

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 JUNE 5, 2008

3 The Owensboro Metropolitan Planning Commission  
4 met in regular session at 5:30 p.m. on Thursday, June  
5 5, 2008, at City Hall, Commission Chambers, Owensboro,  
6 Kentucky, and the proceedings were as follows:

7 MEMBERS PRESENT: Ward Pedley, Chairman  
8 Judy Dixon, Vice Chairman  
9 Gary Noffsinger, Director  
10 Madison Silvert, Attorney  
11 Sean Dysinger  
12 C.A. Pantle

13 \* \* \* \* \*

14 CHAIRMAN: Call the meeting of the Owensboro  
15 Metropolitan Board of Adjustment to Order. We'll  
16 start our meeting with a prayer and the pledge of  
17 allegiance to the flag. If you will stand, please.

18 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

19 CHAIRMAN: First item on the agenda is to  
20 consider the minutes of the May meeting, May 1, 2008  
21 meeting. Are there any additions, corrections?

22 (NO RESPONSE)

23 CHAIRMAN: Chair is ready for a motion.

24 MS. DIXON: Move to approve.

25 MR. PANTLE: Second.

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

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries. The minutes are  
3 approved.

4 Next item.

5 -----

6 CONDITIONAL USE PERMITS

7 ITEM 2

8 201 Phillips Court, zoned R-4DT  
9 Consider a request for a Conditional Use Permit to  
10 construct a parking lot in the rear of the property.  
11 Reference: Zoning Ordinance, Article 8, Section 8.2C1  
12 Applicant: KY United Methodist Homes for Children and  
13 Youth, Mary Kendall Campus

14 MR. SILVERT: State your name, please.

15 MR. WILLIAMS: Zack Williams.

16 (ZACK WILLIAMS SWORN BY ATTORNEY.)

17 ZONING HISTORY

18 The subject property is located on Phillips  
19 Court between 15th Street and 17th Street. The  
20 property is currently zoned R-4DT Inner-City  
21 Residential. OMPC records indicate that the OMBA  
22 approved a Conditional Use Permit on February 1, 2007  
23 to add the subject property to the Mary Kendall Campus  
24 at 193 Phillips Court for the purpose of  
25 administrative offices. The request before you is to  
provide adequate parking for the office personnel.

Four other Conditional Use Permits have been

1 approved for 193 Phillips Court. They are listed by  
2 date as follows:

3 July 11, 1996, to construct a building for  
4 educational and meeting activities.

5 December 4, 1997, to construct a  
6 multi-purpose/recreation building.

7 November 6, 2003, to construct a 30' x 30'  
8 garage and storage building on the existing campus.

9 April 6, 2006, to construct a 30' x 60' picnic  
10 shelter on the existing campus.

#### 11 LAND USES IN SURROUNDING AREA

12 The adjoining property is zoned R-4DT Inner  
13 City Residential and P-1 Professional.

#### 14 ZONING ORDINANCE REQUIREMENTS

15 1. One parking space per 400 square feet of  
16 office space, including one (1) ADA Van accessible  
17 space.

18 2. Vehicular use area screening is required.

#### 19 SUGGESTED CONDITIONS

20 The Conditional Use Permit approved on  
21 February 1, 2007 was subject to the consolidation plat  
22 approval by the OMPC. A Construction Permit for the  
23 parking lot should not be granted without  
24 consolidation plat approval by the OMPC.

25 MR. WILLIAMS: I would like to enter the Staff

1 Report into the record as Exhibit A.

2 CHAIRMAN: Is anyone here representing the  
3 applicant?

4 APPLICANT REP: Yes.

5 CHAIRMAN: Does anyone here have any questions  
6 or comments on the application?

7 (NO RESPONSE)

8 CHAIRMAN: Board members have any questions of  
9 the applicant?

10 (NO RESPONSE)

11 CHAIRMAN: Chair is ready for a motion.

12 MR. DYSINGER: Mr. Chairman, move to approve  
13 the Conditional Use Permit given the findings the  
14 proposed use is compatible with and necessary for  
15 current usage. With the condition that the  
16 construction permit not be issued until the  
17 consolidation plat be approved by the OMPC.

18 MR. DIXON: Second.

19 CHAIRMAN: We have a motion by Mr. Dysinger  
20 and second by Ms. Dixon. Any questions or comments on  
21 the motion?

22 (NO RESPONSE)

23 CHAIRMAN: All in favor raise your right hand.

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: Motion carries unanimous.

1                   Next item.

2           ITEM 3

3           1901 Hall Street, zoned R-4DT  
4           Consider a request for a Conditional Use Permit to  
5           place a 14' x 70' Class-2 manufactured home on the  
6           property.

7           Reference: Zoning Ordinance, Article 8,  
8           Section 8.2 A10B

9           Applicant: Harry Pavlas

10          ZONING HISTORY

11                   The subject property is currently zoned R-4DT  
12           Inner-City Residential. OMPC records indicate that  
13           one Conditional Use Permit has been approved for  
14           class-2 manufactured housing (1905 Hall Street) within  
15           this block of Hall Street. Based on a site visit, it  
16           appears that a class-2 manufactured home was located  
17           at 1901 Hall Street, but has been removed recently.

