

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 MARCH 3, 2005

3 * * * * *

4 The Owensboro Metropolitan Board of
5 Adjustment met in regular session at 6:00 p.m. on
6 Thursday, March 3, 2005, at City Hall, Commission
7 Chambers, Owensboro, Kentucky, and the proceedings were
8 as follows:

9 MEMBERS PRESENT: Ward Pedley, Chairman
10 Gary Noffsinger,
11 Planning Director
12 Marty Warren
13 Ruth Ann Mason
14 Judy Dixon
15 Tim Miller
16 Sean Dysinger
17 Stewart Elliott,
18 Attorney

19 * * * * *

20 CHAIRMAN: The meeting of the Owensboro
21 Metropolitan Board of Adjustment will come to order. We
22 will begin our meeting with a prayer and pledge of
23 allegiance to the flag. You can join us if you like. If
24 you'll stand, please.

25 (PRAYER AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Good evening. I would like to
welcome everyone. Anyone wishing to speak on any item
may do so. We ask that you come to one of the podiums,
state your name and be sworn in.

1 First item on agenda is consider the minutes
2 of the February 3, '05 meeting. They have been read and
3 placed on file in the Planning Office. Were there any
4 additions or corrections?

5 (NO RESPONSE)

6 CHAIRMAN: We're ready for a motion for
7 approval.

8 MS. DIXON: Move to approve.

9 MR. DYSINGER: Second.

10 CHAIRMAN: We have a motion and a second for
11 approval. All in favor raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: The minutes are approved.

14 Next item.

15 -----

16 CONDITIONAL USE PERMITS

17 ITEM 2

18 2301 Ebach Street, in an I-2 zone
19 Consider request for a Conditional Use Permit in order to
20 operate for the distribution of agricultural chemicals
21 and fertilizer, selling of packaged chemical and
22 fertilizer and repackaging of bulk chemical product.
Reference: Zoning Ordinance, Article 8, Section 8.2 G4,
8.4/27
Applicant: Helena Chemical Company, Charles Medley and
Associates, LLC

23 MR. NOFFSINGER: Mr. Chairman, the Planning
24 Staff has reviewed this application and the application
25 is found to be in order. There's another item that is

1 related to this that will be considered next on the
2 agenda, and that is a Variance request filed by the same
3 applicants.

4 The first item to be considered tonight is
5 the Conditional Use Permit. This considers whether or
6 not the proposed use can be properly integrated into a
7 particular neighborhood. By the use itself and the
8 characteristics of itself, it lends itself toward a
9 Conditional Use Permit and a public hearing, where the
10 public has an opportunity to have a say in terms of what
11 this type of use being integrated into their
12 neighborhood.

13 The second item will be a Variance request.
14 The Variance request is necessary because this particular
15 use requires a 300 foot separation be provided from a
16 residential zone. The proposal in this case, there will
17 be some residential areas that will be located within
18 that 300 foot buffer. So, there is a need for a
19 Variance.

20 Now, the Conditional Use Permit could be
21 approved or it could be denied, or this Board can approve
22 the Conditional Use Permit and set conditions. If the
23 Conditional Use Permit is approved or if it's
24 conditionally approved, then the Board can consider
25 granting the Variance. The Board can grant the Variance

1 or they can choose to deny the Variance. In both cases,
2 the Board of Adjustment must make findings of fact, and
3 there's certain criteria that must be considered when
4 evaluating each of these proposals.

5 The Conditional Use Permit that you're now
6 considering indicates that all activities related to the
7 chemical company except for parking will take place
8 within an existing building. The size approximately
9 23.184 acres in size. There's an existing building on
10 the property and there will be an asphalt or concrete
11 parking area located to the south of the existing
12 building. There is a note on the plan that says there
13 will be no outdoor storage at Helena Chemical Company
14 building.

15 So with that, the applicant is represented
16 here tonight by counsel and is ready for the Board's
17 consideration.

18 MR. DYSINGER: Mr. Chairman, I find it
19 necessary to disqualify myself from the consideration of
20 Items 2 and if necessary 2a.

21 CHAIRMAN: So noted.

22 Mr. Noffsinger, has there been any
23 correspondence in the Planning Office in opposition of
24 this item?

25 MR. NOFFSINGER: We received one telephone

1 message today, March 3, 2005, from a James Wayne Hall.
2 He asked that this information be entered into the
3 record, and I can give you a brief summary of what this
4 individual stated if you would like.

