

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 SEPTEMBER 6, 2007

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday,
5 September 6, 2007, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

- 8 MEMBERS PRESENT: C.A. Pantle, Chairman
- 9 Gary Noffsinger
- 10 Ward Pedley
- 11 Marty Warren
- 12 Sean Dysinger
- 13 Ruth Ann Mason
- 14 Judy Dixon
- 15 Clay Taylor
- 16 Madison Silvert, Attorney

17 * * * * *

18 CHAIRMAN: Want to call the Owensboro
19 Metropolitan Board of Adjustment to order. Welcome
20 each one of you and we start our agenda each evening
21 with a prayer and the pledge to allegiance. We invite
22 you all to join us if you so desire. Please join with
23 us at this time. Madison will have our prayer this
24 evening.

25 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Again, I want to welcome you all
this evening to the Owensboro Metropolitan Board of
Adjustment. Any of you all have any comments on any
item, please come to one of the podiums and be sworn

1 in. Direct your questions, if you have questions, to
2 the chairman and we'll find out the answers you need.

3 With that we'll proceed with the first item
4 which is the minutes of the last meeting on August
5 2nd. They're in the office. I think they're correct.
6 Any additions added?

7 MR. NOFFSINGER: No.

8 CHAIRMAN: Entertain a motion to dispose of
9 the item.

10 MS. DIXON: Move to approve.

11 MS. MASON: Second.

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

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries.

16 Next item, please.

17 -----

18 CONDITIONAL USE PERMITS

19 ITEM 2

20 3905 Carter Road, zoned B-4
21 Consider request for a Conditional Use Permit to
22 install netting and inflatable bunkers on the tennis
23 courts to allow re-ball and paintball activities at an
24 existing swim club and recreational facility.
25 Reference: Zoning Ordinance, Article 8, Section
8.2K7/42
Applicant: Atlantis Swim and Sports Complex, Inc.;
Floyd D. Tapp

MR. SILVERT: State your name, please.

1 MR. HOWARD: Brian Howard.

2 (MR. HOWARD SWORN BY ATTORNEY.)

3 ZONING HISTORY

4 The subject property is currently zoned B-4
5 General Business. A zoning change for the subject
6 property for the B-4 zoning was approved in March
7 1987. Several Final Development Plans and Conditional
8 Use Permits have been approved for the property over
9 the years with the most recent approval being a
10 Conditional Use Permit for a picnic canopy in July
11 2006.

12 LAND USES IN SURROUNDING AREA

13 The property to the north and south is zoned
14 B-4 General Business. The property to the east is
15 zoned R-3MF Multi-Family Residential and R-1C
16 Single-Family Residential. The property to the west
17 is zoned I-1 Light Industrial.

18 ZONING ORDINANCE REQUIREMENTS

19 Parking for the site is addressed on the most
20 recent development plan approved in July 2006 and the
21 proposed use will not require additional changes to
22 the development plan.

23 MR. HOWARD: We would like to enter the Staff
24 Report into the record.

25 CHAIRMAN: Is there any objections filed in

1 the office?

2 MR. NOFFSINGER: No, sir.

3 CHAIRMAN: Is anyone this evening wishing to
4 object to this item?

5 (NO RESPONSE)

6 CHAIRMAN: Does the applicant have anything
7 you would like to add at this time?

8 MR. SILVERT: State your name, please.

9 MR. TAPP: Floyd Darrin Tapp.

10 (MR. FLOYD DARRIN TAPP SWORN BY ATTORNEY.)

11 CHAIRMAN: Do you have anything you would like
12 to add?

13 MR. TAPP: I do have one item that I had a
14 question about. It was in regards to if this would be
15 in violation of Section 17-3 of Owensboro Municipal
16 Code. Did some research. With David Fowler's help he
17 found, this letter is self-explanatory, that it would
18 not be in violation of that code. If we could enter
19 that.

20 CHAIRMAN: If you so desire.

21 MR. SILVERT: Just hand it to the court
22 reporter.

23 MR. NOFFSINGER: Mr. Tapp, is that letter and
24 section of the ordinance pertaining to the firing of a
25 gun within the city limits?

1 MR. TAPP: Yes, sir.

2 MR. NOFFSINGER: Thank you.

3 CHAIRMAN: Does the office have any other
4 comments?

5 MR. NOFFSINGER: No, sir.

6 MS. MASON: I have a question for you.
7 The fencing that you're going to put around,
8 how tall is that going to be?

9 MR. TAPP: It's going to be 12 foot tall and
10 we're also going to put a netting on top to prevent it
11 from going out and over into the neighborhood behind
12 us.

13 MS. MASON: And the 12 foot tall fencing, what
14 is that going to be exactly? Inflatable?

15 MR. TAPP: No. The netting is a specially
16 engineered netting specifically for this purpose. It
17 won't allow anything bigger than three millimeters to
18 go through.