18          LAND USES IN SURROUNDING AREA

19                   The majority of properties along this block of  
20           Hall Street are zoned R-4DT and are used for  
21           single-family residences. The subject property is  
22           bordered on all sides by R-4DT zoning.

23          ZONING ORDINANCE REQUIREMENTS

24                   The class-2 manufactured home site standards  
25           based on the requirements of the Zoning Ordinance are  
26           as follows:

27                   1. A concrete or asphalt parking pad to  
28           accommodate two 9'x18' spaces is required.

1           2. A minimum 10'x10' deck or patio is  
2 required.

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

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

7           5. 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           6. All wheel, trailer-tongue and hitch  
13 assemblies shall be removed upon installation.

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

17           The site plan submitted by the applicant  
18 addresses each of these items satisfactorily.

19           MR. WILLIAMS: We would like to enter the  
20 Staff Report into the record as Exhibit B.

21           CHAIRMAN: Anyone here representing the  
22 applicant?

23           APPLICANT REP: Yes.

24           CHAIRMAN: Anyone here like to speak in  
25 opposition or have any comments?

1 MR. CORNETT: Yes.

2 CHAIRMAN: Step forward, please.

3 MR. SILVERT: State your name, please.

4 MR. CORNETT: My name is James Cornett.

5 (JAMES CORNETT SWORN BY ATTORNEY.)

6 MR. CORNETT: I live right behind this  
7 property you're talking about. I have about 20  
8 pictures here. It shows no driveway, no sidewalk, no  
9 trees. It's just a junk pile. It always has been a  
10 junk pile. I would love for you to look at it.

11 You can see the property that's beside it.  
12 They have a boat, a tractor-trailer and a hot dog  
13 traveling machine that hasn't been moved in ten years.

14 The property beside it, you have to call them  
15 every month to cut their grass.

16 The property to the south side of where he  
17 wants to put this trailer in is remodeling that home  
18 to make it look real nice.

19 All the homes on the other side of the street  
20 are real nice. You know, something you want to live  
21 in.

22 This piece of property looks like it has a  
23 septic sewer tank, because I've been over there  
24 looking. I've not seen any hook-up lines. There's a  
25 big concrete pad with a pole running out of it about

1       20 feet in the air. To me that a septic tank. If he  
2       has sewer, I can't find it.

3               This property has never had -- the first time  
4       it came about they moved that trailer in there. There  
5       never was a foundation. Never was secured right. The  
6       grass was never kept up. Place covered up in weeds.  
7       The back gate is bent off. I mean it's just an eye  
8       sore to the property of everybody that's trying to  
9       keep their house looking nice. It's been like for --  
10      I'm 54. My mother has lived there for over 60 years.  
11      That piece of property right there has never looked  
12      any better than what I'm showing you.

13              The last trailer that was there was burned  
14      down they said by someone put a cigarette in an  
15      ashtray and put it under a couch. The guy comes out.  
16      Tears all the aluminum off and sells it. You can see  
17      in the pictures how much that he wanted to take off  
18      and leave. He got what he wanted. It's been like  
19      that ever since. I can't remember when it burned  
20      down. It's probably been - I don't know - six months,  
21      a year. Just those tires, those concrete, all that  
22      junk. They just come out the other day and cut the  
23      grass.

24              Everybody around there wants to keep their  
25      house up. Everybody cuts their yard. Nobody would



1        want that right in the center. Especially right  
2        beside the trailer that has a Winnebago. The boat has  
3        never been in the water. The Gyro hot dog machine has  
4        not moved in ten years I know. So it's just moved  
5        another trailer in to the city. Putting it right  
6        there is just an eye sore for the community. I've  
7        never seen anything that the gentleman that owns the  
8        property says he's going to do. He was going to put  
9        flowers out. He's going to put trees out. He's going  
10       to make it look so nice. Well, they had snakes, three  
11       pit bulls chained up. When they got done they didn't  
12       have any grass because they had them chained up to a  
13       tree. Those things you screw in the ground. They  
14       never cut the grass.

15                If you want to put a trailer in, get some  
16        property somewhere and go out in the country and put  
17        it in and put your septic tank on it. Don't put it  
18        right there in the neighborhood where people have  
19        lived all their life and trying to make something of  
20        what they've got look nice.

21                Do you have any questions of me?

22                CHAIRMAN: Any board member have any  
23        questions?

24                (NO RESPONSE)

25                CHAIRMAN: Is the applicant here to address

1 the concerns of this gentleman?

2 MR. SILVERT: State your name, please.

3 MR. PAVLAS: Jim Riney.

4 (JIM RINEY SWORN BY ATTORNEY.)

5 MR. RINEY: As I said, I'm Jim Riney. We  
6 prepared the site plan and deal with the technical  
7 issues of the application tonight.

8 The plan that we showed, as the Staff Report  
9 indicated, it contains the elements that are required.  
10 We're locating a modular home on the lot. The  
11 property right now does not have a concrete drive or  
12 sidewalk or those things that were mentioned, but  
13 they're the subject of the plan that has been  
14 submitted with the application that says that that's  
15 what has to be put in with the modular home.

16 Regarding the sanitary sewer system  
17 connection. Sanitary sewer is available to the site.  
18 What I heard describe as far as a pipe, it sounds like  
19 a typical vent pipe on a mobile home connection where  
20 there's municipal sewers or septic tank. There are  
21 more septic tanks allowed within the city system, and  
22 sort of not on that size of a lot. The sewer service  
23 would have to be provided via the RWRA sanitary sewer  
24 system that exist currently on Hall Street.

