OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

AUGUST 7, 2014

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, August 7, 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
                   Terra Knight, Attorney
                   Brian Howard
                   Jerry Yeiser
                   Sean Dysinger
                   Lewis Jean
                   Fred Reeves

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

CHAIRMAN:  Call the Owensboro Metropolitan Board of Adjustment August 7, 2014 meeting to order. We will begin our meeting with a prayer and pledge of allegiance to the flag. Ms. Mason will lead us. Will you stand, please.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  I would like to welcome everyone. Anyone wishing to speak on any item you may do so. We welcome your comments and questions. We ask that you step to one of the podiums and state your name and be sworn in. Please, if you will, speak into the microphone.
With that the first item on the agenda is to consider the minutes of the June 5, 2014 meeting. Boards members, you have a copy of the minutes in your packet. Are there any additions or corrections?

(NO RESPONSE)

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

MS. DIXON: Move to approve.

MS. MASON: Second.

CHAIRMAN: We have a motion and a second. All in favor of the motion raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

Next item, please.

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

CONDITIONAL USE PERMITS

ITEM 2

3021 Harbor Road, zoned I-2
Consider a request for a Conditional Use Permit in order to operate a facility for the storage, packaging and distribution of agricultural chemicals and fertilizers, a hazardous use as determined by the Kentucky Building Code.

Reference: Zoning Ordinance, Article 8, Section 8.2G4/27

Applicant: Helena Chemical Company, Beartooth, LLC

MS. KNIGHT: State your name for the record.

MS. EVANS: Melissa Evans.
ZONING HISTORY

The subject property is zoned I-2, Heavy Industrial. OMPC records indicate there have been no other conditional use permits or variances for the subject property.

According to the applicant, the proposed activities include the distribution of agricultural chemical and fertilizer, selling of packaged chemical and fertilizer, as well as repackaging of bulk chemical product. The repackaging process includes transferring from a bulk chemical tanker to a bulk storage tank and repackaging into approximately 12 bulk storage tanks, no less than 110 gallons each.

LAND USES IN SURROUNDING AREA

All surrounding properties are zoned I-2 Heavy Industrial.

ZONING ORDINANCE REQUIREMENTS

The hazardous materials 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

1. Obtain necessary permits for hazardous
uses through Kentucky State Department of Housing, Buildings and Construction.

2. Obtain necessary building, electrical and mechanical permits, inspections and certificates of occupancy and compliance from the OMPC.

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

CHAIRMAN: Anyone here representing the applicant?

MR. KAMUF: Yes, sir, Mr. Chairman. Charles Kamuf.

MS. KNIGHT: Mr. Kamuf, you're sworn as an attorney.

MR. KAMUF: Thank you.

I represent Helena Chemical. On the property down there, there is 57,000 square foot building. Helena will use the building for storage of agricultural chemicals. The property, as Melissa said, is zoned heavy-industrial and it's rated for manufacturing. The issue that creates there is since the building on the property is the change of use from manufacturing to the storage of agricultural chemicals, we are required to get a conditional use.

Applicant for conditional use is to allow Helena, like Melissa said, to relocate, when they
relocate their operation from down on Ebach Street.

I know Mr. Dysinger was on the board the last time we were here. Probably you too, Judy.

In 2005 on Ebach Street, which is down where the old Medley Distillery property is, we started our operation here in Owensboro, Helena did. There is a lease on the property now to Helena. We are going to allow the distillery, there's a new distillery in town that purchased, it's Charles Medley or whoever it is. They're getting ready to open up down there. So we decided to take our operation down on Harbor Road, which is near the Riverport area. Right in front of, it was the old speck building, I think, Fred, when you were down there. We started out it was leased to Faith Tool and Die and then it was leased to Beartooth. Now we've got the building. Hopefully, if we get the conditional use.

We were required to get a conditional use at that time. I'll show you photographs of what it looks like. It's pretty well identical to what we have now, but the area on Ebach Street was more condensed with residential property than what we have. If you look at the aerial map Melissa talked about, there is very little residential homes or this type near the property.
Once the conditional use is approved, the property will be used for agricultural chemicals and fertilizer and selling of package chemicals. There will also be the selling and repackaging of bulk chemical product. Any repackaging will be contained. In addition to the conditional use, we will need a state permit just like we received in 2005 down on Ebach Street.

