OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

NOVEMBER 3, 2016

The Owensboro Metropolitan Board of Adjustment

met in regular session at 5:30 p.m. on Thursday,
November 3, 2016, at City Hall, Commission Chambers,
Owensboro, Kentucky, and the proceedings were as
follows:

MEMBERS PRESENT:  Judy Dixon, Chairman
                    Robynn Clark, Vice Chairman
                    Ruth Ann Mason, Secretary
                    Brian Howard, Director
                    Terra Knight, Attorney
                    Fred Reeves
                    Bill Glenn
                    Lewis Jean

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CHAIRMAN:  Call the November 3, 2016 meeting
of the Owensboro Metropolitan Board of Adjustment to
order.  The first item we're going to attend to is
Mr. Gene is going to give us the prayer and the
pledge.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN:  First item on the agenda is to
consider the minutes of the October 6, 2016 meeting.
Members, you've have been mailed a copy and
have had time to look at it.  So at this time I will
entertain a motion to dispose of the item.

MS. MASON:  Motion to approve.
CHAIRMAN: Motion to approve by Ms. Mason.

MR. GLENN: Second.

CHAIRMAN: Second by Mr. Glenn. A question 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 unanimously.

Mr. Howard.

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VARIANCE

ITEM 2

8735 Stillhouse Road, zoned A-R
Consider a request for a Variance in order to reduce front yard building setback line from 60 feet from the centerline of the road to 40 feet from the centerline of the road.
Reference: Zoning Ordinance, Article 8, Section 8.5.1(c)
Applicant: Charles D. & Linda E. Payne

MS. KNIGHT: Please state your name for the record.

MS. EVANS: Melissa Evans.

(MELISSA EVANS SWORN BY ATTORNEY.)

MS. EVANS: This Staff Report is for a recommendation of denial. It's typical when we have a denial recommendation on a Staff Report that we do
read the whole Staff Report into the record.

SPECIAL CIRCUMSTANCES? Are there special circumstances that do not generally apply to the land in the general vicinity or in the same zone? Yes.

The Applicant proposes to build a residential garage on the subject property. The subject property is zoned A-R Rural Agriculture. The Applicant states that because of the extreme drop off in grade at the rear and sides of the property there is not sufficient room to build a garage in any other location on the property.

While it recognized there is a topography issue on the site, it has not been demonstrated that this topography would prevent the applicant from constructing a garage in accordance with the requirements of the Zoning Ordinance. Based on a site visit, it appears that there may be sufficient room on the site to construct the garage meeting the applicable setback requirements.

The request will alter the essential character of the general vicinity as there appear to be no other structures in the area forward of the building setback line. It will be an unreasonable circumvention of the Zoning Ordinance requirement as it appears there could be adequate room on the property to meet the
requirements, although not in the desired location.

If the variance were to be approved, Staff would recommend that the garage door not be located on the east side of the structure to prevent vehicles backing into the road from the garage since the garage would be located in such close proximity to Stillhouse Road.

HARDSHIP? Would strict application of the regulations deprive the applicant of the reasonable use of the land or create an unnecessary hardship on the applicant? No.

It appears that the applicant will be able to build the proposed building in another location on the property meeting the zoning ordinance requirements.

APPLICANT'S ACTIONS? Are the circumstances from which relief is sought as a result of the applicant's actions taken after adoption of the zoning regulation? No.

FINDINGS OF FACTS:

Granting this Variance will not adversely affect the public health, safety or welfare; it will alter the essential character of the general vicinity as there appear to be no other structures located forward of the building setback line in the area; it will not cause a hazard or a nuisance to the public;
but it will allow an unreasonable circumvention of the requirements of the zoning regulations as it appears there could be adequate room on the property to meet the setback requirements.

Staff would recommend denial of this Variance request.

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

CHAIRMAN: Is there anyone here representing the applicant? Would you step to the podium, please?

