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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

JULY 1, 2010

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, July 1, 2010, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: C.A. Pantle, Chairman
- Ward Pedley, Vice Chairman
- Gary Noffsinger, Director
- Madison Silvert, Attorney
- Rev. Larry Hostetter
- Marty Warren
- Clay Taylor

* * * * *

CHAIRMAN: Let me call the Owensboro

Metropolitan Board of Adjustment to order. I want to welcome you to the meeting this evening. We start our program each meeting with a prayer and the pledge of allegiance. We invite you to please join with us.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: Again, I want to welcome you to the meeting. If you have any comments you want to make on any item, please come to one of the podiums. State your name so we'll have a record and a recording if any problems or something develops down the road.

The first item at this time are the minutes of the June 3rd meeting. We don't have any problems I don't think in the office.

1 MR. NOFFSINGER: Correct.

2 CHAIRMAN: Entertain a motion to dispose of
3 the item.

4 MR. PEDLEY: Motion for approval.

5 MR. WARREN: Second.

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

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries.

10 First thing I want to ask the board for
11 permission to change Number 5 item on the agenda to
12 the last number. Move Number 6 up because I have to
13 ask to be relieved and I'll ask vice chairman,
14 Mr. Pedley, to take the chair at that time, please.

15 MR. WARREN: Motion to move Item Number 5 on
16 the agenda to Number 6 and Number 6 to Number 5.

17 CHAIRMAN: Is there a second?

18 MR. PEDLEY: Second.

19 CHAIRMAN: A motion has been made and a
20 second. Any other comments?

21 (NO RESPONSE)

22 CHAIRMAN: All in favor raise your right hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries.

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CONDITIONAL USE PERMIT

ITEM 2

1903 Daniels Lane, zoned A-U

Consider request for a Conditional Use Permit in order to operate a landscaping business.

Reference: Zoning Ordinance, Article 8, Section 8.2H8/33a

Applicant: Norman King; Franklin J. Dockery & Susan J. Dockery

MR. SILVERT: State your name, please.

MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is currently zoned A-U Urban Agriculture. OMPC records indicate there have been no Zoning Map Amendments for the subject property.

There is a paved driveway and a paved parking pad existing on the property that is shown on the site plan.

LAND USES IN SURROUNDING AREA

The properties to the north, south and east are all zoned A-U Urban Agriculture. The property across Daniels Lane is zoned R-1A Single Family Residential.

ZONING ORDINANCE REQUIREMENTS

1. There is no minimum amount of parking established based on the zoning ordinance, the paved

1 drive and parking pad serve as adequate space for
2 parking.

3 2. Vehicular use area screening is not
4 required because the parking pad is located so far off
5 the road.

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

8 CHAIRMAN: Been any comments in the office?

9 MR. NOFFSINGER: No, sir.

10 CHAIRMAN: Board have any questions of the
11 applicant at this time?

12 (NO RESPONSE)

13 CHAIRMAN: Is the applicant here?

14 (NO RESPONSE)

15 CHAIRMAN: Board members have any other
16 questions or the Staff have any comments?

17 (NO RESPONSE)

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

20 MR. PEDLEY: Mr. Chairman, I make a motion for
21 approval based on findings that it is a compatible use
22 with the surrounding neighborhood. We've heard no
23 opposition on the item and it will not have an adverse
24 influence on the future.

25 CHAIRMAN: Is there a second?

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1 MR. TAYLOR: Second.

2 CHAIRMAN: A motion has been made and a
3 second. Any other questions or comments from the
4 board?

5 (NO RESPONSE)

6 CHAIRMAN: Staff have anything else to add to
7 it?

8 MR. NOFFSINGER: No, sir.

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

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries.

13 Next item, please.

14 -----

15 VARIANCES

16 ITEM 3

17 529 Cedar Street, zoned R-4DT

18 Consider a request for a Variance in order to reduce
19 the side yard building setback line from 5 feet to 1
20 foot.

21 Reference: Zoning Ordinance, Article 8,
22 Section 8.5.11(d)

23 Applicant: Roman Catholic Bishop of Owensboro, a/k/a
24 Owensboro Catholic Diocese

25

MS. EVANS: The Applicant is requesting to
reduce the side yard building setback line along the
south property line in order to construct a new house
and garage for their retiring bishop.

