

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT  
2 DECEMBER 1, 2011

3 The Owensboro Metropolitan Board of Adjustment  
4 met in regular session at 5:30 p.m. on Thursday,  
5 December 1, 2011, at City Hall, Commission Chambers,  
6 Owensboro, Kentucky, and the proceedings were as  
7 follows:

8 MEMBERS PRESENT: Ward Pedley, Chairman  
Ruth Ann Mason, Secretary  
9 Gary Noffsinger, Director  
Madison Silvert, Attorney  
10 Marty Warren  
Sean Dysinger

11 \* \* \* \* \*

12  
13 CHAIRMAN: Call the Owensboro Metropolitan  
14 Board of Adjustment December 1 meeting to order. We  
15 will begin our meeting with a prayer and the pledge of  
16 allegiance to the flag. Would you stand, please.

17 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

18 CHAIRMAN: I'd like to welcome everyone.  
19 Anyone wishing to speak on any item we welcome your  
20 comments and questions. We ask that you come to one  
21 of the podiums, state your name and you'll be sworn  
22 in.

23 With that the first item on the agenda is  
24 consider the minutes of the November 3, 2011 meeting.  
25 Are there any additions or corrects?

1 (NO RESPONSE)  
 2 CHAIRMAN: Chair is ready for a motion.  
 3 MR. DYSINGER: Move to approve.  
 4 MS. MASON: Second.  
 5 CHAIRMAN: We have a motion and a second. All  
 6 in favor of the motion raise your right hand.  
 7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)  
 8 CHAIRMAN: Motion carries unanimously.  
 9 Next item.

10 -----  
 11 CONDITIONAL USE PERMITS

12 ITEM 2  
 13 11901 Highway 951, zoned EX-1  
 Consider a request for a Conditional Use Permit in  
 14 order to operate a 60 meter meteorological tower to  
 measure wind speed, wind direction, and vertical wind  
 15 speed for an additional three years from the original  
 approval in November 2009.  
 16 Reference: Zoning Ordinance, Article 8, Section 8.2K6  
 Applicant: Heartland Wind, LLC, Jesse Bermel; Jerry  
 17 Winn

18 MR. SILVERT: State your name, please.  
 19 MS. EVANS: Melissa Evans.  
 20 (MELISSA EVANS SWORN BY ATTORNEY.)

21 ZONING HISTORY  
 22 The subject property is currently zoned EX-1  
 23 Coal Mining. OMPC records indicate there have been no  
 24 Zoning Map Amendments for the subject property.

25 This was approved originally for a wind tower  
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1 for temporary to collect the data in November of 2009.  
2 They're requesting that this be extended for an  
3 additional three years so that they have time to  
4 collect more data.

5 LAND USES IN SURROUNDING AREA

6 The properties to the north are zoned EX-1  
7 Coal Mining and A-R Rural Agriculture and are used for  
8 agricultural purposes. The properties to the south,  
9 west and east are zoned EX-1 Coal Mining and are used  
10 for agricultural purposes.

11 SPECIAL CONDITIONS

12 1. The tower shall be in place for a maximum  
13 of three years from the date of approval.

14 2. Conditional Use Permit approval is for one  
15 tower for data collection only. No permit for a wind  
16 farm shall be issued until appropriate zoning and  
17 conditional use permits are approved for that use.

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

20 Also, any items approved here tonight do not  
21 constitute approval for construction or occupancy.  
22 The applicant will need to come to the office to get  
23 those appropriate permits for that.

24 CHAIRMAN: Anyone here representing the  
25 applicant?

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1 APPLICANT REP: Yes.

2 CHAIRMAN: Anyone would like to speak in  
3 opposition or any questions?

4 (NO RESPONSE)

5 CHAIRMAN: Do you have any comments you would  
6 like to present?

7 MR. BERMEL: I'm Jess Bermel with Heartland  
8 Wind. If you guys have any questions.

9 MR. SILVERT: Let me swear you in if you're  
10 going to state to anything.

11 (JESSE BERMEL SWORN BY ATTORNEY.)

12 MR. BERMEL: I just quickly. The reason for  
13 an additional three years is two years has quickly  
14 gone by and we have collected data, but we're looking  
15 to, we need a little bit more data and a little more  
16 time to come up with what our long-term plan is going  
17 to be.

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

20 (NO RESPONSE)

21 CHAIRMAN: If not the Chair is ready for a  
22 motion.

23 MR. DYSINGER: Mr. Chairman, given the  
24 findings that this is an ongoing usage, I move that we  
25 approve the Conditional Use Permit for a period of

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1 three more years.

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

4 MR. WARREN: Second.

5 CHAIRMAN: We have a motion and a second. Any  
6 comments or questions on the motion?

7 (NO RESPONSE)

8 CHAIRMAN: All in favor raise your right hand.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries unanimously.

11 Next item.

12 -----

13 VARIANCES

14 ITEM 3

15 2306 Windhaven Drive, zoned I-1 (Postponed from the  
November 3, 2011 meeting)

16 Consider a request for a Variance in order to waive  
17 the required six foot high solid wall or fence around  
an outdoor storage lot.

