

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 FEBRUARY 5, 2015

3 The Owensboro Metropolitan Board of Adjustment
4 met in regular session at 5:30 p.m. on Thursday,
5 February 5, 2015, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

8 MEMBERS PRESENT: Ward Pedley, Chairman
9 Judy Dixon, Vice Chairman
10 Ruth Ann Mason, Secretary
11 Brian Howard, Director
12 Terra Knight, Attorney
13 Jerry Yeiser
14 Susan Free
15 Lewis Jean
16 Robynn Clark

17 * * * * *

18 CHAIRMAN: Call to order the Owensboro
19 Metropolitan Board of Adjustment February 5, 2015
20 meeting. We will begin our meeting with a prayer and
21 pledge of allegiance to the flag. Would you stand,
22 please.

23 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

24 CHAIRMAN: First of all, I would like to
25 welcome everyone. Anyone wishing to speak on any item
may do so. We welcome your comments. We ask that you
to come to one the podiums and state your name and be
sworn in.

Board members, if you will speak into the

1 microphones so everyone can hear.

2 With that the first item on the agenda is the
3 approval of the minutes of January 8, 2015. You all
4 have a copy in your packet. Any comments, or
5 questions, or additions, or corrections?

6 (NO RESPONSE)

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

9 MS. DIXON: Move to approve.

10 CHAIRMAN: We have a motion for approval.

11 MS. MASON: Second.

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

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: The motion carries unanimous. The
16 minutes are approved.

17 Next item, please.

18 -----

19 VARIANCE

20 ITEM 2

21 1046 Pleasant Valley Road, zoned I-2
22 Consider a request for a Variance in order for a newly
23 constructed structure to be below an elevation of one
24 foot above the level of the base flood elevation.
25 Reference: Zoning Ordinance, Article 18,
Section 18-5(b)(2)
Applicant: Marathon Pipe Line, LLC

MS. KNIGHT: State your name for the record,

1 please.

2 MS. EVANS: Melissa Evans.

3 (MELISSA EVANS SWORN BY ATTORNEY.)

4 MS. EVANS: This Staff Report for a Variance
5 is for denial. On denial recommendation on a Variance
6 Staff Report, we typically read the entire Staff
7 Report into the record.

8 CONSIDERATIONS - Refer to applicant's reasons,
9 attached

10 SPECIAL CIRCUMSTANCES

11 Is there Special Circumstances? The Staff
12 believes, no.

13 The subject property has had many projects
14 throughout the last several years. Most recently the
15 applicant received building permits to construct an
16 equipment storage building to house the fire safety
17 equipment. The equipment storage building is located
18 within the floodplain and was required to be
19 constructed at freeboard. Freeboard is defined by
20 Article 18 of the Zoning Ordinance as a "factor of
21 safety," usually expressed in feet above the base
22 flood elevation, which is applied for the purposes of
23 floodplain management. It is used to compensate for
24 the many unknown factors that could contribute to
25 flood heights greater than those calculated for the

1 base flood. Freeboard must be applied, not just to
2 the elevation of the lowest flood or flood proofing
3 level, but also to the level of protection provided to
4 all components of the structure, such as building
5 electrical and HVAC components."

6 The applicant used the base flood elevation of
7 404 feet to construct the building, the base flood
8 elevation as listed on the FEMA flood maps. The
9 elevation listed on the flood maps is not an exact
10 elevation. The exact base flood elevation comes from
11 the Kentucky Division of Water when a Stream
12 Construction Permit is issued, in this case the exact
13 base flood elevation is 404.6 feet. The equipment
14 storage building was constructed at 405 feet and
15 therefore is .06 feet below freeboard.

16 The applicant states in their findings that
17 they were unaware of the correct base flood elevation
18 until the building was already constructed. However,
19 a Cut/Fill application was approved for the subject
20 property in 2012 stating the base flood elevation of
21 404.6 feet. Furthermore, the applicant failed to
22 follow the correct procedures in the inspection
23 process for this equipment storage building by not
24 requesting a foundation inspection. If a foundation
25 inspection would have been performed, an elevation

1 certificate would have been required at that time and
2 the concrete foundation of the building would have
3 been poured and the foundation could have been raised
4 to meet the freeboard.