25 Site plan, just for the record, does include

1 the requirement to install 4 foot concrete drive, the  
2 concrete apron, the concrete pad, three trees as was  
3 conveyed to you earlier by the Staff Report.

4 CHAIRMAN: Jim, did you say that the sewer tap  
5 is available? Is available by RWRA?

6 MR. RINEY: There should be a sewer tap there.  
7 I have not asked them to mark the tap on the ground,  
8 but a sewer system is in the small street. I suspect  
9 there was one there, that sewer system before, but I  
10 can't come to you tonight with the evidence to show  
11 you that.

12 Mr. Pavlas, he may be able to tell you whether  
13 or not they were paying sewer charge on that in the  
14 past.

15 CHAIRMAN: Any board member have any questions  
16 of Mr. Riney?

17 MS. DIXON: Was a permit issued for the mobile  
18 home that was here before this one?

19 MR. WILLIAMS: There was no conditional use  
20 permit for this property. I don't have a recent -- it  
21 may have predated. We don't know that.

22 CHAIRMAN: Any other board members have any  
23 other questions?

24 (NO RESPONSE)

25 MR. SILVERT: State your name, please.

1 MR. MISCHEL: Jim Mischel.

2 (JIM MISCHEL SWORN BY ATTORNEY.)

3 MR. MISCHEL: What might clarify the situation  
4 a little bit is, when we issued a building permit, the  
5 electricity will not be turned in to OMU, it won't be  
6 hooked up until all of these improvements are made.  
7 They have to have the underpinning. They have to have  
8 the sidewalk, the driveways. We need to check on the  
9 sewer connection before they even get electricity.  
10 Typically that's what we do now before we turn the  
11 electricity on. When they get the electricity, it  
12 will be up to compliance in all aspects and  
13 everything.

14 Now, a year down the road, I can't attest to  
15 any trash or anything like that. That's why we have a  
16 property maintenance code.

17 MR. NOFFSINGER: Mr. Mischel, who enforces the  
18 property maintenance code?

19 MR. MISCHEL: That right now is community  
20 development, but it might be going to the city  
21 engineer's office.

22 MR. NOFFSINGER: It's not your office or the  
23 Planning Commission?

24 MR. MISCHEL: No, it's not. It's not with the  
25 Planning Commission, the property maintenance code.

1           MS. DIXON: I guess what I'm asking is: What  
2 kind of assurance can we give these people that their  
3 property value is not going to be compromised by a  
4 place like this?

5           MR. MISCHEL: The only assurance we give is  
6 when the permit is issued, the electricity will not go  
7 on until all these improvements are made. As far as  
8 the future, there is a property maintenance code with  
9 the City of Owensboro. The concern can be addressed  
10 to them and they will go out, they should go out and  
11 will go out and see if they're justified and the cite  
12 the owner or the conditions of that property.

13           MR. NOFFSINGER: Ms. Dixon, we can't give  
14 assurances on property values.

15           MR. SILVERT: State your name again.

16           MR. CORNETT: James Cornett.

17           If you look at the size of the property, I  
18 don't really see how he can put a trailer in there, a  
19 deck, a sidewalk and a driveway. I don't see how he  
20 can do that. If he can, it must going to be an  
21 awfully small trailer.

22           We were promised the last time we were here  
23 that he was going to put in trees and flowers and all  
24 this good stuff. Well, that never happened either.  
25 The picture shows that the property has -- it just

1 amazes me how you're going to put it all there.

2 MR. NOFFSINGER: For the record I've given Mr.  
3 Cornett, I believe it is, a copy of the site plan  
4 prepared by the applicant.

5 MR. CORNETT: Okay.

6 Well, I just wanted to ask you all if you  
7 lived where I was, would you want what I just showed  
8 you beside your house? If you would, happy birthday.  
9 We don't. It's a crying shame that a mobile home has  
10 to come into the City of Owensboro just for someone to  
11 maybe collect a government paycheck or somebody with  
12 Section 8. That's probably what it will turn into  
13 anyway. Why can't he take it somewhere else instead  
14 of putting it right in the middle of town there.

15 If you look around, that other trailer beside  
16 it, you see what we got there. We have two. I mean  
17 two. Go riding through town. There's not a way you  
18 all have two trailers probably within three miles of  
19 you all together like that. You wouldn't want them.

20 CHAIRMAN: Any board members have any  
21 questions of the applicant, Mr. Riney, or anyone else?

22 If you wish to speak, step forward, please.

23 MR. SILVERT: State your name, please.

24 MR. CECIL: Don Cecil.

25 (DON CECIL SWORN BY ATTORNEY.)

1           MR. CECIL: The girl that lived there before  
2 the last, she said that place was on a septic tank.  
3 Now, whether it is now, I don't know. They never did  
4 take care of it. They'd just rent it to anybody that  
5 would come along. In fact, the last bunch they had in  
6 there caused it to burned down. They had dogs, snakes  
7 and everything else in there. He just rents it to  
8 anybody. We live across the street from it. In fact,  
9 one time some people living in there, I heard a car  
10 juggling back and forth one morning. I jumped out of  
11 bed and went out there and it was car, they backed  
12 into my car. I caught them out there before they got  
13 away. They were fixing to take off before I got out  
14 there.