5 CHAIRMAN: Yes.

6 MR. NOFFSINGER: Mr. Hall was calling for
7 parents, James and Mary Hall, who own property adjoining.
8 They live at 2309 Nelson and also own property at French
9 Street and Ebach Street. They're opposed to the
10 Conditional Use Permit and Variance for chemical storage
11 and use because of health concerns. They cannot attend
12 because Mr. Hall is taking his mother to Nashville for a
13 medical appointment. He has indicated the health
14 problems that they do have, and he did leave a telephone
15 number where he can be reached.

16 I will say that should this Conditional Use
17 Permit be approved tonight, it will require and should be
18 conditioned upon the approval of the state Office of
19 Housing, Building and Construction.

20 That is the only complaint of record that has
21 been registered in the office.

22 CHAIRMAN: Thank you. Is anyone here
23 representing the applicant?

24 MR. KAMUF: Yes.

25 MR. ELLIOTT: State your name, please.

1 MR. KAMUF: Charles Kamuf.

2 (MR. CHARLES KAMUF SWORN BY ATTORNEY.)

3 MR. KAMUF: Ladies and gentlemen, I represent
4 Helena Corporation, which is a chemical company. What
5 they intend to do at the Medley Distillery is operate a
6 distribution point for agricultural products such as
7 fertilizer and chemical. To my knowledge, I checked
8 everybody that came in and I don't think there's any
9 objectors here tonight. Nearly all these people - - it's
10 a new corporation that's coming to Owensboro. They
11 looked at specific places to try to get something that
12 would be applicable, that would be good for this type of
13 operation, and this is the area that they picked.

14 The building is the old Medley Distillery
15 building. I have some photographs that I'll show you.
16 The first one, this shows you - - and I'll pass those
17 around. We can mark those exhibits as we get them.

18 This shows you the railroad track. The
19 railroad track is a buffer area. The building that is in
20 light color is the building that we will use. There's a
21 lot of individuals that will explain exactly what the use
22 will be. That's the first exhibit. Why don't I just
23 read them all to you and then I'll pass them down.

24 Another reason that we chose this particular
25 area that is enclosed, the area that you see behind it is

1 pretty well isolated, that one building. And this is the
2 building that they'll use for their packaging and also
3 for their bulk storage. Everything in the area will be
4 enclosed. It will not be anything on the outside, as Mr.
5 Noffsinger explained earlier.

6 The next three pictures that we have pretty
7 well just show the general layout of the area. There's
8 nothing new; nothing different. It shows the area that
9 we're going to store the material in. And that's the
10 same - - as to the next photograph. These three are all,
11 all of those are relative, those are the same area. So
12 you'll have an idea what we're talking about.

13 The existing building will not change in
14 character in any way. You will not - - the neighbors
15 will not even know that there is a change in the area,
16 except the fact there will be some activity there. The
17 building has been vacant for years. The old Medley
18 Distillery buildings have been down there for
19 approximately 100 years. The fertilizer and chemical
20 company that we have is nothing unusual that you would
21 see in a residential area.

22 We went out today and took some photographs,
23 which I think are very important. This shows you the
24 most - - sometime you think about these type of chemical
25 companies just being in an older section of town. This

1 is the newest section of town, and you see Southern
2 States. They have an operation and distribution system
3 similar to the one that we have, only they do more than
4 we do and it's adjacent to a nursing home. It's adjacent
5 to Heritage Park Nursing Home. This is out on Carter
6 Road across from the new industrial park.

7 So in other words, I don't think there's
8 anything to be afraid of as far as this type of activity
9 or they wouldn't have built one next to a nursing home.

10 The next one that we have is this shows the
11 other, one of the other distribution areas that they have
12 the same type of chemical and fertilizer. This is Miles
13 Farm. And if you see directly in front of their
14 operation is the Miles home. This is where Mr. and Mrs.
15 Miles used to live. Directly across the road there's
16 some commercial operation. The Amish store is across the
17 area. So, we don't think that that is a big issue.

18 We have a couple more photographs. This one
19 here, the question I'm sure you have is what would - - in
20 other words, most of this is package. If you see, this
21 type of package that you have here, this is a picture of
22 some Roundup in the area. Most of you know about
23 Roundup. This is a packaged material that they will be
24 selling, but it will be in package and it will be lifted
25 with a forklift.