19 MS. MASON: That's around the perimeter?

20 MR. TAPP: The entire perimeter and on the top
21 as well. What I'm fencing in is my existing tennis
22 courts. They have what's called an omni turf
23 Astroturf surface. We're going to put inflatable,
24 soft inflatable bunkers inside of the tennis courts to
25 use as the barricades.

1 CHAIRMAN: Any other board members have any
2 questions of the applicant?

3 (NO RESPONSE)

4 CHAIRMAN: Hearing none entertain a motion to
5 dispose of the item.

6 MR. PEDLEY: Mr. Chairman, I make a motion to
7 approve based on it meets the requirements of the
8 zoning ordinance. It's compatible with the present
9 activities and it will not adversely effect the
10 neighborhood.

11 CHAIRMAN: Is there a second?

12 MR. TAYLOR: Second.

13 CHAIRMAN: A motion has been made and a
14 second. Any other questions or comments from the
15 board?

16 (NO RESPONSE)

17 CHAIRMAN: Or from the office?

18 MR. NOFFSINGER: No, sir.

19 CHAIRMAN: Hearing none all in favor raise
20 your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries.

23 Next item, please.

24 ITEM 3

25 2767 Veach Road, zoned B-4
Consider request for a Conditional Use Permit to

1 operate an infant daycare seven days a week from 6:00
2 a.m. to midnight, for a maximum of 11 infants.
3 Reference: Zoning Ordinance, Article 8, Section 8.2B3
4 Applicant: Antoinette Brown; Lee Kassinger

5 ZONING HISTORY

6 Two Conditional Use Permits have been approved
7 for the subject property. The most recent increased
8 the number of children under care to 96 in September
9 2005 for the 4,860 square foot building shown on the
10 site plan. The applicant now proposes to acquire 350
11 square feet in a separate building on the property to
12 operate an infant daycare for a maximum of 11
13 children.

14 LAND USES IN SURROUNDING AREA

15 The property to the north, east and south is
16 all zoned B-4 General Business. The property to the
17 west is partially zoned B-4 General Business and
18 partially zoned R-3MF Multi-Family Residential. Land
19 uses in the vicinity include a shopping center, retail
20 stores, pet grooming facility, medical laboratory and
21 residential uses.

22 ZONING ORDINANCE REQUIREMENTS

- 23 1. Two parking spaces plus one per 10
24 children for the existing and proposed day cares.
- 25 2. One parking space per 300 square feet for
the remaining commercial space on the property.

1 MR. HOWARD: The site plan submitted with the
2 application does address those requirements.

3 We would like to enter the Staff Report into
4 the record.

5 CHAIRMAN: Is there any opposition filed in
6 the office?

7 MR. NOFFSINGER: No, sir.

8 CHAIRMAN: Is anyone in the audience wishing
9 to object to this item?

10 (NO RESPONSE)

11 CHAIRMAN: Is the applicant here?

12 (NO RESPONSE)

13 CHAIRMAN: Does the office have anything else
14 to add?

15 MR. NOFFSINGER: No, sir.

16 CHAIRMAN: Does any board members have any
17 other questions or comments?

18 MR. DYSINGER: I just want to know, maybe the
19 Staff knows. Is this an expansion of the hours, the
20 current operating hours?

21 MR. NOFFSINGER: Yes, sir. I believe it would
22 be, and then it's an expansion into the adjoining
23 building as well, a portion of the adjoining building.

24 MR. DYSINGER: Do you know what the current
25 operating hours are?

1 MR. NOFFSINGER: No, sir, I do not.

2 MR. DYSINGER: But you don't have any
3 objections in the office?

4 MR. NOFFSINGER: No, sir. It is commercial.
5 It's B-4 General Business zone. It's little strip
6 center. There shouldn't be any issues. We have been
7 aware and working with the Economic Development
8 Corporation about the need for additional daycare in
9 this community. Not just first shift, but second and
10 third shifts, there's just not that many daycares and
11 facilities providing child care on the second and
12 third shifts. Many of these daycares are starting to
13 answer that need in the community and I think that's
14 what you're seeing here.

15 CHAIRMAN: Any other comments or questions
16 from the board?

17 (NO RESPONSE)

18 CHAIRMAN: Hearing none entertain a motion to
19 dispose of the item.

20 MS. DIXON: Move to approve based upon
21 findings of fact that it fills a need in the
22 community, it's compatible with other land uses in the
23 area and is a logical expansion of the existing
24 business.