Reference: Zoning Ordinance, Article 8, Section  
18 8.5.3(j), Article 17, Section 17.3114

Applicant: Mid-South Equipment, LLC, Chad Watts, Jim  
19 Watts

20 MR. NOFFSINGER: Mr. Chairman, since our last  
21 meeting, the Staff has had only one contact with the  
22 applicant and that was a request by the applicant to  
23 postpone the item until the January meeting. We  
24 indicated to the applicant that that was a decision  
25 that this board would have to make; however, Staff was

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1 prepared to move forward at this meeting with  
2 additional evidence as well as asking the board to  
3 vote on the item.

4 The applicant is here and Ms. Stone is here  
5 which she'll have additional evidence to enter into  
6 the record.

7 CHAIRMAN: Anyone here representing the  
8 applicant?

9 MR. SILVERT: State your name, please. You're  
10 sworn in already.

11 MR. HOLTREY: Travis Holtrey, attorney.

12 I would like to make one correction. I  
13 believe an email was sent to Ms. Stone asking her for  
14 some information that she presented to this board at  
15 the first hearing of the matter which was why some of  
16 the other area equipment companies were legally  
17 compliant.

18 MS. STONE: The Staff Report.

19 MR. HOLTREY: Right. So I had made some  
20 contact at the request of my client to obtain that  
21 information. So just to clarify the record, that was  
22 another communication that I did have with the Staff.

23 It is accurate that I did ask for a  
24 continuance of this motion. At this point now it's  
25 public record. At the time it wasn't. I communicated

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1 with counsel and asked counsel if he was the proper  
2 person to ask for a continuance in the matter. I was  
3 directed to the Staff. Sent an email asking for a  
4 continuance, understanding the Staff has no authority  
5 to grant a continuance of the matter.

6 The basis of that was that I am taking a new  
7 position here in Owensboro with a new firm. Any time  
8 you switch firms there is a question as to what  
9 clients you're going to take with you and what clients  
10 you're not going to take with you. At that time it  
11 was not clear to me.

12 I do have permission from this client to  
13 continue forward, but I didn't want to take the chance  
14 of not being able to be here tonight and not having  
15 someone here. So out of abundance of caution for this  
16 client I thought it was safest to ask for a  
17 continuance. Nevertheless I'm here and I am prepared  
18 to move forward with a few comments.

19 I would say this at the outset. Obviously,  
20 this board recalls the fact that this is now the third  
21 time I've been here before you. I appreciate your  
22 time. I appreciate the Staff's time in the efforts  
23 that has been put forward with regards to this motion  
24 for variance or this application for a variance.

25 I want to thank Gary and Becky and the Staff

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1 for their energy and their energy and the effort  
2 they've put into trying to look at some alternatives.

3 My clients over the past 30 days, since this  
4 was carried over, again, thank you for allowing us to  
5 carry over because there was a lot of information  
6 provided that we needed to digest and look at.

7 Over the last 30 days, I've met twice with  
8 them and they have met on their own and discussed the  
9 plan that was presented. The way I'm going to refer  
10 to that, and I don't know if it's accurate, is that  
11 there has been a plan which would actually require a  
12 variance in and of itself that's a proposed plan. I'm  
13 not quite sure if this board can vote on that because  
14 that is a subsequent or a supplemental request for a  
15 variance. Nevertheless, we will call that an  
16 alternative plan, I guess. We looked at that  
17 alternative plan closely.

18 Based upon these meetings, I was asked to  
19 gather some additional information to communicate to  
20 my client. We've reached several conclusions that I  
21 would like to just share with the board.

22 I think if we would all agree, the one thing  
23 we've been able to agree upon the entire time  
24 throughout this process is that whether it is rubber  
25 track equipment or steel track equipment or heavy

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1 equipment, asphalt is going to be an inferior product  
2 to pave the lot with. I think that when we looked at  
3 this the first thing with the alternate proposal is  
4 paving or making concrete a specific portion of the  
5 applicable yard. That's a part of that plan.

6 We again come back to the fact that asphalt  
7 would be inferior. Of course, it's the more  
8 affordable option, but the client, my client,  
9 Mid-South, and the applicant would remind the board  
10 that it's just not going to be feasible. So that  
11 turns our focus to concrete.

12 We've looked to two potential options with  
13 regards to concrete. There's broom concrete and  
14 there's smooth concrete.

15 Now, if we go with broom concrete, obviously  
16 it's safer when on it by foot. The nature of a lot of  
17 this equipment is a client wants to come out or a  
18 customer wants to come out. They want to test drive  
19 it, get on it, operate it there. We've talked about  
20 that in the past. They'll be walking around our yard.  
21 Broom concrete is much safer to walk on. It's much  
22 safer to climb up onto a piece of equipment off of  
23 broom concrete because of traction.

24 The problem with broom concrete is that as the  
25 Staff has noted in looking at the yard and observing

1 the yard over time, some of the equipment has hard  
2 rubber tracks. It's not the steel tracks. It's the  
3 hard rubber tracks. We've looked into whether or not  
4 operating the equipment over broomed concrete over  
5 time would void a warranty because of the rubber  
6 tracks. There's a genuine concern as to damage that  
7 the broom concrete or rough course concrete would do  
8 to the rubber tracks.

9 So then we turned our attention to smooth  
10 concrete. To pave this portion of the yard with  
11 smooth concrete. Obviously, there's a safety question  
12 for us having people walk on the smooth concrete in an  
13 exterior environment.

