishing to speak in
6 opposition of this item?

7 MR. REID: Comment, can we make a comment?

8 CHAIRMAN: You step up to the podium,
9 please.

10 MR. ELLIOTT: State your name for the
11 record, please.

12 MR. REID: William H. Reid.

13 (MR. WILLIAM REID SWORN BY ATTORNEY.)

14 MR. REID: The question, I picked up kind
15 of the layout. My name is, of course, Billy Reid. My
16 wife, Kathy Reid, we own the property on all three
17 sides of this piece of property.

18 The question I have is there's a 50 foot
19 private driveway through here and they're showing part
20 of the existing road they're putting through here with
21 a loop. My concern or question is, on this loop that
22 they have in the center, if this is a private
23 driveway, this cannot be built up or anything so if I
24 move some heavy equipment through there, does that
25 still gives me the right to use all 50 foot

1 right-of-way? If you look, it's a private drive, 50
2 foot. There's two separate properties that goes back
3 to that.

4 CHAIRMAN: We will get you an answer on
5 that.

6 MR. REID: Okay. Another thing, I guess,
7 would be down the road is the drainage situation,
8 putting this type of a system in there. Will the
9 county engineer have to come up with some type of deal
10 on how the drainage? The north side of this property,
11 which I own, is a place where a lot of water will
12 stand. I'm just kind of concerned. What's the
13 process of going through on the drainage, who takes
14 care of that or if the county engineer will be in
15 charge.

16 CHAIRMAN: Mr. Noffsinger, could you
17 address that concern?

18 MR. NOFFSINGER: Yes, sir.

19 The county engineer will be required to
20 review a drainage plan prior to construction and prior
21 to Mr. Jim Mischel issuing a building permit for this
22 facility.

23 I do not have any answers for you
24 regarding the access easement and the use; although,
25 would state that we should hear from the applicant as

1 to what they intend to do in this area. We did not
2 require any type of turn around or the actual
3 arrangement within that area. That was just prepared
4 by the applicant and their site plan. However, access
5 to the property is limited to that access easement. I
6 certainly understand your concerns, Mr. Reid, and the
7 applicant hopefully is here tonight to address those.

8 MR. REID: Thank you.

9 CHAIRMAN: Would the applicant come
10 forward and address Mr. Reid's concerns.

11 MR. ELLIOTT: State your name, please.

12 MR. RINEY: Jim Riney.

13 (MR. JIM RINEY SWORN BY ATTORNEY.)

14 MR. RINEY: I'm Jim Riney. We prepared
15 the concept plan on behalf of the applicant.

16 If I understood the question correctly
17 regarding the drive, the 50 foot private easement is
18 actually that. An easement. The applicants own the
19 property and this easement was on there for the
20 benefits of the folks that would access on back the
21 lane. I believe I understood the question, if the
22 drive were going to be built up. The board may have
23 to read that question back. There wasn't any
24 intention to build up or elevate. The concept for the
25 loop was to go ahead and handle bus traffic and drop

1 off on the south side of the building and then let the
2 parental traffic, the moms and dads, drop off and pick
3 up the kids in front of the school, out parallel to
4 Reid Road. I hope I've addressed the question. I
5 don't anticipate that there's any difference in the
6 use that Mr. Reid would experience later on than he
7 and his neighbors enjoy today.

8 CHAIRMAN: I think his question was:
9 Would it be built up to where he would have a problem
10 crossing with his equipment.

11 MR. RINEY: That's what I understood, the
12 elevation.

13 CHAIRMAN: Right.

14 MR. RINEY: No. There's no intention to
15 elevate that. Basically they want to try to utilize
16 what's there already in terms of pavement. Probably
17 make it a little wider and make it a little more
18 substantial, if that answers his question.

19 MR. REID: It does.

20 CHAIRMAN: Does anyone else have any
21 questions of Mr. Riney?

22 MR. ELLIOTT: State your name, please.

23 MR. THORPE: C.W. Thorpe. I live at 1401
24 Reid Road.

25 (MR. C.W. THORPE SWORN BY ATTORNEY.)

