OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

FEBRUARY 6, 2014

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, February 6, 2014, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT:  Ward Pedley, Chairman  
Judy Dixon, Vice Chairman  
Ruth Ann Mason, Secretary  
Gary Noffsinger, Director  
Tera Knight, Attorney  
Jerry Yeiser  
Sean Dysinger  
Fred Reeves

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CHAIRMAN: Call the Metropolitan Board of Adjustment February 6, 2014 meeting to order.

We will begin our meeting with a prayer and pledge of allegiance to the flag. If you would stand, please.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: The first item tonight will be a presentation to the Ottie Pantle family.

Mr. Noffsinger will do the presentation.

(PRESENTATION TO OTTIE PANTLE FAMILY.)

CHAIRMAN: We will now be electing the chairman to replace Ottie.
The next item will be the election of officers due to the vacancy of the chair. I turn it over to counsel for that.

MS. KNIGHT: Thank you, Mr. Chairman.

Any time we have a vacancy of an officer, the bylaws require the vacancy to be filled by regular election procedures. So we will go through the same process we just went through last month.

We elect officers in the order with which they're listed in the bylaw. The nominations and elections will be first for chairman, then vice chair and then secretary/treasurer.

At this time are there any comment or questions from the board?

(NO RESPONSE)

MS. KNIGHT: If not, I will open the floor for nomination of chair.

MR. REEVES: I'd like to nominate Ward Pedley for chairman, please.

MS. KNIGHT: Mr. Pedley, do you accept that nomination?

MR. PEDLEY: I do accept.

MS. KNIGHT: Are there any other nominations?

(NO RESPONSE)
CHAIRMAN: If not I'm ready for motion to close nomination.

MR. DYSINGER: Move to close nomination.

MS. KNIGHT: Is there a second?

MS. DIXON: Second.

MS. KNIGHT: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MS. KNIGHT: We will now take a vote. We traditionally do that by show of hands.

All in favor of electing Ward Pedley to serve as chair please raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MS. KNIGHT: Congratulations, Mr. Pedley.

Move on to vice chair. Nomination for vice chair. I'll open the floor for nomination of vice chair.

MS. MASON: I nominate Judy Dixon.

CHAIRMAN: Second.

MS. KNIGHT: Ms. Dixon, do you accept that nomination?

MS. DIXON: Yes.

MR. DYSINGER: Move to close nomination.

MR. REEVES: Second.

MS. KNIGHT: All in favor raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MS. KNIGHT: Nominations are closed.

Now we will vote for vice chair. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

MS. KNIGHT: Ms. Dixon is elected unanimously.

Mr. Chairman, I will turn it back over to you.

Thank you.

CHAIRMAN: Next item on the agenda will be to consider the minutes of the January 2, 2014 meeting. I believe everyone received a copy in the packet.

Are there any additions or corrections?

(NO RESPONSE)

MS. DIXON: Move to approve.

MS. MASON: Second.

CHAIRMAN: Any comments or questions on the motion?

MR. NOFFSINGER: I would just like to add that you should have received a set of minutes that was prepared by Melissa. That's what you will be receiving in the future. That's what you should read and you should be voting on. The transcript that Lynnette prepares will continue to be prepared word for word. She will certify that. We will include
that online at our website. So if you'd like to read
the full transcript word for word, you can do that.
What you will be acting on in the future are the
contents of the minutes.

CHAIRMAN: Thank you.

We have a motion on the floor. All in favor
of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

Next item, please.

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ITEM 4

5965 US Highway 60 E, zoned I-2
Consider a request for a Conditional Use Permit in
order to construct a 2,000,000 gallon storage tank,
truck loading building and an access road for the
purpose of storing hazardous materials.
Reference: Zoning Ordinance, Article 8,
Section 8.2G4/27
Applicant: Yellow Banks River Terminal, LLC;
Earl Clark

MS. KNIGHT: Would you state your name for
record, please.

MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

ZONING HISTORY

The subject property is zoned I-2, Heavy
Industrial. OMPC records contain no conditional use
permits or variances for the subject property.

The applicant is proposing to store bulk urea on the property.

LAND USES IN SURROUNDING AREA

The property to the north is zoned I-2 Heavy Industrial. The property to the south is zoned A-U Urban Agriculture. The properties to the east are zoned I-2 Heavy Industrial and B-4 General Business. The subject property is bordered by the Ohio River to the west.

ZONING ORDINANCE REQUIREMENTS

The hazardous material shall be located 300 feet from any residential zone and 100 feet from any other zone except for I-1 and A-R zones. Based on the information submitted, it appears that these requirements will be met on site.

SUGGESTED CONDITIONS

Obtain necessary building, electrical and mechanical permits, inspections and certificates of occupancy and compliance.

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

CHAIRMAN: Is anyone here representing the applicant?

APPLICANT REP: Yes.
MS. KNIGHT: State your name, please.

MR. GARDNER: Kelly Gardner.

(KELLY GARDNER SWORN BY ATTORNEY.)

CHAIRMAN: Evidently, we don't have anyone here in opposition. If any of the board member have any questions of you.

MR. REEVES: I have one, please.

Kelly, would you mind to talk to us about the provisions for safety and so forth in case there were to be some leakage here or something. How that's taken care of and so forth. It is in fair proximity to the river.

MR. GARDNER: Yes. As part of the permitting process of the tank itself, which is done at the state level, it's the piping from the river to the tank is double wall. I don't know exact regs, but double wall type. Then the tank has in and of itself a secondary containment as well.

MR. REEVES: Thank you very much.

CHAIRMAN: Any other board members have any comments or questions on this item?

(NO RESPONSE)

CHAIRMAN: Thank you, sir.

If not the chair is ready for a motion.

MR. REEVES: Mr. Chairman, I move for approval
based on the finding of fact that there are regulations and specification in place must be approved by the state to insure the safety of this project. It is not inconsistent with other facilities in river ports across the community. It will not interfere with the health and safety of anyone in the community. With the one condition they do get all the necessary electrical and other approvals.

MR. DYSINGER: Second.

CHAIRMAN: We have a motion for by Mr. Reeves for approval and a second by Mr. Dysinger. Any comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: If not, all in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

Next item, please.

MR. DYSINGER: Mr. Chairman, as an adjacent property owner, I find it necessary to recuse myself from this item.

CHAIRMAN: So noted.

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VARIANCE

Ohio Valley Reporting
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ITEM 5

830 Bolivar Street, zoned I-1
Consider a request for a Variance in order to reduce
the front yard building setback line along Bolivar
Street from 25 feet from the property line to 19.1
feet from the property line, to reduce the side street
yard building setback line along East Ninth Street
from 75 feet from the street centerline to 42 feet
from the street centerline and to eliminate the 40
foot roadway buffer along East Ninth Street.
Reference: Zoning Ordinance, Article 8 and 13,
Section 8.5.3(c) and 13.6221
Applicant: Ryan McDaniel; Greater Yelvington
Investments, LLC

MS. EVANS: The subject property is an
industrially zoned property at the intersection of
East Ninth Street and Bolivar Street.

In the vicinity of the subject property, Ninth
Street is classified as a minor arterial roadway with
a prescribed building setback line of 75 feet from the
street centerline and a 40 foot roadway buffer.

The building setback along Bolivar Street is
25 feet from the property line. The structure to the
north of the subject property at 824 Bolivar Street is
13.2 feet from the property line according to the
applicant. The other structures on the west side of
Bolivar Street in the 800 block appear to be less than
25 feet from the property line as well, according to
the aerial photography on GIS. The dimension for the
variance requested is an average of the prescribed
building setback and the current building setback to

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the property to the north.

