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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

JULY 11, 2019

The Owensboro Metropolitan Board of Adjustment  
met in regular session at 5:00 p.m. on Thursday, July  
11, 2019, at City Hall, Commission Chambers,  
Owensboro, Kentucky, and the proceedings were as  
follows:

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

\* \* \* \* \*

CHAIRMAN: We will call the Owensboro  
Metropolitan Board of Adjustment July 11th meeting to  
order.

First thing on the agenda is Tori is going to  
lead us in prayer and the pledge to the flag. Would  
you please stand.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: The first item on the agenda is to  
consider the minutes of the June 6, 2019 meeting. All  
members have received a copy of the minutes and have  
had time to look them over. At this time I will  
entertain a motion to dispose of this item.

1 MR. JEAN: Make a motion to approve the  
2 minutes.

3 MS. MASON: Second.

4 CHAIRMAN: Motion by Lewis Jean and Mrs. Mason  
5 has a second. All in favor of the motion raise your  
6 right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 First item, Mr. Howard.

10 -----

11 CONDITIONAL USE PERMIT

12 ITEM 2

13 4240 Benttree Drive, zoned B-4 General Business  
14 Consider a request for a Conditional Use Permit in  
15 order to construct and operate an individual  
16 self-storage facility from the subject property which  
17 is zoned B-4 General Business and located within  
18 unincorporated Daviess County  
19 References: Zoning Ordinance, Article 8,  
20 Section 8.2L7/48  
21 Applicant: Owensboro Self-Storage, LLC; Robert H.  
22 Steele Charitable Unitrust

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

25 MR. PEDLEY: Trey Pedley.

(TREY PEDLEY SWORN BY ATTORNEY.)

MR. PEDLEY: The subject property is currently  
a vacant 2.15 acre lot within unincorporated Daviess  
County that is zoned B-4 General Business.

1           The Post Office, to the east, and all  
2           adjoining properties to the west across Benttree Drive  
3           are also zoned B-4 General Business. Adjoining  
4           properties to the north are zoned R-3MF Multi-Family  
5           Residential as properties within a multi-family  
6           development. The adjoining property to the south,  
7           across US 60 West, is zoned A-U Urban Agricultural and  
8           appears to be a large farm tract.

9           Individual storage is Conditionally Permitted  
10          in a B-4 zone in unincorporated Daviess County with  
11          the specific condition.

12          The submitted Conditional Use Permit Site Plan  
13          illustrates compliance with such condition.

14          Additionally, the zoning ordinance does not  
15          provide a minimum parking space requirement for  
16          individual storage facilities; however, the Board may  
17          choose to require parking spaces as deemed necessary.

18          Where the vehicle use area adjoins public  
19          right-of-way, a 3-foot wide landscape easement with a  
20          3-foot tall continuous element and 1 tree every 40  
21          linear feet shall be required. Additionally, a  
22          10-foot wide landscape easement with an 8-foot tall  
23          solid wall or fence and 1 tree every 40 linear feet  
24          shall be installed and maintained where the subject  
25          property adjoins neighboring residential properties.

1           If approved special conditions include:

2           1) Obtain approval on a Final Development Plan  
3 demonstrating compliance with all zoning ordinance  
4 requirements including, but not limited to, the  
5 conditions specific to conditionally permitted  
6 individual storage facilities; and

7           2) All necessary building, electrical and HVAC  
8 permits, inspections and certificates of occupancy and  
9 compliance shall be obtained.

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

12           CHAIRMAN: Thank you, Mr. Pedley.

13           Is there anyone here representing the  
14 applicant?

15           Do you want to come to the podium?

16           APPLICANT REP: If you have any questions.

17           CHAIRMAN: We'll let you know.

18           Is there anyone here wishing to speak in  
19 opposition or ask questions about this item?

20           (NO RESPONSE)

21           CHAIRMAN: Hearing none I'll entertain a  
22 motion to dispose of this item.

23           Mr. Glenn.

24           MR. GLENN: I'd make a motion to approve this  
25 application based on the information that's been

1 presented here to us tonight, and also that they meet  
2 the two special conditions listed.

3 CHAIRMAN: Do I have a second?

4 MS. MORGAN: Second.

5 CHAIRMAN: Any question on the motion?

6 (NO RESPONSE)

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

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries unanimously.

11 Next item, Mr. Howard.

12 ITEM 3

13 1203 & 1217 Center Street; 1200, 1202 & 1204 Hathaway  
14 Street, zoned R-4DT Inner-City Residential  
15 Consider a request for a Conditional Use Permit in  
16 order to construct and operate an adult daycare center  
17 from the subject properties  
References: Zoning Ordinance, Article 8  
Section 8.2B3  
Applicant: Wabuck Development Company, Inc.;  
Owensboro Health, Inc.

18 MR. PEDLEY: The subject properties contain  
19 approximately one acre of vacant land located along  
20 East Parrish Avenue from Center Street to Hathaway  
21 Street. All five properties involved with this  
22 request are zoned R-4DT Inner-City Residential, in  
23 which adult daycare centers are conditionally  
24 permitted.

