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1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT
2 AUGUST 4, 2011

3 The Owensboro Metropolitan Board of Adjustment
4 met in regular session at 5:30 p.m. on Thursday,
5 August 4, 2011, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

8 MEMBERS PRESENT: C.A. Pantle, Chairman
Ward Pedley, Vice Chairman
9 Ruth Ann Mason, Secretary
Gary Noffsinger, Director
10 Madison Silvert, Attorney
Rev. Larry Hostetter
11 Sean Dysinger

12 * * * * *

13 CHAIRMAN: I want to call the Owensboro
14 Metropolitan Board of Adjustment to order. Want to
15 welcome each one of you this evening. The first thing
16 we do we start our meeting each Thursday night with a
17 prayer and pledge to allegiance. We invite you all to
18 join us. Gary has our prayer this evening.

19 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

20 CHAIRMAN: Again, I want to welcome you to the
21 Board of Adjustment meeting. If you have any comments
22 on any item, please to come to one of the podiums.
23 State your name so we'll have that on record in the
24 office. We'll listen to whatever you have to talk
25 about as long as it's not over and over. We'll cut

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1 you off if it's the same thing over and over.

2 With that the first item is consider the
3 minutes of the July 7th meeting. They're on record in
4 the office. We have no problems or didn't find any
5 problems unless somebody has something.

6 MR. NOFFSINGER: That's correct.

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

9 MR. PEDLEY: Move for approval.

10 MR. DYSINGER: Second.

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

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries.

16 The next item we like to change Item 5 to
17 Number 1 and go from there.

18 MR. NOFFSINGER: I would also like to announce
19 that before be move forward Item Number 6, 319
20 Frederica Street for First Security Bank has been
21 withdrawn. So if you're here tonight to hear any
22 testimony regarding that item, there will be no
23 opportunity to speak. That item has been withdrawn.

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25 **CONDITIONAL USE PERMIT**

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1 ITEM 5
2 926 Maple Street, Zoned I-1
3 Consider request to revoke a Conditional Use Permit in
4 order to operate an outdoor storage facility approved
5 at the April 7, 2011 OMBA meeting.
6 Reference: Zoning Ordinance, Article 8, Section 8.2L8
7 Applicant: River City Industrial Services, Inc.

8
9 MR. NOFFSINGER: Mr. Chairman, the Board of
10 Adjustment approved this Conditional Use Permit with
11 several conditions. There are three conditions that
12 are still outstanding that need to be taken care of.

13 The first item that needed to be taken care of
14 was an amended development plan which was to be filed
15 with our office. It has not been filed.

16 The second item was there was a buffer area
17 that was supposed to be ten feet wide. It's only
18 about 8, 8 1/2 feet. It needs to be increased.

19 The third item is that the screening has not
20 been completed at the site. I think there's a gate
21 that fronts one of the streets, Maple Street, I
22 believe. That has not been fully screened and it
23 needs to be screened.

24 We have also had reports that the EPA has been
25 out at the site because there have been some
26 complaints with the neighbors; however, no violation
27 has been recorded by the EPA.

28 So you will not be considering revocation of
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1 this Conditional Use Permit based upon odors because
2 the EPA has not issued a violation. So you're only
3 here to address these three items.

4 Now, with that the applicant is represented
5 here tonight by counsel, by Mr. Bill Wilson. He gave
6 me a letter that I need to read into the record. He's
7 asking that your action be postponed until our meeting
8 in September. That will be the first Thursday night
9 in September.

10 "Dear Gary: I have recently been engaged in a
11 good bit of activity relating to apparent problems
12 with the Conditional Use Permit that was issued to
13 River City Industrial Services, Inc., on the outdoor
14 storage facility it operates at 926 Maple Street. I
15 have discussed the matters your office feels have not
16 been adequately addressed with Mike Butler. His
17 engineer, Don Bryant, and you in an attempt to come up
18 with an appropriate resolution of the three problem
19 areas that your office feels still exist. As you know
20 the matter is on the agenda for this evening's meeting
21 of the Owensboro Metropolitan Board of Adjustment.
22 Due to obvious time restraints I cannot completely
23 satisfy all of these concerns in that time frame.

24 "Nevertheless, you may take this letter as my
25 client's agreement to address all of them in what will

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1 hopefully be a satisfactory manner by next month's
2 meeting of the Board of Adjustment. I have only this
3 morning notified Don Bryant regarding his submission
4 of an amended development plan and he has agreed to do
5 so prior to next month's meeting. Mr. Bryant has also
6 agreed to file an application for variance relating to
7 the 10 foot buffer area along the north side of the
8 subject property, where there apparently has been a
9 buffer installed that is only 8 to 8 1/2 feet wide.
10 Mr. Bryant knows that the application for variance
11 must be filed by August 11, 2011 to be on next month's
12 agenda.

13 "The final matter to be addressed relates to
14 the gate along the Maple Street entrance. My client
15 has indicated that he will also have that matter
16 adequately addressed by the time of the September
17 meeting of the Board of Adjustment.

18 "In the event that you have any questions
19 pertaining to the above feel free to contact me at
20 your convenience. William L. Wilson, Jr."

21 With that, Mr. Chairman, Staff believes that
22 they are making a positive attempt to address these
23 issues. It would be Staff's recommendation that you
24 hold off taking action until the September meeting.

25 However, what you do from here is up to you as

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1 a board. You will need to vote on any action that you
2 take.

3 CHAIRMAN: What is the board's pleasure?

4 MR. DYSINGER: Mr. Chairman, I do have a
5 question that Mr. Noffsinger might be able to answer.

6 Did counsel or counsel could possibly address
7 this as well, give you any indication as to why the
8 applicant made no attempt to communicate with Staff
9 for however many weeks? I mean we have a violation
10 here from the 7th, June 7th?