The subject property is 40 feet by 127.46 feet. The right-of-way combined with the width of the property is 72 feet, 3 feet less than the prescribed building setback; virtually making the subject property non-buildable lot. A building currently sits on the subject property that is approximately 1 foot from the property line. According to the applicant this building is proposed to be torn down.

The city engineer's office has reviewed this application and supports the variance request to reduce the building setback lines along Bolivar Street and East Ninth Street and to eliminate the roadway buffer along East 9th Street.

Granting the variance to reduce the front yard building setback line along Bolivar Street will not adversely affect the public health, safety or welfare because other properties on this side of Bolivar Street appear to encroach into the front building setback with no adverse effect on the public; it will not alter the essential character of the general vicinity because essentially all other properties in the 800 block of the west side of Bolivar Street encroach into the front yard building setback as well; it will not cause a hazard or a nuisance to the public.
because the house to the north of the subject property encroaches into the front setback further than the requested variance and causes no problems; it will not allow an unreasonable circumvention of the requirements of the zoning regulations based on the recommendations by the City Engineer's office and the other structures in the area.

Granting the variance to reduce the side yard building setback line along East Ninth Street will not adversely affect the public safety or welfare because other structures in the area already encroach into the building setback line and do not adversely affect the public; it will not alter the essential character of the general vicinity because several other structures along East Ninth Street encroach into the building setback line; it will not cause a hazard or a nuisance to the public because other structures in the area already encroach into the setback and do not negatively impact the public; it will not allow an unreasonable circumvention of the requirements of the zoning regulations because if relief from the prescribed setback is not granted, the subject property is a non-buildable lot.

Granting the variance to eliminate the roadway buffer along East Ninth Street will not adversely
affect the public health, safety or welfare because roadway improvements were completed in 1999 on this area of East Ninth Street and the 32 feet of right-of-way remaining provides sufficient room for future improvements if needed; it will not alter the essential character of the general vicinity because it appears other structures in the area encroach into the roadway buffer; it will not cause a hazard or a nuisance to the public because there is currently 32 feet of right-of-way providing sufficient room along Ninth Street; it will not allow an unreasonable circumvention of the requirements of the zoning regulations because the City Engineer's office supports the variance request in this location.

Staff recommends approval of all three variance requests.

We would like to enter the Staff Report into the record as Exhibit B.

CHAIRMAN: Evidently, we have no one here representing the applicant and no one here in opposition.

Counsel, we have three different variances in a row. Do we need to do each of them separately?

MS. KNIGHT: Yes. I'd take a separate vote on each one.
CHAIRMAN: The first one would be the front building setback along Bolivar Street. That would be our first.

Any board members have any comments or questions on that?

(NO RESPONSE)

CHAIRMAN: If not the chair is ready for a motion.

MS. MASON: Mr. Chairman, I make a motion for approval based on the Staff's findings that it will not adversely affect the public health, safety or welfare; 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 requirements of the zoning regulations.

CHAIRMAN: We have a motion for approval by Ms. Mason. Do I hear a second?

MR. YEISER: Second.

CHAIRMAN: Second by Mr. Yeiser. Comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT)
DISQUALIFICATION OF SEAN DYSINGER - RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

Next one will be East Ninth Street.

Evidently we have no comments or questions from the audience.

Board members have any comments or questions?

(NO RESPONSE)

CHAIRMAN: If not the chair is ready for a motion.

MR. NOFFSINGER: If someone does make a motion, I would just ask that if you want to adopt the Staff's Findings of Fact that you read the entire findings, please.

MR. REEVES: I make a motion for approval based on the Staff's Findings of Fact that this will not adversely affect the public health, safety or welfare; it will not alter the essential character of the general vicinity; it will not cause a hazard or nuisance to the public; and it will not allow an unreasonable circumvention of the requirements of the zoning ordinance.

CHAIRMAN: We have a motion for approval by Mr. Reeves. Do I hear a second?

MS. MASON: Second.