25 CHAIRMAN: Is there a second?

1 MR. DYSINGER: Second.

2 CHAIRMAN: A motion has been made and a
3 second. Any other comments or questions from the
4 board?

5 (NO RESPONSE)

6 CHAIRMAN: Anything else from the Staff?

7 MR. NOFFSINGER: No, sir.

8 CHAIRMAN: Hearing none all in favor raise
9 your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries.

12 Next item, please, sir.

13 ITEM 4

14 1100 West Fifth Street, zoned R-1T
15 Consider request to amend a previously approved
16 Conditional Use Permit in order to construct a 10'x40'
17 building addition to an existing church facility for
18 storage and classroom space.
19 Reference: Zoning Ordinance, Article 8, Section 8.2B4
20 Applicant: The Church of the Living God

21 ZONING HISTORY

22 OMPC records show that three Conditional Use
23 Permits have been approved for the subject property.
24 The most recent approval was for a 10'x40' building
25 addition for the church in April of 2006. However,
the Conditional Use Permit expired one year after
approval since the applicant did not apply for a
building permit to complete the work as approved. An

1 amended final development plan was approved by the
2 OMPC reflecting the building addition in April 2006
3 and is still valid. The final development plan shows
4 the planned addition and ties parking on a separate
5 lot to the church use in order to meet the required
6 parking for the church.

7 LAND USES IN SURROUNDING AREA

8 Land uses to the west and south are
9 single-family residential homes, while the property to
10 the east is a commercial use. Land uses to the north
11 are occupied by a city park to the west of Maple
12 Street and a restaurant to the east of Maple Street.
13 The new McFarland Funeral Home also lies to the north
14 of the subject property.

15 ZONING ORDINANCE REQUIREMENTS

16 1. Article 13, Section 13.8 B4 requires 1
17 parking space for every 5 seats in the main auditorium
18 with a minimum of 5 parking spaces.

19 2. Article 17, Section 17.312 states that
20 when a vehicular use area adjoins public or private
21 street right-of-way, a minimum 3 foot width landscape
22 easement is required with 1 tree per 40 feet of
23 vehicular use area boundary, plus a continuous 3 foot
24 high planting, hedge, fence or wall.

25 MR. HOWARD: We would like to enter the Staff

1 Report into the record.

2 CHAIRMAN: Any opposition filed in the office?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Is anyone wishing to speak in
5 opposition on this?

6 (NO RESPONSE)

7 CHAIRMAN: Does the applicant have any
8 comments they want to present at this time?

9 (NO RESPONSE)

10 CHAIRMAN: Any board members have any
11 questions of the applicant?

12 (NO RESPONSE)

13 CHAIRMAN: Staff have anything else to add?

14 MR. NOFFSINGER: No, sir.

15 CHAIRMAN: Hearing none entertain a motion to
16 dispose of the item.

17 MS. MASON: Mr. Chairman, I move for approval
18 since there's no objections and it is compatible with
19 the current land use and there's been three similar
20 conditional use permits that have been approved in the
21 past including this one which this board approved.

22 MR. DYSINGER: Second.

23 CHAIRMAN: A motion has been made and a
24 second.

25 Applicant, you understand the requirements for

1 the landscaping and stuff as stated on the
2 application?

3 APPLICANT REP: Yes.

4 CHAIRMAN: Any other comments from the board
5 or staff?

6 (NO RESPONSE)

7 CHAIRMAN: Hearing none all in favor raise
8 your right hand.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries.

11 Next item, please, sir.

12 ITEM 5

13 1001 West Seventh Street, zoned R-4DT
14 Consider request to amend a Conditional Use Permit to
15 operate a homeless shelter for 35 individuals from
16 8:00 p.m. to 6:00 a.m. seven days a week.
17 Reference: Zoning Ordinance, Article 8,
18 Section 8.2A7/6a
19 Applicant: Rev. John R. Vaughan; Roman Catholic
20 Diocese of Owensboro

21 ZONING HISTORY

22 The property was rezoned from R-1T Townhouse
23 zone to R-4DT Inner City residential zone in 2000. A
24 conditional use permit was approved in July 2000 for
25 the construction of a new building on the site, which
was occupied by the existing Blessed Sacrament Chapel
and the St. Vincent DePaul Store. The new building
was proposed for church related activities. A final

1 development plan was subsequently approved in October
2 of 2000 showing the existing and proposed church
3 related buildings on the site with adequate parking
4 for the church function and the retail use of the St.
5 Vincent DePaul Store.

6 A Conditional Use Permit was approved for the
7 property in December 2006 in order to operate a
8 temporary homeless shelter for a maximum of 35 guests
9 from 8 p.m. to 6 a.m. for December 2006 through March
10 2007. The applicant wishes to amend the conditional
11 use permit to remove the restriction of specific dates
12 of operation so that the shelter may continue its
13 operation from year to year.

14 LAND USES IN SURROUNDING AREA

15 The area surrounding the proposed site
16 consists mainly of single family residences. The site
17 currently houses a church building and a church
18 related building in addition to the building that will
19 house the shelter if approved.