11 MR. NOFFSINGER: That's correct.

12 MR. DYSINGER: Did they give any indication
13 why there was no communication?

14 MR. NOFFSINGER: I did not receive any
15 communication from their attorney, but he is here. He
16 may have a little trouble speaking where you can hear
17 him tonight, but he can speak.

18 MR. WILSON: I'm Bill Wilson.

19 I really can't answer that question why Mike
20 did or didn't do something. What I can answer is I
21 knew about this for the first time about 4:00
22 yesterday afternoon when I met with him. Well,
23 briefly before that because I spoke with Gary maybe at
24 2:00 when I had a phone call about a meeting that
25 afternoon, which was yesterday.

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1 Don Bryant when I called him this morning he
2 knew nothing about it.

3 So why Mike did what he did or didn't do, I
4 can't answer that. What I mentioned to Madison on the
5 way in here, you know, and I'm certainly not telling
6 Staff how to work anything, but had we gotten a copy
7 of any of those notices, you know, you do a probate
8 matter the probate clerk, whether you're active in the
9 estate or not once your name is on the file notices
10 that go out to the executor of the estate go also to
11 the attorney that showed up.

12 If I had known of this, we wouldn't be here
13 tonight. I'll assure you that. I can't tell you why
14 Mike did anything. Did he think I was getting a copy?
15 I don't know. I never knew about it until 24 hours
16 ago and Don Bryant knew about it about 8 hours ago.
17 That's why we're asking to be given a chance to
18 address these things. He should have addressed and he
19 didn't.

20 MR. DYSINGER: That's the only thing I have,
21 Mr. Chairman.

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

24 (NO RESPONSE)

25 CHAIRMAN: Entertain a motion to postpone the
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1 item.

2 MR. NOFFSINGER: Do you want to see if there's
3 anyone in the audience.

4 CHAIRMAN: Does anyone in the audience wishing
5 to speak on this opposition?

6 Come forward and state your name.

7 MR. SILVERT: Could you state your name,
8 please?

9 MR. WEAVER: Dennis Weaver.

10 (DENNIS WEAVER SWORN BY ATTORNEY.)

11 MR. WEAVER: I live right across the street on
12 Moreland Avenue from him. I feel like he's had more
13 than enough time. He knew. He operated a whole year
14 illegal before he even got it zoned. Now he's been
15 since April and still has done nothing. I feel like
16 the man has had more than enough time to fix the
17 problem.

18 CHAIRMAN: So noted. We'll put that on the
19 record.

20 Any other comments?

21 Come forward please and state your name.

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

24 MS. DUNN: My name is Teri Dunn.

25 (TERI DUNN SWORN BY ATTORNEY.)

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1 MS. DUNN: When they came out and put the
2 green tarp up around the fences, they left a section
3 in my backyard undone. Their dumpsters are filled
4 with water and mosquitos. I'm afraid of that west
5 Nile going around the mosquitos breeding in that
6 water. I have two children. I would like something
7 to be done about that, if you could.

8 CHAIRMAN: We note that and the inspector will
9 check on that.

10 Any other comments?

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

13 MR. ATWELL: James Atwell.

14 (JAMES ATWELL SWORN BY ATTORNEY.)

15 MR. ATWELL: Gentlemen and lady, if you will
16 look back at the records from the first two meetings
17 we had, the fencing that was told to them to put in
18 was a slat fence and what we have up is a mosquito net
19 looking device that doesn't really do anything. I
20 remember specifically that you all told him that there
21 had to be a slat fence, the woven type. That's
22 nowhere near what's out there.

23 CHAIRMAN: Would you like to make a comment,
24 please?

25 MR. SILVERT: Would you state your name,
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1 please?

2 MR. MISCHEL: Jim Mischel.

3 (JIM MISCHEL SWORN BY ATTORNEY.)

4 MR. MISCHEL: Typically we do allow that type
5 of screening, unless there's a condition placed. I
6 would have to go back through the minutes and the
7 notes to see if you did put that condition on there,
8 but typically we allow the slats or this type of
9 fabric, fence to be installed.

10 CHAIRMAN: When you go back, check on the
11 water and stuff, if you would. Report next time to us
12 too and let the attorney know also, please.

13 MR. MISCHEL: Now, I think the water and the
14 mosquitos that would probably be a health department
15 issue. I don't know if they've been notified or not.

16 MR. NOFFSINGER: Again, Mr. Chairman, we're
17 here to discuss three conditions that the applicant is
18 not in compliance with. Anything other than those
19 three conditions, this board would not have the
20 jurisdiction to discuss or entertain.

21 While that may be unfortunate for these
22 neighbors here that have concerns, whatever your
23 actions are need to hinge upon the three reasons
24 they're here for revocation.

25 CHAIRMAN: Okay. We understand that. It

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1 would be nice to inform the attorney of the
2 information from us. Appreciate that.

3 Any other comments?

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

6 MR. WARREN: Jim Warren.

7 (JIM WARREN SWORN BY ATTORNEY.)

8 MR. WARREN: What I would like to ask is just
9 a question on the last meeting we had. They were set
10 to stipulations what they had to do for the
11 conditional use permit, and they haven't done those
12 three things in a timely fashion. How many times will
13 they be allowed to just -- if they come back again, is
14 it going to be the same thing again or are they going
15 to have another certain amount of time to get it done?
16 They were laid out pretty forward what they needed to
17 do. They've obviously not chose to do that. Does
18 anybody, if they come back a second time and it's not
19 done will it be taken away from them or will it be
20 given another chance to do it?

21 MR. NOFFSINGER: Sir, that's going to be a
22 decision this board has to make. Certainly they're
23 within their rights to revoke it tonight. They may
24 give them more time, as they've asked. That's up to
25 this board. They have to address that question.

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1 MR. WARREN: All right.

