

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 DECEMBER 6, 2012

3 The Owensboro Metropolitan Board of Adjustment
4 met in regular session at 5:30 p.m. on Thursday,
5 December 6, 2012, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

8 MEMBERS PRESENT: Ward Pedley, Chairman
9 Gary Noffsinger, Director
10 Madison Silvert, Attorney
11 Shannon Raines
12 Marty Warren
13 Fred Reeves

14 * * * * *

15 CHAIRMAN: Call the Owensboro Metropolitan
16 Board of Adjustment December 6th meeting to order. We
17 will begin our meeting with a prayer, pledge of
18 allegiance to the flag. Mr. Noffsinger will lead us
19 in prayer.

20 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

21 CHAIRMAN: I would like to welcome everyone.
22 We welcome your comments and questions. Anyone
23 wishing to speak, we ask that you come to one of the
24 podiums and state your name and be sworn in. We ask
25 that you speak into the microphone.

With that the first item on the agenda is to
consider the minutes of the November 1, 2012 meeting.

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1 Are there any additions or corrections?
2 (NO RESPONSE)
3 CHAIRMAN: If not the Chair is ready for a
4 motion.
5 MR. REEVES: Move for approval.
6 MS. RAINES: Second.
7 CHAIRMAN: We have a motion and a second. All
8 in favor raise your right hand.
9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
10 CHAIRMAN: Motion carries.
11 Next item, please.

12 -----

13 CONDITIONAL USE PERMIT
14 ITEM 2
15 326 Clay Street, zoned R-4DT (Neighborhood Character
16 Overlay District)
17 Consider a request for a Conditional Use Permit in
18 order to operate a residential transitional living
19 facility within an existing structure.
20 Reference: Zoning Ordinance, Article 8, Section 8.2A7
21 Applicant: Friends of Sinners, Inc., James McBrayer
22 MR. SILVERT: Would you state your name,
23 please?
24 MS. EVANS: Melissa Evans.
25 (MELISSA EVANS SWORN BY ATTORNEY.)
MS. EVANS: First of all, I would like to say
that approval items here tonight does not allow the
applicant or owner to construct, alter, modify or
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1 occupy a building on the subject property. It is the
2 applicant or owner's responsibility to obtain all
3 approvals and inspections as necessary before
4 occupancy of the building will be allowed. Please
5 contact the Building & Electrical Division of the OMPC
6 prior to beginning any work on the subject property
7 for applicable requirements.

8 ZONING HISTORY

9 The subject property is currently zoned R-4DT
10 Inner City Residential and is in the Neighborhood
11 Character Overlay District. OMPC records indicate
12 there have been no Zoning Map Amendments for the
13 subject property.

14 This property is located in the Downtown
15 Overlay District within the Neighborhood Character
16 District and is regulated under Article 21 of the
17 Zoning Ordinance. The application for the operation
18 of a residential transitional living facility has been
19 reviewed by the Downtown Design Administrator and a
20 Certificate of Appropriateness has been issued.

21 The criteria for conditionally permitted group
22 housing have been meet.

23 The applicant is proposing to provide 10 beds
24 in this facility. To meet the parking requirements,
25 the applicant is proposing to use seven parking spaces

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1 located in the parking lot at 400 East Fourth Street.
2 Approval of a Final Development Plan will be required
3 since the applicant is proposing off-site parking.

4 LAND USES IN SURROUNDING AREA

5 All surrounding properties are zoned R-4DT and
6 appear to be residential in nature.

7 ZONING ORDINANCE REQUIREMENTS

8 1. Parking - 1 for each employee, plus 1 for
9 every 2 beds. Total parking required = 7 spaces. All
10 parking is proposed off-site.

11 2. Landscaping - No additional landscaping is
12 required.

13 The following criteria apply to a Conditional Use
14 Permit for a residential transitional home:

15 3. Any person residing in the referenced
16 housing situation shall be subject to all state,
17 federal or local jurisdiction laws.

18 4. The facility shall be located within 1/2
19 mile of public transit.

20 5. The facility shall not be located within
21 an identified historic district recognized by the
22 legislative body.

23 6. The facility shall employ an on-site
24 administrator, who is directly responsible for the
25 supervision of the residents and the implementation of

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1 house rules.

2 7. The applicant shall provide the Board of
3 Adjustment, the Zoning Administrator, the public and
4 the residents a phone number and address of the
5 responsible person or agency managing the facility.

6 8. A fire exit plan shall be submitted with
7 the Conditional Use Permit application showing the
8 layout of the premises. Escape routes, location,
9 operation of each means of egress, location of
10 portable fire extinguishers, and location of the
11 electric main. The fire exit plan shall be
12 prominently displayed within a common area within the
13 facility.

14 9. Hallways, stairs and other means of egress
15 shall be kept clear of obstructions.

16 10. The facility shall comply with all
17 applicable building and electrical codes.