15           CHAIRMAN: Anyone else like to speak in  
16 opposition?

17           (NO RESPONSE)

18           CHAIRMAN: Any board members have any further  
19 questions or comments?

20           (NO RESPONSE)

21           CHAIRMAN: I think chair is ready for a  
22 motion.

23           MR. NOFFSINGER: This lady would like to  
24 speak.

25           MR. SILVERT: State your name.

1 MS. CORNETT: I'm Thelma Cornett. I was down  
2 here several years ago with --

3 MR. SILVERT: Let me swear you in, ma'am.

4 (MS. THELMA CORNETT SWORN BY ATTORNEY.)

5 MS. CORNETT: I was down here several years  
6 ago. The board also sent me a letter. We can down  
7 here and protested this. They told all these things  
8 like they said they was going to do. You can look at  
9 the fence at how the grass, how all those bushes and  
10 everything has grown up in there. They don't take  
11 care of anything when they get in there. Like he  
12 said, they just rent it to anybody. It's out of their  
13 hands and they do what they want to with it once they  
14 get there.

15 CHAIRMAN: Anyone else like to speak in  
16 opposition? Any comments or questions?

17 (NO RESPONSE)

18 CHAIRMAN: Chair is ready for a motion.

19 MS. DIXON: Mr. Chairman, I move to deny the  
20 motion based upon the opposition of the neighbors. By  
21 virtue of the pictures that are shown, it's  
22 incompatible with the other houses around it.

23 MR. PANTLE: Second.

24 CHAIRMAN: We have a motion by Ms. Dixon and a  
25 second by Mr. Pantle. Any questions on the motion or



1 comments?

2 (NO RESPONSE)

3 CHAIRMAN: All in favor raise your right hand.

4 (ALL BOARD MEMBERS - JUDY DIXON, WARD PEDLEY  
5 AND C.A. PANTLE - RESPONDED AYE.)

6 CHAIRMAN: All opposed.

7 (BOARD MEMBER SEAN DYSINGER RESPONDED NAY.)

8 CHAIRMAN: Motion carries three to one. The  
9 application is denied.

10 Next item.

11 ITEM 4

12 2110 Grimes Avenue, zoned I-1  
13 Consider a request for a Conditional Use Permit to  
14 operate an indoor recreational facility for the use of  
15 electric-go-carts, arcade, pizza shop, and laser tag.  
16 Reference: Zoning Ordinance, Article 8, Section 8.B11  
17 Applicant: Ryan McDaniel and W-4 Investments, LLC

18 ZONING HISTORY

19 The subject property is zoned I-1 Light  
20 Industrial. OMPC records indicate that no conditional  
21 use permits or variances have been requested for this  
22 property. The last known use of the property was as a  
23 linen supply service.

24 LAND USES IN SURROUNDING AREA

25 The subject property is bordered by I-1 Light  
Industrial zoning in the east, south, and west of the  
property. The property to the north is zoned I-2,

1 Heavy Industrial.

2 ZONING ORDINANCE REQUIREMENTS

3 1. One parking space per employee on max  
4 shift.

5 2. One parking space per two participants.

6 3. One parking space per three spectator  
7 seats.

8 4. Vehicular use area screening.

9 5. Outside storage area screening.

10 MR. WILLIAMS: I would like to enter the Staff  
11 Report into the record as Exhibit C.

12 CHAIRMAN: Anyone here representing the  
13 applicant?

14 APPLICANT REP: Yes.

15 CHAIRMAN: Is there anyone here that would  
16 like to speak in opposition?

17 (NO RESPONSE)

18 CHAIRMAN: Any board members have any  
19 questions of the applicant?

20 (NO RESPONSE)

21 CHAIRMAN: Chair is ready for a motion.

22 MR. DYSINGER: Mr. Chairman, given the  
23 findings that the proposed usage would be an asset in  
24 the community. It is compatible with surrounding  
25 zoning usage. Move to grant the Conditional Use

1 Permit.

2 CHAIRMAN: We have a motion. Do I hear a  
3 second?

4 MS. DIXON: Second.

5 CHAIRMAN: We have a motion by Mr. Dysinger.  
6 Second by Ms. Dixon. Any question or comments on the  
7 motion?

8 (NO RESPONSE)

9 CHAIRMAN: All in favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 ITEM 5

13 2202, 2214, 2222, 2224, 2226, 2230 West 10th Street,  
14 zoned I-2

15 Consider a request for a Conditional Use Permit to  
16 operate and expand an automobile and truck parts  
17 storage business and salvage yard.

18 Reference: Zoning Ordinance, Article 8, Section 8.2G4  
19 and 8.4

20 Applicant: West Side Auto Parts, Inc.

21

22 ZONING HISTORY

23 The subject property is zoned I-2, Heavy

24 Industrial. OMPC records indicate that no other

25 conditional use permits or variances have been

requested for this property. The property is

currently being used as an automobile and truck parts

storage yard.