2 CHAIRMAN: Any other comments?

3 MR. SILVERT: If you would just state your
4 name again for the record. You've been sworn.

5 MR. WEAVER: Dennis Weaver.

6 One of the other conditions I don't think has
7 been addressed, but there wasn't supposed to be
8 anything higher than the fence. Everything he's got
9 in there is higher than the fence. I didn't know if
10 that was going to be addressed.

11 MR. NOFFSINGER: Sir, the materials that were
12 stacked on the property were to be no higher than the
13 fence and that was a condition; however, the trailers,
14 it was noted that they park there and they're going to
15 be higher than the fence. This board took that into
16 consideration and did not require those trailers to be
17 lower.

18 MR. WEAVER: You talking about semi-trailers?

19 MR. NOFFSINGER: Yes, sir. Those containers.

20 MR. WEAVER: There's other type trailers in
21 there as well.

22 MR. NOFFSINGER: It's my understanding it was
23 materials that are to be stacked. So if they were to
24 stack trailers one on top of the other, then they
25 would be stacked, but it has to be stacked material.

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1 If you had two storage containers stacked on top of
2 each other, that's stacked. But if it's just a
3 semi-trailer or one container, it wouldn't be a
4 stacked material.

5 CHAIRMAN: Any other comments?

6 (NO RESPONSE)

7 CHAIRMAN: Board members have any other
8 comments or questions?

9 MR. DYSINGER: Mr. Chairman, I would like to
10 say I'm not opposed to postponing this. Counselor
11 makes a good case.

12 You're here to represent the client and you
13 just found out yesterday.

14 I'm not opposed to it. What I will say, is
15 that when we come back a month from now I would like
16 to hear either from counsel or from the client himself
17 as to why there has been a complete apparent disregard
18 for the Staff's efforts to communicate, you know, to
19 have this rectified. I understand he can't answer
20 that tonight, and I'm not asking you to. These
21 neighbors have been patient. I think Staff has been
22 patient. I'm seeing, what I see at this point is a
23 willful disregard for everybody but themselves. I'll
24 say that. Again, I'm not opposed to postponement.

25 CHAIRMAN: Any other comments?

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1 (NO RESPONSE)

2 CHAIRMAN: Entertain a motion for or against
3 to postpone.

4 MS. MASON: I will say that I'm not opposed to
5 postponing either, but I agree with Sean. I just
6 think he hasn't done anything that he said he would
7 do. But I'm not opposed to postponing too since his
8 attorney wasn't aware of what was going on.

9 MR. PEDLEY: I would like to say that he has
10 partially done some of the zoning ordinance
11 requirements. He hasn't done some of the conditions
12 put on. Typically we would give 30 days to come into
13 compliance before we recommend revoking the
14 conditional use permit.

15 So with that I make a motion that we postpone
16 to the September meeting to allow the applicant to
17 come into compliance and for the zoning administrator
18 to do a little research and find out some additional
19 information that we might need. But let me assure
20 you, if this isn't done it will be revoked at the next
21 meeting.

22 CHAIRMAN: Is there a second?

23 MR. DYSINGER: I'll second it.

24 CHAIRMAN: A motion has been made and a
25 second. Any other questions or comments from the

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1 board?

2 FATHER LARRY: I would just add I find this a
3 little disturbing that there has been so much time
4 that has gone by without anything being done.
5 Speaking as an educator at some point you've got to
6 draw the line and you'll have to face the
7 consequences.

8 CHAIRMAN: Appreciate all the board members
9 comments on it.

10 Staff have anything else?

11 MR. NOFFSINGER: No, sir.

12 CHAIRMAN: All in favor raise your right hand.

13 (BOARD MEMBERS WARD PEDLEY, SEAN DYSINGER,
14 RUTH ANN MASON RESPONDED AYE.)

15 CHAIRMAN: All opposed.

16 (FATHER LARRY HOSTETTER RESPONDED NAY.)

17 CHAIRMAN: Motion carry.

18 Next item, please, sir.

19 ITEM 2

20 909 Mosley Street, zoned I-1

Consider a request for a Conditional Use Permit in
21 order to operate a trampoline and tumbling/gymnastics
schools for not more than 30 participants at a time.

22 Reference: Zoning Ordinance, Article 8,
Section 8.2B11/13

23 Applicant: Renee King; Steve & Patricia McFarling

24 MR. SILVERT: Would you state your name,
25 please?

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1 MS. EVANS: Melissa Evans.
2 (MELISSA EVANS SWORN BY ATTORNEY.)

3 ZONING HISTORY

4 The subject property is currently zoned I-1
5 Light Industrial. OMPC records indicate the subject
6 property was rezoned from B-4 General Business to I-1
7 Light Industrial in 1980.

8 The applicant is wishing to operate a
9 trampoline and tumbling/gymnastics school for not more
10 than 30 participants at a time and not more than 2
11 employees; there will be no spectator seats. They
12 will offer recreational and competitive classes for
13 school aged students and host special activities such
14 as parties, clinics and summer day camps. The hours
15 of operation will be from 3:30 p.m. to 8:30 p.m.
16 Monday thru Friday and 10:00 a.m. to 2:00 p.m. on
17 Saturdays with special summer hours of 9:00 a.m. to
18 12:00 p.m. Monday thru Friday.

19 The applicant is proposing to use the building
20 at 909 Moseley Street for the operation of the
21 business and the two properties to the east, 508 and
22 512 East 9th Street, to accommodate the required
23 parking. They plan to consolidate all three
24 properties into one.

25 LAND USES IN SURROUNDING AREA

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1 The subject to the north is zoned B-4 General
2 Business. The properties to the south, east and west
3 are zoned I-1 Light Industrial.

4 ZONING ORDINANCE REQUIREMENTS

5 1. Parking - They are required to have 17
6 spaces.