18 11. A list of the house rules shall be
19 submitted to the Board of Adjustment with the
20 application for a Conditional Use Permit and shall be
21 prominently displayed in a common area within the
22 facility. The rules should be adequate to address the
23 following: Noise control, disorderly behavior,
24 property garbage disposal, and cleanliness of the
25 sleeping areas and common areas.

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1 12. The Owensboro Metropolitan Board of
2 Adjustment may impose additional conditions as may be
3 necessary for the proper integration of the use into
4 the planning area.

5 SPECIAL CONDITIONS

6 Approval of a Final Development Plan.

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

9 CHAIRMAN: Anyone here representing the
10 applicant?

11 APPLICANT REP: Yes.

12 CHAIRMAN: Anyone here that would like to
13 speak in opposition or have any comments on this
14 application?

15 (NO RESPONSE)

16 CHAIRMAN: Any board members have any question
17 or comments?

18 (NO RESPONSE)

19 CHAIRMAN: If not the Chair is ready for a
20 motion.

21 MR. WARREN: Mr. Chairman, I make a motion to
22 grant the Conditional Use Permit based on the
23 following findings:

24 That the criteria for group housing has been
25 met and that there has been a Certificate of

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1 Appropriateness issues by the Downtown Design
2 Administrator, with the condition of an approval of a
3 Final Development Plan.

4 CHAIRMAN: We have a motion by Mr. Warren.

5 MR. REEVES: Second.

6 CHAIRMAN: We have a second by Mr. Reeves.

7 Any comments or questions on the motion?

8 (NO RESPONSE)

9 CHAIRMAN: All in favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 Next item.

13 ITEM 3

14 9546 Highway 144, zoned R-1A

15 Consider a request for a Conditional Use Permit in
16 order to operate an existing school and construct an
17 accessory structure.

18 Reference: Zoning Ordinance, Article 8,
19 Section 8.2B14

20 Applicant: Mary Carrico School

21 ZONING HISTORY

22 The subject property is currently zoned R-1A
23 Single Family Residential. OMPC records indicate
24 there have been no Zoning Map Amendments for the
25 subject property.

26 The applicant has been operating a school with
27 related structures on the subject property since
28 before the establishment of the zoning ordinance.

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1 Currently the applicant is proposing to construct a 40
2 foot by 50 foot pole type building for storage of
3 gymnasium equipment. In order to bring the property
4 more into compliance with the zoning ordinance, the
5 applicant is seeking a Conditional Use Permit for the
6 school and the proposed new structure. Some
7 landscaping is provided for the property in proportion
8 to the extent of the expansion, but not for the entire
9 property as required under Article 17, Section 17.22.

10 LAND USES IN SURROUNDING AREA

11 The properties to the north are zoned B-4
12 General Business and R-1A Single Family Residential.
13 The properties to the south are zoned R-1A Single
14 Family Residential. The properties to the west are
15 zoned R-1A Single Family Residential and A-U Urban
16 Agriculture. The properties to the east are zoned B-4
17 General Business and R-1A Single Family Residential.

18 ZONING ORDINANCE REQUIREMENTS

19 1. Parking - 1 for each employee, plus 1 for
20 every classroom. Total parking required = 24 spaces.
21 The applicant shows 106 parking spaces provided on
22 site.

23 2. Landscaping - A 3 foot continuous element
24 with 1 tree every 40 feet of the linear boundary along
25 the southwest side of the access point on Monarch

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1 Road.

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

4 CHAIRMAN: Anyone here representing the
5 applicant?

6 APPLICANT REP: Yes.

7 CHAIRMAN: Anyone here like to speak in
8 opposition or have any comments or questions on the
9 application?

10 (NO RESPONSE)

11 CHAIRMAN: Board members have any questions or
12 comments?

13 (NO RESPONSE)

14 CHAIRMAN: Chair is a ready for a motion.

15 MR. REEVES: Mr. Chairman, I will move for
16 approval of the Conditional Use Permit based on the
17 facts that this is a consistent use of this property
18 prior to the zoning regulations going into place.
19 That it is not anything different than what they've
20 been doing with the exception of this one utility
21 building which is an appropriate use for the building
22 out on the site, and that they fulfill the zoning
23 ordinance requirement.

24 CHAIRMAN: We have a motion by Mr. Reeves.

25 MS. RAINES: Second.

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1 CHAIRMAN: Second by Mrs. Raines. Comments or
2 questions on the motion?

3 (NO RESPONSE)

4 CHAIRMAN: All in favor raise your right hand.
5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries unanimously.
7 Next item.

