OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

SEPTEMBER 2, 2004

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, September 2, 2004, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  C. A. Pantle, Chairman
Gary Noffsinger,
Planning Director
Marty Warren
Ruth Ann Mason
Judy Dixon
Tim Miller
Sean Dysinger
Ward Pedley
Stewart Elliott
Attorney

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CHAIRMAN:  Call the Owensboro Metropolitan Board of Adjustment to order.

The first thing I want to invite you all, if you so desire, to stand up and have a pledge of allegiance and then the prayer after that. Join us if you will.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  I want to welcome all of you to the meeting. If you have anything you would like to add to any of the items that we have on the agenda,
please come forward to one of the podiums. State your name, be sworn in because we'll have it on record if there's a problem or something.

If there are arguments on more than one thing and we start listening to the same thing over, we will cut you off at that time.

With that we'll proceed with the first item which is consider the minutes of the last meeting on August 5th. They're on record in the office. I don't think there has been any problems or need to change anything.

With that we'll entertain a Motion to dispose of the item.

MS. DIXON: Move to approve.

CHAIRMAN: Is there a second?

MS. MASON: Second.

CHAIRMAN: Motion has been made and a second. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

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CONDITIONAL USE PERMITS

ITEM 2

5400 Todd Bridge Road, in an A-R zone

Ohio Valley Reporting
(270) 683-7383
Consider request to amend a Conditional Use Permit to construct and operate a recreational complex consisting of a softball field, baseball field, soccer field, parking lot, concession building with restrooms, locker rooms and press boxes. Reference: Zoning Ordinance, Article 8, Section 8.2K7 Applicant: Brescia University

MR. NOFFSINGER: Mr. Chairman, this is an amended application. An application was approved by this board back several months ago. They have made some modifications to the previously approved plan which includes a different arrangement of the ball fields, as well as some other changes to it. With the change the application has to come back before this board for review. The application is in order. It's consistent with the adopted zoning regulations. If the Board of Adjustment feels that it can be properly integrated into the neighborhood, which they have already found that by approving the first application, the board may consider it for approval.

CHAIRMAN: Any objections in the office by anybody?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is there anyone wishing to object to the changes of this conditional permit?

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything they would like to add at this time?

Ohio Valley Reporting
(270) 683-7383
Any board members have any questions of the applicant?

CHAIRMAN: If not entertain a motion to dispose of the item.

MR. DYSINGER: Move to approve the conditional use permit given that it's an amended of the previously approved permit and the modifications have no real impact.

CHAIRMAN: Is there a second?

MS. DIXON: Second.

CHAIRMAN: A motion has been made and a second. Any other questions from the board?

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

ITEM 3

2767 Veach Road, in a B-4 zone Consider request for a Conditional Use Permit to provide a Childcare and Learning Center to serve 45 children per shift (2 proposed) on week days and 40 children per day on weekends. Reference: Zoning Ordinance, Article 8, Section 8.2 B3 Applicant: Antoinette Lea Brown, Lee Kassinger Ohio Valley Reporting (270) 683-7383
MR. NOFFSINGER: Mr. Chairman, Planning Staff has reviewed this application. It's found to be in order. It's found to meet minimum requirements of the zoning ordinance regarding parking, screening and site development requirements. The proposal does provide for on site parking as well as pick up and drop off. With that it's ready for your consideration.

CHAIRMAN: Has there been any objections in the office?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is anyone wishing to object against this conditional use permit?

(NO RESPONSE)

CHAIRMAN: Does the applicant have anything they would like to add to this?

(NO RESPONSE)

CHAIRMAN: Any board member have any questions?

(NO RESPONSE)

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

MR. PEDLEY: Mr. Chairman, I make a motion for approval based on findings it is compatible with the surrounding neighborhood and it will not have a
negative impact on future development of the community
and meets requirements of the zoning ordinance.

CHAIRMAN: Is there a second?

MR. MILLER: Second.

CHAIRMAN: A motion has been made and a
second. Is there any other discussion from the board
or the office?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please, sir.

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VARIANCES

ITEM 4

4023 Buckland Square, in an R-1C zone
Consider request for a Variance to reduce the rear
yard setback from 20' to 18.5' in order to construct a
12' by 20' sunroom.

Reference: Zoning Ordinance, Article 8,
Section 8.5.7(e)

Applicant: Roy and Alice Cobb

MR. NOFFSINGER: Mr. Chairman, Planning

Staff has reviewed this application. The application
is found to be in order. The Planning Staff after
having reviewed is recommending the variance not be
granted in that the applicant has failed to cite
specific findings of fact related to why a variance
should be approved in this area.

