OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

SEPTEMBER 1, 2005

* * * * * * * * * * * * * * * * * * *

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
MR. NOFFSINGER: No, sir.

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

MS. DIXON: Move to approve.

MR. DYSINGER: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

First item.

-------------------------------

CONDITIONAL USE PERMIT

ITEM 2

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

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

Ohio Valley Reporting
(270) 683-7383
as well as letter of approval from the Corps of Engineers and by local engineer Mr. Jim Riney stating that the placement of the riprap will not result in negative impact to Ohio flood plain. With that requirement of issuance of a Conditional Use Permit for this type of activity has been met and it's ready for consideration.

CHAIRMAN: No opposition filed in the office?

MR. NOFFSINGER: No, sir.

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

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: Staff have anything to add to it?

MR. NOFFSINGER: No, sir.

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

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

CHAIRMAN: Is there a second?
MR. DYSINGER: Second.

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

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

ITEM 3

2767 Veach Road, in a B-4 zone
Consider a request to amend a Conditional Use Permit in order to provide a Childcare and Learning Center to serve 96 children per shift (2 proposed) on weekdays and weekends.
Reference: Zoning Ordinance, Article 8, Section 8.2 B3
Applicant: Antoinette Lea Brown, Lee Kassinger

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

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

Therefore, I have no reason to believe that the
request would not be compatible with the neighborhood.

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

(NO RESPONSE)

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

(NO RESPONSE)

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

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

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

CHAIRMAN: Any other questions or comments from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add to it?

MR. NOFFSINGER: No, sir.

CHAIRMAN: Entertain a motion to dispose of the item.

MR. DYSINGER: Move to approve the Conditional Use Permit given the findings that there
is no opposition from the neighborhood and the use is compatible.

CHAIRMAN: Is there a second?

MS. DIXON: Second.

CHAIRMAN: Any other question or comments from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything else to add?

MR. NOFFSINGER: No, sir.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

-----------------------------

VARIANCE

ITEM 4

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

Reference: Zoning Ordinance, Article 13, Section 13.622

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

MR. NOFFSINGER: Mr. Chairman, this

Ohio Valley Reporting
(270) 683-7383
The application was reviewed by the Planning Staff. It's found to be in order. This is a site that is currently developed.

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

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

The request comes to reduce the buffer area from 60 feet down to 48 feet. Now, right now the property is paved I believe all the way out to the sidewalk on Frederica Street. This would certainly, if the variance is approved, it would be an enhancement to the area by adding landscaping as well as other green space areas onto the property and would provide more of a buffer than what we have existing.

There have been other variances issued within the area. Both in close proximity and along other areas in the blocks along Frederica Street. Although Frederica Street is included in the transportation plan, I believe to be widened at some point in time,
that is not likely to take place in the foreseeable future.

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

CHAIRMAN: Any objections in the office?
MR. NOFFSINGER: No, sir.
CHAIRMAN: Is anyone wishing to speak in opposition of this?
(NO RESPONSE)
CHAIRMAN: Does the applicant have anything you would like to add on to it?
APPLICANT REP: Not unless you have any questions.
CHAIRMAN: Any board members have any questions of the applicant?
(NO RESPONSE)
CHAIRMAN: Staff?
MR. NOFFSINGER: No, sir.
CHAIRMAN: Entertain a motion to dispose of the item.
MS. MASON: Mr. Chairman, I move for approval with the condition that the access points on Ohio Valley Reporting (270) 683-7383
Frederica Street shall be closed and no direct access to Frederica Street shall be permitted. And using the findings that it will not adversely affect the public health, safety or welfare with the closing of the access points on Frederica Street; it will not alter the essential character of the general vicinity; it will not cause a hazard or a nuisance to the public; it will not allow an unreasonable circumvention of the requirements of the zoning regulation.

CHAIRMAN: Is there a second to the motion?

MR. DYSINGER: Second.

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

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

MR. NOFFSINGER: No, sir.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

Next item, please.

-----------------------------------------

ADMINISTRATIVE APPEAL

ITEM 5

Ohio Valley Reporting
(270) 683-7383
1920 Freeman Avenue, in an R-1A zone
Consider request for an Administrative Review to continue the non-conforming use of a two-family dwelling in a single-family residential zone
Reference: Zoning Ordinance, Article 4, Section 4.33
Applicant: Brandy Mathews

MR. NOFFSINGER: Mr. Chairman, the Planning Staff has reviewed this appeal. The property is located in a single-family residential zone. The uses in the area are predominantly single-family. The current use of the subject property has been a two-family dwelling. You have the one family on the main level of the home and then you have a unit on the upper level of the home.

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

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

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

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

MR. MISCHEL: Jim Mischel.

(MR. JIM MISCHEL SWORN BY ATTORNEY.)

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

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

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

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

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: The applicant ready to present
what you have? Please come forward and be sworn in.

MR. ELLIOTT: State your name, please.

MS. MATHEWS: Brandy Mathews.

(MS. BRANDY MATHEWS SWORN BY ATTORNEY.)

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

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

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

Another extensive period was from '89 to,
well, to date currently. It shows no one listed. It
shows David Leeper in the years of '97, '98, '99. I
have a letter, well, it's actually from Mr. Leeper's
father who did some work on the home that states that
David Leeper lived in that apartment for 13 years. I believe it's 13 or 15 years.

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

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

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

I have a letter from Mr. Bob Galloway who lives a 1923 Freeman Avenue which is the home directly across the street. They purchased and began living in that home in 1977. He attest to the fact that my home was a duplex type home from the time that he moved into that home in '77 until the time that Ms. Chapman
passed away in 2002. He was the property owner from I believe June of 2002 until February 2003 when I purchased the home.

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

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

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

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

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

CHAIRMAN: Any questions from the board
members of the applicant?

(NO RESPONSE)

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

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

CHAIRMAN: We appreciate you doing that.

MR. ELLIOTT: Make sure you enter the exhibits.

CHAIRMAN: State your name for the record, sir.

MR. GALLOWAY: My name is Bob Galloway.

(MR. BOB GALLOWAY SWORN BY ATTORNEY.)

MR. GALLOWAY: I bought the house at 1923 which is right across the street. At that time my upstairs was rented. It's like a duplex. Two teachers at Senior High built that house. They were single ladies that built that house. Across the street is where Ms. Chapman lived. She lived by herself. She rented upstairs the whole time I was there, since 1977.
I just want to say that my house was a duplex also, but I changed it up and made it into a single unit after awhile, but I did rent it for some time after that. That's all I have to say.

CHAIRMAN: Any question from the board of this gentleman?

(NO RESPONSE)

CHAIRMAN: Any other comments from Staff?

MR. NOFFSINGER: No, sir.

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

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

CHAIRMAN: Is there a second?

MR. MILLER: Second.

CHAIRMAN: Any other questions or comments from the board?

(NO RESPONSE)

CHAIRMAN: Staff have anything else?

Ohio Valley Reporting
(270) 683-7383
MR. NOFFSINGER: No, sir.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries.

One final motion.

MS. MASON: Move to adjourn.

MR. MILLER: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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

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

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

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