THE OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

MET IN REGULAR SESSION AT 5:30 P.M. ON THURSDAY, APRIL 5, 2012, AT CITY HALL, COMMISSION CHAMBERS, OWENSBORO, KENTUCKY, AND THE PROCEEDINGS WERE AS FOLLOWS:

MEMBERS PRESENT:  C.A. PANTLE, CHAIRMAN
WARD PEDLEY, VICE CHAIRMAN
RUTH ANN MASON, SECRETARY
MADISON SILVERT, ATTORNEY
BRIAN HOWARD
REV. LARRY HOSTETTER
MARTY WARREN
SEAN DYSINGER
SHANNON RAINES

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

CHAIRMAN:  LET ME CALL THE OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT TO ORDER.  I WANT TO WELCOME YOU ALL THIS EVENING.  WE START OUR PROGRAM EACH EVENING WITH A PRAYER AND THE PLEDGE TO THE FLAG. WE INVITE YOU TO JOIN WITH US.  FATHER LARRY WILL HAVE OUR PRAYER THIS EVENING.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  AGAIN, I WANT TO THANK YOU AND WELCOME YOU THIS EVENING COMING TO THIS MEETING.  IF YOU HAVE ANY COMMENTS ON ANY ITEM, PLEASE COME TO ONE OF THE PODIUMS AND STATE YOUR NAME SO WE'LL HAVE RECORD ON FILE IF THERE'S A PROBLEM OR SOMETHING DOWN THE ROAD.

OHIO VALLEY REPORTING
(270) 683-7383
WITH THAT THE FIRST ITEM THIS EVENING IS TO
CONSIDER THE MINUTES OF THE MARCH 1ST MEETING. WE
HAVEN'T HAD ANY PROBLEMS IN THE OFFICE?
MR. HOWARD: NO, SIR.
CHAIRMAN: ANYBODY HAVE ANY ADDITIONS?
(NO RESPONSE)
CHAIRMAN: IF NOT ENTERTAIN A MOTION TO
DISPOSE OF THE ITEM.
MR. DYSINGER: MOVE TO APPROVE.
MR. WARREN: 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.
NEXT ITEM, PLEASE, SIR.
-------------------------------
VARIANCE
ITEM 2
1052 PLEASURE POINTE EAST, ZONED R-1A
CONSIDER A REQUEST FOR A VARIANCE IN ORDER TO REDUCE
THE FRONT YARD BUILDING SETBACK LINE FROM 25 FEET FROM
THE PROPERTY LINE TO 14 FEET FROM THE PROPERTY LINE
AND TO REDUCE THE NORTH SIDE YARD BUILDING SETBACK
LINE FROM 10 FEET FROM THE PROPERTY LINE TO 8 FEET
FROM THE PROPERTY LINE.
REFERENCE: ZONING ORDINANCE, ARTICLE 8,
SECTION 8.5.5(C), 8.5.5(D)
APPLICANT: DENNIS L. GEER

MR. SILVERT: WOULD YOU STATE YOUR NAME,

OHIO VALLEY REPORTING
(270) 683-7383
PLEASE.

MS. EVANS: MELISSA EVANS.
(MELISSA EVANS SWORN BY ATTORNEY.)

MS. EVANS: FIRST OF ALL, I WOULD LIKE TO JUST
MAKE NOTICE THAT ALL APPROVAL OF ITEMS HERE TONIGHT
DOES NOT CONSTITUTE A BUILDING PERMIT AND DOES NOT
ALLOW THE APPLICANT OR OWNER TO ALTER, MODIFY OR
OCCUPY ANY OF THE BUILDINGS ON THE SUBJECT PROPERTY.
IT'S STILL THE APPLICANT'S RESPONSIBILITY TO OBTAIN
ALL THE NECESSARY PERMITS, INSPECTIONS AND CERTIFICATE
OF OCCUPANCY. ALL THOSE THINGS CAN BE DONE THROUGH
OUR OFFICE BY CONTACTING JIM MISCHEL.