20 ZONING ORDINANCE REQUIREMENTS

21 The zoning ordinance classifies the proposed
22 use as a dormitory under the definitions applicable to
23 homeless shelters. It is proposed as a safe place to
24 sleep out of the elements and is seeking to fill a
25 need of the community, particularly during the winter

1 months, and is not proposing to offer additional
2 social services to the residents who sleep there. As
3 a dormitory use, the regulations of the zoning
4 ordinance have certain criteria that must be met in
5 order for the OMBA to consider approval of the use.
6 The applicant has provided the required information
7 relative to these criteria and it has been included in
8 the application for this proposed use and has been
9 distributed to the board members for this information.
10 Parking requirements for the previous retail use
11 located in this building exceed the parking spaces
12 required for the dormitory use.

13 MR. HOWARD: We would like to enter the Staff
14 Report into the record.

15 CHAIRMAN: Has there been any opposition filed
16 in the office?

17 MR. NOFFSINGER: No.

18 CHAIRMAN: Does anyone in the audience wishing
19 to speak in opposition of this item?

20 (NO RESPONSE)

21 CHAIRMAN: Does the applicant have anything
22 you would like to add at this time?

23 MR. SILVERT: Could you state your name,
24 please.

25 SISTER BOONE: Sister Joseph Angela Boone.

1 (SISTER JOSEPH ANGELA BOONE SWORN BY
2 ATTORNEY.)

3 SISTER BOONE: I just wanted to thank you for
4 letting the shelter be used last year. There were
5 over 3,000 beds that were occupied during the month of
6 December, January, February and March. Food was
7 brought in and given to the homeless people at that
8 time. It's a great benefit I think to the society to
9 get the men or women, whoever they were, off the
10 street. This year, as he said, it's going to be from
11 November rather than starting in December because cold
12 weather comes in November. It is interesting how many
13 times during this past summer that we had request for
14 people to even use the shelter during the summer
15 months, which we couldn't do because it was not set up
16 and permitted to be used. We appreciate the
17 possibility that's being used again this coming
18 winter.

19 CHAIRMAN: Staff have any other comments or
20 questions?

21 MR. NOFFSINGER: Based upon my calculations it
22 looks like they were in full capacity for each month
23 during the time they were open. It certainly shows a
24 need for this type of service in the community.

25 MR. WARREN: This conditional use permit

1 though isn't just for November through. We're opening
2 it up, right?

3 MR. NOFFSINGER: Yes. The previous
4 conditional use permit was for November to April.
5 This would be for 12 months, 7 days a week.

6 CHAIRMAN: Board have any other questions or
7 comments?

8 MR. DYSINGER: Mr. Chairman, I just have one
9 question.

10 Sister, the only thing that you're asking is
11 for us to remove the restriction for when you're open.
12 You don't intend on doing anything different than what
13 you did for just the winter months. You're just going
14 to do it year-round?

15 SISTER BOONE: That's right. We have no
16 guarantee that it can be done that long. We are
17 extending to the public information that it will be
18 for November, but there are times during the summer
19 months and other times that we're not equipped to take
20 care of homeless people at that time, but if the
21 necessity keeps coming up we will probably make
22 arrangements to do so, if it's permitted.

23 MR. DYSINGER: Thank you.

24 CHAIRMAN: Any other comments or questions
25 from the board?

1 (NO RESPONSE)

2 CHAIRMAN: Entertain a motion to dispose of
3 the item.

4 MR. TAYLOR: Mr. Chairman, I move to approve
5 the conditional use permit based on the facts that it
6 provides an obvious need and benefit to the community,
7 there's no apparent opposition to this, and it also
8 meets all zoning ordinance requirements.

9 CHAIRMAN: Is there a second to the motion?

10 MR. WARREN: Second.

11 CHAIRMAN: A motion has been made and a
12 second. Any other comments or questions from the
13 board?

14 (NO RESPONSE)

15 CHAIRMAN: Staff have anything else?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: Hearing none all in favor raise
18 your right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries.

21 Next item, please.

22 ITEM 6

23 2031 East Tenth Street, zoned R-4DT
24 Consider request for a Conditional Use Permit in order
25 to place a 14'x52' manufactured home on the property.
Reference: Zoning Ordinance, Article 8, Section
8.2A10B/7

1 Applicant: Martha M. Thompson

2 ZONING HISTORY

3 The subject property is currently zoned R-4DT
4 Inner-City Residential and OMPC records indicate that
5 the subject property has always been zoned R-4DT.
6 OMPC records indicate that one conditional use permit
7 has been granted for a manufactured home in this
8 section of East Tenth Street. The request was
9 approved for 2007 East Tenth Street in April 1990.
10 There is also an existing manufactured home located at
11 1027 West Tenth Street which may likely predate zoning
12 regulations.

13 LAND USES IN SURROUNDING AREA

14 The property to the north, east and west is
15 zoned R-4DT Inner-City Residential. The property to
16 the south across East Tenth Street is zoned I-2 Heavy
17 Industrial.

18 ZONING ORDINANCE REQUIREMENTS

19 The class-2 manufactured home site standards
20 based on the requirements of the zoning ordinance are
21 as follows:

- 22 1. A concrete or asphalt parking pad to
23 accommodate two 9'x18' spaces is required.
- 24 2. A minimum 10'x10' deck or patio is
25 required.

