

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 SEPTEMBER 2, 2010

3 The Owensboro Metropolitan Board of Adjustment  
4 met in regular session at 5:30 p.m. on Thursday,  
5 September 2, 2010, at City Hall, Commission Chambers,  
6 Owensboro, Kentucky, and the proceedings were as  
7 follows:

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

17 \* \* \* \* \*

18 CHAIRMAN: Let's call the meeting to order of  
19 the Metropolitan Board of Adjustments. Welcome you to  
20 the meeting. We start each meeting with a prayer and  
21 pledge of allegiance. We invite you to join us. With  
22 that I'll ask Father Larry to have our prayer.

23 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

24 CHAIRMAN: Again, I want to welcome you to the  
25 meeting this evening. If you have any comments on any  
of the items, please come to one of the podiums.  
State your name so we'll have record of it.

With that we'll start with the first item.  
The minutes of the last meeting on August 5th.

Ohio Valley Reporting

(270) 683-7383

1 They're on file in the office. We found no  
2 corrections that need to it. With that we'll  
3 entertain a motion to dispose of the item.

4 MR. DYSINGER: Move to approve.

5 MS. MASON: Second.

6 CHAIRMAN: A motion has been made and a second  
7 to approve. All in favor raise your right hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries.

10 Next item, please, sir.

11 -----

12 CONDITIONAL USE PERMIT

13 ITEM 2

14 10648 Lafayette Street, zoned R-1A (Postponed from the  
15 August 5, 2010 meeting)

16 Consider request for a Conditional Use Permit in order  
17 to construct a fellowship hall for use at church  
18 functions.

Reference: Zoning Ordinance, Article 8, Section 8.2B4

17 Applicant: Whitesville Baptist Church

18 MR. NOFFSINGER: Mr. Chairman, the applicant  
19 has requested that you consider postponing this item  
20 until the first Thursday in October to allow them  
21 additional time to get their site plan and some other  
22 issues in order. It will require you to vote to  
23 postpone.

24 MR. WARREN: Motion to postpone the item.

25 MR. DYSINGER: Second.

1 CHAIRMAN: All in favor raise your right hand.  
2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)  
3 CHAIRMAN: Motion carries.  
4 Next item, please.

5 ITEM 3

6 2412 Old Henderson Road, zoned B-4  
Consider request for a Conditional Use Permit for  
7 landscaping services in order to store and sell  
products such as mulch, dirt, rock and straw to  
8 residential and commercial customers.

Reference: Zoning Ordinance, Article 8,  
9 Section 8.2H8/33a

Applicant: Jared Hodskins and P.J. Murphy, Harold  
10 McClery

11 MR. SILVERT: Would you state your name,  
12 please.

13 MS. EVANS: Melissa Evans.

14 (MELISSA EVANS SWORN BY ATTORNEY.)

15 ZONING HISTORY

16 The subject property is currently zoned B-4  
17 General Business. OMPC records indicate there was a  
18 zoning map amendment for the subject property from  
19 R-4DT Inner City Residential to B-4 General Business  
20 in May 2004. Additionally there was a minor  
21 subdivision plat consolidating the subject property  
22 with 2420 Old Henderson Road in July of 2007 and a  
23 minor subdivision plat dividing 2412 and 2420 Old  
24 Henderson Road in September 2007.

25 The applicant is wishing to build a 35 by 50

1 foot building for landscaping services and to store  
2 and sell landscaping products in bulk to residential  
3 and commercial customers.

4 LAND USES IN SURROUNDING AREA

5 The properties to the north and west are zoned  
6 R-4DT Inner City Residential and P-1 Professional  
7 Service and are single-family residences and a church  
8 parking lot. The property to the south is zoned P-1  
9 Professional Service and is a church. The property to  
10 the east is zoned B-4 General Business and the land is  
11 vacant.

12 ZONING ORDINANCE REQUIREMENTS

13 1. Parking - Landscaping Services: No  
14 minimum established by the Zoning Ordinance. The  
15 applicant is providing 1 handicapped parking space as  
16 shown on the site plan submitted.

17 2. Landscaping - 1 tree every 40' along the  
18 west property line, 6' high solid screening element  
19 along the north, south, east and west property lines.  
20 The storage bins along the west property line provide  
21 the screening element and the applicant indicates  
22 there are existing trees, meeting the minimum  
23 ordinance requirements. The applicant is installing a  
24 6' high privacy fence along the north, south and east  
25 property lines as shown on the site plan submitted.