Planning Staff went out and viewed the
adjoining properties in the neighborhood. Could not
find any encroachments within the area that would
warrant justification for this request. We find it
would alter the essential character of the general
vicinity and would allow an unreasonable circumvention
of the requirements of zoning regulations. With that
it's ready for your consideration.

CHAIRMAN: Is there any objections in the
office outside of the staff?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Is the applicant here this
evening and have anything they want to bring up?

Come up and state your name for the
record.

MR. ELLIOTT: State your name, please.

MR. COBB: My name is Roy Cobb.

(MR. COBB SWORN BY ATTORNEY.)

MR. NUNNING: My name is Jim Nunning. I'm
representing Champion Window Company which would be
building the structure for Mr. Cobb.

(MR. NUNNING SWORN BY ATTORNEY.)

CHAIRMAN: Mr. Cobb, proceed with your
case, please.

MR. COBB: I'm sure that all of you read the reason, the description of the variance request. Each one of you read that and is familiar with it; is that right?

MR. NUNNING: Did you say that it was not complete?

MR. NOFFSINGER: No, sir.

MR. NUNNING: So all the paperwork was done properly; is that correct?

MR. NOFFSINGER: Yes, sir.

MR. NUNNING: So it's the board's belief that by granting this variance that it would cause problems in the neighborhood. Is that basically what you're saying?

MR. NOFFSINGER: No, it's not the board's belief at this time. That's Planning Staff's recommendation. Stating that the applicant failed to cite specific reasons or justifications as to why the variance should be approved.

Planning Staff went out into the neighborhood in the area. We could not find any encroachments of attached structures that encroached that rear setback line or any other violations. The applicant failed to cite that in the application.
Basically your justification for request
for this variance is that we only have 18 1/2 feet of
rear yard to construct that area, but we want to do a
20 foot sunroom. We want to be allowed to do that
because we want a 12, I guess it's a 12 by 20 sunroom,
when in fact you could go with say maybe a 12 by 18
sunroom or different size sunroom and meet with the
regulations, but you failed to give a justification as
to why the variance should be approved. Is there an
exceptional hardship? Are there special circumstances
in this case? Those would be two considerations this
board would consider. I can tell you financial
hardship is not a recognizable hardship by the state's
statutes.

MR. DYSINGER: That's just the Staff's
recommendation. The board hasn't made any decision at
all yet.

MR. NUNNING: So what I'm understanding
now, I want to make it clear, that if the room is to
be built like Mr. Cobb would like it to be built, then
there would be 18 1/2 feet left over. What I'm
getting at is we're not building on that 18 1/2 feet,
and granted I understand it's got to be 25 foot from
the end of the property, from the back yard to any
structure that's attached to the house. So that's
what we're trying to accomplish is relieve that from 25 to 18 1/2.

MR. NOFFSINGER: Right. You have 18 1/2 foot rear yard as opposed to 20 foot rear yard meaning you could build a sunroom that's 10 by 20 and meet the setback requirements.

MR. NUNNING: Actually we would only be able to build a sunroom that is 5 by 20. In other words, the back of his home is 30 foot off the property line. So we're wanting to add a room onto the back of this property coming out 12 feet, off the back of this home.

MR. PEDLEY: Your rear yard setback is 20 feet. Not 25. So you're only having to cut in a foot and a half off your sunroom. You're asking for 12. You're only encroaching a foot and half into the setback.

MR. NUNNING: So what you're saying, basically you're saying that if the room was 10 1/2 foot instead of 12 we wouldn't need a variance?

CHAIRMAN: That's correct.

MR. DYSINGER: Mr. Cobb, did you want to add anything to what we're saying here?

MR. COBB: I just want to say I talked to the one neighbor that would be involved in this. His
backyard is adjoining mine. He assured me that he
certainly had no problems with me building a room that
I intended to. Of course, he was able to look and see
where the foundation had already been dug and footers
dug. So basically what it would mean is we would have
to cut concrete and redig one side of the footer, if
we make it a smaller room, which it looks like we'll
have to.

MR. DYSINGER: You haven't poured concrete
at this point yet; is that correct? Just dug the
footer. You haven't poured any concrete?
MR. COBB: Correct.
CHAIRMAN: The applicant have anything
else to add at this time?
MR. COBB: That's all.
CHAIRMAN: Board members have any
questions of the applicant?
(NO RESPONSE)
CHAIRMAN: I understand you've already
started the footer and everything on it?
MR. COBB: Yes, sir.
MR. NUNNING: Nothing has been poured.
It's been dug, yes, sir.
CHAIRMAN: Any comments from the board?
MR. PEDLEY: I have a comment about
approving this item.