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

MR. PAYNE: Charles D. Payne.

(CHARLES PAYNE SWORN BY ATTORNEY.)

CHAIRMAN: Mr. Payne, would you like to comment on your application?

MR. PAYNE: Yes, I would like to make a couple of comments here, if I could.

One, down there where there appears to be no other structures located forward of the building setback in the area. Well, right down the road from me there's a block garage that's probably at least 40 foot of the road, and there's a swimming pool up there close to the road and some trailers. I do have
pictures here showing my property, how it really slopes down. There's a light pole back there where this building, we're proposing where the building would go. Probably three foot of it. On the west side of it, if we build it there, there will be a drop probably two foot. I do have, I have pictures with my application. I don't know what happened to them, but I do have pictures here if anyone would like to see them.

CHAIRMAN: You're welcome to distribute them for us.

MS. CLARK: How big of a garage are you planning on building?

MR. PAYNE: 36 by 30.

MS. MASON: I have a question too.

Have you looked at other options of other places to put the garage?

MR. PAYNE: Well, my house is built on a hill in front of it. So when you get up in front of the house it starts sloping way down and all back of it. You know, it's pretty steep incline going down.

MS. MASON: So the people that are going to build the garage for you have said that you can't put it anyplace else but where you want to put it?

MR. PAYNE: No, they didn't say that. It's
possibility a person move the light pole and build up
four or five foot on the back end of it, you know. I
mean that's what it would take, that much. Then I
would have to pour another driveway, well, not a
driveway, but a parking area. The way I have it set
up here, the proposed building, I've got a blacktop
going in and a parking area. Plan to build it right
off the parking area. I mean that's the leveisest spot
I've got on the property, unless you go all the way
back of it about 40 feet. There's an incline going
down.

MR. REEVES: Ms. Dixon, I have a question.

CHAIRMAN: Mr. Reeves.

MR. REEVES: Mr. Payne, I notice you already
have an existing garage attached to the house; is that
correct?

MR. PAYNE: Yes, that's correct.

MR. REEVES: So is that not adequate parking
for the number of vehicles that you have? What's
going to be the purpose of the new garage?

MR. PAYNE: No. We have three vehicles parked
there and we only have one garage. I have a tractor
sitting out in the field down there that I'm hoping,
you know, get a place for my tractor. Get it out of
the weather. I sold my farm and don't have no place
MR. REEVES: Thank you.

CHAIRMAN: Any other questions?

(NO RESPONSE)

CHAIRMAN: Mr. Payne, while they're distributing these, do you want these entered into the record? Do you want these pictures entered into the record?

MR. PAYNE: That will be fine, yes.

Stillhouse Road is a little road between Highway 54 and Morgantown Road is exactly two miles long. This property is exactly in the middle of it.

CHAIRMAN: Are there other questions of Mr. Payne?

(NO RESPONSE)

CHAIRMAN: No other questions.

MS. MASON: I have a question for Melissa.

CHAIRMAN: Yes.

MS. MASON: When you all looked at the other areas where the garage can be put, did you explain that to him, where you thought that it could be put or you all just determined by looking at the land that there was other places the garage could be put?

MS. EVANS: Mr. Payne did come in last week after he received a copy of the Staff Report, and we
did talk to him about that it was our opinion that there could be other places on the property that it could go or that the garage could be constructed smaller, those sort of things.

It was our opinion, based on the way that it looked out there, he has the garage situated behind that parking pad. If he moved it on top of that parking pad and moved it back a little bit or took up part of the existing asphalt that was there, it appears that it could meet the requirements. Maybe he would have to make the garage a little bit smaller, move it to a different location on the property, but it appeared to us that there would be some other options without granting the variance.

The picture that you do have up there on the screen that you all have in front of you, that red line does show where the 40 foot from the center line of the road, where the variance that he's asking for, and then that green line would be where the zoning ordinance would require it to be. That's the 60-foot from the center line of the road. That is the front building setback.