Ohio Valley Reporting

(270) 683-7383

1 MS. EVANS: We would like to enter the Staff  
2 Report into the record as Exhibit A.

3 CHAIRMAN: Thank you.

4 Is there any comments filed with the office?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: Is there anyone with information  
7 opposed to this item?

8 MR. KAMUF: Mr. Chairman, I have some  
9 questions.

10 MR. SILVERT: Just state your name for the  
11 record, Mr. Kamuf. We recognize your oath as an  
12 attorney.

13 MR. KAMUF: Charles Kamuf.

14 I own the property directly to the west of  
15 this. I have no objection to the conditional use, but  
16 I would like for the plat that has been filed, I don't  
17 know whether you call it a development plan or --

18 MR. NOFFSINGER: Site plan.

19 MR. KAMUF: The site plan that was prepared by  
20 a non-engineer that it be filed in the record and that  
21 there will be a solid complete fence around the west  
22 and along the south of the property.

23 CHAIRMAN: Any other comments?

24 MR. KAMUF: That's it.

25 CHAIRMAN: Any board member have any question

Ohio Valley Reporting

(270) 683-7383

1 of him or Staff?

2 MR. KAMUF: The reason for that, Mr. Chairman,  
3 it's not the ordinary site plan that you see. I want  
4 to be sure that they're held to that site plan as far  
5 as their development along with that solid fence.

6 CHAIRMAN: So noted.

7 Any questions from the board or Staff?

8 MR. TAYLOR: I'm just confused on what he's  
9 asking. I'll just ask the Staff: Is that what  
10 they're showing, currently showing on their site plan  
11 but not marked what he's used to seeing or is that  
12 something in addition to what we have here?

13 MR. NOFFSINGER: I think what Mr. Kamuf is  
14 attempting to do is make sure it's clear in the record  
15 and the applicant understands that what's shown on  
16 this site plan in terms of screening must be done and  
17 that includes the fence along those boundaries, as  
18 well as any necessary trees, but it's shown on the  
19 site plan.

20 MR. TAYLOR: It is shown on it. Okay.

21 MR. KAMUF: Clay, it's a little unusual.

22 MR. TAYLOR: I get what you're saying. I just  
23 wanted to clarify to make sure.

24 MR. KAMUF: Also along the front, they show a  
25 solid fence along the front with a solid gate. I want

Ohio Valley Reporting

(270) 683-7383

1 to be sure that that's done too. I have no problem  
2 with the conditional use, as long as it's set and  
3 conditioned on the fact of the site plan.

4 MR. NOFFSINGER: I will state for the record  
5 the site plan meets the minimum requirements for a  
6 conditional use permit. It's just not prepared by a  
7 registered land surveyor or an engineer, but that is  
8 not a requirement.

9 MR. KAMUF: Thank you, Mr. Chairman.

10 CHAIRMAN: Thank you.

11 Is the applicant present and have any comments  
12 at this time?

13 MR. HODSKINS: That was our plan in the first  
14 place to get that done.

15 CHAIRMAN: Do you have any other comments?

16 MR. HODSKINS: No.

17 MR. NOFFSINGER: You just might want to make  
18 sure they're on the record that they do understand  
19 that.

20 CHAIRMAN: Come forward and state your name  
21 for the record, please.

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

24 MR. HODSKINS: Jared Hodskins.

25 (JARED HODSKINS SWORN BY ATTORNEY.)

Ohio Valley Reporting

(270) 683-7383

1           CHAIRMAN: You understand the statements that  
2 he made, understand it clearly that this needs to be  
3 filed in the office, that you're required to do the  
4 job as stated?

5           MR. HODSKINS: Yes.

6           CHAIRMAN: Thank you. Do you have anything  
7 else you want to add?

8           MR. HODSKINS: No, sir.

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

11           (NO RESPONSE)

12           CHAIRMAN: Staff have anything else?

13           MR. NOFFSINGER: No, sir.

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

16           MS. MASON: Mr. Chairman, I move for approval  
17 with the findings, based on the findings that it's  
18 compatible with the land use and the zoning in the  
19 area and there's no opposition and it needs to meet  
20 the zoning ordinance requirements.

21           CHAIRMAN: Is there a second?

22           MR. DYSINGER: Second, Mr. Chairman.

23           CHAIRMAN: A motion has been made and a  
24 second. Any other comments from the board or the  
25 Staff?



1 (NO RESPONSE)

2 CHAIRMAN: Hearing none you understand all of  
3 the requirements?

4 MR. HODSKINS: Yes.

5 CHAIRMAN: All in favor raise your right hand.

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries.