1 And then the next photograph that I show is
2 the picture - - in other words, you say well what if some
3 of this would - - what if there would be a fire? Or
4 something along this line. This shows you how there is a
5 bourne all around the inside of the building to prevent
6 this type of chemical from spreading in case of a fire or
7 in case something would burst.

8 Basically, the Staff has given the report and
9 I don't think that - - we have several individuals
10 that'll be glad to talk concerning the inside of the
11 building. We'll have other individuals to talk as
12 exactly what they'll be doing there. We're here to
13 answer any questions that you might have. Basically
14 that's just a summary of what we're going to do. It's
15 not anything unusual that you wouldn't see in a
16 residential area at the present time in Owensboro,
17 Kentucky. I'll be glad to answer any questions or I have
18 other individuals that can.

19 CHAIRMAN: Any board members have any
20 question of Mr. Kamuf?

21 MR. MILLER: I have just a couple of
22 questions. At this point, do you know what the hours of
23 operations will be at this facility?

24 MR. KAMUF: I'll have to ask somebody.

25 Mr. Mattingly, come up here.

1 MR. ELLIOTT: State your name, please.

2 MR. MATTINGLY: Jerry Mattingly.

3 (MR. JERRY MATTINGLY SWORN BY ATTORNEY.)

4 MR. MATTINGLY: The hours of operation will
5 be 7 in the morning till we finish loading trucks,
6 somewhere around 7, 8:00 in the evening in season, which
7 is agricultural season. You know, in off season, we'll
8 be 7 to 5.

9 MR. MILLER: I'd like to ask one other
10 question while you're up here. I noticed in the
11 application it said there would be no storage outside.
12 What about as far as transferring of the chemical? I
13 mean, is there - - would any of that take place outside
14 or?

15 MR. MATTINGLY: No.

16 MR. MILLER: All activities will be inside
17 the building?

18 MR. MATTINGLY: Inside. We have six loading
19 and unloading bays. Truck can back up to that and be
20 loaded inside the building to the truck.

21 MR. MILLER: Just for clarification.
22 Understand your plans have to be approved by the Kentucky
23 Department of Housing, Building and Construction.

24 MR. MATTINGLY: Sure.

25 MR. MILLER: Can you just kind of tell us

1 what they will look at? What are they responsible for?

2 MR. MATTINGLY: Okay. I was there yesterday
3 in Frankfort submitting the permit. I had to take up
4 drawings of the building, the site. After discussions
5 with those folks, they think Monday they'll have it
6 passed and ready to go. Didn't see any problems at all
7 with it.

8 MR. MILLER: What do they look at?

9 MR. MATTINGLY: They were looking at the - -
10 it's a fully sprinkled building inside. They wanted to
11 see that and elevation on the drawings.

12 MR. MILLER: Containment. Do they look at
13 containment?

14 MR. MATTINGLY: Yes. Uh-huh.

15 MR. MILLER: In case there is a - -

16 MR. MATTINGLY: Well, we will have a
17 Department of Housing, Building inspector come by
18 probably tomorrow and look. They looked at the type of
19 business that we were doing transporting in and out of
20 packaged chemicals and pretty well said they'd fast track
21 it through. They didn't see any problem with it at all.

22 MR. KAMUF: Mr. Miller, I'd like to point out
23 that we do have, the building has already been inspected
24 by the fire marshal and we do have a permit.

25 MR. MILLER: Thank you. That's all the

1 questions I've got.

2 MR. WARREN: I have a question for Mr.
3 Mattingly. What type of bulk chemicals are you - -
4 liquid chemicals, all powder?

5 MR. MATTINGLY: What we're going to have is
6 packaged chemical like you see in the picture.

7 MR. WARREN: Like the Roundup.

8 MR. MATTINGLY: We will also have on pallets
9 a bag, 50-pound bag type materials and up to 250 gallons
10 of tanks of chemicals, and those tanks are approved and
11 tested by the Department of Transportation and - -

12 MR. WARREN: So, you won't have tanker trucks
13 -

14 MR. MATTINGLY: No.

15 MR. WARREN: - coming in of chemical, liquid
16 chemical?

17 MR. MATTINGLY: No. At this time we're not
18 going to have any operation there.

19 CHAIRMAN: Any other board members have any
20 questions?

21 (NO RESPONSE)

22 CHAIRMAN: Thank you, sir.

23 MR. MATTINGLY: Uh-huh.

24 CHAIRMAN: Anyone else like to speak on
25 safety issues or anything that might be a concern to any

1 of the neighbors who are in opposition?