5 The applicant includes in their findings that
6 the equipment stored in this building will be large
7 firefighting equipment on large trucks, and if there
8 were a flood, the only parts of the equipment to get
9 wet would be the tires of the trucks. Article 18 of
10 the Zoning Ordinance states that the Board of
11 Adjustment in considering an application in regards to
12 a floodplain variance shall consider all technical
13 evaluations, all relevant factors, all standards
14 specified in Article 18 and eleven specific
15 considerations in Section 18-4(e)(2)(a-k). One
16 consideration should be is there a danger that
17 materials may be swept onto other lands to the inquiry
18 of others? The Staff believes, yes, this heavy
19 equipment could be swept onto adjoining land by flood
20 waters. Another consideration shall be the safety of
21 access to the property in times of flood for ordinary
22 and emergency vehicles. If there is a flood, will
23 emergency vehicles be able to access the firefighting
24 equipment stored in the building in the event of a
25 fire? The Staff believes this would be difficult

1 resulting in a potential hazard to the public safety.

2 B. HARDSHIP? Would strict application of the
3 regulation deprive the applicant of the reasonable use
4 of the land or create an unnecessary hardship on the
5 applicant? The Staff believes, no. The applicant
6 could've chosen to design the structure at the correct
7 base flood elevation. If the Variance is denied, the
8 applicant may raise the floor of the structure up to
9 the required base flood elevation.

10 C. APPLICANT'S ACTIONS? Are the
11 circumstances from which relief is sought a result of
12 the applicant's actions taken after adoption of the
13 zoning ordinance? Yes.

14 IF YES: WILLFUL ACTIONS? The Staff believes,
15 no, they were not willful actions.

16 FINDINGS OF FACT:

17 Granting this Variance:

18 1. Will adversely affect the public health
19 safety or welfare because the equipment stored in the
20 building could be swept away onto adjoining land in
21 the event of a flood;

22 2. Will not alter the essential character of
23 the general vicinity;

24 3. Will cause a hazard or a nuisance to the
25 public because if the firefighting equipment is under

1 water and there is a fire it will be difficult for
2 emergency personnel to access the equipment to fight
3 the fire endangering the public in the vicinity;

4 4. Will allow an unreasonable circumvention
5 of the requirements of the zoning regulations because
6 the freeboard is designed to keep buildings, equipment
7 and people out of harm's way in the event of a flood
8 and allowing this building to remain below freeboard
9 puts all the above at risk and sets a precedent for
10 future requests of the same nature.

11 Staff would recommend denial.

12 We would like to enter the Staff Report into
13 the record as Exhibit A.

14 CHAIRMAN: Is anyone here representing the
15 applicant?

16 MS. KNIGHT: State your name for the record.

17 MS. DOLL: Blandey Doll for Marathon
18 Petroleum.

19 (BLANDEY DOLL SWORN BY ATTORNEY.)

20 MS. DOLL: Thank you for summarizing what I
21 was going to summarize.

22 I guess at the end of the risk we can counter
23 that because how the equipment gets out of the
24 building are the 550 trucks we already have, the F550
25 trucks. So that's how the equipment would get out.

1 The other item is it can't float away because
2 it's in a garage with doors. So I don't think that's
3 a hazard of floating off site. We also have a
4 perimeter of fencing so it wouldn't be able to get
5 past the fencing.

6 We do also have a, it's not the floor
7 elevation, but we have a berm that meets the 405.6.
8 So that does meet the elevation. That's on three
9 sides of our building. The only areas that do not
10 meet that elevation are the 12 foot garage doors that
11 the equipment comes in and out of. We've thought
12 about after we realized that we did not read the FEMA
13 map correctly during our design or consultants, that
14 we could put ramps where garage doors are, however one
15 of the pieces of equipment, the hose trailer, already
16 has trouble grounding when it goes into the building
17 because we already have it so much higher than the
18 level around it.

19 The other items I wanted to let you know is
20 the F550 trucks, we would have to be 2.2 feet above
21 the floodplain before it even got to the carpet. Not
22 the electrical components or the engine of the F550,
23 just the carpet. It's 2.2 feet. For the trailer
24 mounted pumper trucks, you have to be up 3.5 feet
25 above the FEMA level. The hose trailer, that can be

1 completely under water. There's nothing there
2 electrical, mechanical that can be damaged. All the
3 HVAC, all the electrical is well above 1 foot above
4 the ordinance of 1 foot over the FEMA. So there
5 really is no damage to equipment.