8 Next item, please.

9 -----

10 VARIANCE

11 ITEM 4

12 1212 JR Miller Boulevard, zoned B-4

13 Consider request for a Variance in order to reduce the  
14 required buffer area between a restaurant  
15 drive-through window and a Residential Zone from 100  
16 feet to 36 feet.

17 Reference: Zoning Ordinance, Article 8,  
18 Section 8.4/15

19 Applicant: K&E Limited Partnership-Kyle Duane,  
20 Regional Manager

21 MS. EVANS: The Applicant is requesting to  
22 reduce the required buffer between a Restaurant  
23 Drive-Through window and a Residential Zone from 100  
24 feet to 36 feet. The subject property was rezoned  
25 from I-1 Light Industrial to B-4 General Business in  
April 2009 and a Variance was granted by the Planning  
Commission in April 2009 to reduce the roadway buffers  
on JR Miller Boulevard and East Parrish Avenue from 50  
feet to 40 feet to reduce the building setback lines

1 on JR Miller Boulevard and East Parrish Avenue from 75  
2 feet to 57 feet and 42 feet respectively and to reduce  
3 the rear yard setback from 20 feet to 5 feet. One of  
4 the reasons for granting the rear setback variance was  
5 to allow the rear building wall to provide screening  
6 between the commercial activity and the adjacent  
7 residential uses across the alley.

8 Initially, this variance request was  
9 recommended for denial because the drive-through  
10 window is in a position where it would direct  
11 additional traffic onto the narrow alley behind the  
12 building. The applicant has submitted a new site plan  
13 addressing the concerns regarding increased traffic on  
14 the narrow alley behind the building. The new site  
15 plan shows elements that would direct traffic to exit  
16 the drive-through lane to the north, keeping traffic  
17 to a minimum on the narrow alley, reducing hazard to  
18 the neighboring residential properties and reducing  
19 potential conflicts with vehicles entering or exiting  
20 the alley. The City Engineer has reviewed the revised  
21 plan and it is acceptable to him with the provision  
22 that no landscaping be planted in the median for sight  
23 distance purposes and that the entrance and exits to  
24 the drive through be signed an entrance only and exit  
25 only.

Ohio Valley Reporting

(270) 683-7383

1           However, the order board and loud speaker and  
2 lights from vehicles at the pick-up window could still  
3 cause a nuisance to the public and alter the character  
4 of the neighborhood by making the commercial activity  
5 visible and audible to the neighboring residential  
6 properties.

7           Granting this variance will not adversely  
8 affect the public health, safety or welfare because  
9 traffic will be directed to the north out of the  
10 drive-through lane limiting the traffic on the alley.  
11 It may alter the essential character of the general  
12 vicinity because it will increase the visibility of  
13 the commercial activity to the adjoining residential  
14 neighborhood. It may cause a hazard or a nuisance to  
15 the public because the ordering board and loud speaker  
16 will increase the audibility and visibility of the  
17 commercial activity to the residential neighborhood;  
18 and it will not allow an unreasonable circumvention to  
19 the requirements of the zoning ordinance.

20           Staff recommends approval if there is no  
21 evidence presented indicating this would alter the  
22 essential character of the vicinity or cause a  
23 nuisance to adjoining residences with a condition of  
24 an approved revised final development plan.

25           Staff would recommend denial if there is

Ohio Valley Reporting

(270) 683-7383

1 testimony from adjoining property owners indicating  
2 the drive-through window would cause a nuisance or  
3 further alter the character of the surrounding  
4 neighborhood.

5 We would like to enter the Staff Report into  
6 the record as Exhibit B.

7 CHAIRMAN: Any comments or questions filed  
8 with the office?

9 MR. NOFFSINGER: No, sir.

10 CHAIRMAN: Is the applicant here?

11 MR. KAMUF: Yes, sir, Mr. Chairman.

12 CHAIRMAN: Is anybody in opposition to this  
13 particular item at this time?

14 (NO RESPONSE)

15 MR. KAMUF: We're here to answer any  
16 questions, Mr. Chairman.

17 CHAIRMAN: Anyone have any questions of the  
18 applicant or their representative?

19 (NO RESPONSE)

20 CHAIRMAN: Entertain a motion to dispose of  
21 the item.

22 MR. TAYLOR: Mr. Chairman, move to grant the  
23 variance based upon the findings there is no apparent  
24 opposition in the room at this time. It won't alter  
25 the essential character of the neighborhood. It is

Ohio Valley Reporting

(270) 683-7383

1 zoned B-4 and generally permitted in there. It won't  
2 cause a nuisance or a hazard to the public and it will  
3 not allow an unreasonable circumvention of the  
4 requirements of the zoning regulations. I do place  
5 the condition to approve a revised final development  
6 plan.