You know, it was just our opinion. At the time that we did the Staff Report we also weren't appear of the pole that he says is at the back of that
building or the back of the driveway there, which is something that would have to be relocated if that were an area where he could build that, but we weren't aware that pole was there at time of the application. That was our opinion, that there could be other places that it could be located.

CHAIRMAN: Mr. Payne, could you come back to the microphone?

Are you aware of the other options that you have?

MR. PAYNE: Well, they give me no other option. I don't know how they could go out there and look at it and they not see this light post sitting there.

The only option would be to turn the building another way, and then, like I say, it would have to be built up real far, about four or five foot, you know. That's the only option could be.

MR. GLENN: I've got another question for the Staff.

Is the Staff's concern then, the way I'm reading this, that if it's built the way that he's talking about doing it, that they will be backing out and into the road there on Stillhouse Road? Is that what the worry is?
MR. HOWARD: Well, that's why we put a statement in the Staff Report that would say, if they are going to, if it is located where they ask it to be located, that the doors be situated so that they can't back out into Stillhouse Road due to the proximity there.

What we're looking at with this is if there -- the point of a variance is to vary from what the ordinance has established as the minimum requirements if it can't be met. Topography is certainly one of those things that could dictate that a variance be issued; however, in the application materials that we had, we didn't know the size of the building.

Mike, when he went out and looked at it, he saw that there are topography issues. There's no doubt about that, but there was nothing submitted with the materials that say from the edge of the road, you know, it's this distance. We didn't have any of that information. We're just going out there eyeballing it looking and saying, you know, where that green line is, you know, two-thirds -- the parking pad, if you put the front of the building there, it very well may be possible that you could locate it at that site. That's all we have to go on, and that's what we reviewed.
Of course, he's told you tonight that there isn't anyplace you can do it on that site other than where he's proposing. It's up to you all then to decide is that reasonable; and if not, where do you go from there.

CHAIRMAN: Any other questions?

MR. PAYNE: I did bring drawings, and I left them on the application. I don't know what happened to them. Evidently they lost them, but I did bring that stuff in.

MR. GLENN: Hand-drawing, this hand-drawing is that what you're talking about?

MR. PAYNE: I'm not sure.

MR. GLENN: Look up on the screen. It's on the screen here, TV screen. Is that what you're referring to?

MR. PAYNE: Yes. Something like that, yes.

MR. GLENN: Yes, we have that.

MR. PAYNE: The doors of the proposed building, the doors would be open to the north, to the parking pad. They definitely would not be towards the highway. Thank you.

MS. CLARK: Mr. Payne, I do have another question for you. Are you proposing to keep the parking pad the same that it is now?
MR. PAYNE: Yes, ma'am.

MS. CLARK: Has anybody helped you layout this building or is this something that you're doing on your own?

MR. PAYNE: I just got a guy draw me up, you know, a sketch of it. See the parking pad, it would be closer than 60 feet. If I come off the end of the parking pad west, south parking pad, it would do no good to tear it up because where you said to build it's going to be closer than the 60 feet.

MR. GLENN: I have seen, and I don't know if this will work in your situation. In houses with driveways where they build a small spot off of their driveway, like where they back in, so that when they back out they can back up there and then pull around it. They don't have to back all the way out. Do you know what I'm trying to say there?

MR. PAYNE: Are you talking to me?

MR. GLENN: Yes, sir.

MR. PAYNE: That's the reason I've got this parking pad fixed like this. So that you back right out in the driveway and you won't have to -- we don't back out in the road. It's right on top of a hill.

MR. GLENN: This parking pad from the south to the north now that's going to stay there, how long,
what's the footage on that do you think, are you
thinking? The existing pad there.