1 3. A concrete sidewalk is required, but may
2 be waived along rural roads (w/o curbs).

3 4. The driveway apron shall not exceed 40
4 percent of the lot width.

5 5. The property is required to have at least
6 three trees.

7 6. The manufactured home shall be permanently
8 installed on a permanent foundation. A poured
9 concrete or masonry block skirting wall shall be
10 constructed beneath and along the entire perimeter of
11 the manufactured home.

12 7. All wheel, trailer-tongue and hitch
13 assemblies shall be removed upon installation.

14 8. The manufactured home shall be permanently
15 connected to an approved water and sewer system when
16 available.

17 The applicant has requested a waiver of the
18 required sidewalk since there are no sidewalks in the
19 vicinity of the property along East Tenth Street.

20 MR. HOWARD: We would like to enter the Staff
21 Report into the record.

22 CHAIRMAN: Is there any opposition in the
23 office?

24 MR. NOFFSINGER: No, sir.

25 CHAIRMAN: Is anyone wishing to speak in

1 opposition of this item?

2 (NO RESPONSE)

3 CHAIRMAN: Is the applicant here and have
4 anything you want to add at this time?

5 (NO RESPONSE)

6 CHAIRMAN: Seeing no one any board members
7 have any questions or comments at this time?

8 (NO RESPONSE)

9 CHAIRMAN: Entertain a motion to dispose of
10 the item.

11 MR. WARREN: Motion to approve the conditional
12 use permit with the findings that there are other
13 manufactured homes already existing in the area and
14 it's in keeping with the general vicinity. The land
15 use permits it. Also, we'd like to grant the waiver
16 of the sidewalk since there are no other sidewalks in
17 the vicinity.

18 CHAIRMAN: Is there a second?

19 MS. MASON: Second.

20 CHAIRMAN: A motion has been made and a
21 second. Any other questions or comments from the
22 Staff?

23 MR. NOFFSINGER: No, sir.

24 CHAIRMAN: Board have any other comments or
25 questions?

1 (NO RESPONSE)

2 CHAIRMAN: Hearing none all in favor raise
3 your right hand.

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion carries.

6 Next item, please.

7 -----

8 VARIANCES

9 ITEM 7

10 1008, 1016, 1018 Omega Street; 2600 West Tenth Street,
11 2517, 2521, 2523 Lancaster Avenue, zoned I-2
12 Consider request for a Variance to waive the perimeter
13 tree requirement except along the east boundary and 40
14 linear feet along the north boundary and 25 linear
15 feet along the south boundary as shown on the site
16 plan.
17 Reference: Zoning Ordinance, Article 17,
18 Section 17.311
19 Applicant: Judson Ray & Gloria Jean Drewry

20 CHAIRMAN: Is there any opposition filed in
21 the office?

22 MR. NOFFSINGER: No, sir.

23 CHAIRMAN: Is anyone here wishing to speak in
24 opposition of this item?

25 (NO RESPONSE)

CHAIRMAN: Is the applicant here?

APPLICANT REP: Yes.

CHAIRMAN: Do you have any comments you'd like
to add at this time?

1 APPLICANT REP: No, sir.

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

4 (NO RESPONSE)

5 CHAIRMAN: Staff have anything else to add?

6 MR. NOFFSINGER: Mr. Brian Howard might want
7 to summarize the Variance Staff Review just in summary
8 form in terms of what the request is and what the
9 Staff's position is.

10 MR. HOWARD: Basically the property was
11 recently zoned I-2 Heavy Industrial. That was
12 approved, I believe, in December of 2006. Prior to
13 that it was zoned I-1 Light Industrial and R-4DT
14 Inner-City Residential. The applicant had been using
15 the property as a salvage yard and other uses that
16 were not permitted in those zones so they did rezone
17 to an I-2 Heavy Industrial use.

18 Also with that they applied and received a
19 Conditional Use Permit in order to use the facility as
20 a wrecking yard and salvage yard, storage yard, which
21 the only way they can be approved is through a
22 Conditional Use Permit. At the time they also were
23 granted a variance in order to waive a separation
24 requirement from the surrounding commercial and
25 residential zoned properties. That's a 300 foot

1 waiver from the residential property and 100 foot from
2 commercially zoned property.

3 At that time there was a development plan that
4 was submitted or a site plan that was submitted that
5 showed the required landscaping which includes a
6 fence. The applicant's fence does exceed the minimum
7 height requirement, which is eight feet, and they've
8 installed a ten foot fence around the property that is
9 currently in existence. The plan did show that the
10 trees were proposed to be installed as required.

11 Now, the applicant is requesting that the
12 majority of those trees be removed.

13 The Staff's position would be that it's a
14 minimal screening requirement. That they've already
15 received some waivers and things on other set backs,
16 and separations, and buffers. Since it is a minimal
17 requirement, Staff would recommend that the trees be
18 installed.