1 This is an older area of town developed for
2 the zoning ordinance with substandard lots and a
3 modern size house could not properly fit on the lot.

4 According to the Kentucky Building Code, a
5 distance of 10 feet is required between structures.
6 If a structure is built in the parking lot next to
7 this proposed residence, it will have to be 9 feet
8 from the shared property line in order to maintain the
9 10 foot distance between structures required by the
10 building code.

11 FINDINGS OF FACT: Granting this Variance;

12 1. Will not adversely affect the public
13 health, safety or welfare because the property to the
14 south is a parking lot and emergency services could
15 access the property through that parking lot;

16 2. It will not alter the essential character
17 of the general vicinity because most lots on this
18 street are approximately the same size with structures
19 built on or near the property lines;

20 3. It will not cause a hazard or a nuisance
21 to the public because the adjoining property to the
22 south is owned by the applicant and is a parking lot;

23 4. It will not allow an unreasonable
24 circumvention of the requirements of the zoning
25 regulations because it appears most other houses on

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1 this street also encroach into the side yard setbacks.

2 The Staff recommends approval and we would
3 like to enter the Staff Report into the record as
4 Exhibit B.

5 CHAIRMAN: Any comments in the office?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: Is the applicant here this evening?

8 MR. KAMUF: Yes, sir, Mr. Chairman. I'm here
9 to explain anything. I don't think there's any
10 objection to it, but I'm ready to go forward if you
11 want me to or however you want me to proceed.

12 CHAIRMAN: Board members have any questions of
13 the applicant at this time?

14 (NO RESPONSE)

15 CHAIRMAN: Staff have any other comments?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: Do you have anything that we need
18 to really know real quick?

19 MR. KAMUF: Not real quick. I think I'll
20 leave it at that.

21 CHAIRMAN: Honestly, do you have anything you
22 need to add that we need to know at this time?

23 MR. KAMUF: It's a new home for the old bishop
24 and we've got both the bishops on call. They're down
25 praying.

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1 CHAIRMAN: We need the prayers.

2 With that does the board members have any
3 questions?

4 (NO RESPONSE)

5 CHAIRMAN: Staff have any comments?

6 MR. NOFFSINGER: No, sir.

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

9 MR. TAYLOR: Mr. Chairman, move to grant the
10 variance based on the findings that the neighborhood
11 was developed prior to the zoning ordinance. There
12 are many other occasions and cases in the neighborhood
13 that are similar to this and the improvement will
14 actually be an improvement to the neighborhood rather
15 than hinder.

16 CHAIRMAN: Is there a second?

17 MR. WARREN: Second.

18 CHAIRMAN: A motion has been made and a
19 second. Any other comments or questions from the
20 board?

21 (NO RESPONSE)

22 CHAIRMAN: Staff have anything else?

23 MR. NOFFSINGER: No, sir.

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

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1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries.

3 Next item, please.

4 (FATHER LARRY HOSTETTER JOINS MEETING AT THIS
5 TIME.)

6 ITEM 4

7 9924 Delaware Ferry Lane, zoned A-U

8 Consider a request for a Variance in order to reduce
9 the street yard building setback line from 60 feet
10 from the centerline of the road to 45 feet from the
11 centerline of the road.

12 Reference: Zoning Ordinance, Article 8,
13 Section 8.5.2(c)

14 Applicant: Patricia Simpson

15

16 MS. EVANS: The subject property is a corner
17 lot at the intersection of Delaware Ferry Lane and
18 Highway 258. The variance is for the side yard of the
19 structure since the site plans shows the house will
20 face Highway 258.

21 The property is partially located in the
22 Special Flood Hazard Area with a base flood elevation
23 of 386 feet. According to the applicant's engineer,
24 the elevation of the property severely declines from
25 the north to the south. The applicant is requesting
this variance in order to build the structure on the
area of the property that it was located at or above
the base flood elevation.