7 2. Landscaping - 3 foot wide landscaping
8 easement with 1 tree every 40 feet and a 3 foot high
9 continuous element along the Vehicular Use Area
10 boundaries.

11 SPECIAL CONDITIONS

12 Approval of a minor subdivision plat to
13 consolidate the property.

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

16 CHAIRMAN: Thank you.

17 Has there been any comments filed with the
18 office?

19 MR. NOFFSINGER: No, sir.

20 CHAIRMAN: Is anyone wishing to speak in
21 opposition of this item?

22 (NO RESPONSE)

23 CHAIRMAN: Is the applicant here and you have
24 any comments you would like to present at this time?

25 APPLICANT REP: No. Thank you.

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1 CHAIRMAN: Board members have any questions of
2 the applicant?

3 (NO RESPONSE)

4 CHAIRMAN: Staff have any other comments?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: Entertain a motion to dispose of
7 the item.

8 MS. MASON: Mr. Chairman, I move for
9 approval. My findings of facts are that it's
10 compatible with the land use in the area. There's no
11 opposition and it will not have an adverse influence
12 on the neighborhood. With the conditions that
13 approval of a minor subdivision plat to consolidate
14 the property.

15 MR. DYSINGER: Second.

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

19 (NO RESPONSE)

20 CHAIRMAN: Staff anything else?

21 MR. NOFFSINGER: No, sir.

22 CHAIRMAN: The applicant understand everything
23 that we've presented?

24 APPLICANT REP: Yes, sir.

25 CHAIRMAN: Hearing no other comments all in
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1 favor raise your right hand.
2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries.

4 Next item, please, sir.

5 ITEM 3

6 801 West Fifth Street, zoned B-4

Consider a request for a Conditional Use Permit in

7 order to operate a childcare facility for up to 175
children from 6 a.m. to 12 a.m. Monday thru Friday.

8 Reference: Zoning Ordinance, Article 8, Section 8.2B3

Applicant: H.L. Neblett Community Center

9

10 ZONING HISTORY

11 The subject property is currently zoned B-4
12 General Business. OMPC records indicate the property
13 was rezoned from B-4 General Business and R-4DT Inner
14 City Residential to B-4 General Business in 2005.

15 The applicant is wishing to operate a
16 childcare facility, after school program and evening
17 recreation mentoring program for up to 175 children
18 within an existing community center. The facility
19 will operate Monday thru Friday 6:00 a.m. to 12:00
20 a.m.

21 LAND USES IN SURROUNDING AREA

22 The properties to the north are zoned B-4
23 General Business and P-1 Professional Service. The
24 properties to the south are zoned B-4 General
25 Business. The properties to the east and west are

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1 zoned R-4DT Inner City Residential and B-4 General
2 Business.

3 ZONING ORDINANCE REQUIREMENTS

4 1. Parking - they're required to have 34
5 spaces and they're providing 40 on their site plan
6 that was submitted.

7 2. Landscaping - 3 foot wide landscaping
8 easement with 1 tree every 40 feet and a 3 foot high
9 continuous element along the Vehicular Use Area
10 boundaries.

11 MS. EVANS: We would like to enter the Staff
12 Report into the record as Exhibit B.

13 CHAIRMAN: Any comments filed in the office?

14 MR. NOFFSINGER: No, sir.

15 CHAIRMAN: Anyone wishing to speak in
16 opposition of this item?

17 (NO RESPONSE)

18 CHAIRMAN: Is the applicant here and do you
19 have any comments you would like to make?

20 APPLICANT REP: No, sir.

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

23 (NO RESPONSE)

24 CHAIRMAN: Staff have any other comments?

25 MR. NOFFSINGER: No, sir.

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

3 MR. PEDLEY: Mr. Chairman, I make a motion for
4 approval based on the findings we've heard no
5 opposition on this. It is compatible use in the
6 neighbored. It will not have an adverse influence on
7 the future development.

8 MS. MASON: Second.

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

12 (NO RESPONSE)

13 CHAIRMAN: Staff have anything else?

14 MR. NOFFSINGER: No, sir.

15 CHAIRMAN: The applicant have anything else
16 you would like to add?

17 APPLICANT REP: No, sir.

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

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries.

22 Next item, please.

23 ITEM 4

24 227 East Ninth Street, zoned I-1

Consider a request for a Conditional Use Permit in
25 order to operate a trampoline and tumbling/gymnastics
schools for not more than 48 participants at a time.

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1 Reference: Zoning Ordinance, Article 8,
2 Section 8.2B11/13

3 Applicant: Renee King; Ken & Sherry Crandall

4 ZONING HISTORY

5 The subject property is currently zoned I-1
6 Light Industrial. OMPC records indicate there have
7 been no zoning map amendments for the subject
8 property.

9 This use was the same use that was on the
10 Mosley Street application. The applicant has prepared
11 two applications for different sites while they're
12 debating which property will be more feasible for them
13 to use.

14 So the activities at the site will be the
15 same. The only difference that this site could
16 accommodate up to 40 students at a time rather than
17 the 39. All other issues with the item will be the
18 same though.

19 MR. NOFFSINGER: Is that 48 participants?

20 MS. EVANS: Forty-eight at this site.

21 LAND USE IN SURROUNDING AREA

22 The property to the north, south and east are
23 zoned I-1 Light Industrial. The properties to the
24 west are zoned I-1 Light Industrial and R-4DT Inner
25 City Residential.

ZONING ORDINANCE REQUIREMENTS

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1 1. Parking - they will be required to have 26
2 spaces at this site.

3 2. Landscaping - 3 foot wide landscaping
4 easement with 1 tree every 40 feet and a 3 foot high
5 continuous element along the Vehicular Use Area
6 boundaries.