2 (NO RESPONSE)

3 CHAIRMAN: If not, I'm going to go to the
4 opposition side. Is anyone here in opposition of this
5 item that would like to speak?

6 (NO RESPONSE)

7 MR. NOFFSINGER: Mr. Chairman, I have a
8 question, but we will get to that.

9 CHAIRMAN: We don't have anyone here in
10 opposition. So, if the applicant doesn't have anything
11 else to say, Mr. Noffsinger has a comment and then we
12 will go for a motion to vote.

13 MR. NOFFSINGER: Just had one comment just to
14 make sure that the applicant understands that should
15 there be a change in the use of this building regarding a
16 change from what you have stated here tonight and what
17 you're making an application for, that you will have to
18 come back before this Board for a rehearing on the
19 Conditional Use Permit. So, we make sure we get that in
20 the record and the applicant understands that this is a
21 Conditional Use Permit that the Board is acting upon
22 based upon your testimony as well as what's included in
23 this application. Any deviation from that, you'll have
24 to come back before this Board for a rehearing.

25 MR. KAMUF: They understand.

1 CHAIRMAN: Any board members have any more
2 questions before we ask for a vote?

3 (NO RESPONSE)

4 CHAIRMAN: Chair is ready for a motion.

5 MR. MILLER: Mr. Chairman, I'll make a motion
6 for approval and that - - and Gary, am I right in saying
7 that it would be contingent upon approval by the Kentucky
8 Department of Housing, Buildings and Construction?

9 MR. NOFFSINGER: Yes, sir.

10 MR. MILLER: Personally, I mean, it seems to
11 be well planned and I see no safety or health concerns to
12 the public if operated within the parameters outlined
13 tonight.

14 MR. NOFFSINGER: Excuse me, Mr. Miller. I
15 think I would add to that approval of a Variance to allow
16 these activities to occur within the 300 foot buffer.

17 MR. MILLER: We're not on the Variance yet,
18 are we?

19 MR. NOFFSINGER: No, but it will be necessary
20 in order for the Conditional Use Permit to be exercised.

21 MR. MILLER: I'm sorry.

22 MR. NOFFSINGER: So I think you should add
23 that as a condition.

24 MR. MILLER: Also contingent upon approval of
25 the Variance.

1 MR. WARREN: Second.

2 CHAIRMAN: We have a motion and a second.

3 Any question on the motion?

4 (NO RESPONSE)

5 CHAIRMAN: All in favor raise your right
6 hand.

7 (ALL BOARD MEMBERS PRESENT - WITH THE
8 DISQUALIFICATION OF SEAN DYSINGER - RESPONDED AYE.)

9 CHAIRMAN: It's unanimous for approval.

10 RELATED ITEM:

11 ITEM 2a

12 2301 Ebach Street, in an I-2 zone.
13 Consider request for a Variance to reduce the required
14 300 foot distance from any residential zone to 260 feet
15 in order for the property to operate as a heavy
16 industrial use.

Reference: Zoning Ordinance, Article 8, Section 8.4/27
Applicant: Helena Chemical Company, Charles Medley and
Associates, LLC

16

17 MR. NOFFSINGER: Mr. Chairman, the Planning
18 Staff has reviewed this application. It's found to be in
19 order. It has been described to you in previous
20 testimony. However, as this Board is aware, there are
21 certain findings of fact of considerations that you must
22 take into account before granting this Variance.

23 The Staff has prepared a Staff Report which
24 recommends approval of the Variance. The considerations
25 that, yes, there are special circumstances that generally

1 do not apply to the property, other properties; and if
2 the Variance is not granted, it would pose a hardship
3 upon the applicant.

4 Staff finds that it will not adversely affect
5 public health, safety or welfare; will not alter the
6 essential character of the general vicinity; will not
7 cause a hazard or a nuisance to the public; and will not
8 allow an unreasonable circumvention of the requirements
9 of the Zoning Ordinance.

10 Now, this recommendation is made subject to
11 there not being any opposition registered here tonight
12 from a landowner that is located within this affected
13 buffer, meaning within 300 feet from the activity. Staff
14 has found the subject property is located in a heavy
15 industrial zone. The applicant seeking the Variance
16 proposes to operate agricultural chemical fertilizer,
17 selling a packaged chemical fertilizer and repacking of
18 bulk chemical products within 260 feet from the nearest
19 residential zone.

20 The granting of this 40 foot variance will
21 not alter the essential character of the vicinity and
22 will not constitute a reasonable circumvention of the
23 Zoning Ordinance as long as it's approved by the Kentucky
24 Office of Housing and Building Construction and there's
25 no opposition registered.