Make this point. We will store over 500 code items and only 7 of these items will be reported to the state as hazardous product. Since 7 of these items must be reported, we then are required to get a state permit.

Since the building is a change of use, the state needs a design professional to set out the use of each space and make the upgrades required for the building. That will include this: Melissa mentioned mechanical. We've got mechanical, heating, air condition plan, structural plan, sprinkler system. There is a sprinkler system on the property. We have hired Ted Lolly, a structural engineer with Lolly & Associates, to assist us in gathering the material for the state permit. We've applied for the state permit. Our fee alone to get started on the state permit was $7,000. We are required to get more information.
They state it will take 30 to 40 more days. We can't give you a definite time. We do not have the state permit at the present time.

We have employed the services of Ted Lolly at the approximate cost of $10,000. The city and state fire marshals have approved this site. I think in your plan, we have copies, there is a site plan which I have filed. Do you have that? I'll be glad to show that to you. We have copies. We filed a site plan. Does anybody have questions about the site plan that we filed?

CHAIRMAN: Any board members have any questions of Mr. Kamuf while we have him up, and then I'll see if the audience has any questions? Board members, do you have any questions?

(NO RESPONSE)

MR. KAMUF: Just a couple of other points. There will be no change of the outside of the building. All activities will be inside the building. There will be a curb inside the building to prevent the leakage of bulk chemicals. There is a sprinkler system inside the building. The hours of operation will be from 6:30 to 6:30.

I have a list of photographs that will explain what Melissa talked about as far as there is an aerial
photograph and some other ones.

These aerial photographs that I show you. The first one is an aerial. Exhibit Number 1 is an aerial photograph showing the improvements of the property. There's a star marked there showing where the Harbor Road warehouse road is. As you can see, it's far away from any residential property.

The next photograph, Exhibit 2, shows you where our property is at the present location where we have a lease with I think it's Charles Medley or some company that he owns. As you can see, there's a star showing where the property is. If you see to the west of the property, there is residential property, but we've never had any complaints from the neighbors. That shows you. It will be relocation of that business. There will be very little change to what we're going to do as shown on Exhibit Number 2.

Exhibit Number 3 shows an aerial view of the Harbor warehouse, and you can see all around it. To the left or west of the property is a salvage yard. I think it's Dahl & Groezinger. To the west you'll see coal mining. On the east side of the property is the Riverport. Of course, we had to notify them. As far as I know, there's no objection from any of the neighbors.
Exhibit Number 4 is inside the warehouse at the Harbor Road at the present time. You can compare it to the next one, which is Exhibit Number 5 which shows the existing inside of the Ebach Street warehouse. In other words, the packaging and all of the repackaging will be pretty well the same as we had down on Ebach as you can see.

Then I just want to show a couple of photographs which show the outside of the building. This is the west side of the Harbor Road warehouse. As you can see, it's pretty nice. It's a fairly new building. Then on north side of the Harbor Road warehouse, and this is the property closer to the river.

Then the south side of the Harbor warehouse, Exhibit Number 8, shows the Ira Wood, and that's one of the present owners. Then the east side of the Harbor Road warehouse shows you the entrance and the parking lot. So it's a pretty nice building. We think that once we move out of the lease that we have now and that the distillery takes over the property on Ebach Street, we get this, it will be new jobs and a win/win for everybody.

Exhibit Number 10 also shows the west side.

We make our comparison as to what the lease property
that we have now on Ebach Street as compared to the --
this is Exhibit Number 11.

Then we also have Exhibit Number 12 which is
the north corner of the Ebach Street warehouse and the
east side.

In other words, we think that we're making an
improvement to Owensboro. We think there will be
additional jobs hopefully down the road for both the
distilling property and also for our property there on
Harbor Road.