Since there are no encroachment violations in the neighborhood, what happens to this board once we approve one of these, then we open the door for anyone in that neighborhood or community wants a variance to come down here. We have to approve this one so we open the door for anyone. That creates a major problem to this board. That's the real issue with myself with approving it. It's not the one. It's the one we create in the future. This board would have to consider it. Anyone coming in here wanting a variance in their community goes right straight to yours and say, look, you approved his. That creates a problem.

MR. COBB: Could I comment to that?

CHAIRMAN: Yes.

MR. COBB: When I talked to them in the Planning Commission office we talked about that. The lady, I don't even know her name, but anyhow, I assured her that I was not going to go out in the neighborhood and cause problems with my neighbors. Certainly I didn't do that. Like you say you went and looked, then you know that there are four houses on the same side of Buckland Square between my house and Tammarack Road that do have attached rooms on their
house. I don't know what the setback is because I didn't measure them. Did you?

MR. NUNNING: I think what you were saying before, whatever committee that checks into that apparently went out and looked; is that correct?

MR. NOFFSINGER: Yes. We're saying we note no violations, but it's not the Planning Staff's responsibility to find those violations. It's the applicant's responsibility to find those and make that a part of the application.

For the record, as I stated, the applicant did not do that. The applicant has made an assumption here with no fact.

MR. ELLIOTT: State your name, please.

MR. MISCHEL: Jim Mischel.

(MR. MISCHEL SWORN BY ATTORNEY.)

MR. MISCHEL: I would just like to make a statement.

One of the, I guess, primary reasons for a building permit is to assure that we have uniformity throughout the community that everybody's setbacks are the same and we have this.

Essentially the permit fee on something like this does not cover the cost for us sending people out for inspections and everything. It's a
fact of service. That service is a big part of the service. Before you start that construction spend any money digging any footers, you come in and talk with us and give us a site plan. We look that over to make sure you meet the setbacks. In this case, they did turn in their site plan and it shows the 20 foot rear yard. We permitted that structure based on that. The permit shows that it requires a 20 foot rear yard. That's the big reason for that.

So before you even start building everybody knows what to do. The homeowner, the contractor, when they go out there they know they have to meet a certain standard and here is what it is. It's on the permit. We talked to them about that when they come in. It's to prevent things like this. I don't know what went wrong out in the field, but in the office they did submit the site plan that shows the 20 feet. When our guy went out there I guess that's what he expected to find was the 20 feet. I don't know if you have any questions or not.

MR. DYSINGER: Does that answer your question, sir?

MR. NUNNING: Yes, we're aware of that.

What happened was we started from the wrong spot obviously measuring. Yes, we're aware of that.
Champion gets a lot of permits here in Owensboro.
Yes, we're aware of that.

CHAIRMAN: Any other comments from the board or questions from the Staff? Anything else?
(NO RESPONSE)

CHAIRMAN: The applicant have anything else you want to add before we make a decision?

MR. COBB: No.

CHAIRMAN: Board entertain a motion for or against.

MR. PEDLEY: Mr. Chairman, I make a motion for denial based on findings that it will alter essential character of the general vicinity and it will allow unreasonable circumvention and requirements of the zoning regulations.

CHAIRMAN: Is there a second?

MR. DYSINGER: Second.

CHAIRMAN: Any other comments or questions?
(NO RESPONSE)

CHAIRMAN: Hearing none all in favor of the motion raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: The variance is denied.

Anything else for this meeting at this Ohio Valley Reporting
(270) 683-7383
time?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Entertain one final motion.

MR. WARREN: Motion to adjourn.

MR. MILLER: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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STATE OF KENTUCKY)
)   SS: REPORTER'S CERTIFICATE
COUNTY OF DAVIESS)

I, LYNNETTE KOLLER, Notary Public in and for
the State of Kentucky at Large, do hereby certify that
the foregoing Owensboro Metropolitan Board of
Adjustment meeting was held at the time and place as
stated in the caption to the foregoing proceedings;
that each person commenting on issues under discussion
were duly sworn before testifying; that the Board
members present were as stated in the caption; that
said proceedings were taken by me in stenotype and
electronically recorded and was thereafter, by me,
accurately and correctly transcribed into the
foregoing 16 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notarial seal on this
the 25th day of September, 2004.

LYNNETTE KOLLER, NOTARY PUBLIC
OHIO VALLEY REPORTING SERVICE
202 WEST THIRD STREET, SUITE 2
OWENSBORO, KENTUCKY  42303

COMMISSION EXPIRES:
DECEMBER 19, 2006

COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

Ohio Valley Reporting
(270) 683-7383