1 MR. THORPE: My question is, there is a
2 driveway there. This plan shows a driveway north of
3 there. Is this where a new driveway put in just for
4 this property or is the driveway that we have to our
5 resident now going to be utilized as part of that?

6 CHAIRMAN: I would have to get Mr. Riney
7 to address that.

8 MR. RINEY: The driveway that we've shown
9 the intent is to reflect the location of the existing
10 driveway that's there. Mr. Noffsinger indicated we
11 recognized that the access points by the regulations
12 are limited along Reid Road. So we want the driveway
13 for this facility to coincide with the existing drive
14 that's out there now, if that answers his question.
15 It would be one in the same.

16 CHAIRMAN: Anyone else like to address the
17 board?

18 (NO RESPONSE)

19 CHAIRMAN: Does the board members have any
20 questions of the applicant?

21 (NO RESPONSE)

22 CHAIRMAN: Chair is ready for a motion.

23 MS. MASON: I move for approval. The
24 findings of facts are that it will promote the public
25 health, safety and welfare because it is going to be a

1 school constructed there. The location and the
2 character of the vicinity it will not cause any
3 problems there because there was no opposition this
4 evening.

5 CHAIRMAN: Do we have a second?

6 MR. DYSINGER: Second.

7 CHAIRMAN: We have a motion and a second.

8 Any questions on the motion?

9 (NO RESPONSE)

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

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimously.

14 ITEM 4

15 514 East Fourth Street, 429 Clay Street, zoned R-4DT
16 Consider request for a Conditional Use Permit to
17 construct an 80' by 100' church parish hall on the
18 site with an existing church related school facility.
Reference: Zoning Ordinance, Article 8, Section 8.2B4
Applicant: Saints Joseph & Paul Church

19 MR. NOFFSINGER: Mr. Chairman, the
20 Planning Staff has reviewed this application. The
21 application is found to be in order. It is for an
22 addition to existing church facilities that are
23 located on the property. The applicant is proposing
24 an additional asphalt parking area. Will be
25 landscaping, as required by ordinance, as well as I
believe it involves closure of an existing access

1 point on Fourth Street. The applicant has been made
2 aware of that. So with that it's ready for your
3 consideration.

4 CHAIRMAN: Anyone here that wishes to
5 speak in opposition of this application?

6 MS. HONEYCUTT: I just have a couple of
7 questions.

8 MR. ELLIOTT: State your name, please.

9 MS. HONEYCUTT: Geneva Honeycutt.

10 (MS. HONEYCUTT SWORN BY ATTORNEY.)

11 MS. HONEYCUTT: My question is:
12 Approximately how many parking spaces are they
13 planning on adding? Just for the fact that I live
14 across the street and have had problems when they've
15 had events at the current facility with either
16 blocking my driveway or even parking in my driveway.
17 I just want to know how much parking are they going to
18 add for the facility?

19 CHAIRMAN: Mr. Noffsinger, would you
20 address that concern?

21 MR. NOFFSINGER: It appears that they're
22 proposing 57 parking spaces on the site. The zoning
23 ordinance require them to have 50 parking spaces. So
24 that would be the minimum that they're required to
25 have. So they'll have seven above that.

1 They are adding the parking to the rear of
2 the proposed parish hall and then along Clay Street.
3 I'm not sure exactly how many additional parking
4 spaces they're going to have, but it looks like there
5 might be about 27 new parking spaces in all. I see 8
6 and 8 is 16 and 11 so that will make it about 27
7 additional parking spaces.

8 MS. HONEYCUTT: Thank you.

9 CHAIRMAN: Anyone else have any questions
10 of the applicant?

11 (NO RESPONSE)

12 CHAIRMAN: Does the applicant have
13 anything that they would like to present to the board?

14 (NO RESPONSE)

15 CHAIRMAN: Board member have any questions
16 of the applicant?

17 MR. DYSINGER: I have a question that even
18 staff can probably handle. Did I understand you to
19 say that there would be a net gain of 27 parking
20 spots?

21 MR. NOFFSINGER: Yes, sir. I believe
22 there are 30 on the site now. It looks like there
23 will be 27 additional parking spaces.