1 MR. KAMUF: Mr. Chairman, I'd like to point
2 out that the telephone call evidently that you got was
3 from a Mr. Hall, and he's certainly not within 300 feet
4 of this area. I checked it on this plat.

5 CHAIRMAN: Mr. Noffsinger, has there been any
6 correspondence in opposition of the Variance in the
7 Planning Office other than what you read into the record?

8 MR. NOFFSINGER: Your statement is correct.
9 The gentleman that did register that complained is beyond
10 300 feet. It looks like it's probably in excess of 375
11 to 425 feet from the nearest corner of the building where
12 the activities will occur. There's been no other
13 opposition registered in the office.

14 CHAIRMAN: Is there anyone here that would
15 like to speak in opposition of the Variance?

16 (NO RESPONSE)

17 CHAIRMAN: Does the applicant have any
18 further statement he'd like to make? I think we're okay
19 with what you've stated. Do you have anything else to
20 add?

21 (NO RESPONSE)

22 CHAIRMAN: If not, we'll go for a motion.
23 Board members have any questions on the Variance?

24 MR. WARREN: I have a question for Mr.
25 Noffsinger, I think. So, the testimony given in the

1 Conditional Use Permit will apply here, too? It doesn't
2 have to be restated?

3 MR. NOFFSINGER: That would be a question for
4 Mr. Elliott.

5 MR. ELLIOTT: No.

6 MR. WARREN: It does not?

7 MR. ELLIOTT: No. Just the findings for the
8 Variance.

9 CHAIRMAN: Chair is ready for a motion.

10 MS. DIXON: Move to approve based upon the
11 findings from the Staff that it will not adversely affect
12 the public health, safety or welfare; will not alter the
13 essential character of the general vicinity; will not
14 cause a hazard or a nuisance to the public; and will not
15 allow an unreasonable circumvention of the requirements
16 of the zoning regulations.

17 MR. MILLER: Second.

18 CHAIRMAN: Any question on the motion?

19 (NO RESPONSE)

20 CHAIRMAN: All in favor raise your right
21 hand.

22 (ALL BOARD MEMBERS PRESENT - WITH THE
23 DISQUALIFICATION OF SEAN DYSINGER - RESPONDED AYE.)

24 CHAIRMAN: Motion is approved by unanimous
25 vote.

1 MR. KAMUF: Thank you, Mr. Chairman and
2 ladies and gentlemen.

3 ITEM 3

4 6028 KY 1389, in an R-1A zone
5 Consider request for a Conditional Use Permit to
6 temporarily place a 14' by 60' class 2 manufactured home
7 on the property.
8 Reference: Zoning Ordinance, Article 8, Section 8.2 A10B
9 Applicant: Tracy Robertson

10 MR. NOFFSINGER: Mr. Chairman, the Planning
11 Staff has reviewed this application and the application
12 is found to be in order. The applicant is requesting
13 placement of this unit on a temporary basis, and they are
14 asking we waive the requirements for the removal of tire,
15 tongue, wheels, axles, as well as the concrete or masonry
16 type skirting around the perimeter of the trailer, the
17 concrete porch or deck and other items.

18 And while the Staff, we do not have any
19 opposition to this, we would like to hear from the
20 applicant in terms of their timeframe for construction
21 because we do understand they are going to build a house
22 and we need to get on the record as to what their
23 timetable is.

24 CHAIRMAN: Anyone here representing the
25 applicant?

MR. ROBERTSON: Yes.

MR. ELLIOTT: State your name, please.

1 MR. ROBERTSON: Tracy Robertson.

2 (MR. TRACY ROBERTSON SWORN BY ATTORNEY.)

3 MR. ROBERTSON: Like I said, it's going to be
4 temporary, just as soon as possible. Hopefully this
5 spring to go ahead and start building.