14 In that situation it would not damage rubber  
15 tracks, which would be favorable to us. Still can't  
16 get around the fact that the steel tracks on any  
17 concrete would do damage to the concrete.

18 The third conclusion or concern that we've  
19 reached is a turn radius issue. A great deal of the  
20 equipment that is delivered to the yard is delivered  
21 on semi tractor-trailer flatbeds. We have tried to  
22 look at the proposed plan and delivery or the drop-off  
23 of equipment for the yard or for my clients and having  
24 the equipment delivered and have the turn radius for a  
25 semi tractor-trailer where it's not going to drive on

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1 concrete and then off into a gravel and then back on  
2 because of the question of the weight of that and the  
3 turning on it, chipping off the side of it. There's a  
4 genuine concern for us. I have made a list of the  
5 equipment just over the last 60 days. It has been  
6 delivered to the yard on semi tractor-trailer flatbed.  
7 We've had sky lifts, generators, front end loaders,  
8 tractors, all delivered in the last 60 days on semi  
9 tractor-trailer.

10 If the alternate proposal is taken seriously  
11 and looked at from a consideration of is it feasible,  
12 we have a significant turn radius issue.

13 The fourth conclusion that my client has  
14 reached is that this proposal, this alternate proposal  
15 would be difficult. There are some long-term future  
16 expansion plans of Mid-South Equipment. Having it  
17 apportion the way it is, is not I say feasible, but  
18 it's not within the long term plan of expansion of  
19 Mid-South.

20 That was a conclusion we reached that I said,  
21 well, really before -- I think that you all would be  
22 entitled to asking more specific questions. In all  
23 fairness, the expansion plans are a year or two down  
24 the line and that's assuming certain growth in the  
25 market. I wanted to put that out there because it was

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1 a part of our discussions because we did not take  
2 lightly you guys, the board, allowing us 30 more days.  
3 We wanted to look at every option.

4 The fifth conclusion we've reached was I was  
5 asked to do some research not only in Owensboro,  
6 because I think we have presented the board with the  
7 area market so-to-speak of our competitors and then  
8 being legally compliant. I wanted to make sure we had  
9 exhausted it. That's why I requested that information  
10 from Ms. Stone.

11 I was asked to spend some time just on the  
12 internet looking just at one equipment dealer who has  
13 a branch here but is nationwide. That's Erb  
14 Equipment. When I looked at Erb Equipment's website,  
15 what I found was that in all the pictures of their  
16 yards around the country, we have gravel or dirt  
17 storage yards with clear fences.

18 You're saying, well, we're not going to get  
19 compared to what they do in Memphis, Tennessee. We're  
20 not going to get compared -- the reason I was asked to  
21 point that out is what Mid-South was asking for  
22 unreasonable? In looking at the Variance from this  
23 ordinance, we wanted to see, okay, are we out in left  
24 field on this request? You know, is it maybe just a  
25 thing with Owensboro. So I did spend some time.

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1 Again, we've reached the conclusion that a majority if  
2 not everywhere you look you're seeing equipment like  
3 this stored in yards with asphalt or dirt storage  
4 yards with clear fences.

5 The sixth item that we've discussed and looked  
6 at in depth is that the only harm I can recall that  
7 was alluded to, and I will apologize if I'm wrong.  
8 The only harm that I think this board has been  
9 presented with was that there has been gravel from our  
10 storage lot that has made its way out onto Windhaven  
11 Drive. The only harm.

12 My client has given me permission to say to  
13 the board that in the event that our Variance is  
14 granted we will take the steps necessary. The fix on  
15 this seems to be rather easy. Of digging channel and  
16 putting a grate to catch the gravel. So if that is  
17 the only harm that's been mentioned, I have the  
18 authority that represents the board that we can remedy  
19 that harm in short order and will.

20 Those were the six items that we discussed.  
21 The reasons that we don't -- I don't want this board  
22 to think that we are making light of the proposed  
23 alternate. We appreciate that effort. We gave you --  
24 I wanted a chance to look at it closely. Have them  
25 look at it and digest it. And these were the thoughts

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1 and conclusions and considerations that Mid-South, the  
2 applicant, came up with.

3 In short, we still believe we've satisfied the  
4 criteria that is required for a variance. We would  
5 ask the board at this time to vote on the petition,  
6 the application we originally filed for the Variance  
7 based upon all the information now from this, the  
8 third meeting.

9 I'm open to questions. Would like to hear the  
10 new evidence that's to be proposed and then we're,  
11 again, willing to answer any questions.

12 CHAIRMAN: Any board members have any  
13 questions of Mr. Holtrey?

14 (NO RESPONSE)

15 CHAIRMAN: Staff have any additional  
16 information you can share with us?

17 MR. SILVERT: Would you state your name,  
18 please?

19 MS. STONE: Becky Stone.

20 (BECKY STONE SWORN BY ATTORNEY.)

21 MS. STONE: First, to respond to his concern  
22 about a partial Variance being granted. We have  
23 advertised a Variance for the whole perimeter of the  
24 outdoor storage area. So if the board decided to  
25 approve only a portion of that, that would be

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1 appropriate.