SPECIAL CIRCUMSTANCES

UPON INSPECTION IT WAS DETERMINED THAT A NEW
HOME ENCROACHED INTO THE SETBACK LINES. THE APPLICANT
WAS REPLACING AN OLD SINGLE-WIDE MANUFACTURED HOME
WITH A DOUBLE-WIDE MANUFACTURED HOME; THE OTHER
BUILDINGS ON THE PROPERTY WERE ALREADY EXISTING.

TOPOGRAPHY IN THE AREA LIMITS WHERE STRUCTURES
CAN BE PLACED. MOST PROPERTIES SLOPE DRAMATICALLY
DOWNGRADE FROM THE STREET, RESULTING IN A MAJORITY OF
THE STRUCTURE'S ENCROACHING IN THE FRONT BUILDING
SETBACK LINE. THE RESIDENCE AT 1073 PLEASURE POINT
EAST APPEARS TO ENCROACH INTO THE FRONT YARD BUILDING
SETBACK LINE, WHILE ACCESSORY STRUCTURES AT 1030,
1045, 1061, 1070 AND 1073 PLEASURE POINTE EAST APPEAR
TO ENCROACH INTO THE FRONT AND SIDE YARD BUILDING
SETBACK LINES.

GRANTING THIS VARIANCE WILL NOT ALTER THE
ESSENTIAL CHARACTER OF THE GENERAL VICINITY BECAUSE
THERE ARE MANY OTHER ENCROACHMENTS IN THE AREA. IT
WILL NOT CAUSE A HAZARD OR A NUISANCE TO THE PUBLIC
BECAUSE THIS IS A NARROW ROAD IN A RESIDENTIAL AREA
WHERE TRAFFIC TRAVELS AT A SLOW SPEED. IT WILL NOT
ALLOW AN UNREASONABLE CIRCUMVENTION OF THE
REQUIREMENTS OF THE ZONING REGULATIONS BECAUSE THE
TOPOGRAPHY OF THE LAND AND THE EXISTING PROPERTY
BOUNDARIES LIMIT WHERE STRUCTURES COULD BE PLACED ON
THE PROPERTY.

STAFF RECOMMENDS APPROVAL WITH THE FOLLOWING
CONDITIONS: OBTAIN NECESSARY BUILDING, ELECTRICAL AND
MECHANICAL PERMITS, INSPECTIONS AND CERTIFICATES OF
OCCUPANCY AND COMPLIANCE.

WE WOULD LIKE TO ENTER THE STAFF REPORT INTO
THE RECORD AS EXHIBIT A.

CHAIRMAN: THANK YOU.

HAVE WE HAD ANY COMMENTS OR QUESTIONS IN THE
OFFICE?

MR. HOWARD: NO, SIR.

CHAIRMAN: IS ANYONE THIS EVENING WISH TO

OHIO VALLEY REPORTING
(270) 683-7383
SPEAK IN OPPOSITION OF THIS ITEM?

(NO RESPONSE)

CHAIRMAN: IS THE APPLICANT HERE AND DO YOU HAVE ANY COMMENTS YOU WANT TO PRESENT AT THIS TIME?

APPLICANT REP: NO.

CHAIRMAN: HEARING NONE DOES ANYONE --

MR. SILVERT: COULD YOU STATE YOUR NAME, PLEASE.

MR. SIPES: GENE SIPES.

(GENE SIPES SWORN BY ATTORNEY.)

MR. SIPES: MY BROTHER AND I OWN THE PROPERTY NEXT-DOOR TO THE GENTLEMAN THERE. THEY'RE ASKING US FOR PERMISSION TO DO THIS?

MR. HOWARD: BASICALLY YOU RECEIVED NOTIFICATION BECAUSE YOU'RE AN ADJOINING PROPERTY OWNER. YOU ARE NOT REQUIRED TO GIVE APPROVAL OR DISAPPROVAL, BUT IT GIVES YOU THE OPPORTUNITY TO COME TO THE PUBLIC HEARING AND VOICE ANY TYPE OF OPINION THAT YOU MIGHT HAVE WHETHER IN FAVOR OR AGAINST. SO THAT'S WHY YOU WERE NOTIFIED. IF YOU HAVE ANY COMMENTS, NOW WOULD BE THE TIME.

MR. SIPES: SO WE HAVE NO CONTROL OVER IT BASICALLY?