7 MR. WARREN: Second.

8 CHAIRMAN: A motion has been made and a  
9 second. Is there any other comments or questions from  
10 the board?

11 (NO RESPONSE)

12 CHAIRMAN: Staff have any other comments?

13 MR. NOFFSINGER: No, sir.

14 CHAIRMAN: The applicant have anything he  
15 wants to add?

16 MR. KAMUF: No, Mr. Chairman.

17 CHAIRMAN: Thank you.

18 Hearing none all in favor of the item raise  
19 your right hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries.

22 Next item, please.

23 -----

24 ADMINISTRATIVE APPEAL

25 ITEM 5

Ohio Valley Reporting

(270) 683-7383

1 123 West 12th Street, zoned I-1  
Consider request for an Administrative Appeal to  
2 revise the conditions of a previous Administrative  
Appeal relative to time restrictions on truck traffic.  
3 Reference: Zoning Ordinance, Article 7, Section 7.34  
Applicant: Houston J. Marks, II; Marks Co., Inc.

4  
5 ZONING HISTORY

6 The subject property is currently zoned I-1  
7 Light Industrial. OMPC records indicate there have  
8 been no Zoning Map Amendment applications approved for  
9 the subject property.

10 There was an Administrative Appeal approved in  
11 January 2007 regarding screening of a non-conforming  
12 vehicular-use-area having been abandoned for more than  
13 18 months with the condition that there would be no  
14 truck traffic between 9:00 p.m. and 7:00 a.m.

15 Since the approval of the original  
16 Administrative Appeal, the uses occupying the building  
17 have changed, and there is now a heating and air  
18 conditioning company leasing a portion of the  
19 building. This use requires cargo vans and service  
20 trucks to have access to the property at all times, in  
21 case of an emergency situation, to pick up repair  
22 parts and replacement equipment.

23 The applicant is requesting the condition of  
24 the original Administrative Appeal to be changed to  
25 continue to restrict semi-trucks and delivery trucks

1 between the hours of 9:00 p.m. and 7:00 a.m. except in  
2 emergency situations, but to allow cargo vans or  
3 service trucks to pick up repair parts or replacement  
4 equipment (heating and air conditioning units) at any  
5 time.

6 LAND USES IN SURROUNDING AREA

7 The properties to the north and east are zoned  
8 I-1 Light Industrial. The property to the south is  
9 zoned R-4DT Inner City Residential and B-4 General  
10 Business. The property to the west is zoned R-4DT  
11 Inner City Residential.

12 SPECIAL CONDITIONS

13 Semi-trucks and delivery trucks are not  
14 allowed on site between 9:00 p.m. and 7:00 a.m. except  
15 in case of an emergency, and cargo vans and service  
16 trucks may pick up repair parts or replacement  
17 equipment at any time.

18 MS. EVANS: We would like to enter the Staff  
19 Report into the record as Exhibit C.

20 CHAIRMAN: Thank you.

21 Any comments filed in the office?

22 MR. NOFFSINGER: Yes, sir. I do have an  
23 e-mail that's from Steve Lambert to Melissa Evans,  
24 Staff person.

25 "I will be out of town on September 2nd and

Ohio Valley Reporting

(270) 683-7383

1 will not be able to attend the meeting. I own the  
2 duplex at 1129 Allen Street, at the corner of 12th and  
3 Allen. I would not be in favor of any semi-truck  
4 traffic after 9:00 p.m. or before 7:00 a.m. If this  
5 is just for service vans or pickup truck now and then,  
6 I would be okay with it. Thanks."

7 That is what the application is asking for.

8 CHAIRMAN: Is anyone else here in opposition?

9 MR. VANOVER: My name is Guy Vanover.

10 (GUY VANOVER SWORN BY ATTORNEY.)

11 MR. VANOVER: My name is Guy Vanover. I live  
12 at 1201 St. Ann. They do start before 7.

13 I don't have any problems with, you know,  
14 picking up stuff with the cargo trucks or anything.  
15 Just as long as they do what they say they're going to  
16 do and not start before 7 like they do now.

17 CHAIRMAN: Any questions of the opposition  
18 from the board?

19 MR. DYSINGER: So you're saying they currently  
20 violate the --

21 MR. VANOVER: Yes. They start about 6:00 in  
22 the morning and they usually finish about 6:00 at  
23 night.

24 MR. NOFFSINGER: Excuse me. They can work on  
25 the property at different hours. The restriction was

Ohio Valley Reporting

(270) 683-7383



1 for truck traffic in terms of the semi-trucks.  
2 Actually at this point it's any truck traffic coming  
3 on the lot before 7 a.m.