8 -----

9 VARIANCE

10 ITEM 4

11 4600-4700 Block Free Silver Road, zoned EX-1
12 Consider a request for a Variance in order to
13 eliminate the required 100 foot buffer from the public
14 right-of-way for a portion of Free Silver Road per
15 agreement with Daviess County Fiscal Court dated July
16 4, 2012

17 Reference: Zoning Ordinance, Article 12,
18 Section 12a.52

19 Applicant: Western Kentucky Minerals, Inc.; Daviess
20 County Fiscal Court

21 MS. EVANS: The properties in the area were
22 rezoned from A-R Rural Agriculture to EX-1 Coal Mining
23 at the March 2012 Planning Commission meeting. Mining
24 activities are not allowed within 100 feet of the
25 public right-of-way per the zoning ordinance unless a
26 variance is granted.

27 The applicant is proposing to mine through the
28 road in this area causing the relocation of Free
29 Silver Road while the mining takes place. A Public

1 Facility review was performed by the office staff as
2 requested by Daviess County Fiscal Court regarding the
3 relocation of Free Silver Road in this area in June
4 2012.

5 In July 2012, Daviess County Fiscal Court
6 granted the applicant's petition to alter Free Silver
7 Road while coal mining activities take place.

8 Granting this Variance will not adversely
9 affect the public health, safety or welfare because
10 the road will be relocated during coal mining
11 activities, diverting traffic away from the mining.
12 It will not cause a hazard or a nuisance to the public
13 because the relocated roadway will remain 100 feet
14 from the coal mining activity. It will not be an
15 unreasonable circumvention of the requirements of the
16 zoning regulations because the relocated roadway will
17 remain 100 feet from the coal mining activity.

18 Staff would recommend approval of this item
19 and we would like to enter the Staff Report into the
20 record as Exhibit C.

21 CHAIRMAN: Anyone here representing the
22 applicant?

23 APPLICANT REP: Yes.

24 CHAIRMAN: Anyone here like to speak in
25 opposition of the application?

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1 (NO RESPONSE)
2 CHAIRMAN: Does the applicant have anything
3 you would like to present?
4 APPLICANT REP: No.
5 CHAIRMAN: Board members have any questions or
6 comments?
7 (NO RESPONSE)
8 CHAIRMAN: If not the Chair is ready for a
9 motion.
10 MR. WARREN: Mr. Chairman, I'd like to make a
11 motion to grant the variance based on the following
12 Findings of Fact:
13 That granting this Variance will not adversely
14 affect the public health, safety or welfare; will not
15 alter the essential character of the general vicinity;
16 will not cause a hazard or a nuisance to the public;
17 it will not allow an unreasonable circumvention of the
18 requirements of the zoning regulations because the
19 Daviess Fiscal Court has approved a permit to
20 relocated Free Silver Road during coal mining
21 activities. Therefore, traffic will be diverted from
22 the mining area and the road will be more than 100
23 feet from the coal mining activities.
24 CHAIRMAN: We have a motion by Mr. Warren.
25 MR. REEVES: I'll second that.

1 CHAIRMAN: Second by Mr. Reeves. Any comments
2 or questions on the motion?

3 (NO RESPONSE)

4 CHAIRMAN: All in favor of the motion raise
5 your right hand.

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries unanimous.

8 Next item.

9 ITEM 5

10 1916 Stratford Drive, zoned R-1A

11 Consider a request for a Variance in order to reduce
12 the interior side yard building setback line from 10
13 feet to 5 feet along the east property line.

14 Reference: Zoning Ordinance, Article 8,
15 Section 8.5.5(d)

16 Applicant: Ryan Ruttman; Chivonne Ruttman

17 MS. EVANS: The applicant is proposing to
18 construct a 17.58 foot by 30.8 foot attached addition
19 to the east of the existing structure. The proposed
20 addition would leave approximately 5 feet between the
21 structure on the subject property and the property
22 line, thus requiring a variance.

23 There have been two previous variance requests
24 granted in the area; at 1629 and 1664 Roosevelt Road.
25 The Variance granted at 1629 Roosevelt Road was
approved in 1982 to reduce both interior side yard
building setback lines to 2 feet on the west side and
7.6 feet on the east side. Upon inspection of the

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1 area and review of the aerial photographs on GIS, it
2 appears there may be other instances of side yard
3 building setback encroachments in the area.

4 Granting this Variance will not adversely
5 affect the public health, safety or welfare because
6 there will be adequate room between the structures on
7 1900 and 1916 Stratford Drive for emergency services
8 to gain access between them. It will not alter the
9 essential character of the general vicinity or allow
10 an unreasonable circumvention of the requirements of
11 the zoning regulations because other variances have
12 been granted in the area and there appear to be other
13 side yard encroachments in the area that may predate
14 the zoning ordinance.

15 Staff would recommend approval with the
16 following Condition:

17 1. Obtain all necessary building, electrical
18 and mechanical permits, inspections and certificates
19 of occupancy and compliance.

20 We would like to enter the Staff Report into
21 the record as Exhibit D.

22 CHAIRMAN: Is anyone here representing the
23 applicant?

24 APPLICANT REP: Yes.

25 CHAIRMAN: Is there anyone here that would

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1 like to speak in opposition to this application?