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

9 CHAIRMAN: Is there any comments filed in the
10 office?

11 MR. NOFFSINGER: No, sir.

12 CHAIRMAN: The applicant here and is anyone
13 wishing to speak in opposition of this item?

14 (NO RESPONSE)

15 CHAIRMAN: The applicant have any comments you
16 would like to make at this time?

17 APPLICANT REP: No, sir.

18 CHAIRMAN: Hearing none the board have any
19 questions?

20 (NO RESPONSE)

21 MR. NOFFSINGER: No, sir.

22 CHAIRMAN: Staff have anything else?

23 MR. NOFFSINGER: No, sir.

24 CHAIRMAN: Entertain A motion to dispose of
25 the item.

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1 MR. DYSINGER: Mr. Chairman, given the
2 findings that the use is compatible with the
3 surrounding neighborhood I move that we grant the
4 conditional use permit.

5 CHAIRMAN: Is there a second?

6 FATHER HOSTETTER: Second.

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

10 (NO RESPONSE)

11 CHAIRMAN: Anything else from the staff?

12 MR. NOFFSINGER: No, sir.

13 CHAIRMAN: The applicant have anything else
14 you would like to add?

15 APPLICANT REP: No, sir.

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

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries.

20 Next item, please.

21 -----

22 VARIANCES

23 ITEM 7

24 6701 Block Highway 405, zoned R-1C

Consider a request for a Variance in order to reduce

25 the required project boundary for a Planned

Residential Development from 20 feet to 10 feet along

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1 the southeast property line.
Reference: Zoning Ordinance, Article 10,
2 Section 10.432
Applicant: Image Builders, LLC

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

6 MR. HOWARD: Brian Howard.
7 (BRIAN HOWARD SWORN BY ATTORNEY.)

8 SPECIAL CIRCUMSTANCES

9 The subject property was rezoned from B-4
10 General Business to R-1C Single-Family Residential at
11 the June 2011 OMPC meeting. The applicant is
12 proposing a Planned Residential Development consisting
13 of 11 lots and a private alley for rear access to the
14 lots. By choosing to do a Planned Residential
15 Development the applicant will not have to meet the
16 minimum 50 foot lot widths typically required in an
17 R-1C zone. They will be able to install the private
18 alley that will be used for rear access to the lots
19 which is also allowed in a Planned Residential
20 Development. However there is a requirement of a 20
21 foot setback from the project boundary lines that is
22 not required in a standard subdivision plat in order
23 to buffer from other properties.

24 The applicant argues that because of the
25 required project boundary they will lose the use of

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1 the proposed lots in this development because there
2 will not be enough space left on the lot for a
3 single family residence, thus reducing the number of
4 sellable lots from 11 to 10.

5 If the applicant were to do a standard
6 subdivision plat for the subject property, the private
7 alley that is currently proposed would not be allowed.
8 It would not be feasible to put a public street
9 through this development because of the restrictions
10 on the amount of land area available. This would
11 leave only the option for access to be off of Highway
12 405 and Wrights Landing Road. The access
13 standards state that on both Highway 405 and Wrights
14 Landing Road there is a minimum of 250 foot spacing
15 between access points. It is the Staffs' calculation
16 that with this minimum distance there would only be
17 space for 2 access points off of Highway 405 and 1
18 access point off of Wrights Landing Road. It is our
19 opinion that if the lots shared access points, the
20 applicant could, at most fit 6 lots onto the subject
21 property.

22 The applicant may be losing the use of 1 lot
23 and have 10 sellable lots if they are required to meet
24 the project boundary setback of 20 foot in a Planned
25 Residential Development; but if they were to do a

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1 standard subdivision they would only have, at most, 6
2 sellable lots due to the access spacing
3 standards. It is Staffs' opinion that the applicant
4 will be benefitting greatly by being able to do a
5 Planned Residential Development, even if the Variance
6 is not granted.

7 Granting this variance will alter the
8 essential character of the general vicinity because it
9 abuts a residential neighborhood that was developed as
10 a standard subdivision meeting lot size requirements
11 and keeping this 20 foot project boundary setback will
12 allow adequate space between the existing neighborhood
13 and this proposed Planned Residential Development with
14 a private alley and smaller lot sizes and greater
15 density.

16 Granting this variance will be an unreasonable
17 circumvention of the requirements of the zoning
18 ordinance because by choosing to do a Planned
19 Residential Development the applicant is already
20 receiving benefits of smaller lot sizes and the use of
21 a private alley and this development should adhere to
22 the requirements of Article 10 in order to benefit.

23 MR. HOWARD: With that I would like to enter
24 the Staff Report into the record as Exhibit D with the
25 recommendation from Staff for denial.

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1 CHAIRMAN: Been any opposition or comments in
2 the office?

3 MR. NOFFSINGER: Yes, sir. We have had one
4 call from an adjoining landowner that state that they
5 had concerns. They were indeed adjoining property
6 owner and had concerns about the buffer being reduced
7 from 20 feet down to 10 feet.

8 CHAIRMAN: So noted.

9 Is anyone here this evening wishing to speak
10 in opposition?

11 If you're in opposition, I just want to know
12 of anyone. Just minute.

13 Let's hear the applicant first and then you
14 can bring your opposition.

15 Is the applicant here. Anybody representing
16 the applicant?

17 MR. SILVERT: State your name, please.

18 MR. BAKER: Jason baker.

19 (JASON BAKER SWORN BY ATTORNEY.)

20 MR. BAKER: We prepared the application for
21 the applicant. He wasn't able to make it tonight. I
22 can answer any questions relating to the specific
23 application, but couldn't act on behalf of the client.

24 CHAIRMAN: Any board members have any
25 questions of the applicant representation at this

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1 time?

2 MR. DYSINGER: Yes. Mr. Chairman, I would
3 just ask if the applicant's representative can give us
4 a reason to grant the variance?