MR. PAYNE: It's probably 50, 60 feet.
MR. GLENN: And the garage itself is going to
be built?
MR. PAYNE: In behind it.
MR. GLENN: In behind it.
MR. PAYNE: Yes. To the south of it, yes.
MR. GLENN: To the south of it. Okay.
CHAIRMAN: Any other questions of Mr. Payne?
MS. CLARK: I do have another question.
Have you not considered moving the pole or
checked into what it would be to move the pole in the
back, the utility pole?
MR. PAYNE: I haven't checked into it, no. I
just know if I moved it back it probably, at that
point, which is probably about 4 foot before that
point it really starts sloping down to the west real
fast, you know.

MR. REEVES: I have a question.
Because this drawing is not to scale, I'm
having difficulty. Are we saying that from the red
line on here to the edge of the current parking lot is
the size the building is going to be exactly?
MR. HOWARD: No. The red line is basically a
dimension of 10 feet from the blue line, which is the
property line. It's 10 feet to there. Then the green
line would be an additional 20 feet.

MS. KNIGHT: I think based on his drawing I
think you're right, Fred. He's showing that the
building would stop at the edge of the concrete pad.
Is that what you're asking?

MR. REEVES: Yes. I'm wondering if the
building he's proposing fits in between the 10-foot
setback red line and the current edge of the parking
here or if the garage is going to extend beyond the
current parking pad.

MS. KNIGHT: Do you understand his question?

MR. PAYNE: Not really I don't.

MR. HOWARD: You could not extend forward
towards Stillhouse Road beyond that red line.

MR. REEVES: Yes, I know that. Would it
extend further back? I guess when you go -- is north

--

MR. HOWARD: North is up.

MR. REEVES: North is up. So if I was going,
is the building he's proposing going to go west,
further west than the existing parking pad?

MS. EVANS: The way you have it drawn here
shows that it is the full length of the driveway and
parking pad. He's asking if that is correct or if the
building actually would stop before the park pad ends
or if it would go further?

MR. PAYNE: It would stop before the parking
pad ends.

MR. REEVES: Okay. That's my question.

CHAIRMAN: Have you worked out a resolution?

MR. REEVES: I haven't worked out a
resolution. I just needed to understand my own now.
I was having difficulty, because it wasn't to scale
here, trying to figure out what was going on.

CHAIRMAN: Any other questions or comments to
Mr. Payne?

MR. REEVES: I guess I have one more.
The building you're proposing from the front
of the garage to the back of the garage, what's the
drop off there, the one you're proposing to build?

MR. PAYNE: Approximately 2 foot.

MR. REEVES: If you moved it back adjacent to
the current garage, what would be the drop off be?

MR. PAYNE: Probably 5, 6, 7 foot.

MR. REEVES: Thank you.

CHAIRMAN: Any other questions while Mr. Payne
is there?

(NO RESPONSE)
CHAIRMAN: Are we ready for a motion?

MR. REEVES: I'll make one.

CHAIRMAN: All right, Mr. Reeves.

MR. REEVES: I make a motion we deny the application based on the fact that it will alter the essential character of the general vicinity as it appears to be, there appears to be no other structures located for the building setback line in the area. Secondly, it will allow an unreasonable circumvention of the requirements of the zoning regulations as it appears there could be adequate room on the property to meet the setback requirements.

CHAIRMAN: We have a motion on the floor. Do I have a second?

MS. CLARK: Second.

CHAIRMAN: Second by Ms. Clark. Any 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 unanimously. The Variance is denied.

ITEM 3

624 East Third Street, zoned B-2
Consider a request for a Variance in order to reduce
the distance of a non-residential driveway from the
right-of-way of an intersecting street from 50 feet to
23 feet.
Reference: Zoning Ordinance, Article 13,
Section 13.22
Applicant: Sts. Joseph and Paul Catholic Church

MS. KNIGHT: Please state your name for the
record.

MR. HILL: Mike Hill.

(MIKE HILL SWORN BY ATTORNEY.)