2 (NO RESPONSE)

3 CHAIRMAN: Does applicant have anything you
4 would like to state?

5 APPLICANT REP: No.

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

8 (NO RESPONSE)

9 CHAIRMAN: Chair is ready for a motion.

10 MR. WARREN: Mr. Chairman, I make a motion to
11 grant this Variance based on the findings of fact that
12 granting the Variance will not adversely affect the
13 public health, safety or welfare because there will be
14 adequate room between the 1900 and 1916 for any type
15 of emergency vehicles if needed; also it will not
16 alter the essential character of the general vicinity
17 because of the previous variances that have been
18 granted in that area, and there are lots of other
19 encroachments in that area; it will not allow an
20 unreasonable circumvention of the requirements of the
21 zoning regulations for the same reason, the variances
22 that have been granted in the other obvious
23 encroachments. And with the Condition to obtain all
24 necessary permits and certificates of occupancy and
25 compliance.

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1 CHAIRMAN: We have a motion by Mr. Warren.
2 MS. RAINES: Second.
3 CHAIRMAN: Second by Mrs. Raines. Comments or
4 questions on the motion?
5 (NO RESPONSE)
6 CHAIRMAN: All in favor of the motion raise
7 your right hand.
8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
9 CHAIRMAN: Motion carries unanimous.
10 Next item.

11 ITEM 6
12 200 East 18th Street, zoned B-4
Consider a request for a Variance in order to
13 eliminate the roadway buffer along East 18th Street
and to eliminate the roadway buffer along J.R. Miller
14 Boulevard for a distance of approximately 250 feet
from the intersection of J.R. Miller Boulevard and
15 East 18th Street south to the existing access point
along J.R. Miller Boulevard
16 Reference: Zoning Ordinance, Article 13,
Section 13.6221
17 Applicant: MW Parrish, LLC

18 MS. EVANS: The applicant is redeveloping the
19 subject property and wishing to eliminate the roadway
20 buffer along East 18th Street and a portion of the
21 roadway buffer along J.R. Miller Boulevard from the
22 intersection with East 18th Street approximately 250
23 feet south to the first access point on the property.

24 According to the applicant the elimination of
25 the roadway buffers would allow them to continue to

1 use the property as previously used without losing any
2 of the existing parking.

3 In 1994, a variance was approved to eliminate
4 the required landscaping along East 18th Street for
5 the subject property.

6 In 1992, the property owners at 215 East 18th
7 Street petitioned the City of Owensboro for closure of
8 approximately forty (40) feet of right-of-way on J.R.
9 Miller Boulevard at East 18th Street. The OMPC held a
10 public hearing on the request with recommendations by
11 GRADD, OMPC Staff, and the City Staff to retain the
12 right-of-way at this major intersection for future
13 transportations improvements.

14 The OMPC recommendation to the City of
15 Owensboro was to retain the right-of-way and it was
16 not closed. Similarly, the fifty (50) foot
17 right-of-way at the intersection of East 25th Street
18 and J.R. Miller Boulevard was retained when 217 East
19 25th Street was developed as a convenience store.

20 Two previous roadway buffer reductions have
21 been approved to reduce the roadway buffer along J.R.
22 Miller Boulevard from 50 feet from the centerline of
23 the road to 40 feet from the centerline of the road at
24 1212 J.R. Miller Boulevard and 303 East 14th Street
25 and 1200 Moseley Street. Both were approved in 2009

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1 with the condition that the reduced roadway buffer be
2 dedicated as right-of-way.

3 The OMPC Staff has submitted the site plan
4 documenting the variance requests to the City
5 Engineer's office for review concerning the
6 elimination of the roadway buffers in this area.
7 According to the City Engineer's office, East 18th
8 Street is on the long range infrastructure improvement
9 plans to be widened from Frederica Street to
10 Leitchfield Road. In conjunction with the future
11 improvement to East 18th Street, improvement will need
12 to be made at J.R. Miller Boulevard which affects the
13 roadway buffer of J.R. Miller Boulevard.

14 Additionally, there are future improvement
15 plans for J.R. Miller Boulevard to be widened. If
16 that occurs, all widening will occur on the west side
17 of the street in the area of the subject property due
18 to the fact that there is additional right-of-way on
19 that side of the street.

20 The City Engineer's office would recommend the
21 Variance on East 18th Street be denied due to the
22 future plans to widen the street and would recommend
23 the Variance along J.R. Miller Boulevard be reduced by
24 only 6 feet. A reduction of only 6 feet would leave
25 the roadway buffer in this area at 44 feet from the

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1 centerline of the road and still affect the parking
2 area the applicant is trying to keep intact by
3 requesting the roadway buffer be eliminated.