CHAIRMAN: We have a second by Ms. Mason.
1 Comments or questions on the motion?
2 (NO RESPONSE)
3 CHAIRMAN: All in favor of the motion raise your right hand.
4 (ALL BOARD MEMBERS PRESENT - WITH THE DISQUALIFICATION OF SEAN DYSINGER - RESPONDED AYE.)
5 CHAIRMAN: Motion carries unanimous.
6 MS. KNIGHT: The adoption of the findings of fact as listed on the Staff Report, incorporate those into the motion will help.
7 MS. MASON: Should we make an amendment on that?
8 MR. NOFFSINGER: You're not going to be able to do that. There's no opposition to this and no one is challenging it. If someone were to challenge it, we would be concerned that you need to elaborate more than just "will not, will not." You need to give examples of why it will not. That's why the Staff Report gives you those examples that you may incorporate into the Staff Report or into your findings.
9 CHAIRMAN: Actually if you have no opposition you can read the Staff's findings, but you would state why it will not adversely affect the public health, safety or welfare. You need to make the findings of
why.

In this case it's okay to just merely read what the Staff's findings were. If you need additional findings, you can state that. If you have opposition here and you had the applicant here, you might go into something different.

Counsel, you recommend that we don't just say "will not." You want the because in there.

MS. KNIGHT: Ideally you would go on with the because and reason. At a minimum, like I said, if you adopted the Staff's Findings 1 through 4 as enumerated on the Staff Report which has been incorporated here that would be sufficient as well.

CHAIRMAN: Especially when we don't have opposition or anything.

MS. KNIGHT: It's even more important to do so when we do have opposition that you do have findings of fact.

MS. MASON: It's better to read them?

MS. KNIGHT: Yes.

CHAIRMAN: Are we okay with the motion and approval?

MS. KNIGHT: It's been done and carried unanimously. We will move on to the third.

CHAIRMAN: We will move to the next one, 40
foot road buffer.

Any board members have any comments or
questions on that?

(NO RESPONSE)

MR. REEVES: Is this on Bolivar Street?

MS. MASON: Along Ninth Street.

MR. NOFFSINGER: Buffer along East Ninth
Street. This is the Variance to eliminate the roadway
buffer along East Ninth Street.

CHAIRMAN: If there no questions or comments,
chair is ready for a motion.

MS. MASON: Mr. Chairman, I make a motion for
approval to eliminate the roadway buffer along East
Ninth Street. My findings are it will not adversely
affect the public health, safety or welfare because
roadway improvements were completed in 1999 on this
area of East Ninth Street and the 32 feet of
right-of-way remaining provides sufficient room for
future improvements if needed.

It will not alter the essential character of
the general vicinity because it appears other
structures in the area encroach into the roadway
buffer.

It will not cause a hazard or nuisance to the
public because there is currently 32 feet of
right-of-way providing sufficient room along East Ninth Street.

It will not allow an unreasonable circumvention of the requirements of the zoning regulation because the city engineer's office supports the variance request in this location.

CHAIRMAN: We have a motion for approval by Ms. Mason. Do I hear a second?

MR. YEISER: Second.

CHAIRMAN: We have a second by Mr. Yeiser.

Comments or questions on the motion?

(NO RESPONSE)

CHAIRMAN: All in favor of the motion raise your right hand.

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

CHAIRMAN: Motion carries unanimous.

We need one final motion.

MS. MASON: Motion to adjourn.

CHAIRMAN: We have a motion to adjourn by Ms. Mason.

MR. REEVES: Second.

CHAIRMAN: Second by Mr. Reeves. All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: We are adjourned.

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STATE OF KENTUCKY )
)SS: REPORTER'S CERTIFICATE
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 19 typewritten pages; and that no signature
was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the
28th day of February, 2014.

____________________________
LYNETTE KOLLER FUCHS
NOTARY ID 433397
OHIO VALLEY REPORTING SERVICES
2200 E. PARRISH AVE., SUITE 106-E
OWENSBORO, KENTUCKY 42303

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

Ohio Valley Reporting
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