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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

SEPTEMBER 1, 2005

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, September 1, 2005, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

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

* * * * *

CHAIRMAN: Call the meeting to order. I want to welcome each one of you to the Owensboro Metropolitan Board of Adjustment this evening.

Set a few guidelines. If you have anything to say to the board, come to one of the mikes. Be sworn in by the attorney and then address your questions to the chairman and we will get the answer you want.

With that the first item is consider the minutes of the August 4, 2005 meeting. They're in the office on record. I don't think there is any problems

1 with them.

2 MR. NOFFSINGER: No, sir.

3 CHAIRMAN: With that entertain a motion to
4 dispose of the item.

5 MS. DIXON: Move to approve.

6 MR. DYSINGER: Second.

7 CHAIRMAN: A motion has been made and a
8 second. All in favor raise your right hand.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries.

11 First item.

12

13 CONDITIONAL USE PERMIT

14 ITEM 2

15 901 Blk West First Street, in an R-4DT zone
16 Consider a request for a Conditional Use Permit in
17 order to fill approximately 252 feet along the Ohio
18 River bank with broken concrete and riprap
19 Reference: Zoning Ordinance, Article 18,
20 Section 18-6(b)(2)(g)
21 Applicant: Sycamore Square Homeowner's Association,
22 Inc.

19

20 MR. NOFFSINGER: Mr. Chairman, Planning
21 Staff has reviewed this application. The application
22 is found to be in order. It is for placement of fill
23 with the flood plain along the Ohio River bank. The
24 applicant has submitted into the file a string
25 construction permit approved by the Division of Water

1 as well as letter of approval from the Corpe of
2 Engineers and by local engineer Mr. Jim Riney stating
3 that the placement of the riprap will not result in
4 negative impact to Ohio flood plain. With that
5 requirement of issuance of a Conditional Use Permit
6 for this type of activity has been met and it's ready
7 for consideration.

8 CHAIRMAN: No opposition filed in the
9 office?

10 MR. NOFFSINGER: No, sir.

11 CHAIRMAN: Hearing none is there anyone
12 wishing to speak in opposition on this item?

13 (NO RESPONSE)

14 CHAIRMAN: Hearing none does the board
15 members have any questions?

16 (NO RESPONSE)

17 CHAIRMAN: Staff have anything to add to
18 it?

19 MR. NOFFSINGER: No, sir.

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

22 MR. PEDLEY: Make a motion for approval
23 based on no opposition and it will not have adverse
24 influence in the neighborhood.

25 CHAIRMAN: Is there a second?

1 MR. DYSINGER: Second.

2 CHAIRMAN: A motion has been made and a
3 second. Is there any other questions from the board?

4 (NO RESPONSE)

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

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries.

9 ITEM 3

10 2767 Veach Road, in a B-4 zone
11 Consider a request to amend a Conditional Use Permit
12 in order to provide a Childcare and Learning Center to
13 serve 96 children per shift (2 proposed) on weekdays
14 and weekends.

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

17 Applicant: Antoinette Lea Brown, Lee Kassinger

18 MR. NOFFSINGER: Mr. Chairman, Planning
19 Staff has reviewed this application. The application
20 is found to be in order.

21 As previously stated, the Conditional Use
22 Permit was approved for this property back some time
23 ago by this board. The daycare facility has been in
24 operation. This is an expansion of the daycare and to
25 remainder of a 4,860 square foot building. I have
26 noted no objections in the file or have not had any
27 complaints on this particular piece of property.
28 Therefore, I have no reason to believe that the

1 request would not be compatible with the neighborhood.

2 CHAIRMAN: Is there anyone this evening
3 that would like to speak in opposition of this?

4 (NO RESPONSE)

5 CHAIRMAN: Does the applicant have
6 anything they'd like to add to it at this time?

7 (NO RESPONSE)

8 CHAIRMAN: Any board members have any
9 questions of the applicant?

10 MR. MILLER: I have a question for Gary.
11 Could you tell me what the Conditional Use
12 Permit allowed as far as the number of children the
13 first time.

14 MR. NOFFSINGER: I believe that was 40
15 something. Forty-five.

16 CHAIRMAN: Any other questions or comments
17 from the board?

18 (NO RESPONSE)

19 CHAIRMAN: Staff have anything else to add
20 to it?

21 MR. NOFFSINGER: No, sir.

22 CHAIRMAN: Entertain a motion to dispose
23 of the item.

24 MR. DYSINGER: Move to approve the
25 Conditional Use Permit given the findings that there

1 is no opposition from the neighborhood and the use is
2 compatible.