4 Granting this variance may adversely affect
5 the public health, safety or welfare because if the
6 roadway buffers are eliminated, it will hamper the
7 City of Owensboro's ability to widen East 18th Street
8 and J.R. Miller Boulevard in this area. It may also
9 allow an unreasonable circumvention of the
10 requirements of the zoning regulations because roadway
11 buffers exist to allow for future expansion of
12 infrastructure, and if they are eliminated in this
13 area, it could affect the ability of the City of
14 Owensboro to accomplish necessary roadway
15 improvements.

16 Staff would recommend denial of the Variance
17 request.

18 We would like to enter the staff Report into
19 the record as Exhibit E.

20 We also have communications from the City
21 Engineer's office through e-mail. In there, in the
22 communication we asked them to review the site plan.
23 Their response was that after review by the City
24 Engineer and Staff, the City Engineer's Office has
25 denied the proposed roadway buffer zone elimination

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1 along East 18th Street at 200 East 18th Street. As
2 far as the elimination of the roadway buffer along
3 J.R. Miller Boulevard for 250 feet south of East 18th
4 Street, the City Engineer denies the request to
5 eliminate the buffer zone after evaluation. The
6 buffer zone can be reduced by 6 feet for a total
7 buffer of 44 feet for that 250 foot stretch.

8 We would like to enter this e-mail
9 communication into the record as Exhibit F.

10 CHAIRMAN: Anyone here representing the
11 applicant?

12 MR. BAKER: Yes.

13 CHAIRMAN: Anyone here like to speak in
14 opposition of this application of have any comments or
15 questions?

16 (NO RESPONSE)

17 CHAIRMAN: Does the applicant have a
18 presentation you would like to do or any comments?

19 MR. BAKER: Yes.

20 MR. SILVERT: Would you state your name,
21 please?

22 MR. BAKER: Jason Baker.

23 (JASON BAKER SWORN BY ATTORNEY.)

24 MR. BAKER: I'm here on behalf of Bryant
25 Engineering. Work with the applicant to help prepare

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1 the site plan that's submitted with the application.

2 The applicant is here as well who can answer
3 any questions.

4 They recently purchased the entire property
5 with the intent of turning it into a good useable
6 property.

7 As you know, this is a site that's been here
8 for many years. Operated as a car lot in total. It
9 was owned and operated by Roberts Motors.

10 The building closest to this variance was used
11 as their used car lot. I believe that building is
12 probably the latest building that's been built on the
13 site.

14 The location of the building and the space
15 between the building and the J.R. Miller Boulevard
16 right-of-way only allows a certain amount of space for
17 there to be display space for vehicles.

18 The issue is when we set and met with planning
19 on this we were talking about what we needed to do to
20 bring the site into compliance with the ordinance.
21 There was some, I believe some landscape issues that
22 the previous owner may or may not have fully
23 implemented. We were trying to bring that forward
24 while still keeping the site as a useable car lot.

25 The roadway buffer, I think the city engineer

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1 said that they requested 44 feet. With 44 feet that
2 reduces the total amount of area or lane width behind
3 where the cars would be parked to around 15 feet, if
4 my math is right there, which would make it very
5 difficult, if you look at the exhibit to get those
6 cars in those display spaces.

7 The intent of the applicant was to bring this
8 area into compliance with the landscape ordinance by
9 putting in a low shrub area in compliance with the
10 vehicular sales area. In order to do that, we know
11 that you cannot put landscape within the roadway
12 buffer. So the roadway buffer had to be reduced down
13 to the right-of-way. If we move it any further back,
14 it renders it, it severely affects our ability to use
15 this as a display area for vehicles.

16 We request your consideration.

17 You want to talk at all?

18 MR. WALKER: No.

19 CHAIRMAN: Any board members have any
20 questions of Mr. Baker?

21 MR. REEVES: I do.

22 When Roberts was there, the previous owner,
23 did they park cars where you're showing these, set
24 back from the roadway before? Did they honor that
25 buffer I guess is what I'm saying?

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1 MR. BAKER: No, sir. The actual configuration
2 that's out there right now, if you look at the blow up
3 detail at the bottom of the exhibit, you'll see an
4 area there that says "curb to be removed." That
5 actually shows curb that's currently on the
6 right-of-way. This is another condition we'll be
7 fixing as part of this application being granted.
8 Yes, they parked cars all the way up to that curb line
9 that I just mentioned.

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

12 MS. RAINES: Mr. Chairman, I just want to make
13 sure I understand.

14 So before this was used as a car lot, and the
15 intent is to continue to use it as a car lot, we're
16 just trying to get into compliance, get it updated
17 into compliance for the landscaping, and if we do that
18 we can't do the parking getting them in and out; is
19 that right?

20 MR. BAKER: Correct. If we position the
21 landscaping outside of the roadway buffer at 44 feet
22 from the center line, that would push the curb line
23 further back. So we have to create, we have the
24 roadway buffer and then another 3 foot strip for
25 landscape, and then the new curb.