19 If you have any questions, would be glad to
20 answer those.

21 MR. NOFFSINGER: I do have a question so I
22 understand where the variance is being sought.

23 The east property line, would that be where
24 the existing building sets?

25 MR. HOWARD: Correct. That would be the

1 existing building along Omega Street.

2 MR. NOFFSINGER: Since we have a building
3 there, they're not going to have room to put any trees
4 along that east boundary?

5 MR. DREWRY: They're already there.

6 CHAIRMAN: Come forward.

7 MR. SILVERT: State your name, please.

8 MR. DREWRY: My name is Judson Ray Drewry.

9 (MR. JUDSON RAY DREWRY SWORN BY ATTORNEY.)

10 CHAIRMAN: Start again.

11 MR. DREWRY: I was just answering the
12 question. East is not going to be changed at all.
13 All the trees along Omega Street are going to stay
14 there. Everything is going to stay. The only thing
15 is I don't want trees inside my fence, inside my
16 privacy fence. The fence is 10 foot tall and there's
17 no need for trees inside.

18 Along the north boundary there's 135 feet that
19 will be nothing but landscaping. That's on all of
20 Tenth Street. All of that is going to be strictly
21 landscaping. Everything on Omega, except for the
22 driveway, is already landscape. The 25 foot on the
23 south boundary, that's already landscaped. It stays
24 because that's part of Omega Street.

25 The only thing I wanted was the trees out of

1 the inside of the input fence. There's no practical
2 use for them to be there. You couldn't see them. I
3 mean it's not practical. Also it's a fire hazard.

4 MR. DYSINGER: Sir, just so I'm clear. Where
5 exactly is the ten foot fence that you're talking
6 about? Southwest?

7 MR. DREWRY: On the big drawing, the fence on
8 the big drawing was in red.

9 MR. NOFFSINGER: Mr. Drewry, I made a mistake
10 on east. I meant the west side. You're asking west
11 side not to put the trees where the existing building
12 is. There adjoining the parking lot of the rest home
13 you're asking that the trees not have to be installed
14 there.

15 MR. DREWRY: That's existing building, right
16 up against that line. So there's no trees that could
17 go there anyway.

18 MR. NOFFSINGER: Right. Although, it's an
19 ordinance requirement that you have those trees.

20 MR. DREWRY: Not in the drawing that I've got.

21 MR. NOFFSINGER: Right. I understand that
22 now.

23 MR. DREWRY: There are trees on the west side,
24 but they've been placed inside the ten foot fence from
25 the building back to Lancaster Avenue.

1 MR. NOFFSINGER: That brings me to my next
2 question because those trees are shown inside your
3 privacy fence along Lancaster and along a portion of
4 the west property line. I thought you said you didn't
5 want the trees.

6 MR. DREWRY: I don't want the trees in there.

7 MR. NOFFSINGER: But the way this is written
8 up it's as if you submitted the site plan and the
9 trees that are shown here are the trees that would be
10 required to be installed. Now, I may be confused, but
11 that's the way I'm reading this.

12 MR. DREWRY: There's two drawings. I've got
13 one that approved the last variance. Then there was
14 one for the upgrade.

15 MR. HOWARD: There should be two drawings in
16 your packet. In the left-hand corner one should say
17 "Original Variance" and the second should say
18 "Proposed Variance."

19 MR. NOFFSINGER: I only had one large drawing
20 and that's what I was going by. This one might be the
21 other one and was not stapled in. It wasn't stapled
22 in.

23 MR. DREWRY: See, that's what I want. The
24 second one there you'll see where it's drawn in, all
25 the different things. The trees are gone on the

1 inside of the privacy fence.

2 MS. MASON: So this fence is a metal fence.
3 Not a chain-link?

4 MR. DREWRY: Yes, ma'am. It's a metal fence.

5 MS. MASON: And it goes?

6 MR. DREWRY: It's 10 feet tall. Most places
7 it's 11 because it's off the ground in most places I
8 put so it goes at least 10 foot in the air.

9 MR. DYSINGER: The solid metal, is it the
10 chain-link with the little rivets?

11 MR. DREWRY: It's solid metal. It looks
12 exactly like a building. There's no wood. It's all
13 metal. It's metal sheet that's ten foot tall screwed
14 to angle iron. It's withstood 70 and 80 mile an hour
15 winds. It hasn't wiggled yet.

16 MR. DYSINGER: And there's no room on the
17 outside of this fence for trees?

18 MR. DREWRY: No, sir. There's no room on the
19 outside of the fence at all. There's 9 to 11 foot on
20 the south boundary on Lancaster, but that's mostly
21 city property. I just mow it and keep it maintained.
22 If they wanted me to put trees out there, I'd be glad
23 to do that or bushes or whatever, you know. That's
24 their part, the city's property. There's no sidewalk
25 on that side. There's actually no sidewalks anywhere

1 around there. I just mow it?