LAND USES IN SURROUNDING AREA

1           The subject property is bordered on the south  
2           and west by I-2, Heavy Industrial zoning with the  
3           exception of one R-4DT zoning at 2011 Lancaster  
4           Avenue. There are no conditional use permits on file  
5           for these addresses, but some are currently used by  
6           West Side Auto for the storage of vehicles in an  
7           unknown state of operability. 2011 Lancaster Avenue  
8           is utilized as a single-family residence and is not  
9           owned by West Side Auto. The properties to the east  
10          are also zoned I-2, Heavy Industrial, but are used as  
11          residences. The properties to the north are zoned  
12          R-4DT and are utilized as single-family residences.  
13          The residential zoning is within the 300 foot buffer  
14          required by the zoning ordinance.

15          ZONING ORDINANCE REQUIREMENTS

- 16                 1. A minimum 8' high fence surrounding the  
17                 outdoor storage area.
- 18                 2. A tree for every 40' lineal feet of  
19                 outside storage area along the boundary of the storage  
20                 area.
- 21                 3. No stacking of materials or vehicles above  
22                 the required fence.

23          SUGGESTED CONDITIONS

- 24                 1. Subject to approval of a Variance for the  
25                 300 foot buffer from residential property.

1           2. No drive access point off of West 10th  
2 Street or Lancaster Avenue.

3           3. A consolidation plat be submitted to  
4 consolidate all properties.

5           4. No stacking of materials or vehicles above  
6 the required fence.

7           5. A pest control plan must be implemented  
8 and maintained annually.

9           6. Trees be placed on the exterior of the  
10 fence.

11           MR. WILLIAMS: I would like to enter the Staff  
12 Report into the record as Exhibit D.

13           CHAIRMAN: Anyone here representing the  
14 applicant?

15           MR. KAMUF: Yes, Mr. Chairman.

16           MR. SILVERT: State your name, please.

17           MR. KAMUF: Charles Kamuf.

18           MR. SILVERT: Mr. Kamuf, as always, I  
19 recognize the oath you took as an attorney.

20           CHAIRMAN: Mr. Kamuf, let's see if we have any  
21 opposition on this item and see what the concerns are.

22           MR. KAMUF: Let me say this: That we have  
23 written letters to all of the neighbors. I personally  
24 talk to some. Lorraine Cundiff, the owner of West  
25 Side, has talked to them. We've written every

1 neighbor a letter and explained to them what we're  
2 doing. She's also met with them. I don't think  
3 there's any opposition here tonight.

4 CHAIRMAN: Mr. Noffsinger, has there been any  
5 correspondence in the Planning Office?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: Anyone here like to speak in  
8 opposition, question or comments on this item?

9 (NO RESPONSE)

10 CHAIRMAN: Any board members have any  
11 questions of Mr. Kamuf?

12 (NO RESPONSE)

13 CHAIRMAN: Chair is ready for a motion.

14 MR. PANTLE: Mr. Chairman, being it's the same  
15 business all the time and is compatible with the  
16 community around it, I move to approve the Conditional  
17 Use with Conditions 1, 2, 3, 4, 5 and 6 as stated by  
18 the Staff.

19 MR. DYSINGER: Second.

20 CHAIRMAN: We have a motion and a second. Any  
21 question or comments on the motion?

22 (NO RESPONSE)

23 CHAIRMAN: All in favor raise your right  
24 hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)



1 approved for this location, the variance should also  
2 be approved.

3 Staff does believe there would be a hardship  
4 if this variance were not approved.

5 There are various precedents within the city  
6 area where such a decision has been made. You can  
7 reference them in your documentation.

8 Findings, if granting this Variance, the Staff  
9 believes this application will not adversely affect  
10 the public health, safety or welfare; will not alter  
11 the essential character of the general vicinity; will  
12 not cause a hazard or a nuisance to the public; and  
13 will not allow an unreasonable circumvention of the  
14 requirements of the zoning regulations.

15 So Staff recommends approval. However, that  
16 is if there is no objection by local residents to this  
17 expansion.

18 I would like to enter the Staff Report into  
19 the record as Exhibit E.

20 CHAIRMAN: Has there been any correspondence  
21 in the Planning Office of this issue?

22 MR. WILLIAMS: There has not, sir.

23 CHAIRMAN: Anyone here representing the  
24 applicant?

25 MR. KAMUF: Yes.



1           CHAIRMAN: Is anyone here have any questions  
2 or comments or opposition on this item?

3           (NO RESPONSE)

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

6           (NO RESPONSE)

7           CHAIRMAN: The chair is ready for a motion.

8           MR. DYSINGER: Mr. Chairman, given the  
9 findings that granting the variance will not adversely  
10 affect the public health, safety or welfare; will not  
11 alter the essential character of the general vicinity;  
12 will not cause a hazard or a nuisance to the public;  
13 and will not allow an unreasonable circumvention of  
14 the requirements of the zoning regulations, I move  
15 that we grant this variance request.

16           CHAIRMAN: We have a motion by Mr. Dysinger.

17           MR. PANTLE: Second.

18           CHAIRMAN: Second by Mr. Pantle. Any comments  
19 or questions on the motion?

20           (NO RESPONSE)

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

23           (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24           CHAIRMAN: Motion carries unanimous.