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1 Effectively we're talking about, I think we
2 have 18 feet of area of lane width behind where the
3 cars will be parked for sale. So there's 15 foot wide
4 strip there in-between where the back of the cars
5 would be and the building itself. We would be
6 reducing that down to 15 feet.

7 MR. REEVES: One other questions if I could,
8 Mr. Chairman.

9 On your drawing here, do I see currently some
10 trees that are in that buffer that would have to be
11 removed?

12 MR. BAKER: Those are existing trees that are
13 there. I'm not sure when they were put there. They
14 are planted in the right-of-way. We have no reason to
15 remove them.

16 MR. REEVES: Am I correct, Mr. Noffsinger,
17 that they would not be allowed to meet the landscaping
18 requirement by putting them in that same area and
19 other places here now; is that correct?

20 MR. NOFFSINGER: That is correct. They are
21 existing. As long as the city okayed them to remain,
22 they could remain, but it would not count toward their
23 required landscape materials because they're in the
24 city right-of-way.

25 MR. REEVES: Let me ask: How big of a hurry

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1 are you to have this resolved? I mean if this were
2 not resolved at this meeting, would it interfere with
3 any kind of time schedule you have going on?

4 MR. BAKER: That's probably a better question
5 for the client.

6 MR. WALKER: The sooner the better.

7 MR. SILVERT: I'm sorry, I need to swear you
8 in.

9 Would you state your name for the record,
10 please?

11 MR. WALKER: Marty Walker.

12 (MARTY WALKER SWORN BY ATTORNEY.)

13 MR. WALKER: I don't know if you're talking a
14 week or if you're talking another month. Another
15 month would be too long probably.

16 MR. REEVES: I guess my concern, Mr. Walker,
17 is I would like to have City Engineer's Staff here to
18 ask them questions why they recommended denial. I'd
19 feel more comfortable if I could hear from them. They
20 obviously aren't here this evening. This is not an
21 unimportant decision for either you or them I guess is
22 what I'm thinking.

23 MR. BAKER: Can we take a minute?

24 MR. NOFFSINGER: Yes.

25 (MR. BAKER AND MR. WALKER CONFER.)

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1 - - - - (OFF THE RECORD) - - - -

2 CHAIRMAN: We're back on record.

3 MR. WALKER: To answer your question.

4 Currently we're working with a party on a car lot.
5 Losing that space and that ability to park cars out
6 front by the building would probably effect that deal.
7 We need an answer. I would like to say, yes, we could
8 wait for the engineer, but the party we're working
9 with will probably want an answer here pretty soon.

10 MR. REEVES: I guess what I'm struggling with
11 is we've got some trees that are grandfathered in here
12 so-to-speak, and yet you can't put the new ones in
13 there. I want to be fair to everybody, but at the
14 same time I will tell you I'm very, very sensitive to
15 J.R. Miller Boulevard. That is a major artery that is
16 going to get nothing but more use. I'm very reluctant
17 to do anything that might impact our ability to
18 improve it or to make sure that that's a safe
19 intersection and safe thorough way.

20 MR. BAKER: We didn't apply for a Variance on
21 the landscape portion of this application. Again, we
22 were trying to do our best to bring it into
23 compliance.

24 One potential solution might be to give
25 variance on the landscape there and then I pick back

1 up with 3 feet that we lost in the buffer. We could
2 honor the 44 foot buffer and put the curb line
3 directly in that location, if that would be an option.

4 MS. RAINES: I would like to hear how Staff
5 feels about that.

6 MR. NOFFSINGER: Mr. Chairman, if I may. That
7 would require a separate application because the
8 applicant has not made an application to reduce the
9 landscape elements. It's to reduce the roadway
10 buffer. They are not required to put in any
11 landscaping along 18th Street because they received a
12 variance some time ago.

13 The Staff, as well as the City Engineer's
14 office, we're very concerned about 18th Street because
15 we realize that improvements to 18th Street will be
16 coming in the near future.

17 The existing building that's within the
18 roadway buffer will remain. We're not telling them
19 they have to put any landscaping in along 18th Street
20 because they received a variance. It's a question of
21 whether or not this board is going to eliminate that
22 roadway buffer to allow them to park vehicles within
23 that roadway buffer. At the point of -- if you
24 approved that roadway buffer on 18th Street, at the
25 point of acquisition of right-of-way by the City of

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1 Owensboro, then they are going to have to compensate
2 the applicant for the variance that you approve
3 because you've allowed them to keep that asphalt in
4 that roadway buffer.

5 Keep in mind, even though this was a car lot,
6 it's gone unused for a period of over 18 months so
7 they've lost their nonconforming status.

8 Now, on J.R. Miller Boulevard it's my
9 understanding the city engineer is recommending a
10 roadway buffer reduction from 50 feet down to 44 feet.
11 The Planning Staff would support that provided that 6
12 foot area of the roadway buffer is dedicated as
13 right-of-way by the applicant. That is consistent
14 with what's taking place on other corners along J.R.
15 Miller Boulevard.