2           The purpose of a public hearing, as you know,  
3 is to present evidence so the that board can make  
4 findings to support their decision regarding the  
5 Variance, Conditional Use Permit or Administrative  
6 Appeal. It's important to remember that a Variance  
7 runs with the land, that's KRS 100.251. A Variance  
8 applies to the property for which it is granted and  
9 not to the individual who applied for it. A Variance  
10 is transferable to any future owner of the land, but  
11 it cannot be transferred by the applicant to a  
12 different site. KRS states that the board must find  
13 that the granting of the Variance will not affect the  
14 public health safety or welfare, will not alter the  
15 essential character of the general vicinity, will not  
16 cause a hazard or a nuisance to the public, and will  
17 not allow an unreasonable circumvention of the  
18 requirements of the regulations. Because the Variance  
19 applies to the land and not to the applicant, KRS  
20 states that in making these findings the board shall  
21 consider whether:

22           1. The requested Variance arises from special  
23 circumstances which do not generally apply to the land  
24 in the general vicinity or in the sudden zone.  
25 Evidence has been entered into the record showing the

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1 businesses in the same area have complied with the  
2 zoning regulation relative to outdoor screening.  
3 Additionally, evidence has been provided to  
4 demonstrate that other like businesses in the same  
5 zone in the community have adhere to the zoning  
6 regulations. The community is adopted a screening  
7 requirement for outdoor storage that is applied with  
8 consistency. Every business has varied business  
9 activities, but the basis of a variance should, as  
10 stated in KRS, consider the characteristics of the  
11 site, not the particular business practice, because  
12 the variance remains with the land. Not the owner or  
13 the applicant. A business practice is not a special  
14 circumstance. The cost of doing business in Daviess  
15 County includes conforming to adopted regulations of  
16 the county. Typically special circumstances would be  
17 physical characteristics of the land that differ from  
18 other properties in the area or in the same zone.  
19 There has been evidence presented to the board by the  
20 Staff that there are some special circumstances along  
21 the one boundary of the lot as shown on the exhibit  
22 that would support a variance in that location only.  
23 This evidence was presented by the Staff after visits  
24 to the site and not presented by the applicant. The  
25 topography in the tree on the lot provide natural

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1 screening that would be a feature of the lot that is  
2 special and provides the intention of the ordinance  
3 relative to screening. Otherwise, there are no  
4 physical features such as narrowness or shape of the  
5 lot to demonstrate a special circumstance that would  
6 support a waiver of outdoor screening.

7 1. The strict application of the provisions  
8 of the regulation would deprive the applicant of the  
9 reasonable use of the land or would create an  
10 unnecessary hardship on the applicant. As stated  
11 above, compliance with the zoning ordinance is a  
12 reasonable cost of doing business in Daviess County  
13 and has been since the 1970's. The applicant has a  
14 choice concerning how much area to screen to  
15 accommodate their outdoor storage needs. They can  
16 also choose to display products on a paved displayed  
17 area, on a size and type that meets their needs and  
18 budget. The original site plan submitted by the  
19 applicant and approved showed screening around the  
20 entire graveled outdoor storage area. The contractual  
21 obligation that they're attempting to meet in  
22 displaying their product can be met on this site.  
23 There's adequate room on the site to create a display  
24 area. There are no physical characteristics of the  
25 site that would prevent the owners from creating

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1 outdoor storage and display area.

2 3. The circumstances are a result of actions  
3 of the applicant taking subsequent to the adoption of  
4 the zoning regulation from which relief is sought.  
5 The applicants had an approved site plan that met all  
6 the regulations which they choose not to implement.  
7 Currently they are under violation of the zoning  
8 regulation, but if taken steps to come into compliance  
9 by asking for relief of the screening requirements.  
10 The Staff does not believe there is evidence entered  
11 by the applicant to support a variance of the entire  
12 boundary of the outdoor screening. If denied, we  
13 anticipate that the applicant will conform to the  
14 zoning ordinance regulations immediately.

15 The applicant's attorney stated in the public  
16 hearing that there has been no evidence presented to  
17 indicate that the granting of this variance would  
18 adversely affect the public health, safety and  
19 welfare, would alter the essential character of the  
20 general vicinity, would cause a hazard or nuisance to  
21 the public, or would allow an unreasonable  
22 circumvention of the ordinance.

23 The Staff disagrees and would argue that the  
24 applicant has not presented evidence to support these  
25 findings. The community has adopted zoning

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1 regulations expressly to serve to enhance the public  
2 health, safety and welfare. The screening requirement  
3 is recognized by the community as necessary to enhance  
4 the public welfare by increasing the esthetics of the  
5 community. The regulation applies to all outdoor  
6 storage areas and the burden of proof is on the  
7 applicant to demonstrate that a variance can meet the  
8 criterias set forth in KRS. As stated earlier, the  
9 variance would apply to the land, not the business.  
10 So if granted future outdoor storage could occur on  
11 this site without screening as well. The character of  
12 the general vicinity would be altered as other  
13 businesses in the area have complied with the  
14 screening requirement in the granting of this variance  
15 could affect future businesses and uses in the area by  
16 setting a precedent for waiving outdoor screening in  
17 the area and affecting the aesthetics, not only in the  
18 present but for future uses.