I have the officials with Helena. They're all
here to answer any questions. Jerry Mattingly, he has
spent hours and hours working on this state permit, as
I explained it. I understand you'll probably have to
approve it subject to the state permit. We're in the
process of doing everything we can, hiring engineers,
and we hope to get that soon. We're here to answer
any questions.

CHAIRMAN: Board members, comments or
questions of Mr. Kamuf?
(NO RESPONSE)

CHAIRMAN: Anyone in the audience have any
comments or questions on this item?
(NO RESPONSE)

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

MR. REEVES: Mr. Chairman, I make a motion to approve this conditional use permit given the following facts:

That the land is currently zoned for heavy-industrial. There are similar operations to this on Riverport property. This new warehouse they'll be using is not near any residential area, and with the conditions that they obtain the necessary state permits and OMPC permits.

CHAIRMAN: We have a motion by Mr. Reeves for approval.

MR. DYSINGER: Second.

CHAIRMAN: We have a second by Mr. Dysinger. Comments or questions on the motion?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

Next item, please.

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

VARIANCE

ITEM 3

1046, 1646 Pleasant Valley Road, zoned I-2
Consider a request for a Variance in order to
eliminate the required 6 foot solid fence around the perimeter of an outdoor storage area along the north, south and west boundaries.
Reference: Zoning Ordinance, Article 17, Section 17.311
Applicant: Marathon Pipe Line; Marathon Petroleum Company

MS. EVANS: The applicant is currently using an area behind the building as an outdoor storage area; outdoor storage areas are required to be screened. The applicant is proposing to install the required screening along the east boundary of the outdoor storage area. The applicant is requesting a Variance for the required solid screening along the north, south and west boundaries of the outdoor storage area.

The north boundary of the outdoor storage area is bound by the railroad tracks which provides screening and a buffer to adjoining property. The south is similarly zoned industrial and there is a tree line there, and then the west boundary has two OMU reservoirs.

Granting this Variance will not alter the essential character of the general vicinity because this is an industrial area where outdoor storage is currently taking place with no screening. It will not allow an unreasonable circumvention of the requirements of the zoning regulations because the
applicant will install the required screening along 
the road right-of-way screening the outdoor storage 
from the right-of-way; the other sides are screened by 
extisting elements, meeting the intent of the 
Ordinance.

Staff would recommend approval with one 
special condition. Installation of the required 6 
foot tall solid wall or fence along the east boundary 
of the outdoor storage area.

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

CHAIRMAN: Anyone here representing the 
applicant?

(NO RESPONSE)

CHAIRMAN: Board members, do you have any 
comments or questions on the application?

MR. DYSINGER: I just have one question, Mr. 
Chairman.

The mentioned, existing non-screened outdoor 
storage, is that in compliance with the current 
ordinance or is it just grandfathered in?

MS. EVANS: No, it's not in compliance. I 
believe it may be a grandfathered use. They came in 
to do a new project out there, and with that new 
project we tried to bring the property into compliance
where we can. The screening was one of those things that we were trying to bring into compliance. With the elements that are around the property the screening is not going to serve much of a purpose on those other sides because of the railroad tracks and the tree line and the OMU reservoirs back there. They are going to screen them on the right-of-way though.

MR. DYSINGER: Because of the particular nature of this property Staff is recommending approval?

MS. EVANS: Yes.

MR. DYSINGER: Just wanted to get that into the record.

CHAIRMAN: Any other questions?

(NO RESPONSE)

CHAIRMAN: Anyone from the audience would like to comment on this?

(NO RESPONSE)

CHAIRMAN: Chair is ready for a motion.

MS. MASON: Mr. Chairman, I move for approval granting with the findings of fact that it will not adversely affect the public health, safety and welfare because it's an existing ongoing use and it's separated from the public right-of-way by existing building and required solid screening will be
installed along the right-of-way; and it will not alter the essential character of the general vicinity because this is an existing use and in industrial area; and it will not cause a hazard or a nuisance to the public because this is an existing industrial use in an industrial area and the required screening will be installed along the boundary visible from the right-of-way; and it will not allow an unreasonable circumvention of the requirements of the zoning regulations because the applicant will install the required screening along the road right-of-way screening the outdoor storage from the right-of-way; the other sides are screened by existing elements, meeting the intent of the zoning ordinance. With the condition that there will be an installation of the required 6 foot tall solid wall or fence along the east boundary of the outdoor storage area.