24 CHAIRMAN: State your name, please.

25 MR. RHOADS: My name is Rick Rhoads.

1 (MR. RICK RHOADS SWORN BY ATTORNEY.)

2 MR. RHOADS: I have a plan here of the
3 building. Do you need to see that, what the building
4 is going to look like?

5 CHAIRMAN: Unless there's questions about
6 it. I don't think we need to see it. Thank you.

7 MR. NOFFSINGER: The board has a site plan
8 showing it. Each board member has received a site
9 plan showing the building footprint, as well as the
10 parking areas and the facilities that will be located
11 on the property. They have not seen an architectural
12 or an elevation shot of what the building will look
13 like, but they have reviewed the physical site plan.

14 CHAIRMAN: Are there any more questions
15 from the board?

16 (NO RESPONSE)

17 CHAIRMAN: Chair is ready for a motion.

18 MR. DYSINGER: Move to approve the
19 Conditional Use Permit, Mr. Chairman, given the
20 findings that it will be essential for the public
21 health, safety and welfare by providing space for
22 wedding receptions, religious celebrations, church
23 meetings and special events. Also given the finding
24 that the improvement in parking is going to be a
25 benefit to the area and in addition to which given the

1 finding that it is not incompatible with the current
2 use of what I can only assume be decades of use of the
3 area that it is now.

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

6 MR. WARREN: Second.

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

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries unanimously.

11 VARIANCES

12 ITEM 5

13 1907, 1912 Paddock Pointe Cove, zoned R-3MF
14 Consider request for a Variance to reduce the 20
15 foot project boundary setback to 5 feet along the
16 north side of the planned residential development
17 (lots 3 and 4)

Reference: Zoning Ordinance, Article 10,
Section 10.432

Applicant: Paul J. Martin, Paddock Swim & Tennis
Club, Inc.

18 MR. NOFFSINGER: Mr. Chairman, Planning
19 Staff has reviewed this application. We find the
20 application to be in order.

21 The applicant is here tonight to describe
22 what he intends to do with the property. Then after
23 that the staff would have a report that they would
24 like to read into the record.

25 CHAIRMAN: Anyone here that would like to

1 speak in opposition of this item?

2 MR. ELLIOTT: State your name for the
3 record, please.

4 MR. ANDERSON: Richard Anderson.

5 (MR. RICHARD ANDERSON SWORN BY ATTORNEY.)

6 MR. ANDERSON: I own the property that
7 borders this property on the north side. It's
8 multi-family housing. In fact, I've owned it for
9 about 20 years.

10 A few years ago I had to purchase a strip
11 of land that lies between my property and this
12 property that I thought I already owned, but I
13 purchased it instead of going to court to prove I
14 owned it by adverse possession. The reason I
15 purchased it is because it was an absolute requirement
16 in order to use the multi-family facility that I have
17 to provide parking that's necessary for it. It's been
18 that way ever since I bought the property and it was
19 that way for 10 or 12 years before I bought the
20 property. I know that there's no extra room there.
21 It's absolute minimum.

22 I also own a lot of multi-family property
23 around the community. A lot of it is joining
24 single-family houses. I know that five feet does not
25 give adequate room between multi-family property and

1 single-family property for the normal activities to be
2 carried on without any problems being created between
3 the occupants. On that basis, I object to this
4 variance.

5 CHAIRMAN: Anyone else that would like to
6 speak in opposition, and we'll try to give you an
7 answer on that?

8 MR. ELLIOTT: State your name for the
9 record, please.

10 MR. OBERST: David Oberst.

11 (MR. DAVID OBERST SWORN BY ATTORNEY.)

12 MR. OBERST: I'm not here opposing or in
13 agreement with anything. I just have some questions.

14 I live at 1920 Tomy Lee Court, which would
15 adjoin this new property. I just want to see if it's
16 going to change from the Paddock to the rear of my
17 residence, how it would affect me as far as setbacks
18 or easements, etcetera. I'm just trying to get some
19 information.

20 CHAIRMAN: Anyone else?

21 (NO RESPONSE)

22 CHAIRMAN: Would the applicant like to
23 address those concerns.

24 MR. ELLIOTT: State your name, please.

25 MR. MARTIN: Paul Martin.

1 (MR. PAUL MARTIN SWORN BY ATTORNEY.)