19 The granting of the variance causes a nuisance  
20 to the public by disregarding the community standard  
21 for development. And most importantly granting this  
22 variance allow an unreasonable circumvention of the  
23 zoning ordinance by permitting this waiver where no  
24 special circumstance or hardship exist to support the  
25 findings.

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1           The granting of this variance will set a  
2 precedent for future outdoor storage lots seeking the  
3 same relief and contribute to unsightly development in  
4 the community. Each business could offer some basis  
5 for why they do not want to screen their storage, but  
6 the OMBA needs to act in accordance with KRS and  
7 consider the circumstances of the land, not the  
8 business practice. If the OMBA chooses to consider  
9 the individual business practices and contractual  
10 agreements as support of granting this variance, then  
11 they should request that the Planning Commission  
12 recommend to the legislative bodies that the outdoor  
13 screening requirement be eliminated from the zoning  
14 ordinance because every business will have some reason  
15 that does not apply to the physical site as to why  
16 they cannot provide the screening. Keep in mind that  
17 the variance stays with the land, not the applicant,  
18 and that findings made to support any variance should  
19 be based on the characteristic of the land and zone.

20           We would like enter this as Exhibit B.

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

23           (NO RESPONSE)

24           CHAIRMAN: Mr. Noffsinger, do you have any  
25 comments you would like to make?

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1           MR. NOFFSINGER: The only comment I would like  
2 to make, I think I already have this in the record,  
3 but we just need to recognize that East Parrish Avenue  
4 is a major corridor into our community and through our  
5 community.

6           Based upon the flexibility of our  
7 comprehensive plan and our own zoning ordinance, we  
8 allow these types of industrial activities to be  
9 located along our major corridors. By doing that we  
10 have a requirement for screening. It is Staff's  
11 belief and it has been the belief of this community,  
12 based upon the standards they've adopted, that outdoor  
13 storage areas should be screened from the public's  
14 view.

15           Here you have a major thoroughfare through our  
16 community where you have industrial type storage, as  
17 well as equipment, being stored and displayed on the  
18 lot.

19           Again, we've made provisions for that activity  
20 to occur in an area that really has a mixture of  
21 professional and retail uses and some industrial, but  
22 we allow those industrial uses on those major  
23 corridors because I believe we have a good ordinance  
24 that protects neighbors, that protects the public from  
25 view of these types of activities.

1           Again, this variance runs with the land. KRS  
2           states that the variance should not be considered  
3           based upon a particular business practice.

4           For so many times I've heard about uses out on  
5           Highway 60 East that are unsightly. Outdoor storage.  
6           People come in and they're storing old manufactured  
7           homes out in plain view with no screening. Those uses  
8           were grandfathered in. There are folks that say  
9           simply, we need to do something about that. Isn't  
10          there an ordinance against that?

11          Well, there is and if it's not grandfathered  
12          in or if the Board Adjustment doesn't grant a  
13          variance, then those types of activities will be  
14          screened from the public view and from visitors coming  
15          into our community. We've heard that time and time  
16          again from people.

17          That's what the applicant is asking you to do  
18          here. He's asking you to take the screening  
19          requirements and totally do away with them, as well as  
20          the paving requirements and for this business to be  
21          able to operate here at this location.

22          Staff would certainly recommend that the  
23          variance not be approved. That you deny the  
24          applicant's request. We do believe we had a very fair  
25          compromise that we thought would help the applicant

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1 and also adhere to the requirements of KRS in terms of  
2 what you should consider in granting the variance. We  
3 believe that was a good option. The applicant is here  
4 tonight to tell you that they're not acceptable to  
5 that and they want you to waive the entire  
6 requirements. Staff would certainly hope that you  
7 uphold the ordinance and those regulations that have  
8 been adopted and deny the applicant's request.

9 CHAIRMAN: Mr. Holtrey, I'm going to give you  
10 one final chance to make comments, make your argument,  
11 and then I'm going to ask for a motion.

12 MR. HOLTREY: I have no further comments.

13 CHAIRMAN: Is the answer "no?"

14 MR. HOLTREY: Yes. The answer is, no, I have  
15 no further comments.

16 CHAIRMAN: Okay.

17 Any board members have any comments or  
18 questions?

19 (NO RESPONSE)

20 CHAIRMAN: Chair is ready for a motion.

21 MR. NOFFSINGER: Mr. Chairman, before you do  
22 that, we had findings from the last meeting. Did you  
23 submit those? Do the board members have those?

24 MS. STONE: They should be in the file. Are  
25 they not in the file?

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1 MS. MASON: I have mine from the last meeting.

2 MR. NOFFSINGER: I just want to make sure the  
3 board members have the findings that we did recommend.

4 CHAIRMAN: Yes, I think everyone has those.

5 MR. SILVERT: I also want to remind the chair  
6 for a consistency standpoint, given that this is the  
7 third meeting, at our first meeting the chair stated  
8 that he was going to abstain on this up front and for  
9 consistency sake I just want to remind the chair.

10 CHAIRMAN: I will state that when I ask for a  
11 vote.

12 The chair is ready for a motion.

13 MS. MASON: I'm ready for a motion.

14 First, I want to commend the Staff for what  
15 you all tried to do to work through this with the  
16 applicant.

17 With that the variance to waive the screening  
18 requirement for a portion of the outdoor storage  
19 boundary should be approved along the southeast  
20 boundary as indicated on the exhibit plan from the  
21 November meeting.