3 CHAIRMAN: Is there a second?

4 MS. DIXON: Second.

5 CHAIRMAN: Any other question or comments
6 from the board?

7 (NO RESPONSE)

8 CHAIRMAN: Staff have anything else to
9 add?

10 MR. NOFFSINGER: No, sir.

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

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion carries.

15 Next item, please.

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17 VARIANCE

18 ITEM 4

19 2524 Frederica Street, in a B-4 zone
20 Consider request for a Variance to reduce the
21 roadway buffer from 60 feet from the street centerline
22 to 48 feet from the street centerline in order to
23 install landscaping and a vehicular stacking area for
24 the proposed car wash.

22 Reference: Zoning Ordinance, Article 13,
Section 13.622

23 Applicant: Byrne-Riney, LLC, Sean and Jennifer Byrne,
24 Mark and Liane Riney

25 MR. NOFFSINGER: Mr. Chairman, this

1 application was reviewed by the Planning Staff. It's
2 found to be in order. This is a site that is
3 currently developed.

4 The existing development I believe was a
5 service station. The service station will be torn
6 down and a car wash will be added to the facility.
7 The property currently has I believe two access points
8 on Frederica Street.

9 If this variance is approved, the
10 applicant is proposing to close all access to
11 Frederica Street with access being via Park Plaza
12 Drive.

13 The request comes to reduce the buffer
14 area from 60 feet down to 48 feet. Now, right now the
15 property is paved I believe all the way out to the
16 sidewalk on Frederica Street. This would certainly,
17 if the variance is approved, it would be an
18 enhancement to the area by adding landscaping as well
19 as other green space areas onto the property and would
20 provide more of a buffer than what we have existing.
21 There have been other variances issued within the
22 area. Both in close proximity and along other areas
23 in the blocks along Frederica Street. Although
24 Frederica Street is included in the transportation
25 plan, I believe to be widened at some point in time,

1 that is not likely to take place in the foreseeable
2 future.

3 Since this is an improvement and the area
4 of the roadway buffer would only include paving and
5 landscaping and other reasons which we have made the
6 board aware, we would recommend that you give it
7 favorable consideration.

8 CHAIRMAN: Any objections in the office?

9 MR. NOFFSINGER: No, sir.

10 CHAIRMAN: Is anyone wishing to speak in
11 opposition of this?

12 (NO RESPONSE)

13 CHAIRMAN: Does the applicant have
14 anything you would like to add on to it?

15 APPLICANT REP: Not unless you have any
16 questions.

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

19 (NO RESPONSE)

20 CHAIRMAN: Staff?

21 MR. NOFFSINGER: No, sir.

22 CHAIRMAN: Entertain a motion to dispose
23 of the item.

24 MS. MASON: Mr. Chairman, I move for
25 approval with the condition that the access points on

1 Frederica Street shall be closed and no direct access
2 to Frederica Street shall be permitted. And using the
3 findings that it will not adversely affect the public
4 health, safety or welfare with the closing of the
5 access points on Frederica Street; it will not alter
6 the essential character of the general vicinity; it
7 will not cause a hazard or a nuisance to the public;
8 it will not allow an unreasonable circumvention of the
9 requirements of the zoning regulation.

10 CHAIRMAN: Is there a second to the
11 motion?

12 MR. DYSINGER: Second.

13 CHAIRMAN: Is there any other comments or
14 questions from the board?

15 (NO RESPONSE)

16 CHAIRMAN: Staff have anything else?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: All in favor raise your right
19 hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries.

22 Next item, please.

23 -----

24 ADMINISTRATIVE APPEAL

25 ITEM 5

1 1920 Freeman Avenue, in an R-1A zone
2 Consider request for an Administrative Review to
3 continue the non-conforming use of a two-family
4 dwelling in a single-family residential zone
5 Reference: Zoning Ordinance, Article 4, Section 4.33
6 Applicant: Brandy Mathews

7 MR. NOFFSINGER: Mr. Chairman, the
8 Planning Staff has reviewed this appeal. The property
9 is located in a single-family residential zone.

10 The uses in the area are predominantly
11 single-family. The current use of the subject
12 property has been a two-family dwelling. You have the
13 one family on the main level of the home and then you
14 have a unit on the upper level of the home.