6 Any questions?

7 CHAIRMAN: Any board member have any
8 questions?

9 MR. REEVES: Question for Staff and then
10 questions perhaps for this lady.

11 When they failed to get a foundation
12 inspection, did they in fact skip a step that is
13 required by the process?

14 MR. HOWARD: Yes. Jim is here and he can get
15 up and address that.

16 I believe they called and got the electrical
17 inspection process set up. They got that, but when it
18 came to the building site, really made it all way
19 through the building of the building without getting
20 any inspections done.

21 MR. REEVES: I guess my question then is:
22 Why did you decide not to get your foundation
23 inspected as required?

24 MR. DOLL: It wasn't a decision not to do it.
25 It was an oversight. The way Marathon works their

1 projects, I was the project leader for this project
2 here. Basically upgrading the firewater system at
3 this site. We hire inspectors and then third party
4 inspectors. Our expectations is those inspectors
5 would make sure that all the permits were being met,
6 the SPCC plans were being met and so forth. The
7 inspectors, it was an oversight for them. As a
8 project leader, it's an oversight for me not checking
9 up that this wasn't done. So I didn't learn that we
10 did not do that until after the project. That is
11 definitely an oversight, lesson learned on Marathon's
12 part.

13 MR. REEVES: Thank you.

14 CHAIRMAN: I have one or two questions. One
15 is, your exhibits shows that your floor in the
16 building is gravel?

17 MS. DOLL: No. It's concrete.

18 CHAIRMAN: It has been concreted?

19 MS. DOLL: Yes. That's why we struggle. Not
20 only the equipment, the hose trailer in particular
21 bottoming out. Putting concrete on concrete, it's
22 going to be a maintenance nightmare. So we are
23 struggling. We did look at the flood proofing
24 definition and there does say you can have
25 nonstructural. So what we could do is some type of

1 sandbags or when we have flood alerts or warnings that
2 we would put in front of those doors. Like I said,
3 the other three sides of the building already meet
4 with the curb. It's a concrete curb around that or a
5 berm, whatever you want to define it as. It's just
6 the garage doors that really are the ones that could
7 allow water in if it's over the FEMA level.

8 CHAIRMAN: Your exhibit appeared to be gravel.

9 MS. DOLL: No. That's the equipment stored
10 outside. Because at that time we didn't have
11 permission to put the equipment inside the new
12 building because we didn't have the permit.

13 CHAIRMAN: Okay.

14 MS. DOLL: No. You don't have a picture of
15 the -- that's just the equipment when it was brought
16 on site from the company out in Texas that we
17 purchased it from.

18 CHAIRMAN: Your floor is concrete?

19 MS. DOLL: It is concrete and the berm is
20 concrete.

21 CHAIRMAN: I have a question for Staff.

22 Should this application variance be approved
23 and then you go to the requirement, the building must
24 be flood proofed. If this application is, the
25 variance is approved, are you also at the same time

1 approving the requirement that the building must be
2 flood proof; in other words, your walls, your doors
3 and everything must be impermeable area? So this
4 application and the variances, does it cover both or
5 is it going to be a request here for a variance for
6 the flood proofing the building, if you're below the
7 freeboard in your floor? Then what the floodplain
8 regulations says, then you must flood proof the
9 building itself that's outside the perimeter of the
10 building where water cannot get into the building.
11 The ordinance itself states that.

12 My question is for the Staff: What would be
13 the proper procedure in the event that the variance is
14 approved? Then you need a variance on flood proofing
15 the building?

16 MR. HOWARD: I can give my opinion, and you
17 correct me if I'm wrong, Jim.

18 Basically their request is to allow their
19 building to remain as is. Not meeting the freeboard
20 requirement and not meeting that one foot elevation
21 requirement. So if the variance were approved, then
22 your approving it as is, where it is and that's it.

23 Jim, you may want to give some more insight
24 into that, as far as how the zoning ordinance works.

25 MS. KNIGHT: State your name for the record,

1 please.