2 MR. MARTIN: First of all, on Mr.
3 Anderson's concerns, the property in question, of
4 course, he has a 25 foot rear yard that actually abuts
5 the side of the property that we're speaking of.
6 We're also going to construct a fence along the north
7 boundary of this property. So really that five foot
8 is not going to make any difference to him because
9 he's going to have a fence there anyway.

10 As far as Mr. Oberst's concerns, it really
11 doesn't affect the property along Tomy Lee Court.
12 We're just talking about the property along the north
13 side of the Paddock. So the rear setbacks and
14 everything will be as if they were single-family
15 homes, which is what they're going to be.

16 This is an R-3 zone. An R-3 zone, as you
17 all know, you only have to have a minimum of five foot
18 side yard. This has been a contiguous part of
19 Thoroughbred Acres from the very beginning. The entire
20 Thoroughbred Acres is zoned R-3. So a five foot side
21 yard is the only requirement in an R-3 zone.

22 If you have any other questions, I'll be
23 glad to answer them.

24 CHAIRMAN: Any board members have any
25 questions of Mr. Martin?

1 MR. DYSINGER: Not at this time.

2 CHAIRMAN: Thank you.

3 MR. ANDERSON: May I approach and comment?

4 CHAIRMAN: Step forward, please.

5 MR. ELLIOTT: Restate your name.

6 MR. ANDERSON: Richard Anderson.

7 If Mr. Martin is not going to build
8 anything within 20 feet of the property line, then he
9 doesn't need the variance.

10 CHAIRMAN: Would the staff like to address
11 this issue?

12 MR. NOFFSINGER: Doug Lane from the
13 Planning Staff would have a statement.

14 MR. ELLIOTT: State your name, please.

15 MR. LANE: Doug Lane.

16 (MR. DOUG LANE SWORN BY ATTORNEY.)

17 MR. LANE: I have a statement here from
18 the Planning Staff that I would like to read into the
19 record.

20 The applicant is proposing to reduce the
21 required 20 foot project boundary setback to 5 feet
22 along lots 3 and 4. The applicant submitted and
23 received approval for a combined Final Development
24 Plan/Major Subdivision Preliminary plat that
25 identified the 20' buffer along lots 3 and 4. The

1 subject properties are located on the north side of a
2 proposed planned residential development and a 20'
3 setback is required by the zoning ordinance to provide
4 a buffer between the existing development in the
5 surrounding area and the proposed planned development.

6 Planning Staff recommends denial of this
7 variance for the following reasons:

8 1. It will allow an unreasonable
9 circumvention of the requirements of the zoning
10 regulations because:

11 a. By submitting a Combined Final
12 Development Plan/Major Subdivision Preliminary Plan,
13 it already allows for flexibility in the design of the
14 proposed development that wouldn't normally be
15 permitted by the regulations of the Zoning Ordinance.

16 b. The subject lots appear to have
17 similar sized building floor areas as the other nine
18 lots in this proposed development.

19 c. The adjoining properties to the
20 north of lots 3 and 4 are not a part of the proposed
21 residential development.

22 2. It may alter the essential character
23 of the general vicinity because:

24 a. The Development Plan for Paddock
25 Pointe is contained with orientation to an interior

1 street, which does not follow the development patterns
2 of adjoining properties fronting Carter Road.
3 Therefore, a reduction of the 20' buffer, along with
4 potential future re-development of adjoining
5 properties, could alter the essential character of the
6 neighborhood.

7 CHAIRMAN: Mr. Martin, do you have any
8 additional comments on that?

9 MR. MARTIN: I know this has been done
10 before because it was done down at Whispering Meadows
11 when there was a 20 foot buffer zone around that. It
12 came back and that was reduced to 10 feet because it
13 was in keeping with the neighborhood, which was R-1A.
14 So I don't think it would be any different than what's
15 been done before.