15 Now, the applicant will appear before you
16 tonight to enter into evidence that this unit has been
17 used as a two-family unit prior to the adoption of the
18 zoning ordinance in April of 1977. They will also
19 appear before you tonight to submit evidence that the
20 property has not been used for single-family
21 residential since that date and that there have been
22 no gaps in the use of this property as a two-family
23 dwelling unit for a period exceeding 18 months. With
24 that I'll turn it over to you, Mr. Chairman.

25 CHAIRMAN: Is the Staff going to have
anything to add to it at this time?

MR. NOFFSINGER: The only thing Staff will

1 enter into the record will be the handwritten notes by
2 Mr. Jim Mischel regarding information he found in the
3 city directory, which is a publication that gives
4 address, occupancy, various information on particular
5 addresses within our community. He will submit
6 evidence into the record that shows that the property
7 was used as a duplex prior to the adoption of the
8 ordinance in April of 1977 and that it has continued
9 to be used as a two-family unit since that date;
10 however, the information he provides will show that
11 there are possible gaps in the use of the property.
12 That information is only as good as the source that's
13 putting the information in the city directory. We
14 can't always rely on it. We would rely on this
15 information to show that the use predates the adoption
16 of the zoning ordinance; however, I don't think that
17 that information should be used to show or deny that
18 there were gaps in the use of the property for a
19 period exceeding 18 months.

20 MR. ELLIOTT: State your name for the
21 record, please.

22 MR. MISCHEL: Jim Mischel.

23 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

24 MR. MISCHEL: Mr. Noffsinger has said it
25 pretty well.

1 In our research in the office what we had
2 to rely on was the city directory. I did find in 1977
3 it was used as a duplex. The main address was 1920
4 Freeman Avenue and the apartment was addressed at 1920
5 1/2. It did show that the apartment was used quite a
6 bit for a few years, but there was gaps. As Mr.
7 Noffsinger said, that doesn't mean that people didn't
8 live there. The city directory just didn't have it
9 recorded. We can tell you that in 1977 when the
10 ordinance was adopted it was a two-family living unit.

11 CHAIRMAN: Thank you. Any questions from
12 the board or the staff?

13 MR. MISCHEL: Back then it would be
14 considered legally a non-conforming use. As long as
15 you don't have an 18 month gap, then it would still be
16 legally a non-conforming or grandfather use. I think
17 they have some information to show that.

18 I'd like to go on and introduce this into
19 the record. That's all I have to say unless you have
20 any questions.

21 (NO RESPONSE)

22 CHAIRMAN: Anyone on the board have any
23 questions of the staff at this time?

24 (NO RESPONSE)

25 CHAIRMAN: The applicant ready to present

1 what you have? Please come forward and be sworn in.

2 MR. ELLIOTT: State your name, please.

3 MS. MATHEWS: Brandy Mathews.

4 (MS. BRANDY MATHEWS SWORN BY ATTORNEY.)

5 MS. MATHEWS: Do you all have copies of
6 all the information that I submitted or do I need to -

7 -

8 CHAIRMAN: Just present it and then you
9 will want to submit it to the recorder so she will
10 have record of it.

11 MS. MATHEWS: The first thing I want
12 address is in the city directory with those gaps that
13 Mr. Mischel mentioned I have a letter from a Ms. Pam
14 Janoski who lived in the home next-door in the years
15 of 1985 and 1986. She attests that the apartment, the
16 upstairs apartment was rented by a Mr. Wesley Bartlett
17 who is listed in the city directory for years '82 and
18 '83, but he's not listed in '84, '85 or '86, but she
19 has attested to the fact that he was living in that
20 unit at the time.

21 Another extensive period was from '89 to,
22 well, to date currently. It shows no one listed. It
23 shows David Leeper in the years of '97, '98, '99. I
24 have a letter, well, it's actually from Mr. Leeper's
25 father who did some work on the home that states that

1 David Leeper lived in that apartment for 13 years. I
2 believe it's 13 or 15 years.

3 In the year 2002, I began renting the
4 downstairs apartment prior to purchasing the home in
5 October of '02 and Matt Galloway began renting the
6 upstairs apartment in October of '02. His name is not
7 listed in that city directory either.