6 MR. NOFFSINGER: Okay. So would you say - -
7 this spring. So, within - - we're looking for a
8 timeframe here in terms of this unit to be removed from
9 the property. And this is - -

10 MR. ROBERTSON: Six to nine months to build
11 the home. So, as soon as the home is liveable so we can
12 move in.

13 MR. NOFFSINGER: Right.

14 CHAIRMAN: Any board members have any
15 question for Mr. Robertson?

16 MR. MILLER: I don't think I heard you. Did
17 you say you were going to obtain a building permit this
18 spring?

19 MR. ROBERTSON: To build the home. Yes.

20 MR. MILLER: Okay.

21 CHAIRMAN: Let me see if we have any
22 opposition here. Anyone here in opposition to this item?

23 (NO RESPONSE)

24 CHAIRMAN: Any board members have any
25 questions?

1 (NO RESPONSE)

2 CHAIRMAN: Chair is ready for a motion.

3 MR. DYSINGER: I have a question on how we
4 phrase this. Is it possible to grant it pending
5 application for building permit and then like a secondary
6 approval for gone by the first of January? I mean, I
7 don't know that the date - - six to nine months, kind of
8 the rest of the year.

9 MR. NOFFSINGER: Staff would recommend that
10 you set a specific date as to when the unit is to be
11 removed. We would recommend that you consider approving
12 the Conditional Use Permit for a temporary placement not
13 to exceed a date of - - it has to be removed by November
14 1, 2005. That gives you, what, 9 to 10 months, I think.

15 MR. DYSINGER: That seems a little short.
16 Would the applicant be free to reapply at that time for
17 some sort of extension if necessary?

18 MR. NOFFSINGER: Yes. Yes. But the
19 applicant would need to come in before November 1.

20 Does November 1 sound reasonable to you?

21 MR. ROBERTSON: If everything gets going like
22 it's supposed to. Yes. I mean, I've already got the
23 contractor on the house, I mean, you know, ready to get
24 started. So, but I need to be living there also, you
25 know, to help him out.

1 MR. NOFFSINGER: Right. And that's
2 understandable. The reason I'm thinking about November
3 1, I think that if we go beyond that and get into the wet
4 season and you may not be able to get that unit off. So,
5 if we know that it's November 1, that's the date we're
6 going to be shooting for, perhaps that'll push you along
7 in the process.

8 But, yes, the applicant would be able to come
9 back in ahead of time and ask for an extension.

10 MR. DYSINGER: Would he have to pay the
11 reapplication fee and all that?

12 MR. NOFFSINGER: Yes.

13 MS. MASON: I have a question. Do we need to
14 act on, like, the driveway apron and all that? That's
15 all part of it, what he's asking for?

16 MR. NOFFSINGER: That'd be part of the
17 application.

18 MS. MASON: Okay. Part of the application.
19 Okay.

20 MR. NOFFSINGER: Temporary placement for up
21 to a particular date.

22 MS. MASON: Okay.

23 MR. DYSINGER: Mr. Chairman, move to approve
24 Conditional Use Permit, given the findings that there
25 appears to be no opposition, the request seems to be

1 reasonable, that the applicant be allowed to temporarily
2 place 14 by 60 class 2 manufactured home on the property
3 until November 1, 2005, with leave to reapply if
4 necessary. Does that cover it, about cover it?

5 MR. NOFFSINGER: Yes.

6 MR. WARREN: Second.

7 CHAIRMAN: I have a motion to second. Is
8 there any questions on the motion?

9 (NO RESPONSE)

10 CHAIRMAN: All in favor raise your right
11 hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion approved unanimously.

14 MR. ROBERTSON: Thank you.

15 -----

16 VARIANCE

17 ITEM 4

18 1230 Allen Street, in an R-4DT zone
19 Consider request for a Variance to reduce the rear yard
20 setback from 10 feet to 3 feet in order to construct a
21 carport.

22 Reference: Zoning Ordinance, Article 3, Section
23 3-7(c)(1), 3-5(e)

24 Applicant: Julius Carl Holton, Ruth LeFaye Holton

25 MR. NOFFSINGER: Mr. Chairman, Planning Staff
has reviewed this application. The application is found
to be in order. Ms. Stone is here tonight to describe
what is taking place and Staff's recommendation.

1 MR. ELLIOTT: State your name, please.

2 MS. STONE: Becky Stone.

3 (MS. BECKY STONE SWORN BY ATTORNEY.)

4 MS. STONE: In reviewing the application for
5 this Variance, we've visited the site and we noticed that
6 there had been concrete poured from the alley to an
7 existing curb cut and beyond on Parrish Avenue. So, upon
8 investigation with the city engineer's department, we
9 learned that indeed there was a permit granted to put
10 concrete in the area that had been grass stripped where
11 that existing curb cut occurred on Parrish Avenue.
12 However, the concrete does extend beyond that curb cut to
13 the east to the landscaped area on the property, which
14 allows some movement, makes that driveway access look
15 wider there.