2 MR. MISCHEL: Jim Mischel.

3 (JIM MISCHEL SWORN BY ATTORNEY.)

4 MR. MISCHEL: My only question in that
5 scenario, if we say it has to be flood proof, I only
6 know of one other case in Daviess County over 20 some
7 years that we have flood proofed a structure, but it
8 was done on the front end while it was being built.
9 Basically we fell back to FEMA. FEMA has a flood
10 proofing form. It's eight to ten pages long and it's
11 a lot of steps you have to go through. An engineer
12 has to certify that as it's going through that
13 process. So I hate to say, yes, now we will flood
14 proof this building, and it has to be -- I think
15 research will have to be done to see it could be done
16 after the fact, you know, instead of as it's being
17 built.

18 CHAIRMAN: But the ordinance does state that
19 if the finished floor is below the freeboard elevation
20 and then the ordinance goes on to say, and then it
21 also says on industrial buildings, it goes on to say
22 that the building must be flood proof. Which means
23 the perimeter of the building must be sealed tight
24 where it's impermeable. Water cannot penetrate it.

25 So I'm asking this question, whether we've got

1 two issues here or if we give the variance that
2 covers?

3 MR. MISCHEL: I think personally the variance
4 would cover it.

5 She has stated they have more or less built a
6 berm on all the sides except the garage door.

7 MS. DOLL: And two-man doors.

8 MR. MISCHEL: Yes, and the two-man doors. As
9 far as trying to flood proof that 100 percent, that's
10 where we could have some issues there.

11 I think the variance, as I read it, would take
12 care of this situation, if you find the facts that
13 material won't be damaged or destroyed or whatever, if
14 I'm reading it right.

15 CHAIRMAN: That answers, basically I guess it
16 answers my question, but that question needed to be
17 asked because the ordinance does state that. So
18 that's why I brought that up.

19 MS. DOLL: Just so we're all on the same page.
20 Our request is for a variance that we do nothing to
21 the building because even if we flood proofed it, it
22 still serves no benefit. Our equipment, our HVAC, our
23 electrical is at a minimum 2 feet above the floodplain
24 elevation, which is a foot above what you guys would
25 recommend here in Owensboro.

1 CHAIRMAN: Do you intend to store anything in
2 there, other than your equipment in the building do
3 you intend to store anything that will float or could
4 float out or anything hazardous material?

5 MS. DOLL: No. That is strictly, there's no
6 more room in there. It is strictly a firefighting
7 equipment storage. So it would have the firefighting
8 equipment, the hoses, anything related to
9 firefighting. There's no room for anything else.
10 It's in an unoccupied building. When we do get the
11 permit, there's nothing else that would go in there.

12 Now, I can't promise that 20 years down the
13 road that maybe we go into a mutual agreement with the
14 City of Owensboro and we share our equipment and move
15 it off site and then we have an empty building, but
16 during that process I think we would have to get a new
17 permit for the building to get it as an occupied
18 building or something else.

19 CHAIRMAN: The concern is if you stored 5
20 gallon cans of gasoline --

21 MS. DOLL: No.

22 CHAIRMAN: - or hazardous material and it did
23 flood and then it could float out of there and float
24 on other properties and then Yellow Creek. That's the
25 reason that question was asked.

1 MS. DOLL: What we could propose then, just so
2 we are clear. There are diesel engines in there so
3 there is going to be diesel, but again, you would have
4 to be on those. Those are the mounded struck. Before
5 you answer get to the trailer, it's 3 1/2 feet above.
6 With that said, no hazardous materials would be in
7 there. We could on the variance, we could put
8 conditions in there that specifically state nothing
9 other than the pieces of equipment that I've
10 identified, firefighting equipment, and then also
11 stating nothing can be on the floor. So we can word
12 that in the variance if that helps. At Marathon you
13 are welcome to come on site for inspections.

14 MS. KNIGHT: Mr. Chairman, if I may. The
15 statute she's discussing the conditions, I think this
16 goes along with your question, the statute does allow
17 you to impose reasonable conditions or restrictions on
18 any variance you decide to grant.