The applicant has already applied with the

1 FEMA for a letter of Map Amendment to remove the
2 portion of the property that is at or above the base
3 flood elevation from the Special Flood Hazard Area.

4 If FEMA approves the LOMA, the proposed
5 location of the house would no longer be in the
6 Special Flood Hazard Area.

7 The county engineer has recommended the area
8 behind the proposed location of the house not be
9 filled because the impact of filling the area would
10 not be warranted when the structure could be moved
11 forward.

12 We have some e-mail correspondence with the
13 county engineer in the file folder if anybody would
14 like to see that.

15 FINDINGS OF FACT: Granting this Variance;

16 1. Will not adversely affect the public
17 health, safety or welfare because the proposed
18 structure will still be located off the street and not
19 in the Special Flood Hazard Area;

20 2. It will not alter the essential character
21 of the general vicinity because they are replacing an
22 existing residence with a new one;

23 3. It will not cause a hazard or a nuisance
24 to the public because it will prevent the structure
25 from being built in the Special Flood Hazard Area;

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1 4. It will not allow an unreasonable
2 circumvention of the requirements of the zoning
3 regulations because the topography of the land
4 prevents the structure from being located in a
5 different area on the subject property.

6 Staff recommends approval. We would like to
7 enter the Staff Report into the record as Exhibit C.

8 CHAIRMAN: Any comments filed in the office?

9 MR. NOFFSINGER: No, sir.

10 CHAIRMAN: Is anyone in the audience
11 representing the applicant?

12 APPLICANT REP: Yes.

13 CHAIRMAN: Do you have any comments?

14 (NO RESPONSE)

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

17 (NO RESPONSE)

18 CHAIRMAN: Staff have any other comments?

19 MR. NOFFSINGER: No, sir.

20 CHAIRMAN: Anyone objecting to the item?

21 (NO RESPONSE)

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

24 MR. PEDLEY: Mr. Chairman, I make a motion for
25 approval based on the Staff Report and the Findings of

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1 Facts 1 through 4.

2 CHAIRMAN: Is there a second?

3 MR. WARREN: Second.

4 CHAIRMAN: A motion has been made and a
5 second. Any other questions or comments from the
6 board?

7 (NO RESPONSE)

8 CHAIRMAN: Staff have any other comments?

9 MR. NOFFSINGER: No, sir.

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

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Next item, please.

15 ITEM 5

16 1708 Todd Court, zoned R-3MF

Consider a request for a Variance in order to reduce
17 the street rear yard building setback line from 25
feet from the property line to 13.6 feet from the
18 property line

Reference: Zoning Ordinance, Article 8,

19 Section 8.5.10(c)

Applicant: CTC Investments, LLC

20

21 MS. EVANS: The Applicant is requesting to
22 reduce the street yard building setback line along
23 Southtown Boulevard from 25 feet from the property
24 line to 13.6 feet from the property line. Recently
25 the City of Owensboro acquired right-of-way along

1 Southtown Boulevard for the roadway widening project
2 of Southtown Boulevard. This acquisition caused the
3 existing building to encroach into the newly applied
4 setback of 25 feet.

5 The Applicant proposes to remove only a
6 portion of the structure leaving the remainder of the
7 building encroaching 11.4 feet into the new setback.
8 The structures at 1700 and 1704 Todd Court also
9 encroaches into the new setback line along Southtown
10 Boulevard as a result of the acquisition of the
11 right-of-way by the City of Owensboro.

12 At 1700 Todd Court 285 square feet of the
13 structure encroach into the new setback whereas on the
14 subject property, 228 square feet of the structure
15 will encroach into the setback if this variance is
16 approved.

17 The structure at 1700 Todd Court encroaches
18 13.3 feet into the setback line, 1.9 feet further into
19 the setback than the proposed encroachment of the
20 structure on the subject property.