8 Just to go through all the evidence that I
9 have. I first have a handwritten letter from Mr. Bob
10 Gillett who lived in the home in 1946 when the
11 apartment upstairs was - - when the home was converted
12 to an upstairs apartment and they began renting it at
13 that time.

14 I have an Affidavit from Ms. Kerry Morgan
15 who was the niece as well as the executor of the
16 estate of the home of Ms. Chapman who owned the home
17 prior to me. She owned the home from I believe the
18 1950's, the early '50s I believe until she passed away
19 in 2002.

20 I have a letter from Mr. Bob Galloway who
21 lives a 1923 Freeman Avenue which is the home directly
22 across the street. They purchased and began living in
23 that home in 1977. He attest to the fact that my home
24 was a duplex type home from the time that he moved
25 into that home in '77 until the time that Ms. Chapman

1 passed away in 2002. He was the property owner from I
2 believe June of 2002 until February 2003 when I
3 purchased the home.

4 The home was vacant from I guess the time
5 of Ms. Chapman's death until I moved in in October of
6 2002. So that would have been less than a six month
7 period of time.

8 I also have a letter from a Mr. and Mrs.
9 Charles Jackson who owned the home from 1957 to 1963.
10 They attest to that fact that they rented the upstairs
11 apartment during their entire time that they owned the
12 home.

13 Again, the letter from Mr. David Leeper,
14 Sr. who did the heating and cooling on the home in
15 1979. He separated the heating and cooling system at
16 that time and said that it had an upstairs apartment
17 at that time.

18 I think the last piece of evidence that I
19 have is a picture of the home that I got from the PVA
20 office which shows the outside stairwell. It's a
21 picture from 1955.

22 I have a contract to sell my home to a
23 gentleman who wants to continue to rent it and that's
24 why we are before you today.

25 CHAIRMAN: Any questions from the board

1 members of the applicant?

2 (NO RESPONSE)

3 CHAIRMAN: Staff have anything else you
4 would like to add at this time?

5 MR. NOFFSINGER: I'd just like to say that
6 your application is very well prepared. You can tell
7 you went out of your way and you presented a good case
8 that will help this board make a decision. If
9 everyone would do that, it would make this board's job
10 a lot easier.

11 CHAIRMAN: We appreciate you doing that.

12 MR. ELLIOTT: Make sure you enter the
13 exhibits.

14 CHAIRMAN: State your name for the record,
15 sir.

16 MR. GALLOWAY: My name is Bob Galloway.

17 (MR. BOB GALLOWAY SWORN BY ATTORNEY.)

18 MR. GALLOWAY: I bought the house at 1923
19 which is right across the street. At that time my
20 upstairs was rented. It's like a duplex. Two
21 teachers at Senior High built that house. They were
22 single ladies that built that house. Across the
23 street is where Ms. Chapman lived. She lived by
24 herself. She rented upstairs the whole time I was
25 there, since 1977.

1 I just want to say that my house was a
2 duplex also, but I changed it up and made it into a
3 single unit after awhile, but I did rent it for some
4 time after that. That's all I have to say.

5 CHAIRMAN: Any question from the board of
6 this gentleman?

7 (NO RESPONSE)

8 CHAIRMAN: Any other comments from Staff?

9 MR. NOFFSINGER: No, sir.

10 CHAIRMAN: Waiting for a motion on how you
11 want to state the administrative appeal.

12 MR. DYSINGER: Mr. Chairman, given the
13 findings that there seems to be sufficient evidence to
14 support the appellant's claim that the non-conforming
15 use predates the implementation of the zoning
16 ordinance and that that use was not interrupted for a
17 period greater than 18 months. I move that we find in
18 favor of the appellant and allow the continued
19 non-conforming use.

20 CHAIRMAN: Is there a second?

21 MR. MILLER: Second.

22 CHAIRMAN: Any other questions or comments
23 from the board?

24 (NO RESPONSE)

25 CHAIRMAN: Staff have anything else?

1 MR. NOFFSINGER: No, sir.

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

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion carries.

6 One final motion.

7 MS. MASON: Move to adjourn.

8 MR. MILLER: Second.

9 CHAIRMAN: All in favor raise your right
10 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, Notary Public in and for
4 the State of Kentucky at Large, do hereby certify that
5 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 18 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

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

18

19

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

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22 COMMISSION EXPIRES:
DECEMBER 19, 2006

23

24 COUNTY OF RESIDENCE:
DAVIESS COUNTY, KENTUCKY

25