2 CHAIRMAN: Staff have any other comments or
3 questions?

4 MR. NOFFSINGER: No, sir.

5 MR. WARREN: What kind of trees are there?

6 MR. DREWRY: The ones that's there, most of
7 them are Cyprus, ball Cyprus. Eight inch ball Cyprus.

8 I'll have to put three on Tenth Street, three
9 more trees on Tenth Street.

10 MR. DYSINGER: So if you would plant the trees
11 as required, would they even be visible from outside
12 your property?

13 MR. DREWRY: No, sir, they would not. Not
14 until ten years or more.

15 MR. NOFFSINGER: Ideally what you do before
16 you place the fence, you don't put the fence right on
17 the property line. You put the trees on the outside
18 and you place the fence back, but then you lose
19 property that you can use for your operation. Now
20 we're dealing with the issue that the fence has been
21 installed and where do you put the trees.

22 When was the fence installed?

23 MR. DREWRY: Several years. Well, I put part
24 of it in two years ago. When I bought the property
25 over on Lancaster, I bought two more lots over there.

1 So I put down by Lancaster and then by the rest home.
2 I put the fence in then there, just when I expanded
3 the property. Before that it was probably eight or
4 nine years.

5 MR. DYSINGER: So when you put this fence in,
6 the portion of it that you put in, did you not --
7 maybe this question is for Staff.

8 Did the applicant not have to get a permit at
9 that time for this fence?

10 MR. NOFFSINGER: Well, that would be a
11 question for Mr. Mischel.

12 MR. DREWRY: I didn't get a permit. I went
13 and approved the existing fence that was there is what
14 I did. I didn't get a permit.

15 MR. SILVERT: State your name, please.

16 MR. MISCHEL: Jim Mischel.

17 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

18 MR. MISCHEL: Typically we do not permit
19 fences. No permit required. So I guess at this time,
20 two years ago or back in the '80s when the fence was
21 put in, I guess he did it on his own.

22 MR. DREWRY: I did all my landscaping, all the
23 Cyprus trees, all the landscaping, the rose bushes,
24 all the hollies and everything else I did all on my
25 own. I never asked anybody. I asked them how they

1 needed it, but I didn't get no orders to anything like
2 that.

3 MS. MASON: How long have you been in business
4 at this particular property?

5 MR. DREWRY: Fourteen years.

6 MS. MASON: And you've been the original
7 person all along?

8 MR. DREWRY: Yes, ma'am.

9 CHAIRMAN: Any other questions or comments
10 from the board of the applicant?

11 (NO RESPONSE)

12 CHAIRMAN: Staff have anything else to add?

13 MR. NOFFSINGER: No.

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

16 MR. DYSINGER: Mr. Chairman, my thinking on
17 this matter, my thinking on all Variances is that
18 burden is on the applicant of why they shouldn't have
19 to comply. With that said, I'd be interested in what
20 other board members think about this situation,
21 putting these trees in behind the fence.

22 MR. TAYLOR: My opinion is that at some point
23 whether a permit had to be required or not when this
24 original fence was constructed that he is now at a
25 hardship because of that. If there was a problem

1 then, we probably should have brought it up then. Now
2 for him to either move the fence back or put these
3 trees in a place where we're not going to be able to
4 see them, in my opinion, would put undo hardship on
5 him whenever the fence went up 14 years or 20 years or
6 7 years, it may should have got caught then as opposed
7 to maybe in the future. It's on the property line. I
8 know saying it's not permitted so it may be some kind
9 of deal where it's hard to pick up. But in my opinion
10 it looks like to me that him planting the trees is
11 just going to cost him, you know, and you're never
12 going to see him. Obviously to move the fence would
13 cost way more than that and that would defeat the
14 purpose too. It just doesn't seem to me with no
15 extreme opposition, it just seems like it would be an
16 extreme hardship on him without any opposition that's
17 been brought forth.

18 CHAIRMAN: Any other comments from any other
19 board members?

20 MS. DIXON: I guess I have a hard time with
21 backing away from any kind of screening with reference
22 to salvage yards because of what we've seen over the
23 years. Although Mr. Drewry has done a tremendous job,
24 really an adequate job, eventually those trees will be
25 seen.

1 MR. DREWRY: Another thing. I wouldn't mind,
2 I don't mind as long as the fence is maintained at the
3 ten foot level and in good looking condition. A lot
4 better than most of your other salvage yards in
5 Owensboro and around Owensboro. I don't have any
6 problems on if the fence goes down, the trees go up.
7 I wouldn't have any problems with that at all. To
8 move that fence back, you're talking 30, \$40,000 and
9 lose a lot of property. Which you've only got less
10 than two acres there for what the business is. If you
11 take that much property out of that acreage, there's
12 not going to be a yard there big enough.