25           ITEM 6

1 2290 Harbor Road, zoned I-2  
2 Consider a request for a Conditional Use Permit to  
3 construct one 1,489,000 gallon steel tank inside the  
4 existing earthen dike and tank farm at Miles River  
5 Terminal for the storage of Urea Ammonium Nitrate  
6 solution.  
7 Reference: Zoning Ordinance, Article 8, Section  
8 8.2G4/27  
9 Applicant: Miles Farm Supply, LLC

6 ZONING HISTORY

7 The subject property is zoned I-2, Heavy  
8 Industrial. OMPC records contain no conditional use  
9 permits or variances for the subject property. The  
10 tract contains four existing storage tanks inside a  
11 containment dike that was designated for this purpose.

12 LAND USE IN SURROUNDING AREA

13 The subject property is bordered by I-2 Heavy  
14 Industrial zoning on all sides. All surrounding  
15 property is owned by the Owensboro Riverport  
16 Authority.

17 MR. WILLIAMS: I would like to enter the Staff  
18 Report into the record as Exhibit F.

19 CHAIRMAN: Is anyone here representing the  
20 applicant on this item?

21 MR. DYSINGER: Mr. Chairman, for the record my  
22 wife works for Miles Farm Supply. I however would not  
23 feel pressured to rule on this either way. I think I  
24 can hear the evidence impartially.

25 CHAIRMAN: No noted.

1           MR. SILVERT: Given the statement by Mr.  
2           Dysinger that he at least wants to bring out the  
3           potential for the appearance of conflict, I think we  
4           need to open it up to ask if there's any objection  
5           from anyone present as to Mr. Dysinger continuing to  
6           rule on this issue?

7           CHAIRMAN: Is there anyone here that has any  
8           objection to Mr. Dysinger acting or voting on this  
9           item?

10           (NO RESPONSE)

11           CHAIRMAN: So noted. If he does not, we do  
12           not have a quorum.

13           MR. DYSINGER: Thank you, Mr. Chairman.

14           CHAIRMAN: Anybody here that would like to  
15           speak on this item?

16           (NO RESPONSE)

17           CHAIRMAN: Does any board members have any  
18           questions of the applicant?

19           (NO RESPONSE)

20           CHAIRMAN: Chair is ready for a motion.

21           MR. PANTLE: Mr. Chairman, I move to approve  
22           this Conditional Use Permit for the reasons stated and  
23           where it's located in the property, the surrounding  
24           property.

25           CHAIRMAN: We have a motion for approval by

1 Mr. Pantle.

2 MS. DIXON: Second.

3 CHAIRMAN: We have a second by Ms. Dixon. Any  
4 comments or questions on the motion?

5 (NO RESPONSE)

6 CHAIRMAN: All in favor raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 ITEM 7

10 6133 US Highway 60 East, zoned I-2  
11 Consider a request for a Conditional Use Permit to  
12 construct a 98' x 148' fabric-type storage building on  
13 an existing concrete slab for the purpose of storing  
14 low-hazardous products and noncombustible materials.  
15 Reference: Zoning Ordinance, Article 8, Section  
16 8.2G4/27  
17 Applicant: Yellow Banks River Terminal and Hawesway,  
18 Inc.

19 ZONING HISTORY

20 The subject property is zoned I-2, Heavy  
21 Industrial. OMPC records indicate that a conditional  
22 use permit was approved on August 3, 2007 for the  
23 construction of a storage building in the near  
24 vicinity to that proposed by this application. Other  
25 conditional use permits have been approved for  
buildings on the property on April 5, 2001 and June 5,  
1997.

The subject property is located within a  
special flood hazard area and contains floodway. The

1 proposed building is not to be located in the floodway  
2 as per the site plan. A stream construction permit to  
3 build in a special flood hazard area was issued on May  
4 5, 2008 by the Kentucky Division of Water (#17126) for  
5 the construction of the proposed building.

6 LAND USES IN SURROUNDING AREA

7 The subject property is bordered by I-2 Heavy  
8 Industrial zoning to the north and south. The  
9 property is bordered to the west by the Ohio River and  
10 to the east by B-4, General Business zoning.

11 ZONING ORDINANCE REQUIREMENTS

12 1. Parking of one space per two employees at  
13 max shift must be available on site (minimum five  
14 spaces.)

15 MR. WILLIAMS: I would like to enter the Staff  
16 Report into the record as Exhibit G.

17 CHAIRMAN: Anyone here representing the  
18 applicant?

19 APPLICANT REP: Yes.

20 CHAIRMAN: Anyone here like to speak in  
21 opposition of this item?

22 (NO RESPONSE)

23 CHAIRMAN: Board members have any questions of  
24 the applicant?

25 MR. DYSINGER: Mr. Chairman, I have a

1 question. I don't know, since the applicant is not  
2 here, if it can be answered. What is a fabric type  
3 storage building.

4 MR. NOFFSINGER: We have a picture of it, I  
5 think.

6 MR. DYSINGER: Thank you.

7 CHAIRMAN: Chair is ready for a motion.

8 MR. PANTLE: Mr. Chairman, I move we approve  
9 the conditional use for being that the Kentucky  
10 Division of Water approved it and where it's located,  
11 the area where it's being built. Also that the zoning  
12 ordinance be complied with: Parking of one space per  
13 two employees at max shift must be available on site  
14 (minimum 5 spaces.)