MR. HOWARD: NO. YOU CERTAINLY HAVE CONTROL, BUT YOU'RE NOT REQUIRED TO EITHER APPROVE IT OR SAY
THAT YOU DON'T WANT IT TO BE THERE. YOU WERE NOTIFIED AS AN ADJOINING PROPERTY OWNER. THIS IS A PUBLIC HEARING. THIS IS THE TIME THAT YOU CAN ENTER ANY TESTIMONY. THE BOARD WILL TAKE INTO CONSIDERATION WHATEVER COMMENTS YOU HAVE BEFORE THEY MAKE A DECISION TO APPROVE OR DENY THE APPLICATION.

MR. SIPES: SAY I DECIDED I WAS AGAINST THIS, YOU ALL WOULD TAKE THAT INTO CONSIDERATION?

MR. HOWARD: YES.

MR. SIPES: THE ONLY REASON I WOULD BASICALLY BE AGAINST IT, I DON'T KNOW IF THIS WOULD MAKE A DIFFERENCE OR NOT. A TREE FROM HIS PROPERTY FELL OVER AND CRUSHED OUR FENCE, OUR PROPERTY LINE FENCE. ALL WE WOULD LIKE IS FOR HIM TO REMOVE THAT TREE AND REPLACE OUR PROPERTY LINE FENCE AND THEN WE WOULD BE FINE WITH WHATEVER. I DON'T KNOW IF THAT MATTERS OR NOT.

MR. HOWARD: THIS IS A VARIANCE REQUEST ON LOCATION OF HIS RESIDENTIAL STRUCTURE. ANY TYPE OF A TREE FALLING ON A FENCE IS REALLY, THAT'S MORE OF A PRIVATE CIVIL ISSUE THAT SHOULD BE RESOLVED BETWEEN NEIGHBORS. WHAT THIS BOARD WOULD BE CHARGED WITH IS EVALUATING WHETHER OR NOT THE REQUESTING VARIANCE IS IN COMPLIANCE OR IS IN CHARACTER WITH WHAT IS TYPICALLY FOUND IN THE NEIGHBORHOOD. THEY WOULDN'T
REALLY BE ABLE TO GIVE YOU ANY TYPE RELIEF OR AID IN
DETERMINING WHAT TYPE OF ACTION SHOULD BE TAKEN IF A
TREE WAS TAKEN DOWN OR FELL ON A FENCE.

MR. SIPES: SO YOU ALL REALLY --
MR. HOWARD: NOT ON THIS ISSUE.
MR. SIPES: THANK YOU.
CHAIRMAN: YOU HAVE ANY OTHER COMMENTS?
MR. SIPES: NO, I SUPPOSE NOT. THAT PRETTY
MUCH COVERS IT.
CHAIRMAN: THANK YOU.
ANY BOARD MEMBERS HAVE ANY COMMENTS OR
QUESTIONS OF THE APPLICANT?
(NO RESPONSE)
CHAIRMAN: STAFF HAVE ANY OTHER COMMENTS?
MR. HOWARD: NO, SIR.
CHAIRMAN: ENTERTAIN A MOTION TO DISPOSE OF
THE ITEM.
MR. DYSINGER: MR. CHAIRMAN, GIVEN THE
FINDINGS OF THE SPECIFIC NATURE OF THIS PROPERTY WOULD
MAKE STRICT A APPLICATION OF ZONING ORDINANCE A BURDEN
ON THE PROPERTY OWNER, AND FURTHER GRANTING THE
VARIANCE WOULD NOT ADVERSELY AFFECT THE PUBLIC HEALTH,
SAFETY OR WELFARE, I MOVE THAT WE APPROVE THE VARIANCE
WITH THE FOLLOWING CONDITIONS: 1) SUBMISSION AND
APPROVAL OF AMENDED FINAL DEVELOPMENT PLAN AND 2)
OBTAIN NECESSARY BUILDING, ELECTRICAL AND MECHANICAL
PERMITS, INSPECTIONS AND CERTIFICATES OF OCCUPANCY AND
COMPLIANCE.

MR. WARREN: SECOND.

CHAIRMAN: A MOTION HAS BEEN MADE AND A
SECOND. ANY OTHER COMMENTS OR QUESTIONS BY THE BOARD?