16 So, in reviewing the application for the
17 Variance, we find that the Variance should be granted
18 based on existing setbacks that are allowable in that
19 zone and also on existing conditions in that area, but we
20 would like to impose the condition that that grass strip
21 of the right-of-way be reestablished just to the existing
22 curb cut on that driveway and allow the concrete to
23 extend to the curb cut, but no further to the east.

24 Our reasons are based on the granting of the
25 Variance would not adversely affect the public health,

1 safety or welfare; would not alter the essential
2 character of the general vicinity; would not cause a
3 hazard or a nuisance to the public; and would not allow
4 an unreasonable circumvention of the requirement of the
5 zoning regulations.

6 CHAIRMAN: Anyone here representing the
7 applicant?

8 MR. HOLTON: Me.

9 CHAIRMAN: Is there something you'd like to
10 say?

11 MR. HOLTON: Well, the only reason that we
12 did that - -

13 CHAIRMAN: Step up to the podium.

14 MR. ELLIOTT: State your name, please.

15 MR. HOLTON: Carl Holton.

16 (MR. CARL HOLTON SWORN BY ATTORNEY.)

17 MR. HOLTON: The reason we did that was
18 there's lots of people that use the alley, and all of
19 them cut across, cut short, and there's just a mud hole
20 there where they dropped off, hit the mud hole and went
21 on across. How much would you say it is there?

22 MS. STONE: Probably about seven feet to the
23 existing curb cut that's on Parrish.

24 MR. HOLTON: I don't know how far it is, but,
25 you know, it was an area there where people cut across.

1 So, we re-poured the concrete, sidewalk was bad. So we
2 re-poured it along with part of my drive up here and we
3 just, you know, curved it on out there where people
4 pulled in there and don't drop in the hole and make a
5 mess. It'll be a whole lot neater job like it is. If
6 you request it, then we will put it back dirt, but it
7 would be a lot neater job, you know, to leave the
8 concrete there.

9 MR. DYSINGER: Mr. Chairman, can I ask a
10 question of the - - oh, I'm sorry. Go ahead.

11 MS. STONE: I was just going to comment for
12 Mr. Holton we're not requesting the concrete where the
13 alley was widened to be removed. Over to where that curb
14 cut is fine, and that should keep the people from cutting
15 across the yard because that's widening that alley. What
16 we're requesting is east of the existing curb cut back
17 and they've got a landscaped area there back to that
18 grass strip, for that right-of-way to be reestablished as
19 grass strip.

20 MR. DYSINGER: So, Becky, it's the Staff's
21 opinion that putting it - - meeting this condition is not
22 going to put them in a situation where they got the mud
23 hole and - -

24 MS. STONE: No, because they will be allowed
25 to keep that widening of the alley. So, they shouldn't -

1 -

2 MR. DYSINGER: It's not going back to the way
3 it was before, in other words?

4 MS. STONE: Right.

5 MR. DYSINGER: Okay. Thank you.

6 Sir, do you concur with that? Do you think
7 you understand what we're suggesting?

8 MR. HOLTON: I would love to leave it like it
9 is, but we'll go back and, you know, do whatever you all
10 recommend and if we get the Variance, but it would make a
11 lot neater driveway. It would make a lot neater area
12 there if the concrete is left in there because we got
13 shrubbery on this side of it and it would make a lot
14 better place where we can get into the driveway.

15 CHAIRMAN: Ms. Stone, is that a barrier type
16 of curb or is it a roll curb?

17 MS. STONE: It's a roll curb. You can drive
18 over it. And it makes the driveway wider by having that
19 concrete beyond that curb cut, and we're saying that the
20 driveway should not be wider than where the existing curb
21 cut is.

22 CHAIRMAN: That roll curb allows vehicles to
23 cross it where a barrier curb does not?

24 MS. STONE: Right.

25 CHAIRMAN: And it is a roll curb?

1 MS. STONE: Yes.

2 CHAIRMAN: So if they remove the concrete and
3 it does create a place for vehicles to cross, but up
4 there again - - is that what - -

5 MS. STONE: Well, they still will have the
6 widened alley. So people who are turning into the alley
7 have seven feet more. We're not asking them to remove
8 the concrete between where the alley is and where there
9 was an existing curb cut on Parrish. But to the east of
10 that curb cut should be reestablished as grass because
11 what happens is that's just made that access that much
12 wider.