22 The findings that support of this is granting  
23 of this variance will not adversely affect the public  
24 health, safety or welfare because the natural  
25 topography and the tree lines screen the outdoor

1 storage area from public crew along Parrish Avenue.

2 The granting of this variance will not alter  
3 the essential character of the general vicinity  
4 because the storage is as affectively screened by the  
5 natural elements in this location as other screened  
6 storage in the vicinity.

7 The granting of this variance will not cause a  
8 hazard or nuisance to the public because in this  
9 location the outdoor storage cannot be seen from the  
10 public right-of-way.

11 The granting of this variance will not be an  
12 unreasonable circumvention of the zoning ordinance at  
13 this particular location because the change in  
14 elevation provided by the natural topography and the  
15 heavy tree line affectively provide screening  
16 comparable or exceeding the zoning ordinance  
17 requirements and serve to meet the intent of the  
18 zoning ordinance requirements.

19 With that the variance request to waive the  
20 outdoor storage area screening on the remaining  
21 boundary of the graveled area should be denied. If  
22 the outdoor storage lot extends to the fence, access  
23 points on Windhaven, a paved area, a minimum of 50 by  
24 50 should be provided to prevent rock from entering  
25 the public right-of-way.

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1 Findings in support of this denial of the  
2 remaining outdoor storage area boundary are:

3 Granting this variance will affect the public  
4 health, safety and welfare because visible outdoor  
5 storage is required to be screened for the aesthetics  
6 of the community.

7 I will say that the applicant has a choice to  
8 pave an area that can be used for the display of the  
9 equipment with a three foot high element and one tree  
10 every 40 linear feet of boundary. A pavement section  
11 could be comparable to the public improvement  
12 specifications for streets and it would accept the  
13 weight of heavier equipment if the applicant chooses  
14 to display heavy equipment outside the screened  
15 storage area. In observations of the lot, it appears  
16 that a portion of this area is currently paved to  
17 store particular equipment item and smaller items of a  
18 weight that would not damage pavement are also stored  
19 in the graveled area near the front of the lot.

20 Granting this variance will alter the  
21 essential character of the general vicinity because  
22 other businesses in the immediate vicinity, notably  
23 like for instance Kight Lumber, have screened their  
24 outdoor storage along public road frontage.  
25 Additionally equipment can be seen from neighboring

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1 owners. I know that the attitude of the current owner  
2 at this time regarding the storage, the ownership can  
3 change and, as was stated earlier, the variance runs  
4 with the land.

5 Granting this variance will cause a hazard or  
6 nuisance to the public because outdoor storage is  
7 unsightly and would be visible from Windhaven  
8 right-of-way and the Hill Valley Circle right-of-way  
9 and the adjoining properties.

10 Granting of this variance will allow an  
11 unreasonable circumvention of the requirements of the  
12 zoning ordinance because similar outdoor storage lots  
13 on light zone properties in the community with similar  
14 uses have been required to provide the six foot high  
15 solid wall or fence.

16 The exhibits from the November meeting need to  
17 be entered into the record.

18 CHAIRMAN: We have a motion. Do I hear a  
19 second?

20 MR. DYSINGER: I will second.

21 CHAIRMAN: I disqualified myself at the very  
22 first meeting on the item so I will abstain from  
23 voting on this item.

24 The chair is ready a vote. All in favor raise  
25 your right hand.

1 (ALL BOARD MEMBERS PRESENT - WITH THE  
2 ABSTAINING OF MR. PEDLEY - RESPONDED AYE.)  
3 CHAIRMAN: Motion carries unanimously.  
4 Next item.  
5 ITEM 4  
6 401 West 2nd Street, zoned B-2, (Riverfront Core  
Overlay District)  
7 Consider a request for a Variance in order to increase  
8 the build-to setback from 10 feet maximum along Locust  
9 Street to 30 feet, to reduce the required building  
10 frontage along St. Elizabeth Street from 70 percent to 33  
11 percent, and to reduce the required building  
12 frontage along Locust Street from 70 percent to 33  
13 percent, and to reduce to the required building  
14 frontage along West Second Street from 70 percent to 0  
15 percent, and to reduce the parking setback from the  
16 required 3 feet behind the building facade along the  
17 street to 2 feet 9 inches in front of the building  
18 facade along St. Elizabeth Street and 24 feet 4 inches  
19 in front of the proposed building facade along Locust  
20 Street  
21 Reference: Zoning Ordinance, Article 21, Sections  
22 21.83(a)(i), 21.83(a)(ii), 21.83(a)(iii), 21.83(d)(i)  
23 Applicant: Bryant Downtown Hotel, LLC  
24 MS. EVANS: We have prepared three Staff  
25 Reports for this item so that we can vote on these  
three items individually so that everything is  
understood and clear on what is being approved or  
denied on these items.  
First of all we'll consider the build-to  
setback from a maximum of 10 feet along Locust Street,  
to increase the build-to setback from a maximum of 10  
feet on Locust Street to 30 feet.  
The subject property is located within the  
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1 Riverfront Core Overlay District. Article 21 of the  
2 Zoning Ordinance establishes build-to zones and  
3 setbacks for buildings in the Downtown Overlay  
4 Districts. The purpose of the maximum setback is to  
5 create buildings near the sidewalk encouraging  
6 pedestrian oriented development and continuing the  
7 historic fabric of the downtown area.