5 MR. BAKER: The reason the applicant was
6 applying for the variance has to do with there's an
7 existing sanitary sewer force main which traverses
8 from the sanitary sewer lift station property directly
9 behind this and extends directly across the subject
10 tract bisecting it out toward 405.

11 The location of that force main limits the
12 distance, the width of those lots directly to the
13 west. That's the purpose for the request.

14 CHAIRMAN: Any other questions from the board
15 members?

16 MR. DYSINGER: I would ask Staff if they've
17 like to comment on that? Does sewer main factor into
18 their report at all?

19 MR. NOFFSINGER: Yes, we're certainly aware of
20 that. We did take that into account in our review.
21 Again, in looking at if they developed this as a
22 regular subdivision, they could get six sellable lots.
23 They chose to do a Planned Residential Development.
24 They can get ten sellable lots and they want to push
25 it to 11. That would be at the expense of the

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1 adjoining landowner and their right to a buffer from a
2 project that's not a part of their development.

3 Although this development will be in keeping
4 with the density of the zoning they're under, you will
5 find that the lots in this development are going to be
6 much smaller than what they are in the adjoining
7 development. So they're already taking advantage of
8 the benefit that the ordinance has allowed them to do
9 by doing a Planned Residential Development. This is
10 asking to go another step further.

11 Certainly we would like it get as many lots
12 out there as we can. We don't recommend doing that at
13 the risk of circumventing the zoning ordinance which
14 has already allowed flexibility for this developer to
15 create more lots than what the ordinance would
16 ordinarily allow.

17 CHAIRMAN: Any other comments or questions of
18 the applicant's representative right now?

19 (NO RESPONSE)

20 CHAIRMAN: The one that has opposition at this
21 time please come forward and state your name please,
22 ma'am.

23 MS. JOHNSON: My name is Tamra Johnson.
24 (TAMRA JOHNSON SWORN BY ATTORNEY.)

25 MS. JOHNSON: I have few questions. The first
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1 one was why do they want to change, and now I know
2 that instead of having ten sellable lots they want to
3 have 11.

4 With this I believe that ten houses back there
5 is going to be congested. It's going to be problems
6 with the noise. I think these will cause problems.

7 I also would like to know if the variance is
8 on the three properties off of 405 on Chandler Avenue?
9 Apparently this is the only place that they're asking
10 for a variance. Is this yes or no?

11 MR. NOFFSINGER: If I may.

12 Yes, ma'am, the only place they're asking for
13 a variance would be along that property line that
14 adjoins the two lots that front Chandler. The one at
15 Chandler and 405, and then the lot next to it.
16 They're identified as lot 4D and lot 4C. A portion of
17 lot 4B. Just a small portion.

18 MS. JOHNSON: Also, if this does get passed, I
19 would like to know if there will be a barrier of some
20 sort. Not a planned for a barrier, but a barrier. Of
21 course, when they start building, there's going to be
22 dust and dirt and so forth and the noise, of course.
23 I would like to know if there's going to be some kind
24 of barrier put up. When will this variance be voted
25 on? Does anybody know?

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1 CHAIRMAN: Tonight.

2 MS. JOHNSON: My one last comment is I
3 respectfully ask that it be denied because of the
4 noise and the view and the congestion back behind the
5 houses. Thank you.

6 CHAIRMAN: Anyone else have any other
7 comments?

8 Come forward and state your name please,
9 ma'am.

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

12 MS. HEADY: By name is Bobbi Heady.
13 (BOBBI HEADY SWORN BY ATTORNEY.)

14 MS. HEADY: I'm the lot that just has the
15 small amount. I received a letter too.

16 I have some of the same concerns that Tammy
17 has. It will be very close to our property in the
18 back of my house. Noise factor, congestion, blocking
19 the view. I'm with her. I'd like to respectfully
20 request that this be denied, this variance. Thank
21 you.

22 CHAIRMAN: Anyone else have any other
23 comments?

24 Come forward, please, ma'am.

25 MR. SILVERT: Could you state your name,

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1 please?

2 MS. ROWLAND: Helen Rowland.

3 (HELEN ROWLAND SWORN BY ATTORNEY.)

4 MS. ROWLAND: My husband and I are the owners
5 of block 40 in Wrights Acres. We do request that this
6 variance be denied for the simple fact that if you
7 take it from 20 feet to 10 feet, that house will be
8 almost literally right outside my back door. I feel
9 that is entirely too close. If you put ten houses in
10 that area, it will be very, very congested regardless
11 of what a plan may show. I thoroughly agree with the
12 other two that are here. Thank you.

13 CHAIRMAN: Any other comments from the board
14 members?

15 (NO RESPONSE)

16 CHAIRMAN: Staff have any other comments?

17 MR. NOFFSINGER: The only question I think
18 that has not been addressed would be a barrier. If
19 this variance is not granted, is there going to be
20 some type of barrier. That was the one question I
21 think that was not addressed.

22 MR. PEDLEY: Mr. Noffsinger, does the
23 ordinance require screening?

24 MR. NOFFSINGER: No, sir.

25 MR. PEDLEY: Doesn't require.

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1 MR. NOFFSINGER: No, sir.

2 CHAIRMAN: Mr. Baker, come forward. Can you
3 answer our question, please.

4 MR. BAKER: Jason baker.

5 I know of no plan to put up a fence; although
6 technology is I'm communicating with the client here
7 and he said "I'll put up a fence." I don't know if
8 that works.

9 MR. NOFFSINGER: It doesn't change Staff's
10 recommendation, but at least it gives these folks an
11 idea of what to expect.

12 CHAIRMAN: State your name again, please.

13 MS. JOHNSON: Tamra Johnson.

14 In the last meeting that we had here, which
15 was June 9th, I believe, the builder said the plan was
16 to put up a barrier of some sort. That is all well
17 and good. His plan, we all know that plans don't go
18 as planned. So I would like to get a guarantee that
19 if this variance does go through that there will be
20 some type of barrier. As my neighbor said, these
21 houses will be in our backyard. That's my question.
22 Thank you.