MR. DYSINGER: Second.

CHAIRMAN: We have a motion for approval by Ms. Mason and a second by Mr. Dysinger. Comments or questions on the motion?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
CHAIRMAN: Motion carries unanimous.

Next item, please.

ITEM 4

1302 West 7th Street, zoned R-4DT
Consider a request for a Variance in order to reduce
the side street yard building setback line along
Orchard Street from 25 feet from the property line to
10 feet from the property line.
Reference: Zoning Ordinance, Article 8,
Sections 8.5.11(c)
Applicant: Habitat for Humanity

MS. EVANS: The applicant is requesting that
the east side yard setback, along Orchard Street, be
reduced from 25 feet from the property line to 10 feet
from the property line to construct a new home on the
property.

This neighborhood is in an area developed
before the establishment of the Zoning Ordinance where
it appears other principal structures also encroach
into the building setback line. Additionally, the
OMBA has granted similar variance requests to reduce
the side street yard building setback lines in August
2012 at 2402 West Ninth Street and along Hocker Street
at 2400 West Fifth Street and 2400 Cravens Avenue in
June of 2012.

Granting this variance will not alter the
essential character of the general vicinity because
there appear to be other encroachments into the
building setback lines within the area. It will not adversely affect the public health, safety or welfare because this will be a new home as part of the Habitat for Humanity project that will create affordable housing for the community and will enhance the health, safety and welfare of the public in this area. It will not allow an unreasonable circumvention of the requirements of the zoning regulations because similar variances have been approved in this area.

Staff would recommend approval with the condition that they obtain the 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 C.

CHAIRMAN: Anyone here representing the applicant?

MS. KNIGHT: State your name, please.

MR. COLEMAN: Whaylon Coleman.

(WHAYLON COLEMAN SWORN BY ATTORNEY.)

MR. COLEMAN: I'm here just to make sure that the execution of this variance doesn't affect any loss of land for the neighboring property of 1318 West Seventh.

CHAIRMAN: Board members have any questions of
the applicant?

MR. DYSINGER: Staff may want to respond.

MS. EVANS: Here is your property. Here is the alley that we discussed over the phone. This is the one where they're putting the house right now. They've divided the property. This is where they're asking for the variance. The variance is over here on Orchard Street side.

MR. COLEMAN: Okay. Great. Thank you very much.

MS. EVANS: You're welcome.

CHAIRMAN: The applicant have any further comments?

(NO RESPONSE)

CHAIRMAN: Anyone have comments or questions?

MR. REEVES: I have a question.

Mr. Reeves, are you satisfied with the response you just received, as far as encroach on your property?

MR. COLEMAN: Yes.

CHAIRMAN: Any further comments?

(NO RESPONSE)

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

MR. DYSINGER: Mr. Chairman, I move to grant
the variance request on the grounds that granting this variance will not adversely affect the public health, safety or welfare because the applicant will be constructing a new home on a vacant lot enhancing the area; and due to the nature of these lots in general. With the condition that the applicant obtain the necessary building, electric and mechanical permits, inspections and certificates of occupancy and compliance.

CHAIRMAN: We have a motion for approval by Mr. Dysinger.

MS. DIXON: Second.

CHAIRMAN: Second by Ms. Dixon. Comments or questions on the motion?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimous.

We need one final motion.

MS. MASON: Motion to adjourn.

MS. DIXON: Second.

CHAIRMAN: We have a motion by Ms. Mason and a second by Ms. Dixon. All in favor of the motion raise your right hand.
(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

(Meeting ends at 5:50 p.m.)

----------------------------------------------
STATE OF KENTUCKY )
COUNTY OF DAVIESS )

I, LYNNETTE 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 20 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 21st day of AUGUST, 2014.

LYNNETTE 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
(270) 683-7383