8 The applicant is developing the entire block  
9 with plans to construct a hotel and parking lot.

10 The applicant is requesting this Variance  
11 because of an RWRA sewer easement that is located  
12 along the west property line, along Locust Street  
13 which extends 27.85 feet into the subject property in  
14 the location of the proposed hotel. The Zoning  
15 Ordinance, Article 3, Section 3-5(c)(1) prohibits  
16 construction within a public utility easement.

17 The application must receive a recommendation  
18 from the Historic Preservation Board to alter these  
19 setbacks before the OMBA can act. The HPB met on  
20 October 19, 2011 and made a favorable recommendation  
21 to approve this dimensional variance.

22 Granting this Variance will not allow an  
23 unreasonable circumvention of the requirements of the  
24 zoning regulations because construction within a  
25 public utility easement is prohibited in the Zoning

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1 Ordinance. It will not alter the essential character  
2 of the general vicinity because this is a redeveloping  
3 area where the entire block front is being developed  
4 as one project adjacent to the proposed Convention  
5 Center being built by the City and County. Both  
6 projects will benefit the redevelopment and character  
7 of the downtown area.

8 Staff would recommend approval.

9 We would like to enter the Staff Report into  
10 the record as Exhibit C.

11 CHAIRMAN: Do we hear all of these at one time  
12 or individually?

13 MR. DYSINGER: Mr. Chairman, if it's all  
14 right, I'd like to take them one at a time just for  
15 clarity.

16 MR. SILVERT: We certainly can.

17 CHAIRMAN: One at a time?

18 MR. SILVERT: Can we ask.

19 CHAIRMAN: Okay.

20 MR. NOFFSINGER: The first variance would be  
21 to increase the build-to setback from 10 feet maximum  
22 along Locust Street to 30 feet.

23 CHAIRMAN: Okay. On the first item stated by  
24 Mr. Noffsinger.

25 We have anyone here representing the

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1 applicant?

2 MR. BRYANT: Yes.

3 CHAIRMAN: Mr. Bryant, do you have anything  
4 you would like to share with us?

5 MR. SILVERT: State your name, please.

6 MR. BRYANT: William Malcolm Bryant.

7 (WILLIAM MALCOLM BRYANT SWORN BY ATTORNEY.)

8 MR. BRYANT: To clarify I think to understand  
9 on the Locust Street side, which is the west side of  
10 the property, there's this large RWRA easement.

11 The intent of Article 21, the Downtown  
12 Progressive Plan, was to bring buildings up as close  
13 as you can to the street for that urban fill, but the  
14 RWRA easement won't allow us to do that. So we're  
15 bringing it up as close as we can.

16 Just one clarification is on the drawing that  
17 I think we've have submitted, the building was shown  
18 to be 27.85 feet off of the property line or actually  
19 30 feet off. We could go up to 27.85 feet. So we may  
20 close that gap of a couple of feet for some mechanical  
21 needs that we have, just as long as we don't get over  
22 the easement is the clearance that RWRA wants to make  
23 sure we do. I didn't want our numbers to lock us in.  
24 We were down there measuring and saying, why aren't  
25 you 27.85? Does that make sense?

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1 MR. NOFFSINGER: We need to get that cleared  
2 up because numbers matter.

3 MR. BRYANT: Whatever you want to do. As long  
4 we don't go further past the easement.

5 MR. NOFFSINGER: We can't grant a Variance  
6 that would give you more leeway than what was  
7 advertised.

8 MS. STONE: What was advertising, this would  
9 give him less. He would be getting less of a variance  
10 if he came into that 30 foot.

11 MR. NOFFSINGER: As long as we're covered  
12 there. We just can't go beyond.

13 MR. BRYANT: Right. I'm not asking for more.  
14 Actually it's less. That's all I wanted to clear up.

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

17 (NO RESPONSE)

18 CHAIRMAN: Any comments or questions on this  
19 first item?

20 (NO RESPONSE)

21 CHAIRMAN: Staff have any more?

22 MR. NOFFSINGER: No, sir.

23 CHAIRMAN: Chair is ready for a motion.

24 MR. DYSINGER: Mr. Chairman, given the  
25 specifics of this particular portion of this

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1 particular property and given the findings that  
2 granting the Variance will not adversely affect the  
3 public health, safety or welfare because a development  
4 will be moved away from the public utility easement  
5 which is required. Further, it will not alter the  
6 essential character of the general vicinity because  
7 this is a developing area where the entire block front  
8 is being developed as one project. Adjacent to the  
9 proposed convention, adjacent and in conjunction with  
10 I might add, the proposed Convention Center being  
11 built by the city and county. Both projects will  
12 benefit the redevelopment and the character of the  
13 downtown area, I move that we grant the variance.