23 CHAIRMAN: Thank you.

24 Board members have any other comments?

25 MR. PEDLEY: It's unfortunate that the

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1 applicant is not here to agree to some sort of
2 screening, fence or pine trees; although, we can put
3 that condition on the variance.

4 Is that right, Mr. Noffsinger?

5 MR. NOFFSINGER: Yes, sir.

6 MR. PEDLEY: It would be good if the builder
7 was here. He's not. I'm not for postponing this. I
8 think we need to move forward. However, we have a
9 severe shortage of lots in this community for
10 builders. I know Image Builders have been searching
11 all over for lots. We do not have lots to build homes
12 on because of the lack of development. Most of the
13 builders are searching for lots. Also the
14 comprehensive plan would support higher density. It
15 does support higher density. I believe that's the
16 direction we're moving in.

17 Also, this side yard of these homes is to the
18 rear of the homes in lot 4D and lot 4C. There's quite
19 a space. I do believe there needs to be a screening.
20 I believe either a fence or pine trees or both.

21 With that, Mr. Chairman, if you're ready.

22 CHAIRMAN: We're ready for a motion.

23 MR. PEDLEY: I think I'm prepared.

24 Again, my findings are with what I've
25 previously stated about the shortage of lots in this

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1 community. We're needing to go to a higher density in
2 our developments and the comprehensive plan encourages
3 that. Most of the builders are searching for lots
4 today. We have totally depleted our development lots.
5 For that reason I'm going to make a motion that we
6 approve this variance with the findings that it will
7 not adversely affect the public health, safety or
8 welfare because it is in a residential area. To the
9 north of those the spacing on the houses are much
10 closer than it will be to the rear lots, on these
11 houses on these two lots. It will not alter the
12 essential character of the general vicinity. Actually
13 it abuts the rear lots. Everything to the north of
14 what they're developing will be narrow lots and
15 closer. It will not cause a hazard or nuisance to the
16 public. Based on my findings that we do have a
17 shortage of lots. The comprehensive plan calls for
18 high density in our developments in the future. It
19 will not adversely allow an unreasonable circumvention
20 of the requirements of the zoning ordinance
21 regulations because actually when you allow this
22 development to be that way you actually created a
23 closer and higher density. Because it is on a rear
24 lot, the house on Chandler and spacing is quite a
25 distance, I don't feel it's a major circumvention of

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1 the requirements of the zoning ordinance.

2 I will put on a condition on it that the
3 builder put up a fence 6 feet high and a pine tree
4 every 10 feet on the side of the homes on Chandler
5 Avenue. That's my motion.

6 CHAIRMAN: Is there a second to the motion?

7 MS. MASON: I'll second it.

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

11 (NO RESPONSE)

12 MR. DYSINGER: Mr. Chairman, I would just say
13 that under normal circumstances and in all the years
14 that we've been on this board together I generally
15 defer to Mr. Pedley's experience and judgment and
16 issues of development. I do have to say that in this
17 case however I don't think that the argument is
18 compelling in the face of such egregious circumvention
19 of the zoning ordinance. That's all I would say.

20 CHAIRMAN: Any other comments or questions
21 from the board members?

22 (NO RESPONSE)

23 CHAIRMAN: Staff have anything else, comments
24 you all would like to make?

25 MR. NOFFSINGER: I think we better remain

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1 silent.

2 CHAIRMAN: So noted.

3 Hearing no other questions or comments all in
4 favor raise your right hand.

5 (BOARD MEMBERS WARD PEDLEY AND RUTH ANN
6 RESPONDED AYE.)

7 CHAIRMAN: Opposed.

8 (BOARD MEMBERS FATHER LARRY HOSTETTER AND SEAN
9 DYSINGER RESPONDED NAY.)

10 CHAIRMAN: Two/two.

11 I'm against the application so I vote no. So
12 the motion fails.

13 Next item, please.

14 MR. NOFFSINGER: We need another motion.

15 MR. DYSINGER: Mr. Chairman, given the
16 findings that there is simply no compelling reason to
17 grant the variance, further that there is nothing
18 adherent in the lot shape or size that would compel
19 granting it and creating an obvious circumvention of
20 the zoning ordinance, and given the testimony of
21 adjoining landowners, it would create a nuisance in
22 the neighborhood and is therefore not compatible. I
23 move that we deny the variance request.

24 FATHER LARRY: Second.

25 CHAIRMAN: A motion has been made and a

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1 second. Any other questions or comments from the
2 board at this time?

3 (NO RESPONSE)

4 CHAIRMAN: Staff have any other comments?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: Hearing none all in favor of the
7 motion raise your right hand.

8 (BOARD MEMBERS SEAN DYSINGER, FATHER LARRY
9 RESPONDED AYE.)

10 CHAIRMAN: Opposed.

11 (BOARD MEMBERS WARD PEDLEY AND RUTH ANN MASON
12 RESPONDED NAY.)

13 CHAIRMAN: I have to go along with the motion
14 to deny it.

15 -----

16 ADMINISTRATIVE APPEAL

17 ITEM 8

18 2125 Breckenridge Street, zoned B-4

Consider a request for an Administrative Appeal

19 concerning the proposal to change from one
non-conforming use to another non-conforming use with
20 regards to parking, access and landscaping.

Reference: Zoning Ordinance, Article 4, 7,

21 Section 4.53, 7.34

Applicant: Irvin Merritt; Haphazard, LLC

22

23 ZONING HISTORY

24 The subject property is currently zoned B-4

25 General Business. OMPC records indicate there have

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1 been no Zoning Map Amendment applications approved for
2 the subject property.

3 The applicant is requesting to change from one
4 non-conforming use as a restaurant to another
5 non-conforming use as a restaurant. The site, with
6 regards to parking, access and landscaping, will
7 remain the same as it was with the previous business.