MR. HOWARD: I DO HAVE A QUESTION, IF I COULD.
YOUR CONDITION ON THE DEVELOPMENT PLAN, THAT
WOULD NOT BE SOMETHING THAT IS TYPICALLY FOUND ON A
RESIDENTIAL APPLICATION.

MR. DYSINGER: I WILL WITHDRAW THAT CONDITION.

MR. HOWARD: I JUST WANT YOU TO TAKE THAT
UNDER CONSIDERATION. WE WOULDN'T REQUIRE A
DEVELOPMENT PLAN ON A RESIDENTIAL BUILDING PERMIT
TYPICALLY.

MR. DYSINGER: MR. CHAIRMAN, I WILL AMEND MY
MOTION TO REMOVE THE FIRST CONDITION, ADMISSION AND
APPROVAL OF FINAL DEVELOPMENT PLAN; IS THAT CORRECT?

MR. HOWARD: YES.

MR. WARREN: I WILL SECOND IT.

CHAIRMAN: THE SECOND APPROVES IT WITH THE
WITHDRAW. ANY OTHER COMMENTS OR QUESTIONS FROM THE
BOARD?

(NO RESPONSE)

CHAIRMAN: STAFF HAVE ANYTHING ELSE?
MR. HOWARD: NO, SIR.

CHAIRMAN: HEARING NONE ALL IN FAVOR RAISE YOUR RIGHT HAND.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: MOTION CARRIES.

NEXT ITEM, PLEASE, SIR.

ITEM 3

1007, 1017, 1025 TAMARACK ROAD, ZONED B-4, P-1
CONSIDER A REQUEST FOR A VARIANCE IN ORDER TO REDUCE
THE ROADWAY BUFFER FROM 40 FEET FROM THE CENTERLINE OF
THE ROAD TO 30 FEET FROM THE CENTERLINE OF THE ROAD.
REFERENCE: ZONING ORDINANCE, ARTICLE 13, SECTION
13.6221
APPLICANT: ROBERT H. STEELE

SPECIAL CIRCUMSTANCES

THE APPLICANT IS WISHING TO REDEVELOP THE
SUBJECT PROPERTY. CURRENTLY THERE ARE TWO BUILDINGS
ON THE SUBJECT PROPERTY AND THE APPLICANT INTENDS TO
REMOVE THE EXISTING BUILDINGS AND CONSTRUCT A SINGLE,
9,900 SQUARE FOOT STRIP MALL.

ROADWAY BUFFERS ARE GENERALLY ESTABLISHED TO
ALLOW FOR POSSIBLE WIDENING OF ROADWAYS IN THE FUTURE.
ACCORDING TO THE CITY ENGINEER'S OFFICE, THERE ARE NO
PLANS TO WIDEN THIS PORTION OF TAMARACK ROAD. THE
PROPERTIES LOCATED AT 933, 1035 AND 1115 TAMARACK ROAD
ALL APPEAR TO ENCROACH INTO THE REQUIRED 40 FOOT
ROADWAY BUFFER AS WELL.

FOUR PREVIOUS DEVELOPMENT PLANS FOR THE

OHIO VALLEY REPORTING
(270) 683-7383
GRANTING THIS VARIANCE WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH, SAFETY OR WELFARE BECAUSE THE ROADWAY BUFFER WAS PREVIOUSLY APPROVED AT 30 FEET ON THE SUBJECT PROPERTY AND DOES NOT CAUSE ANY PROBLEMS CURRENTLY. IT WILL NOT ALTER THE ESSENTIAL CHARACTER OF THE GENERAL VICINITY BECAUSE THERE ARE MANY OTHER ENCROACHMENTS INTO THE ROADWAY BUFFER IN THE AREA. IT WILL NOT CAUSE A HAZARD OR A NUISANCE TO THE PUBLIC BECAUSE, ACCORDING TO THE CITY ENGINEER'S OFFICE, THERE ARE NO PLANS TO WIDEN TAMARACK ROAD IN THIS AREA. IT WILL NOT ALLOW AN UNREASONABLE CIRCUMVENTION OF THE REQUIREMENTS OF THE ZONING REGULATIONS BECAUSE THERE HAVE BEEN FOUR PREVIOUS DEVELOPMENT PLAN APPROVED SHOWING A 30 FOOT ROADWAY BUFFER.