21 FINDINGS OF FACT: Granting this Variance;

22 1. Will not adversely affect the public
23 health, safety or welfare because the properties at
24 1700 and 1704 Todd Court also encroach into the
25 setback line;

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1 2. It will not alter the essential character
2 of the general vicinity because other structures on
3 the same side of Todd Court also encroach into the
4 setback line. At 1700 Todd Court, 285 square feet of
5 the structure encroach into the setback whereas on the
6 subject property, 228 square feet of the structure
7 will encroach into the setback if this variance is
8 approved;

9 3. It will not cause a hazard or a nuisance
10 to the public because the structure at 1700 Todd Court
11 encroaches 1.9 feet further into the setback than the
12 proposed encroachment of the structure on the subject
13 property;

14 4. It will not allow an unreasonable
15 circumvention of the requirements of the zoning
16 regulations because the structures at 1700 and 1704
17 Todd Court encroach into the setback as well.

18 Staff recommends approval. We would like to
19 enter the Staff Report into the record as Exhibit D.

20 CHAIRMAN: Is there any comments in the
21 office?

22 MR. NOFFSINGER: No, sir.

23 CHAIRMAN: Is the applicant here?

24 MR. REYNOLDS: The applicant representative.

25 CHAIRMAN: Do you have any comments?

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1 Come forward at this time. State your name,
2 please.

3 MR. REYNOLDS: David Reynolds representing the
4 applicant, CTC Investments.

5 I'm here to answer any questions that you may
6 have, but I think the exhibits, the charts that we
7 showed, made pictures, and would ask if there is any
8 questions we'll try to answer them, but otherwise we'd
9 ask you to consider the stuff we've presented for
10 recommendation and grant the request.

11 CHAIRMAN: Thank you.

12 Does any board members have any questions of
13 the applicant?

14 (NO RESPONSE)

15 CHAIRMAN: Staff have anything else?

16 MR. NOFFSINGER: No, sir.

17 CHAIRMAN: Entertain a motion to dispose of
18 the item.

19 MR. WARREN: Motion to grant this variance
20 based on the findings that have been stated in the
21 Staff Report. It will not adversely affect the public
22 health, safety; it will not alter the essential
23 character of the general vicinity; it will not cause a
24 hazard or a nuisance to the public; and it also will
25 not allow an unreasonable circumvention of the

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1 requirements of the zoning regulation.

2 MR. TAYLOR: Second.

3 CHAIRMAN: A motion has been made and a
4 second. Is there any other comments from the board at
5 this time?

6 (NO RESPONSE)

7 CHAIRMAN: Staff have any comments?

8 MR. NOFFSINGER: No, sir.

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

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries.

13 This last item I'm involved, have interest in
14 it and I will turn the chair over to Mr. Pedley and he
15 will handle that at this time.

16 ITEM 6

17 Emma's River Ridge Subdivision, zoned R-3MF (Proposed
18 301 Pantle PT, lots not established by final plat.)

19 Consider a request for a Variance in order to
20 eliminate the required landscaping screening along the
21 east property line from the top of the river bank
22 forward 75 feet.

23 Reference: Zoning Ordinance, Article 17,
24 Section 17.331/3D

25 Applicant: Emma's River Ridge, LLC

MS. EVANS: The applicant is requesting the
elimination of the screening element on the east side
of the property line from the top of the river bank
forward 75 feet to maintain the existing river view of

1 the neighboring property owner to the east. The
2 neighboring property owner supports and endorses this
3 variance request.

4 The property to the east is zoned B-4 General
5 Business but is currently not developed. We would
6 recommend that if the property to the east ever
7 develops commercially, as it is zoned, that the
8 required screening be installed at that time.

9 FINDINGS: Granting this Variance;

10 1. Will not adversely affect the public
11 health, safety or welfare, it will positively affect
12 it providing a scenic view of the river for the
13 adjoining property to the east;

14 2. It will not alter the essential character
15 of the general vicinity because there is no screening
16 in place currently;

17 3. It will not cause a hazard or a nuisance
18 to the public; in fact, if the screening is required
19 from the river bank forward 75 feet, it will cause a
20 nuisance blocking the river view the neighboring
21 property has always had;

22 4. It will not allow an unreasonable
23 circumvention of the requirements of the zoning
24 regulations because this requirement is designed to
25 provide a screen between commercially and

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1 residentially zoned property. The adjoining property
2 to the east is not developed commercially at this time
3 and the adjoining property owners are requesting the
4 screening not be installed.