8 LAND USES IN SURROUNDING AREA

9 The properties to the north and east are zoned
10 B-4 General Business. The properties to the south and
11 west are zoned R-3MF Multi-Family Residential.

12 AUTHORITY FOR CHANGE IN NON-CONFORMING USE

13 A motion to approve would allow the operation
14 of a restaurant using the existing site with no
15 additional improvements to the site required.

16 A motion to deny would require the applicant
17 to install the parking, appropriate access points and
18 landscaping as required by the zoning ordinance.

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

21 CHAIRMAN: Has there been any opposition filed
22 in the office on this?

23 MR. NOFFSINGER: No, sir. For the record this
24 is an existing block building that's been used for a
25 restaurant as long as certainly I can remember it as a

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1 child. It will continue a restaurant here. They're
2 making no additions to this facility. It will remain
3 as is and function hopefully as a successful
4 restaurant if you approve this Administrative Appeal.

5 CHAIRMAN: What is the board's pleasure on
6 this appeal?

7 MR. DYSINGER: Mr. Chairman, given the
8 findings that new non-conforming use will be exactly
9 as restrictive as the old non-conforming use I move
10 that we find in favor of the appellate.

11 CHAIRMAN: Is there a second?

12 MS. MASON: Second.

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

16 (NO RESPONSE)

17 CHAIRMAN: Staff have any other comments?

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 9

25 7046 Highway 56, zoned B-4

Consider a request for an Administrative Appeal

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1 concerning the proposal to change from one
2 non-conforming use to another non-conforming use with
3 regards to parking, access and landscaping.

Reference: Zoning Ordinance, Article 4, 7,
4 Section 4.53, 7.34

Applicant: Jeff Blackstone; Jimmy Yeckering

4

5 ZONING HISTORY

6 The subject property is currently zoned B-4
7 General Business. OMPC records indicate there have
8 been no Zoning Map Amendment applications approved for
9 the subject property.

10 The applicant is requesting to change from one
11 non-conforming use as a restaurant to another
12 non-conforming; use as a restaurant. The site, with
13 regards to parking, access and landscaping, will
14 remain the same as it was with the previous business.

15 The applicant is proposing to construct a
16 patio on the front of the building. If this patio
17 were to remain uncovered, it would not increase the
18 non-conformity of the structure or site; however, if
19 the applicant wishes to cover the patio, this would
20 increase the non-conformity and therefore the Board
21 could not act to approve a roof structure

22 LAND USES IN SURROUNDING AREA

23 The properties to the north, south and west
24 are zoned B-4 General Business. The property to the
25 west is zoned R-1A Single-Family Residential.

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1 AUTHORITY FOR CHANGE IN NON-CONFORMING USE

2 A motion to approve would allow the operation
3 of a restaurant using the existing site with no
4 additional improvements required to the site and would
5 allow the applicant to construct an uncovered patio.

6 A motion to deny would require the applicant
7 to install the parking, appropriate access points and
8 landscaping as required by the zoning ordinance.

9 SPECIAL CONDITIONS

10 We would like to place one special condition
11 on this item, if it were approved. That is:

12 1. Construction of any building additions or
13 roof structures over the proposed patio is prohibited.

14 MS. EVANS: We would like to enter the Staff
15 Report into the record as Exhibit F.

16 CHAIRMAN: Thank you.

17 Any comments?

18 MR. NOFFSINGER: No, sir.

19 CHAIRMAN: Is there anyone talking against the
20 appeal at this time?

21 CHAIRMAN: Hearing none board members have any
22 comments?

23 MR. DYSINGER: Mr. Chairman, I would just ask
24 if the applicant is aware of the special condition
25 that's been requested, understands it and so forth.

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1 CHAIRMAN: Come forward and state your name.

2 MR. SILVERT: Would you state your name,
3 please.

4 MR. BLACKSTONE: Jeff Blackstone.

5 (JEFF BLACKSTONE SWORN BY ATTORNEY.)

6 MR. BLACKSTONE: Yes, I understand that. The
7 reason for the patio at all is to get one level into
8 the restaurant. You've got steps and there's no way
9 to make it handicap accessible really. So by putting
10 a deck out there allows us to do that. The only
11 reason for putting a roof over it and not really
12 enclose it in is just strictly a convenience for
13 weather. It doesn't extend out any further than the
14 area that's already bricked or whatever is already
15 there. It just eliminates steps. So whatever works
16 out on that, you know. Umbrella I guess work just as
17 well.

18 CHAIRMAN: Any other comments or questions of
19 the applicant?

20 (NO RESPONSE)

21 CHAIRMAN: The Staff have anything else?

22 MR. NOFFSINGER: No, sir.

23 CHAIRMAN: Entertain a motion to dispose of
24 the Administrative Appeal.

25 FATHER HOSTETTER: Mr. Chairman, I move that
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1 we grant the Administrative Appeal based on the fact
2 that we're moving from one non-conforming use as a
3 restaurant to another with, however, the special
4 condition that construction of any building additions
5 or roof structures be prohibited over the proposed
6 patio.

7 CHAIRMAN: Is there a second?

8 MR. DYSINGER: Second.

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

12 (NO RESPONSE)

13 CHAIRMAN: Staff have anything else?

14 MR. NOFFSINGER: No, sir.

15 CHAIRMAN: All in favor raise your right hand.

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries.

18 Next item.

19 FATHER HOSTETTER: Move to adjourn.

20 MS. MASON: Second.

21 CHAIRMAN: All in favor raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: We are adjourned.

24 -----

25

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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 Planning
6 Commission 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 45 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 26th day of August, 2011.

18
19

LYNNETTE KOLLER FUCHS
NOTARY ID 433397
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
OWENSBORO, KENTUCKY 42303

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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