The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, February 5, 2015, 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
Brian Howard, Director
Terra Knight, Attorney
Jerry Yeiser
Susan Free
Lewis Jean
Robynn Clark

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

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

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

Board members, if you will speak into the
microphones so everyone can hear.

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

(NO RESPONSE)

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

MS. DIXON: Move to approve.

CHAIRMAN: We have a motion for approval.

MS. MASON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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

Next item, please.

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VARIANCE

ITEM 2

1046 Pleasant Valley Road, zoned I-2
Consider a request for a Variance in order for a newly constructed structure to be below an elevation of one foot above the level of the base flood elevation.

Reference: Zoning Ordinance, Article 18, Section 18-5(b)(2)

Applicant: Marathon Pipe Line, LLC

MS. KNIGHT: State your name for the record,
MS. EVANS: Melissa Evans.  
(MELISSA EVANS SWORN BY ATTORNEY.)

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

CONSIDERATIONS - Refer to applicant's reasons, attached

SPECIAL CIRCUMSTANCES

Is there Special Circumstances? The Staff believes, no.

The subject property has had many projects throughout the last several years. Most recently the applicant received building permits to construct an equipment storage building to house the fire safety equipment. The equipment storage building is located within the floodplain and was required to be constructed at freeboard. Freeboard is defined by Article 18 of the Zoning Ordinance as a "factor of safety," usually expressed in feet above the base flood elevation, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the
base flood. Freeboard must be applied, not just to
the elevation of the lowest flood or flood proofing
level, but also to the level of protection provided to
all components of the structure, such as building
electrical and HVAC components."

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

The applicant states in their findings that
they were unaware of the correct base flood elevation
until the building was already constructed. However,
a Cut/Fill application was approved for the subject
property in 2012 stating the base flood elevation of
404.6 feet. Furthermore, the applicant failed to
follow the correct procedures in the inspection
process for this equipment storage building by not
requesting a foundation inspection. If a foundation
inspection would have been performed, an elevation
certificate would have been required at that time and the concrete foundation of the building would have been poured and the foundation could have been raised to meet the freeboard.

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

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

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

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

FINDINGS OF FACT:

Granting this Variance:

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

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

3. Will cause a hazard or a nuisance to the public because if the firefighting equipment is under
water and there is a fire it will be difficult for
emergency personnel to access the equipment to fight
the fire endangering the public in the vicinity;

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

Staff would recommend denial.

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

CHAIRMAN: Is anyone here representing the
applicant?

MS. KNIGHT: State your name for the record.

MS. DOLL: Blandey Doll for Marathon

Petroleum.

(BLANDEY DOLL SWORN BY ATTORNEY.)

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

I guess at the end of the risk we can counter
that because how the equipment gets out of the
building are the 550 trucks we already have, the F550
trucks. So that's how the equipment would get out.
The other item is it can't float away because it's in a garage with doors. So I don't think that's a hazard of floating off site. We also have a perimeter of fencing so it wouldn't be able to get past the fencing.

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

The other items I wanted to let you know is the F550 trucks, we would have to be 2.2 feet above the floodplain before it even got to the carpet. Not the electrical components or the engine of the F550, just the carpet. It's 2.2 feet. For the trailer mounted pumper trucks, you have to be up 3.5 feet above the FEMA level. The hose trailer, that can be
completely under water. There's nothing there electrical, mechanical that can be damaged. All the HVAC, all the electrical is well above 1 feet above the ordinance of 1 foot over the FEMA. So there really is no damage to equipment.

Any questions?

CHAIRMAN: Any board member have any questions?

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

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

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

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

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

MR. DOLL: It wasn't a decision not to do it. It was an oversight. The way Marathon works their
projects, I was the project leader for this project here. Basically upgrading the firewater system at this site. We hire inspectors and then third party inspectors. Our expectations is those inspectors would make sure that all the permits were being met, the SPCC plans were being met and so forth. The inspectors, it was an oversight for them. As a project leader, it's an oversight for me not checking up that this wasn't done. So I didn't learn that we did not do that until after the project. That is definitely an oversight, lesson learned on Marathon's part.

MR. REEVES: Thank you.

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

MS. DOLL: No. It's concrete.

CHAIRMAN: It has been concreted?

MS. DOLL: Yes. That's why we struggle. Not only the equipment, the hose trailer in particular bottoming out. Putting concrete on concrete, it's going to be a maintenance nightmare. So we are struggling. We did look at the flood proofing definition and there does say you can have nonstructural. So what we could do is some type of
sandbags or when we have flood alerts or warnings that we would put in front of those doors. Like I said, the other three sides of the building already meet with the curb. It's a concrete curb around that or a berm, whatever you want to define it as. It's just the garage doors that really are the ones that could allow water in if it's over the FEMA level.