15 CHAIRMAN: We have a motion for approval by  
16 Mr. Pantle. Do we have a second?

17 MR. DIXON: Second.

18 CHAIRMAN: Second by Ms. Dixon. Comments or  
19 questions on the motion?

20 (NO RESPONSE)

21 CHAIRMAN: All in favor raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimous.

24 -----  
25 VARIANCE

1       ITEM 8

2       195 Booth Field Road, zoned R-1A  
3       Consider a Variance to reduce the side-yard building  
4       setback from 10' to 4' along the north property line  
5       to build only a detached garage with covered porch.  
6       Reference: Zoning Ordinance, Article 8.5(d)  
7       Applicant: John and Patsy Austin

8       CONSIDERATIONS

9                 Staff does not find special circumstances in  
10                this situation.

11                The applicant desires to detach a garage and  
12                does not want to place it any closer to the residence  
13                than is shown on his site plan. Placing the garage  
14                behind the house would allow a reduction in the side  
15                yard setback to three feet, but according to the  
16                applicant, this would require the side yard to be  
17                paved and would be out of character with the  
18                neighborhood. He also contends that the garage would  
19                seem too close to the swimming pool if placed behind  
20                the home. However, it is evident from the site plan  
21                that there is sufficient space to meet the building  
22                code minimum of six feet. The opposite side of the  
23                property is not a suitable location for the garage  
24                because it contains a septic drain field.

25                A site visit has confirmed that the adjacent  
26                property to the north does have a steep elevation  
27                change near the property line which may prevent the

1 adjoining owner from additional building in this area.  
2 The applicant contends that this would ensure that  
3 adequate space will exist between the proposed garage  
4 and any buildings on the adjacent lot. However, there  
5 can be no presumption that the adjoining properties  
6 will not be developed to the extent allowed by the  
7 zoning ordinance. The applicant is able to meet the  
8 requirements of the zoning ordinance on the subject  
9 property by relocating the proposed garage to the  
10 rear.

11 Additionally, there is no evidence of setback  
12 encroachments in the general vicinity of the subject  
13 property. Therefore, approval of the variance will be  
14 out of character with the general vicinity.

15 The Staff does not believe it was a hardship  
16 on the applicant since there is sufficient room on the  
17 property to locate the garage behind the house;  
18 thereby meeting zoning ordinance setback  
19 requirements.

#### 20 FINDINGS

21 1. Granting this variance will not adversely  
22 affect the public health, safety or welfare.

23 2. It will alter the essential character of  
24 the general vicinity.

25 3. It will not cause a hazard or a nuisance



1 to the public.

2 4. It will allow an unreasonable  
3 circumvention of the requirements of the zoning  
4 regulations.

5 For these reasons Staff recommends denial.

6 MR. WILLIAMS: We would like to enter the  
7 Staff Report into the record.

8 CHAIRMAN: Anyone here representing the  
9 applicant?

10 MR. AUSTIN: Yes.

11 CHAIRMAN: Anyone here in opposition of this  
12 item?

13 (NO RESPONSE)

14 CHAIRMAN: Would the applicant like to address  
15 the board?

16 MR. AUSTIN: Yes, sir, please.

17 CHAIRMAN: Please step forward.

18 MR. SILVERT: State your name, please.

19 MR. AUSTIN: John Austin.

20 (JOHN AUSTIN SWORN BY ATTORNEY.)

21 MR. AUSTIN: I understand the Staff's concern  
22 that this may be a precedent setting situation. Given  
23 the nature of the area of the Booth Field Road  
24 residence, the fact that my back neighbor, the  
25 Tuckers, were contacted. They do not have a problem

1 with this. They actually own the lot that would be to  
2 the northeast, if you have the plat there before you.  
3 It's a vacant lot. They just bought two lots. Built  
4 on one and kept one vacant. That sits over the back  
5 side of the hill, which actually ridges on the north  
6 south property line that bisects the northern side of  
7 my property.

8 The gentleman to my immediate north, Mr.  
9 Mangrum, has exhibited no problems with this  
10 whatsoever. I did state in my statement that the  
11 property is for sale. So Mr. Mangrum will not be an  
12 issue for very long.

13 Knowing this I did speak with the real estate  
14 lady. I showed her the sketches that are before you.  
15 I requested her to tell me right now that this really  
16 looked like it would be a problem to her. She did  
17 not. She did not feel like that it would be a major  
18 malfunction.

19 Esthetically I've worked very hard with my  
20 contractor who is here with me tonight to try to make  
21 this all blend well into the existing home and in to  
22 the area around it.

23 Again, while I understand that this is not a  
24 common variance in the area, I would disagree  
25 respectfully that it would be out of character with

1 the neighborhood in general.

2 The nearest neighbor then across road of Booth  
3 Field is a fairly open area, as most of you may be  
4 aware. Out buildings are not uncommon. Although,  
5 lots may be positioned a bit differently than ours, as  
6 Staff has pointed out.

7 My concern with moving the garage to fall  
8 within the requirements of the Zoning Commission, as  
9 far as setbacks are concerned, it would definitely  
10 approach upon the residents and make this entire  
11 project not worthwhile.

12 Our home is built with cathedral ceilings.  
13 There are no attic spaces. There are no crawl spaces.  
14 There are no basement. Somewhere between little and  
15 no storage. We probably should have look at that when  
16 we bought the home, but quite frankly we liked the  
17 home instead. What we're looking to do with this  
18 garage is create an actual pull-down attic space for  
19 some additional storage. Again, trying to keep it  
20 esthetically in tune with the rest of the home.