14 MR. WARREN: Second.

15 CHAIRMAN: We have a motion and a second.

16 Comments or questions on the motion?

17 (NO RESPONSE)

18 CHAIRMAN: All in favor raise your right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

21 The next Variance.

22 MS. EVANS: The second variance will be to  
23 reduce the required building frontage along St.  
24 Elizabeth Street from 70 percent to 33 percent and to  
25 reduce the required building frontage along Locust

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1 Street from 70 percent to 33 percent and to reduce to  
2 the required building frontage along West Second  
3 Street from 70 percent to 0 percent.

4 The Historic Preservation Board also met on  
5 this item on October 19, 2011, and made a favorable  
6 recommendation to approve the dimensional variance.

7 Granting this Variance will not allow an  
8 unreasonable circumvention of the requirements of the  
9 zoning regulations because the scenario of developing  
10 an entire city block that was selected by the City of  
11 Owensboro for development in this case as not the  
12 anticipated development pattern and creates a special  
13 circumstance not applicable to other blocks where  
14 existing buildings are currently in place forming a  
15 pedestrian building wall.

16 Staff would recommend approval on this  
17 Variance as well and we would like to enter this into  
18 the record as Exhibit D.

19 CHAIRMAN: Mr. Bryant, do you have any  
20 comments on this one?

21 MR. BRYANT: No.

22 YOUR HONOR: Staff have any comments?

23 MR. NOFFSINGER: No, sir.

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

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1 (NO RESPONSE)

2 CHAIRMAN: Chair is ready for a motion.

3 MS. MASON: Mr. Chairman, I move for approval  
4 on the Variance with the findings that it will not  
5 adversely affect the public health safety or welfare  
6 because the construction in this matter will allow  
7 adequate and safe parking for the hotel guests; it  
8 will not alter the essential character of the general  
9 vicinity because this is a redeveloping area where the  
10 entire block front is being developed as one project  
11 adjacent to the proposed Convention Center being built  
12 by the city and county. Both projects will benefit  
13 the redevelopment and the character of downtown area.  
14 It will not cause a hazard or nuisance to the public  
15 because this will allow development to occur on one  
16 end of the property and provide much needed parking on  
17 the other end. It will not allow an unreasonable  
18 circumvention of the requirements of the zoning  
19 regulations because the development of the entire  
20 block is not typical of the anticipated infill  
21 development regulated in Article 21.

22 CHAIRMAN: We have a motion.

23 MR. WARREN: Second.

24 CHAIRMAN: We have a motion and a second. Any  
25 other comments or questions on the motion?

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1 (NO RESPONSE)  
2 CHAIRMAN: All in favor raise your right hand.  
3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)  
4 CHAIRMAN: Motion carries unanimously.  
5 Next variance.  
6 MS. EVANS: The last Variance is to reduce the  
7 parking setback from the required 3 feet behind the  
8 building facade along the street to 2 feet 9 inches in  
9 front of the building facade along St. Elizabeth  
10 Street and 24 feet 4 inches in front of the proposed  
11 building facade along Locust Street.  
12 This item also went before the Historic  
13 Preservation Board and they acted on October 19, 2011,  
14 and made a favorable recommendation to approve this  
15 dimensional variance as well.  
16 Granting this Variance will not allow an  
17 unreasonable circumvention of the requirements of the  
18 zoning regulations because the hotel site is being  
19 developed as an entire block as one project differing  
20 from the anticipated infill development in downtown,  
21 and the site was selected by the City of Owensboro  
22 creating a special circumstance that can only be  
23 addressed by a Variance from the strict application of  
24 the Zoning Ordinance Requirements.  
25 Staff would also recommend approval of this  
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1 Variance and we would like to enter the Staff Report  
2 into record as Exhibit E.

3 CHAIRMAN: Mr. Bryant, do you have any  
4 comments on this one?

5 MR. BRYANT: No, sir.

6 CHAIRMAN: Any board members have any  
7 questions or comments?

8 (NO RESPONSE)

9 CHAIRMAN: Staff have any questions or  
10 comments?

11 MR. NOFFSINGER: No, sir.

12 CHAIRMAN: Chair is a ready for a motion.

13 MR. WARREN: Motion to approve the Variance  
14 with the findings that it will not adversely affect  
15 the public health, safety or welfare. It's actually  
16 increasing the public safety by adding the provided  
17 needed parking on the site for the hotel guest. It  
18 will not alter the essential character of the general  
19 vicinity because this is a redeveloping of the area  
20 where the entire block frontage is being developed as  
21 one project adjacent to the proposed Convention  
22 Center. It will not cause a hazard or a nuisance to  
23 the public because it will be providing a need for the  
24 hotel guests and the community by allowing more  
25 parking on the site. It will not allow an

1 unreasonable circumvention of the requirements of the  
2 zoning regulations because there is a signed contract  
3 with the City of Owensboro and the applicant requiring  
4 150 parking spaces.

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

7 MR. DYSINGER: Second.

8 CHAIRMAN: We have a motion and a second.  
9 Comments or questions on the motion?

10 (NO RESPONSE)

11 CHAIRMAN: All in favor raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries unanimously.

14 MR. WARREN: Motion to adjourn.

15 MS. MASON: Second.

16 CHAIRMAN: All in favor raise your right hand.

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: We are adjourned.

19 -----

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

16 WITNESS my hand and notary seal on this the  
17 30th day of December, 2011.

18

19

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

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COMMISSION EXPIRES: DECEMBER 16, 2014

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

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