13 MR. DYSINGER: In your opinion, do you not
14 want to plant the trees just because you don't think
15 it's necessary? Is there any other hazard?

16 MR. DREWRY: It's a fire hazard. Inside of a
17 salvage yard you're using cutting torches. Grass and
18 trees is really a fire hazard, you know. If you've
19 got leave on the ground, it could start a fire. It's
20 really a fire hazard. I like trees. I love trees,
21 but not in this instance, no. I've got trees outside
22 the lot. The front, over 100 and some feet down the
23 front has got trees 25 feet wide. On Tenth Street
24 there's -- it's 35 foot from the street to the
25 building. From the proposed fence that's going to go

1 there, that's all going to be beautified. There will
2 be four trees in it and shrubs and grass. That's not
3 going to be used. That's give away from the property.
4 Then the whole front along Omega.

5 Nobody in the neighborhood objects. I was
6 surprised that the trees was in there. The drawing I
7 seen before the last variance meeting it wasn't on it.
8 It was the before drawing there. After the meeting I
9 found the trees and me and my lawyer and my
10 engineering company went and had a few words. Had a
11 cooling down period before I made the application this
12 time.

13 CHAIRMAN: Any other comments from the board?

14 MR. WARREN: Judy, I agree with your
15 hesitancy, especially with this sort of thing, but I
16 also feel like that this is pretty much, there are
17 some unique circumstances here. He has gone over and
18 above I believe with the fence that's there. I think
19 with maybe some conditions or recommendations on the
20 application that maybe we could ward off some of those
21 problems in the future. I do feel it would be a
22 hardship and actually pretty unnecessary. I am
23 familiar with the scrap yard business. You're right,
24 leaves, of course, I could see where it could be a
25 fire hazard actually. Really, really not serving a

1 whole lot of purpose other than giving you and your
2 customers inside the fence some pretty trees.

3 MR. DREWRY: You can't see them when the gates
4 are shut.

5 CHAIRMAN: Any other board members have any
6 comments?

7 (NO RESPONSE)

8 CHAIRMAN: Entertain a motion to dispose of
9 the item.

10 MR. WARREN: I'm going to make a motion to
11 grant the variance. Findings that I do not feel like
12 it's going to adversely affect the public, safety or
13 welfare since we do have the fence, a 10 foot high
14 solid fence. It will not alter the essential
15 character of the general vicinity. It's already
16 there. By not granting this variance that it could
17 possibly cause a hazard or a nuisance to the public
18 due to the fire hazard issues. I don't think that
19 it's an unreasonable circumvention of the zoning
20 requirements. Once again I keep going back to the
21 fence. From what I see the main reason for our
22 requirements are screening and protecting the general
23 public and I think that he's met the requirement.

24 I would like to add some recommends for
25 approval of this application.

1 1. A consolidated plat shall be submitted
2 and approved by the OMPC to consolidate all subject
3 p0roperties into a single tract.

4 2. The existing ten foot fence shall be
5 maintained by the property owner to provide screening
6 from all adjacent properties.

7 3. Storage of vehicles or materials on the
8 site may not exceed the height of the fence.

9 4. A pest control plan must be implemented
10 annually.

11 CHAIRMAN: Is there a second to the motion?

12 MR. TAYLOR: Second.

13 CHAIRMAN: Any other comments from the Staff?

14 MR. NOFFSINGER: No, sir.

15 CHAIRMAN: Board have any other comments or
16 questions of the applicant?

17 (NO RESPONSE)

18 CHAIRMAN: You understand the recommendations
19 from the board?

20 MR. DREWRY: Yes, I do.

21 CHAIRMAN: All in favor raise your right hand.

22 (BOARD MEMBERS PRESENT - MARTY WARREN, SEAN
23 DYSINGER, RUTH ANN MASON, C.A. PANTLE, JR., WARD
24 PEDLEY AND CLAY TAYLOR - RESPONDED AYE.)

25 CHAIRMAN: All opposed.

1 (BOARD MEMBER JUDY DIXON RESPONDED NAY.)
2 CHAIRMAN: One opposed. Motion carries.
3 Entertain one more motion.
4 MR. WARREN: Move to adjourn.
5 MS. MASON: Second.
6 CHAIRMAN: All in favor raise your right hand.
7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
8 CHAIRMAN: We are adjourned.
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1 STATE OF KENTUCKY)
)SS: REPORTER'S CERTIFICATE
2 COUNTY OF DAVIESS)

3 I, JANE BELCHER, Notary Public in and for the
4 State of Kentucky at Large, do hereby certify that the
5 foregoing Owensboro Metropolitan Board of Adjustment
6 meeting was held at the time and place as stated in
7 the caption to the foregoing proceedings; that each
8 person commenting on issues under discussion were duly
9 sworn before testifying; that the Board members
10 present were as stated in the caption; that said
11 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 37 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 25th day of September, 2007.

18

19

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22

COMMISSION EXPIRES: DECEMBER 7, 2008

23

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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