STAFF RECOMMENDS APPROVAL WITH THE FOLLOWING CONDITIONS: 1) SUBMISSION AND APPROVAL OF AN AMENDED FINAL DEVELOPMENT PLAN. 2) OBTAIN NECESSARY BUILDING, ELECTRICAL AND MECHANICAL PERMITS, INSPECTIONS AND CERTIFICATES OF OCCUPANCY AND COMPLIANCE.

WE WOULD LIKE TO ENTER THE STAFF REPORT INTO THE RECORD AS EXHIBIT B.

CHAIRMAN: THANK YOU.

OHIO VALLEY REPORTING
(270) 683-7383
HAVE WE HAD ANY COMMENTS OR QUESTIONS IN THE OFFICE?

MR. HOWARD: I BELIEVE WE HAD ONE PHONE CALL BASICALLY JUST GATHERING INFORMATION, BUT THAT’S IT. NO OPPOSITION WERE EXpressed, NO.

CHAIRMAN: ANYONE WISHING TO SPEAK IN OPPOSITION OF THIS ITEM?

(NO RESPONSE)

CHAIRMAN: APPLICANT HAVE ANYTHING YOU WOULD LIKE TO SAY AND COME FORWARD?

APPLICANT REP: NO.

CHAIRMAN: BOARD HAVE ANY QUESTIONS OF THE APPLICANT?

(NO RESPONSE)

CHAIRMAN: STAFF HAVE ANY OTHER COMMENTS?

MR. HOWARD: NO, SIR.

CHAIRMAN: ENTERTAIN A MOTION TO DISPOSE OF THE ITEM.

FATHER HOSTETTER: MR. CHAIRMAN, MOVE TO GRANT THE VARIANCE. FINDINGS OF FACT: IT WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH, SAFETY OR WELFARE OF THE PUBLIC; IT WILL NOT ALTER THE ESSENTIAL CHARACTER OF THE GENERAL VICINITY; IT WILL NOT CAUSE A HAZARD OR A NUISANCE TO THE PUBLIC; AND IT WILL NOT ALLOW AN UNREASONABLE CIRCUMVENTION OF THE OHIO VALLEY REPORTING (270) 683-7383
REQUIREMENTS OF THE ZONING REGULATIONS BECAUSE THERE
HAVE BEEN FOUR PREVIOUS DEVELOPMENT PLAN APPROVED.
WITH THE CONDITIONS 1 AND 2: SUBMISSION AND APPROVAL
OF AN AMENDED FINAL DEVELOPMENT PLAN. OBTAINING
NECESSARY BUILDING, ELECTRICAL AND MECHANICAL PERMITS,
INSPECTIONS AND CERTIFICATES OF OCCUPANCY AND
COMPLIANCE.

MR. DYSINGER: SECOND.

CHAIRMAN: A MOTION HAS BEEN MADE AND A
SECOND. ANY OTHER COMMENTS OR QUESTIONS FROM THE
BOARD?

(NO RESPONSE)

CHAIRMAN: STAFF HAVE ANYTHING ELSE?
MR. HOWARD: NO, SIR.
CHAIRMAN: HEARING NONE ALL IN FAVOR RAISE
YOUR RIGHT HAND.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: MOTION CARRIES.
NEXT ITEM, PLEASE.
MR. DYSINGER: MOVE TO ADJOURN.
MS. MASON: 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 )

I, LYNETTE KOLLER FUCHS, 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 13 TYPEWRITTEN PAGES; AND THAT NO SIGNATURE WAS REQUESTED TO THE FOREGOING TRANSCRIPT.

WITNESS MY HAND AND NOTARY SEAL ON THIS THE 29TH DAY OF APRIL, 2012.

LYNETTE KOLLER FUCHS
NOTARY ID 433397
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
OWENSBORO, KENTUCKY 42303

COMMISSION EXPIRES: DECEMBER 16, 2014
COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

OHIO VALLEY REPORTING
(270) 683-7383