13 CHAIRMAN: Right.

14 MR. NOFFSINGER: Mr. Chairman, if I might add
15 to the record that this situation, if this were allowed
16 to stand, we have this situation all over Owensboro where
17 people would like to concrete or asphalt their grassplot
18 for various reasons. One, they'd like to park up on it
19 so they can get their wheels off the curb or out of the
20 street; they can get their vehicle up out of the street.
21 If we were to do that, then we would have no grassplots;
22 and grassplots are one thing that adds to the aesthetic
23 beauty of our community as well as help alleviate some of
24 our drainage concerns. We all know we have drainage
25 concerns in this community.

1 It's just, it may not seem to be that big of
2 a deal, but if you look at it in the bigger picture of it
3 and what precedence you're setting and would be setting,
4 it is a big deal. Now, if the applicant were to go in
5 and make a larger curb cut and it's on a state
6 right-of-way where we have access control; but if they
7 were to widen that curb cut, they would have to get a
8 license bonding contractor to go in and actually cut that
9 curb and reform it to do it correctly.

10 And that's not what was done here. It was
11 just a matter of they took the existing curb cut and
12 concreted all the way in front of it toward the proposed
13 carport and then they just extended on into the grassplot
14 and just decided to roll it up over the curb, which would
15 not be the proper way to do it. You would actually go in
16 and cut that curb.

17 So, I think it goes beyond just this
18 particular site even though it may not seem to be that
19 big of a deal. It's the message you're sending to other
20 folks that have similar requests that simply want to pave
21 or asphalt their grassplot. Maybe they don't want to mow
22 it or maybe they're parking, using it for parking now but
23 it's a mud hole. I have seen that, but that is really
24 not an issue for this Board but it is a consideration on
25 this Variance.

1 CHAIRMAN: Any board members have any more
2 questions?

3 MR. DYSINGER: I have one more question.
4 Moving away from that condition, for the record, does the
5 Staff know of any precedent of the, you know, approval of
6 this happening beforehand, situations that matched this,
7 that meet this that have been approved in the past?

8 MR. NOFFSINGER: I'm not aware of any.

9 MR. DYSINGER: Okay.

10 CHAIRMAN: Any more questions?

11 (NO RESPONSE)

12 CHAIRMAN: Chair is ready for a motion.

13 MS. DIXON: Move to approve the Variance
14 because it will not adversely affect the public health,
15 safety or welfare; will not alter the essential character
16 of the general vicinity; will not cause a hazard or a
17 nuisance to the public; will not allow an unreasonable
18 circumvention of the requirements of the zoning
19 regulations; and subject to the condition that the
20 applicant remove the concrete, restore the grass strip to
21 the east of the curb cut on Parrish Avenue between the
22 curb and the sidewalk.

23 MR. DYSINGER: Second.

24 CHAIRMAN: I have a motion and a second. Any
25 question on the motion?

1 (NO RESPONSE)

2 CHAIRMAN: All in favor raise your right
3 hand.

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion approved unanimously.

6 Are there any more motions?

7 MR. DYSINGER: Move to adjourn.

8 MS. MASON: Second.

9 CHAIRMAN: All in favor raise your right
10 hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Meeting is adjourned.

13 -----

14

15

16

17

18

19

20

21

22

23

24

25

1 COMMONWEALTH OF KENTUCKY)
 2) SS: REPORTER'S CERTIFICATE
 3 COUNTY OF DAVIESS)

4 I, Sara Wilson, Notary Public in and for the
 5 State of Kentucky, do hereby certify, that the foregoing
 6 Owensboro Metropolitan Board of Adjustment meeting was
 7 held at the time and place as stated in the caption to
 8 the foregoing proceedings; that each person commenting on
 9 issues under discussion were duly sworn before
 10 testifying; that the Board members present were as stated
 11 in the caption; that said proceedings were taken by me in
 12 stenotype and electronically recorded and was thereafter,
 13 by me, accurately and correctly transcribed into the
 14 foregoing 31 typewritten pages; and that no signature was
 15 requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this the
 17 25th day of March, 2005.

18
 19 _____
 20 SARA E. WILSON, NOTARY PUBLIC
 21 OHIO VALLEY REPORTING SERVICE
 22 202 WEST THIRD STREET
 SUITE 12, ODDFELLOWS BUILDING
 OWENSBORO, KENTUCKY 42303

23 COMMISSION EXPIRES:
 24 JUNE 10, 2006

COUNTY OF RESIDENCE:
 DAVIESS COUNTY, KY

25