MR. HILL: The applicant here is Sts. Joseph
and Paul Catholic Church. They acquired the subject
property recently and they're proposing to extend
their existing adjacent parking lot onto the subject
property, which was previously utilized as an auto
care business until a recent fire.

The applicant desires to utilize the same
parking layout that's in their existing parking lot
with regard to where the drive lanes are located,
where the rows of parking currently are. In order to
do that, when you extend their drive lane, the
easternmost drive lane north toward Third near the
intersection of Triplett, it exits out onto Triplett,
the driveway I'm speaking of, approximately 23 feet
from the intersection of Triplett and Third. There's
a requirement in the Zoning Ordinance that
nonresidential driveways be located a minimum of 50
feet from intersecting streets.

The Staff did some research all along Third Street, several blocks in either direction, and found two other examples of nonresidential driveways that exist within that 50 foot distance to the nearest intersection.

Staff also confirms doing prior research that when the property was previously developed and used as the auto care center it basically had wide open curb cuts along both frontages along Triplett and along East Third Street. In other words, cars could pull in and out of there basically just about anywhere along the entire frontage of the car business.

Even with this variance Staff feels like that the situation will come into compliance because they would be defining the access points to Third Street to propose the existing parking lot to the south has one access point onto Triplett. So Staff feels that even though the Variance is being requested, it would still improve the overall situation with the circulation of traffic flow in the area around the church, particularly during peak usage time. It would provide several additional parking spaces off street that don't exist now; whereas, I'm sure the patrons are utilizing on-street parking spaces during church time.
Staff feels that Granting the Variance will not adversely affect the public health, safety or welfare because the variance will allow for an improved circulation pattern near the church during peak hours.

Granting the Variance will not alter the essential character of the general vicinity because vehicles have accessed the subject property within 50 feet of the intersection for many years during previous ownership.

Granting the Variance will not cause a hazard or nuisance to the public because the Variance will allow significant expansion of the existing parking lot providing more off-street parking spaces for the patrons of the church.

Granting this Variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because even with this Variance the site will come more into compliance with access management requirements compared to the wide open curb cuts that previously were utilize on the site.

Staff recommends approval with the following Conditions:

1. Obtain approval of a Site Plan.
2. Obtain all necessary building and

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electrical permits, inspections and certificate of occupancy and compliance.

Staff request that the Staff Report be entered into the record as Exhibit B.

CHAIRMAN: Thank you.

Is there someone here representing Sts. Joe and Paul?

MS. KNIGHT: Please state your name for the record.

MR. WARD: Kelly Ward, Jr.

(KELLY WARD, JR. SWORN BY ATTORNEY.)

CHAIRMAN: Do you have anything you would like to add to the application?

MR. PAYNE: No. I think they done a great job summarizing what we were trying to do anyhow. Like I say, we're trying to get the vehicles off the street and safety for our parishioners. We've been wanting to do this for a year.

We're okay with the way it's drawn up.

CHAIRMAN: Stay put unless you want to get a lot of exercise getting up and down, in case anybody has got any questions.

Any board members have questions of Mr. Ward?

(NO RESPONSE)

CHAIRMAN: If not I'll entertain a motion to
dispose of the item.

MR. JEAN: Motion to approve based on the Staff Report, Findings 1 through 4 with Conditions 1 and 2.

CHAIRMAN: Thank you.

Do we have a second?

MR. GLENN: Second.

CHAIRMAN: Second by Mr. Glenn. Any questions on the motion?

(NO RESPONSE)

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: The motion carries unanimously.

I'll entertain one more motion.

MS. MASON: Motion to adjourn.

MR. GLENN: Second.

CHAIRMAN: All in favor raise your right hand.

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: We are adjourned.

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(270) 683-7383
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 22 typewritten pages; and that no signature was requested to the foregoing transcript.

WITNESS my hand and notary seal on this the 25th day of November, 2016.

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

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