16 For example, the new Huck's store as well as
17 the block which Family Video located at J.R. Miller
18 Boulevard and Parrish, they dedicated that roadway
19 buffer, but they also installed the required landscape
20 materials as well. So certainly the Staff would not
21 recommend a reduction in the landscaping, but we would
22 recommend that a 6 foot, a reduction from a 50 foot
23 down to a 44 foot roadway buffer be granted provided
24 the applicant dedicates that right-of-way.

25 The building that appears to be the problem

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1 was recently -- well, it was constructed, the most
2 recent building constructed on the property.
3 Certainly it was constructed in that location by the
4 applicant to maximize the area of land. We feel in
5 terms of the traffic safety, the increase traffic that
6 this project will generate, and the fact that they are
7 actually increasing the number of lots, the number of
8 tenants, and the number of activities that are going
9 to be located here, we feel like the roadway reduction
10 that we're proposing would be beneficial to the
11 applicant, as well as the community, and it will also
12 allow the City of Owensboro to make needed
13 improvements to the transportation infrastructure that
14 exist and that the applicant will create as well add
15 to the traffic generations in that area. We're not
16 asking at this time to my knowledge that applicant
17 make any roadway improvements, which we have asked of
18 other applicants in the past, but we would ask that
19 that right-of-way be dedicated.

20 CHAIRMAN: Mr. Noffsinger, you're asking to
21 dedicate the additional 4 feet. They have 40 feet
22 now. They would dedicate an additional 4 feet?

23 MR. NOFFSINGER: Right. Well, dedicate an
24 additional 6 feet. It would go from, the roadway
25 buffer would go from 50 feet down to 44 feet. So they

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1 would dedicate an additional 6 feet.

2 MR. BAKER: Between five and six.

3 CHAIRMAN: Mr. Baker, your 3 foot landscape,
4 your curb would take up that 4 feet, what I'm seeing
5 here on this plat. It would actually be in the 44
6 feet.

7 MR. BAKER: In the scenario that I mentioned
8 as a potential option, you would be putting the curb
9 line directly on the right-of-way line. It would not
10 be setback off the right-of-way.

11 Now, the existing condition out there, the
12 curb that's out there is actually 3 feet into the
13 right-of-way.

14 CHAIRMAN: And you're removing that section of
15 the curb and moving back?

16 MR. BAKER: Correct.

17 CHAIRMAN: That's what you're showing on your
18 plat here. Your existing property line from the
19 center of the road right now is 41 feet?

20 MR. BAKER: Yes.

21 CHAIRMAN: When you add the additional 3 feet
22 for landscape and the curb, you've taken up the 44
23 feet. So actually 4 feet is going to be in -- the
24 city is asking that you dedicate that 4 feet to the
25 city. Is that the way you understand that, Mr. Baker?

1 MR. BAKER: Yes.
2 You understand that, right?
3 It's important that he understands it. Yes,
4 but your numbers are correct.

5 CHAIRMAN: In your agreement, you agree to
6 install the required landscape according to the
7 ordinance from 18 Street to your access point to the
8 south of 250 some feet. You're going to meet the
9 landscape requirement?

10 MR. BAKER: Yes. If we could get the full
11 approval of the variance, we would be able to put in
12 the landscape and maintain use of the property. We
13 would have a 3 foot strip just outside the roadway
14 buffer, which we're proposing would be the
15 right-of-way line, and then we would have a curb just
16 inside of that.

17 CHAIRMAN: And everything south of that you
18 would meet the 50 foot?

19 MR. BAKER: Yes. Anything south of that would
20 be considered future development area. Yes, we would
21 honor the roadway buffer.

22 CHAIRMAN: You would honor the 50 foot buffer?

23 MR. BAKER: Yes.

24 CHAIRMAN: That's the way I understand your
25 application.

1 Any board members have any additional
2 questions or comments?

3 MR. WARREN: I just have a question of Mr.
4 Noffsinger.

5 So let's say that we did approve this variance
6 for one reason or another, I mean it looks like the
7 city engineer is saying, you're not going to do this
8 no matter what.

9 MR. NOFFSINGER: No. What would happen, if
10 you approve the variance as they've asked, then that
11 buffer, roadway buffer would no longer exist and they
12 would be able to develop the property within that
13 roadway buffer and the city engineer would not have a
14 say in it because it's their property. That roadway
15 buffer is there as a reservations for protect that
16 future improvement.

17 What I was saying, I need to correct to make
18 sure it's correct on the record. That it would go,
19 our recommends from 50 to 44. So it would be a 6 foot
20 dedication.

21 MS. RAINES: Is that optional, Mr. Noffsinger?

22 MR. NOFFSINGER: Pardon?

23 MS. RAINES: Is that 6 foot dedication
24 optional?

25 MR. NOFFSINGER: What we're recommending is
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1 that if you grant that 6 foot right-of-way buffer to
2 them that it be dedicated as right-of-way.