21 Thank you.

22 CHAIRMAN: Board members, do you have any  
23 questions?

24 (NO RESPONSE)

25 CHAIRMAN: I have a couple of questions for

1 Staff.

2 Let's see if we have any questions by the  
3 board members.

4 Any board members have any questions?

5 MR. DYSINGER: Not right now.

6 CHAIRMAN: The location of this garage -- I'm  
7 asking Staff this. What's the spacing between that  
8 garage and that house have to be at that point?

9 MR. WILLIAMS: Minimum is six feet.

10 CHAIRMAN: He is showing ten feet.

11 MR. WILLIAMS: Ten feet, yes, sir.

12 CHAIRMAN: So if he moved it six feet, then  
13 what would the side yard requirement be?

14 MR. NOFFSINGER: He would have eight feet it  
15 looks like. The requirement would be ten feet.

16 CHAIRMAN: Is this an A-R zone?

17 MR. NOFFSINGER: This, I believe, is an R-1A  
18 zone, yes, sir. Single-family residential.

19 CHAIRMAN: And that requires ten foot setback?

20 MR. NOFFSINGER: Yes, sir.

21 CHAIRMAN: That's the reason for this  
22 variance?

23 MR. NOFFSINGER: I think the gentleman wants  
24 to keep it as far from his home as possible so as not  
25 to seemingly encroach upon the home. Why it's ten

1 feet, he'll have to answer that.

2 MR. AUSTIN: The ten foot request -- I  
3 originally started looking at an 18 foot garage. I  
4 cut the garage down. The ten foot would allow at  
5 least for some semblance of a breezeway. Of some way  
6 to create some landscaping and maintain the value of  
7 the home.

8 If I move to four foot from the home, I can  
9 fall within the ten foot requirement, but that puts us  
10 right upon two bedroom windows and a bathroom window  
11 with a space of four foot and would be extremely dark  
12 and no in keeping with the character of the  
13 neighborhood at all.

14 With the ten foot, sir, again, I can do some  
15 landscaping. We have a rod iron gate that enters a  
16 court yard. I can put a rod iron gate and really  
17 balance the entire home, sir.

18 CHAIRMAN: But the zoning ordinance requires  
19 six feet between the garage and the house; is that  
20 correct, Mr. Noffsinger?

21 MR. NOFFSINGER: Yes, sir.

22 CHAIRMAN: If you move the six, you still  
23 would not be in compliance on your side yard. You  
24 only have eight. So you still need the variance.

25 MR. AUSTIN: Yes, sir.

1           CHAIRMAN: I'm just clarifying, for my own  
2 information clarifying why you would not move over so  
3 you would not need a variance.

4           MR. AUSTIN: Understood, sir. Another  
5 question that I tried to address once I learned more  
6 about the requirements was the possibility, and Staff  
7 address this, of moving the garage further back.  
8 Again, looking at the plat of the property, you see  
9 the pool in the back. I even considered changing the  
10 entire approach of the garage so that it would be like  
11 a combination garage and pool house. The biggest  
12 problem with that, sir, would be that I would then  
13 require another 30 feet minimum of an asphalt/concrete  
14 and that completely eliminate the landscaping of that  
15 side of the yard. Again, as Staff pointed out, would  
16 truly not be in keeping with that neighborhood at that  
17 particular time, sir.

18           CHAIRMAN: Mr. Noffsinger or Staff, if he  
19 attached the garage to the house, he would have  
20 generally the same?

21           MR. NOFFSINGER: That is correct.

22           CHAIRMAN: Would that put it in compliance?

23           MR. NOFFSINGER: Yes, sir.

24           CHAIRMAN: You have several ways that you can  
25 come into compliance without this variance. The

1       problem with this variance is once we do this and your  
2       neighbor next-door wants one, we're bound to give it  
3       to him, and it goes on and on and on. That's one of  
4       the reasons we call it a circumvention of the zoning  
5       ordinance. You can put that garage on that lot  
6       without the variance. That's all I have to say. I  
7       just want to make those comments.

8               Any board members have any questions?

9               (NO RESPONSE)

10              CHAIRMAN: Chair is ready for a motion.

11              MS. DIXON: Move to deny because it would  
12       provide an unreasonable circumvention of the  
13       requirements and there are other options open to the  
14       applicant, and that it would alter the essential  
15       character of the general vicinity.

16              MR. DYSINGER: Second.

17              CHAIRMAN: We have a motion and a second. Any  
18       comments or question on the motion?

19              (NO RESPONSE)

20              CHAIRMAN: All in favor raise your right hand.

21              (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22              CHAIRMAN: Motion carries unanimously.

23              We need one more motion.

24              MR. DYSINGER: Move to adjourn.

25              MS. DIXON: Second.

1                   CHAIRMAN: All in favor raise your right hand.

2                   (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3                   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 40 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 June, 2008.

18

19

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JANE BELCHER  
OHIO VALLEY REPORTING SERVICES  
202 WEST THIRD STREET, SUITE 12  
21 OWENSBORO, KENTUCKY 42303

22

COMMISSION EXPIRES: DECEMBER 19, 2010

23

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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