5 Staff recommends approval with one condition:

6 1. If the adjoining property to the east
7 develops commercially the required screening shall be
8 installed.

9 We would like to enter the Staff Report into
10 the record as Exhibit E.

11 MR. PEDLEY: Has there been any correspondence
12 in the planning office?

13 MR. NOFFSINGER: No, sir.

14 MR. PEDLEY: Anyone here representing the
15 applicant?

16 APPLICANT REP: Yes.

17 CHAIRMAN: Do you have any comments?

18 MR. RINEY: Yes.

19 MR. SILVERT: State your name, please.

20 MR. RINEY: Jim Riney.

21 (JIM RINEY SWORN BY ATTORNEY.)

22 MR. RINEY: Counsel, I recognize I'm not
23 counsel so I will be dealing with facts, statements.

24 MR. SILVERT: Thank you.

25 MR. RINEY: This represents what this project

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1 is all about. It's the river view. From here to
2 there it's kind of limited, but let me pass this
3 around just so you can see the impact.

4 Around the Riney household I'm not known as a
5 photographer, but I got lucky. We got these photos
6 together that I took.

7 The project was conceived and moved forward
8 because of the location and the river vista. The
9 screening, the variance request for the screening was
10 made in order to keep that vista that's been there all
11 these years. Both for the subject property and for
12 the adjoining property. The Julians live next-door
13 and expressed their interest to the owners that they
14 want to keep that open. The 75 feet from the top of
15 the river bank, I've measured that and that comes back
16 to an area where there's an existing building. So
17 that's within reason of what has been at the site.

18 What I just heard was that the Staff has
19 recommended that if this is ever commercial that the
20 screening be installed. That's going to take away, at
21 least what the owners have told me, that's going to
22 take away from the value of their land. We would ask
23 that the variance be approved based on the submittal
24 that there not be additional conditions because of the
25 unique location and the character of the property

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1 along the Ohio River. There's just not that much
2 that's available.

3 I've got a plat, but I think you all have
4 those. If we look at that.

5 MR. NOFFSINGER: Excuse me. Staff is fine
6 with that. If the adjoining landowners are not here
7 to raise an issue, the Board is comfortable with it,
8 it's not an issue with us.

9 MR. RINEY: Thank you. I'll sit down.

10 MR. PEDLEY: Any board members have any
11 questions of Mr. Riney?

12 (NO RESPONSE)

13 MR. PEDLEY: Evidently we have no one here in
14 opposition.

15 Any board members have any questions on the
16 application?

17 (NO RESPONSE)

18 MR. PEDLEY: Chair is ready for a motion.

19 MR. TAYLOR: Mr. Chairman, move to grant the
20 variance based on that it does provide a scenic view
21 of the river, the adjoining property to the east as
22 well as this property owner. There's no screening in
23 place currently and the screening will generally be of
24 the benefit of the residency over the commercial
25 property so I don't feel that the screening would

1 provide benefit there. I recommend approval of the
2 variance.

3 MR. PEDLEY: We have a motion by Clay.

4 MR. WARREN: Second.

5 MR. PEDLEY: Second by Marty. Any comments or
6 questions on the motion?

7 (NO RESPONSE)

8 MR. PEDLEY: All in favor raise your right
9 hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 MR. PEDLEY: Motion carries unanimously.

12 We need one final motion.

13 MR. WARREN: Motion to adjourn.

14 MR. TAYLOR: Second.

15 MR. PEDLEY: All in favors raise your right
16 hand.

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 MR. PEDLEY: 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 21 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 27th day of July, 2010.

18

19

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

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COMMISSION EXPIRES: DECEMBER 19, 2010

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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