16 Again, I say that with 20 foot rear,
17 they've already got 25 foot yard in the back. By
18 going to 5 foot on the side line it is going to make a
19 difference for those lots because they become
20 irregular on the north boundary. Like I say it has
21 been done before. It's been approved by this
22 commission before. I don't think it's going to alter
23 the character of the neighborhood because all the
24 houses in the area only have to have a five foot side
25 yard and most of them do only have five foot side

1 yards.

2 CHAIRMAN: Any board members have any
3 questions of Mr. Martin?

4 (NO RESPONSE)

5 CHAIRMAN: Thank you, Mr. Martin.

6 MR. ANDERSON: My name is Richard
7 Anderson.

8 Mr. Martin is misrepresenting the issue.
9 There is not 25 feet of back yard where I'm talking
10 about on our property. In fact, there's zero feet.
11 My parking lot goes right up to the property line.
12 There's not one inch. I don't want his buildings
13 built within five feet of that property. It'd just be
14 unmanageable.

15 MR. DYSINGER: Mr. Chairman, could I ask a
16 question of Mr. Anderson?

17 CHAIRMAN: Yes.

18 MR. DYSINGER: Mr. Anderson, it seems to
19 me your testimony earlier was that most of this
20 community observes a 20 foot setback; is that correct?

21 MR. ANDERSON: Whenever there's
22 multi-family development in conjunction or adjoining
23 single-family residences, yes, there's usually a 20
24 foot separation or better.

25 MR. DYSINGER: In this area though you

1 find that to be the case?

2 MR. ANDERSON: Yes. In fact, beyond me,
3 to the east of me there's additional multi-family
4 housing. The condition that Mr. Martin was talking
5 about does exist there, but my property line is close
6 to 100 feet long and I use every inch of it for
7 parking. There's zero lawn there. His property line
8 is right on my pavement.

9 MR. DYSINGER: Thank you, sir.

10 CHAIRMAN: Mr. Martin, would you step back
11 up.

12 MR. MARTIN: I just want to clarify one
13 thing. This 20 foot rear yard is what Mr. Anderson's
14 property is to this property is a rear yard. Not a
15 side yard. We're asking for a side yard variance.
16 Not a rear yard variance. We're still going to have
17 20 feet in the rear and on the south side, but we're
18 asking for the variance for the 5 feet, which would be
19 our side yard would be his rear yard.

20 MR. NOFFSINGER: I just have a comment.
21 Mr. Martin is right. This board on several occasions
22 has approved a reduction in the 20 foot non-project
23 boundary setback in a planned residential development.
24 However, that is part of an ongoing development that
25 is being developed in phases. There's been an

1 understanding that we're going to do that in separate
2 pieces, but we're not going to have a 20 foot boundary
3 within each one of those modules. The Planning Staff
4 has recommended in that situation to this board that
5 those variances be approved.

6 Here the difference is that we're going
7 into an area that was developed many, many years ago.
8 This is exactly what that 20 foot non-project setback
9 is for in the ordinance. If it's not going to be
10 observed in this particular situation, we should do
11 away with the 20 foot non-project boundary setback in
12 a planned residential development because when would
13 it ever be used.

14 The Planning Staff is coming from the
15 standpoint that it would allow an unreasonable
16 circumvention of the ordinance in what I just stated.
17 I do think it is there for a reason. It should be
18 observed in areas where you have redevelopment within
19 an existing developed neighborhood and you have the
20 pattern of development that's set and defined. It has
21 been for many years within the neighborhood.

22 This flexibility of being able to go into
23 an area, if you have one acre in size and redevelop an
24 area with this type of use has significant impact
25 throughout this community in residential areas. It

1 allows a lot of flexibility that's built into the
2 development plan. A phase of this to allow some
3 flexibility in the requirements for a development to
4 go in and redevelop areas that have already developed.
5 If we're to go and start taking away some of those
6 elements that are built in for the protection of the
7 adjoining properties, then Staff feels we're allowing
8 that unreasonable circumvention of the ordinance
9 because it certainly can change the character of the
10 area. One could argue that it would here. Others
11 might argue that it wouldn't. That's what this
12 planned residential development does. It opens up
13 some areas in the community for redevelopment.

14 MR. MARTIN: The only difference here, I
15 think, is this property is zoned R-3 multi-family. If
16 we went over there and built multi-family, built 75
17 units in there, that would certainly change the
18 character of the neighborhood a lot more than what
19 this is going to.