4 MR. VANOVER: You may be right on that. I'll  
5 check it out, you know. I live next-door to them. I  
6 live directly north of their warehouse door where the  
7 air conditioner sits.

8 MR. NOFFSINGER: Please let us know if there  
9 is an issue and Staff would be glad to take a look at  
10 it. They can work at other hours during the day, but  
11 at this point -- what they're asking for is large  
12 trucks would still be prohibited 9:00 p.m. to 7 a.m.

13 MR. VANOVER: I don't mind the small trucks.

14 MR. NOFFSINGER: But what they would like to  
15 have is these smaller trucks to come in in the middle  
16 of the night.

17 MR. VANOVER: Like I said, I don't any problem  
18 with that because their warehouse doors are actually  
19 on Allen Street and not 12th, other than the loading  
20 dock.

21 CHAIRMAN: Any other comments?

22 (NO RESPONSE)

23 CHAIRMAN: Thank you.

24 Does anybody else have any other comments?

25 (NO RESPONSE)

Ohio Valley Reporting

(270) 683-7383

1           CHAIRMAN: The applicant have any comments at  
2 this time?

3           MR. SILVERT: Would you state your name  
4 please?

5           MR. MARKS: Houston Marks.

6           (HOUSTON MARKS SWORN BY ATTORNEY.)

7           MR. MARKS: Sir, I will acknowledge to  
8 Mr. Vanover that I was down there one day and the  
9 doors were open and they were in the building, but  
10 once again they were not running truck traffic, but  
11 they did have the doors open. I just wanted to state  
12 that for the record.

13          CHAIRMAN: Any board members have any comments  
14 or questions of the applicant?

15          MR. DYSINGER: In the application you state  
16 that generally this will be for emergency situation.

17          MR. MARKS: Yes, sir.

18          MR. DYSINGER: Could you describe what some of  
19 those might be just so I can get an idea of how often  
20 something like this might take place.

21          MR. MARKS: A certain number of years ago  
22 Unilever, which was then Ragu, was storing empty  
23 containers in the building. They had a load on site  
24 ready to fill during the night operations and  
25 something happened to them. A piece of equipment ran

Ohio Valley Reporting

(270) 683-7383

1 into them and broke the load. They actually came down  
2 after the 9:00 hour and had to get like five loads of  
3 trucks to get over there to keep the operation  
4 running. That would be an emergency situation  
5 unbeknownst to anyone.

6 The other thing is just to make sure, you  
7 know, if a pickup truck shows up at 10:00 at night,  
8 open up the building to get a part out, that we are  
9 not in violation of what you all are asking us for.

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

11 CHAIRMAN: Any other questions from the board  
12 of the applicant?

13 (NO RESPONSE)

14 CHAIRMAN: Staff have any other comments?

15 MR. NOFFSINGER: No, sir.

16 CHAIRMAN: Do you have any other comments?

17 MR. MARKS: No, sir.

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

20 MR. TAYLOR: Mr. Chairman, move to grant the  
21 revision of the Administrative Appeal. A previous  
22 Administrative Appeal was granted. This does not  
23 alter the general scope of that appeal. It does  
24 somewhat change it, but it still protects the health,  
25 safety and welfare of the community and it does

Ohio Valley Reporting

(270) 683-7383

1 protect the essential character of the surrounding  
2 area.

3 CHAIRMAN: Is there a second?

4 MS. MASON: Second.

5 CHAIRMAN: A motion has been made and a  
6 second. Any other comments or questions from the  
7 board?

8 (NO RESPONSE)

9 CHAIRMAN: Staff have any other comments?

10 (NO RESPONSE)

11 CHAIRMAN: Hearing none all in favor raise  
12 your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries.

15 One last item.

16 MR. DYSINGER: Move to adjourn.

17 MS. MASON: Second.

18 CHAIRMAN: All in favor raise your right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: We are adjourned.

21 -----

22

23

24

25

1 STATE OF KENTUCKY )

)SS: REPORTER'S CERTIFICATE

2 COUNTY OF DAVIESS )

3 I, LYNNETTE KOLLER FUCHS, Notary Public in and  
4 for the State of Kentucky at Large, do hereby certify  
5 that 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 20 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, 2010.

18

19

\_\_\_\_\_  
LYNNETTE KOLLER FUCHS  
OHIO VALLEY REPORTING SERVICES  
202 WEST THIRD STREET, SUITE 12  
OWENSBORO, KENTUCKY 42303

20

21

22

COMMISSION EXPIRES: DECEMBER 19, 2010

23

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

24

25

Ohio Valley Reporting  
(270) 683-7383