3 MS. RAINES: But if they don't?

4 MR. NOFFSINGER: They're going to dedicate a 6
5 foot area, but they're going to gain a 4 foot area in
6 which to develop.

7 MR. WALKER: Yes. To be able to use.

8 MR. NOFFSINGER: Yes.

9 MR. BAKER: Again, I think what we're talking
10 about here, the dedication of that right-of-way would
11 be a problem dedicating up to the 44 as requested by
12 engineering. Again, in order to maintain the use of
13 the property, we need to, actually we really need to
14 reduce it down to the right-of-way.

15 CHAIRMAN: Addressing the J.R. Miller
16 Boulevard issues.

17 Now we've got to go to the 18th Street. We've
18 got two different things here. Not sure what the
19 process would be on a motion, but you might deny the
20 18th Street and approve the J.R. Miller.

21 Counselor or Mr. Noffsinger, would you have a
22 direction on that.

23 MR. SILVERT: You can grant less of the
24 variance that's requested by the application, but not
25 more. So if variance wants to be partial on one side

1 and not on the other and could justify that with your
2 findings of fact, you can do that. You just can't
3 grant more than what's requested. We haven't
4 advertised that.

5 MR. NOFFSINGER: I have a question of the
6 applicant.

7 On 18th Street, if that variance is denied,
8 could you -- let's say that's denied and the variance
9 along J.R. Miller Boulevard would be approved as
10 requested by the engineer and you transfer the
11 landscape materials from that section of J.R. Miller
12 to 18th Street, is that an option for you? Does that
13 help you in terms of traffic movement?

14 The reason I'm asking that, this property has
15 already been given relief, a tremendous amount of
16 relief in the past that other properties haven't
17 necessarily received. So there's no landscaping
18 requirement along 18th Street. Could we shift the
19 required landscaping to 18th Street? I'm just looking
20 at that as an option. Not that I would suggest that
21 you do that. It's just is that a possibility?

22 MR. WALKER: How far along 18th Street?

23 MR. NOFFSINGER: You would need to honor the
24 50 foot roadway buffer and then that landscaping would
25 start at that roadway buffer and go into the property

1 3 feet.

2 MR. WALKER: I appreciate the feedback, but I
3 don't think that will work. I mean that's going to
4 push the cars back. Also, we're going to have the
5 same problem on a different side of the building it
6 looks like.

7 MR. NOFFSINGER: Except that you have more
8 room between the roadway buffer and the building on
9 18th Street than you have on J.R. Miller Boulevard.

10 MR. WALKER: Right.

11 MR. NOFFSINGER: You still maintain, you're
12 not going to have necessarily a double display there,
13 but you would have display plus an aisle for vehicular
14 move.

15 MR. WALKER: We wouldn't lose the double
16 display and then also that's going to affect the old
17 showroom where we're working with a different party on
18 developing that piece of property. It certainly is
19 going to affect the parking in that area. It's just
20 hard to look at it here kind of on the fly.

21 MR. REEVES: Mr. Noffsinger, my motion is
22 going to probably be unpopular, but I'm going to make
23 it anyway. Because I think in the end it's the best.

24 I'm very uneasy with either side of this issue
25 because of the nature of 18th Street and J.R. Miller

1 Boulevard, and also the fact that the city engineer
2 have expressed some concerns. I hate to see us make a
3 motion just on the fly that we might all live to
4 regret.

5 I know this is probably very important to you.
6 I also know the business decisions kind of get slowed
7 down during the holiday season. I would prefer to
8 suggest that maybe you and the city engineer and the
9 Staff get together and see if you can come up with an
10 accommodation that will work. As board members, we
11 have a much more black and white issue to address as
12 opposed to one that so many factors have been pitched
13 to us as we've been sitting down here.

14 I'm going to move that this application be
15 postponed until the January meeting which I think is
16 early in January, Mr. Noffsinger.

17 MR. NOFFSINGER: The 1st is on a Tuesday. So
18 it will be the 3rd of January.

19 MR. REEVES: I move that it be postponed to
20 the January 3rd meeting then.

21 CHAIRMAN: There's a motion on the floor by
22 Mr. Reeves to postpone it until the January meeting.

23 MR. WARREN: I'll second that motion.

24 CHAIRMAN: We have a second by Mr. Warren.
25 Comments or questions on the motion?

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1 (NO RESPONSE)
2 CHAIRMAN: All in favor of the motion raise
3 your right hand.
4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
5 CHAIRMAN: Motion carries unanimously to
6 postpone.
7 We need one more motion.
8 MR. WARREN: Move to adjourn.
9 MR. REEVES: Second.
10 CHAIRMAN: All in favor raise right hand.
11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
12 CHAIRMAN: We are adjourned.
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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 37 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 2nd day of January, 2013.

18

19

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

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23 COMMISSION EXPIRES: DECEMBER 16, 2014

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

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