20 You say that boundary, Gary, but you
21 changed it out. Whispering Meadows you changed it on
22 what would be the west side of that property which was
23 not part of the boundary too. You changed that to 10
24 foot as well because you determined that that was a
25 non or restricted than what the other part of this

1 subdivision was, which is R-1A. I know what you're
2 talking about. As you go back and that development
3 occurs, you can do away with the 20 foot here and add
4 it on to the next part of it, but you also did away
5 with it on the west side of it as well.

6 MR. NOFFSINGER: We may have. Speaking to
7 this application, I think you see a difference in that
8 all the area around it has already developed. This is
9 a total redevelopment of it. I really think in this
10 situation it's much different than Whispering Meadows.

11 MR. MARTIN: The only thing I would say is
12 a little different is that we've got a rear yard to a
13 side yard in this particular case. So you're going to
14 have a bigger boundary than you were going to have
15 anyway because you've got - - I don't know how far it
16 is from the back of this building to your property
17 line, but you've got a car parked there so I know it's
18 at least 20 foot. So it's probably 25 feet. He's not
19 going to gain anything because they're still going to
20 put a fence right on the property line. Whatever his
21 car can come up to is going to be the fence.

22 MR. WARREN: Mr. Noffsinger, in the
23 variance it says nothing about side yard and rear yard
24 other than it just specifies project boundaries
25 setback. So we're really not discussing side yard

1 versus rear yard setbacks, right?

2 MR. NOFFSINGER: That is not what the
3 variance is about. It's about that 20 foot
4 non-project setback. Even though Mr. Martin is using
5 as part of his defense that the typical side yard
6 would be 5 foot, that is true, but because it was
7 developed as this planned residential development with
8 a different orientation of lots, they had that 20 foot
9 setback as opposed to a five foot setback.

10 CHAIRMAN: Any more questions or comments
11 from the board members?

12 (NO RESPONSE)

13 CHAIRMAN: Chair is ready for a motion.

14 MR. DYSINGER: Move to deny the variance
15 request, Mr. Chairman, given the findings that it may
16 alter the essential character of the general vicinity
17 because the side yard setback and the project setback
18 would be inconsistent with what is currently there;
19 and therefore will allow an unreasonable circumvention
20 of the requirements of the zoning regulation.

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

23 MS. DIXON: Second.

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

1 MR. DYSINGER: Could I just say something
2 real quick, Mr. Chairman, to Mr. Martin.

3 The burden on us is to have a reason to
4 grant the variance. I didn't see that in this. So
5 it's a difficult issue and you presented a good case.
6 I don't normally explain why I make a motion, but I
7 felt like I should this time.

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

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimous.

12 ADMINISTRATIVE APPEALS

13 ITEM 6

14 407 East Ninth Street, zoned B-4
15 Consider request for Administrative Appeal to change
16 the use of the property from a non-conforming use as a
17 pawn shop/storage facility with no on-site parking to
18 another non-conforming use as a retail sales of ethnic
19 food and related products with no on-site parking.
20 Reference: Zoning Ordinance, Articles 4 & 7,
21 Section 4.53, Section 7.34
22 Appellant: Schay Properties, Inc.

23 MR. NOFFSINGER: Mr. Chairman, Planning
24 Staff member Jim Mischel would like to present his
25 side of the story.

26 MR. ELLIOTT: State your name, please.

27 MR. MISCHEL: Jim Mischel.

28 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

29 MR. MISCHEL: This property at 407 East

1 Ninth Street, if you've been by there you'll see that
2 it's a concrete block building. It was originally
3 built as a business and it's always been used as a
4 business. It hasn't been used as residential, as far
5 as I can tell.

6 I think the owners would like to change
7 the use. It's had various uses over the years. They
8 would like to put in I guess a neighborhood type store
9 to sell food-related items. We don't necessarily
10 object to that. It does have a history of commercial
11 use. I would say in the future though if this use
12 changes to something else, it'd probably be
13 appropriate to come back in front of the board to see
14 what that use would be, to see if it would still be
15 appropriate. As far as we can tell, it has had
16 commercial activity throughout the year.