CHAIRMAN: Your exhibit appeared to be gravel.

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

CHAIRMAN: Okay.

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

CHAIRMAN: Your floor is concrete?

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

CHAIRMAN: I have a question for Staff. Should this application variance be approved and then you go to the requirement, the building must be flood proofed. If this application is, the variance is approved, are you also at the same time
approving the requirement that the building must be
flood proof; in other words, your walls, your doors
and everything must be impermeable area? So this
application and the variances, does it cover both or
is it going to be a request here for a variance for
the flood proofing the building, if you're below the
freeboard in your floor? Then what the floodplain
regulations says, then you must flood proof the
building itself that's outside the perimeter of the
building where water cannot get into the building.
The ordinance itself states that.

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

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

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

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

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

MR. MISCHEL: Jim Mischel.

(JIM MISCHEL SWORN BY ATTORNEY.)

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

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

So I'm asking this question, whether we've got
two issues here or if we give the variance that
covers?

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

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

MS. DOLL: And two-man doors.

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

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

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

MS. DOLL: Just so we're all on the same page.

Our request is for a variance that we do nothing to
the building because even if we flood proofed it, it
still serves no benefit. Our equipment, our HVAC, our
electrical is at a minimum 2 feet above the floodplain
elevation, which is a foot above what you guys would
recommend here in Owensboro.
CHAIRMAN: Do you intend to store anything in there, other than your equipment in the building do you intend to store anything that will float or could float out or anything hazardous material?

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

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

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

MS. DOLL: No.

CHAIRMAN: - or hazardous material and it did flood and then it could float out of there and float on other properties and then Yellow Creek. That's the reason that question was asked.
MS. DOLL: What we could propose then, just so we are clear. There are diesel engines in there so there is going to be diesel, but again, you would have to be on those. Those are the mounded struck. Before you answer get to the trailer, it's 3 1/2 feet above. With that said, no hazardous materials would be in there. We could on the variance, we could put conditions in there that specifically state nothing other than the pieces of equipment that I've identified, firefighting equipment, and then also stating nothing can be on the floor. So we can word that in the variance if that helps. At Marathon you are welcome to come on site for inspections.

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

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

MR. MISCHEL: Without further research I think it would be hard to do in front of the man doors and the garage door.
MS. KNIGHT: I just wanted to make you aware of that.

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

MS. KNIGHT: I understand.

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

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

CHAIRMAN: Yes, Mr. Reeves.

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

MS. DOLL: We consider the foam firefighting equipment. It's purchased as --
MR. REEVES: Tell me what the foam is. Where is it? Is it in barrels, containers or what?

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

MR. REEVES: And they sit where?

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

MR. REEVES: Where do they sit now?

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

CHAIRMAN: That's all the questions I have. Board members, do you have any more questions?

(NO RESPONSE)

CHAIRMAN: Staff you have any questions or comments?

(NO RESPONSE)

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

(NO RESPONSE)

CHAIRMAN: With that chair is ready for a motion.

MR. REEVES: Mr. Chairman, I move to deny this request for a variance as it will adversely affect the public health, safety or welfare because the equipment
stored in the building could be swept away onto adjoining land in the event of a flood; and while it will not alter the essential character of the general vicinity, it will cause a hazard or a nuisance to the public because if the firefighting equipment is under water and there is a fire it will be difficult for emergency personnel to access the equipment to fight the fire endangering the public in the vicinity; it will allow an unreasonable circumvention of the requirements of the zoning regulations because the freeboard is designed to keep buildings, equipment and people out of harm's way in the event of a flood and allowing this building to remain below freeboard puts all the above at risk and sets a precedent for future requests of the same nature.

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

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

MS. DIXON: Second.
CHAIRMAN: We have a second by Ms. Dixon. 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.

Is there any new business?

(NO RESPONSE)

CHAIRMAN: If not we need a motion for adjournment.

MS. DIXON: So move.

CHAIRMAN: We have a motion for adjournment.

MS. MASON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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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
20th day of February, 2015.

LYNNETTE KOLLER FUCHS
NOTARY ID 524564
OHIO VALLEY REPORTING SERVICES
2200 E. PARRISH AVE, SUITE 106E
OWENSBORO, KENTUCKY  42303

COMMISSION EXPIRES:  DECEMBER 16, 2018
COUNTY OF RESIDENCE:  DAVIESS COUNTY, KENTUCKY

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