19 With regard to your question about flood
20 proofing though, if I'm hearing Mr. Mischel right, I
21 don't know if that can be done even if you impose that
22 restriction or that condition.

23 MR. MISCHEL: Without further research I think
24 it would be hard to do in front of the man doors and
25 the garage door.

1 MS. KNIGHT: I just wanted to make you aware
2 of that.

3 CHAIRMAN: I'm only asking that question
4 because the ordinance states it. That's the reason
5 I'm asking those questions. The ordinance does state
6 about buoyancy things. Anything that can float out
7 and go over on other properties can cause a nuisance
8 and hazard to the building. I'm only asking that
9 question because it is in the ordinance. As far as
10 the -- every question I've asked is in the ordinance.

11 MS. KNIGHT: I understand.

12 Ms. Doll just mentioned some conditions to put
13 on the variance request.

14 MS. DOLL: That would help. Just so I'm clear
15 because I don't think I wrote it in the variance. We
16 have firefighting foam which would not be hazardous
17 because that's what they use to put out fire. So it's
18 environmentally friendly. That's stored in there in
19 plastic totes, other than the fire equipment. Note
20 that could be under water too.

21 CHAIRMAN: Yes, Mr. Reeves.

22 MR. REEVES: So you're now saying there is
23 something stored in there other than the equipment?

24 MS. DOLL: We consider the foam firefighting
25 equipment. It's purchased as --

1 MR. REEVES: Tell me what the foam is. Where
2 is it? Is it in barrels, containers or what?

3 MS. DOLL: They are totes. Big plastic totes.

4 MR. REEVES: And they sit where?

5 MS. DOLL: They will sit on a pumper truck.

6 MR. REEVES: Where do they sit now?

7 MS. DOLL: They sit on the floor. You mix it
8 with water and it's what you use those pumps for
9 through the hoses to pull and put on the top of a
10 crude tank fire.

11 CHAIRMAN: That's all the questions I have.

12 Board members, do you have any more questions?

13 (NO RESPONSE)

14 CHAIRMAN: Staff you have any questions or
15 comments?

16 (NO RESPONSE)

17 CHAIRMAN: Evidently we have no one in the
18 audience that would like to speak in opposition on
19 this. If so, then step up.

20 (NO RESPONSE)

21 CHAIRMAN: With that chair is ready for a
22 motion.

23 MR. REEVES: Mr. Chairman, I move to deny this
24 request for a variance as it will adversely affect the
25 public health, safety or welfare because the equipment

1 stored in the building could be swept away onto
2 adjoining land in the event of a flood; and while it
3 will not alter the essential character of the general
4 vicinity, it will cause a hazard or a nuisance to the
5 public because if the firefighting equipment is under
6 water and there is a fire it will be difficult for
7 emergency personnel to access the equipment to fight
8 the fire endangering the public in the vicinity; it
9 will allow an unreasonable circumvention of the
10 requirements of the zoning regulations because the
11 freeboard is designed to keep buildings, equipment and
12 people out of harm's way in the event of a flood and
13 allowing this building to remain below freeboard puts
14 all the above at risk and sets a precedent for future
15 requests of the same nature.

16 Further as the applicant failed to get the
17 required foundation inspection, they would have been
18 aware that they needed to elevate this building
19 because the foundation inspection would have revealed
20 that to them. Further, they do currently have
21 material other than firefighting equipment stored on
22 the floor of the building.

23 CHAIRMAN: We have a motion for denial by
24 Mr. Reeves.

25 MS. DIXON: Second.

1 CHAIRMAN: We have a second by Ms. Dixon. Any
2 comments or questions on the motion?

3 (NO RESPONSE)

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

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: Motion carries unanimous.

8 Is there any new business?

9 (NO RESPONSE)

10 CHAIRMAN: If not we need a motion for
11 adjournment.

12 MS. DIXON: So move.

13 CHAIRMAN: We have a motion for adjournment.

14 MS. MASON: Second.

15 CHAIRMAN: And a second. All in favor raise
16 your right hand.

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: 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 20 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 20th day of February, 2015.

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21
22

LYNNETTE KOLLER FUCHS
NOTARY ID 524564
OHIO VALLEY REPORTING SERVICES
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23 COMMISSION EXPIRES: DECEMBER 16, 2018

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

25