17 CHAIRMAN: Any board members have any
18 questions of Mr. Mischel?

19 (NO RESPONSE)

20 CHAIRMAN: Would the applicant like to
21 address the board?

22 MR. ELLIOTT: State your name, please.

23 MR. HAYNES: Brian Haynes.

24 (MR. BRIAN HAYNES SWORN BY ATTORNEY.)

25 MR. HAYNES: I'm one of the owners. I'm

1 here to answer any questions you might have.

2 CHAIRMAN: Any board members have any
3 questions of Mr. Haynes?

4 Mr. Noffsinger.

5 MR. NOFFSINGER: Mr. Haynes, could you
6 describe the amount of traffic that you have had at
7 the facility in the past versus what you might
8 anticipate with this new proposed use?

9 MR. HAYNES: I can't describe. Me and Mr.
10 Schmitt bought that building at a city property tax
11 sale. We have not been the former - - we've owned it
12 for several years, but the use there, there was a
13 gentleman in there and all he was doing out of that
14 property was operating I think a pawn shop very
15 informally. I don't know what the traffic would have
16 been. It would all have been drawn directly from that
17 neighborhood and that's what will occur with this
18 facility. It's just a neighborhood shop kind of like
19 you have the sandwich shop that's on the next corner
20 and then you've got the new anticipated park over
21 here. It's just something that would benefit the
22 neighborhood. We don't anticipate people driving down
23 there to use this.

24 MR. NOFFSINGER: The reason I ask that I
25 was wondering in looking at the difference in the

1 uses. With the pawn shop it would seem to me that it
2 might draw people in from other areas of the community
3 that might perhaps visit pawn shops; whereas this
4 particular use might be geared toward the neighborhood
5 and serving the needs of the neighborhood. Is that
6 what you see?

7 MR. HAYNES: Yes. I'm not real familiar
8 with pawn shops. Mr. Schmitt probably is. I would
9 think they're probably - - it's going from a public
10 use to just a general neighborhood use.

11 CHAIRMAN: Anyone have any comments on the
12 item?

13 (NO RESPONSE)

14 CHAIRMAN: Any board members have any
15 questions?

16 MR. DYSINGER: I just would add, Mr.
17 Chairman, I live on Bolivar Street, 824. There's a
18 Chinese grocery just kind of around the corner, not
19 unlike I think what you guys are describing. Several
20 businesses in the area like that.

21 MS. MASON: So you're saying you think a
22 lot of it would be walking traffic?

23 MR. HAYNES: I think it all would be.

24 CHAIRMAN: Any more questions or comments?

25 (NO RESPONSE)

1 CHAIRMAN: Chair is ready for a motion.

2 MS. DIXON: Mr. Chairman, I'll make a
3 motion to approve the request because the property has
4 a history of retail operations of one way or another
5 and it would definitely serve the purpose within that
6 area for the public use, providing walk-in operation
7 for an inner city area.

8 CHAIRMAN: We have a motion for approval
9 for the appeal?

10 MR. DYSINGER: So we're overturning Jim's
11 that we're voting on?

12 MR. NOFFSINGER: No, not necessarily.
13 You're voting on whether or not to grant the
14 administrative appeal. To change from this
15 non-conforming use to another. It's not like a zoning
16 violation or overruling Jim.

17 CHAIRMAN: Do we have a second on the
18 motion?

19 MS. MASON: Second.

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

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimous.

24 We need one final motion.

25 MS. DIXON: Move to adjourn.

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MS. MASON: Second.

CHAIRMAN: All in favor raise your right
hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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 32 typewritten pages; and that no signature
 15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this
 17 the 30th day of March, 2006.

18

19

 LYNNETTE KOLLER, NOTARY PUBLIC
 OHIO VALLEY REPORTING SERVICE
 202 WEST THIRD STREET, SUITE 12
 OWENSBORO, KENTUCKY 42303

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22 COMMISSION EXPIRES:
 DECEMBER 19, 2006

23

24 COUNTY OF RESIDENCE:
 DAVIESS COUNTY, KENTUCKY

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