25 To the north and to the east adjoining

1 properties are zoned P-1 Professional/Services and are  
2 utilized as medical offices and uses. All adjoining  
3 properties to the west, across Center Street, are  
4 zoned R-4DT Inner-City Residential and appear to be  
5 residential in nature, vacant lots, or a church  
6 operation.

7 All adjoining properties to the south, are  
8 zoned R-4DT Inner-City Residential and appear to be  
9 residential in nature or are vacant lots; many of  
10 which are owned by the applicant and are part of the  
11 applicant's plans for a future residential care  
12 development, of which this adult daycare will work in  
13 conjunction with if this is approved.

14 Adult daycare centers are required to maintain  
15 two parking spaces plus one space for every ten  
16 persons under care. The submitted site plan  
17 illustrates a planned 17 parking spaces at the site.

18 Additional vehicular use area screening  
19 consisting of a 3-foot tall continuous element and 1  
20 tree every 40-linear feet shall be constructed where  
21 the vehicular use area adjoins public rights-of-way or  
22 residentially zoned property.

23 If approved, special conditions include:

- 24 1) Obtain approval of Minor Subdivision Plat;  
25 2) Obtain approval of a Site Plan or Final

1 Development Plan;

2 3) All necessary building, electrical and HVAC  
3 permits, inspections and certificates of occupancy and  
4 compliance shall be obtained.

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

7 CHAIRMAN: Thank you, Mr. Pedley.

8 Is there anyone here wishing -- is the  
9 applicant available to speak?

10 Hold right there and see if there are any  
11 questions.

12 Are there any questions?

13 MR. GIBSON: I've got a question.

14 CHAIRMAN: Okay. Would you come to the  
15 podium, please.

16 MS. KNIGHT: Sir, if you could please state  
17 your name for the record.

18 MR. GIBSON: Hubert Gibson.

19 (HUBERT GIBSON SWORN BY ATTORNEY.)

20 MR. GIBSON: My question is, me and my mom  
21 here, we live at 1227 Center Street. We're part of  
22 where that development is going to be. We were told  
23 it was going to adult apartments, but they're saying  
24 daycare. What's the difference? We were told  
25 daycare.

1 CHAIRMAN: We'll get the answers for you.  
2 Just a minute.

3 MS. KNIGHT: If you could state your name,  
4 please?

5 MR. ELMORE: Anthony Elmore.

6 (ANTHONY ELMORE SWORN BY ATTORNEY.)

7 MR. ELMORE: What we're discussing tonight is  
8 the five lots that are north of your property. We're  
9 only asking for a Conditional Use Permit to be able to  
10 operate an adult daycare that would work, it would  
11 coincide with the apartments that we're proposing.  
12 The apartments themselves, the property is zoned  
13 directly for the apartments; so there's no need to  
14 request a conditional use.

15 MR. GIBSON: Now, will you be using -- you've  
16 got Center Street and Hathaway. There's still two,  
17 three houses left in that area right there. Are you  
18 seeking the house on Hathaway too closer to Parrish  
19 right on the end?

20 MR. ELMORE: We're seeking as much land as we  
21 can use for the development; however, we do have  
22 adequate land available that the hospital has if we  
23 can obtain.

24 Maybe I can state the hospital does own this  
25 property. They've had lots of options through the



1 years. You know, they can utilize this property.  
2 They are working with us. They see the affordable  
3 housing for the elderly. The services that we're  
4 proposing to provide for the tenants in the community.  
5 This is something that's good and that's why they are  
6 co-applicants of this application.

7 MR. GIBSON: If you get your approval here,  
8 when will that start, the construction?

9 MR. ELMORE: The request tonight is to have a  
10 zoning letter, which we can submit for application.  
11 So we have to show that the property is fully zoned  
12 correctly, which we need a conditional use. With that  
13 we will submit an application for funding by August  
14 15th. We expect to find out about the awards by  
15 December or January. It takes a while for Kentucky  
16 Housing Corporation. Then we will pursue all  
17 necessary approvals with the Planning Commission  
18 through the city agencies in February and March. Then  
19 construction probably looking at late summer to fall  
20 of actual construction.

21 CHAIRMAN: Does that answer all your  
22 questions?

23 MR. GIBSON: Yes, ma'am, it does. Thank you.

24 CHAIRMAN: You're welcome.

25 Any other questions or comments on this item?

1 (NO RESPONSE)

2 CHAIRMAN: At this point I'll entertain a  
3 motion.

4 Mr. Reeves.

5 MR. REEVES: Motion to approve this item based  
6 on the Staff Report and their findings of fact, and  
7 also that it does appear that this development will be  
8 compatible with the neighborhood and will not create a  
9 public nuisance.

10 MS. KNIGHT: Were the conditions on this one?

11 MR. REEVES: Yes, and conditions 1 through 3.

12 CHAIRMAN: We need a second?

13 MR. ANDREW HOWARD: Second.

14 CHAIRMAN: We have a motion and a second. Is  
15 there any question on the motion?

16 (NO RESPONSE)

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

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

21 -----

22 VARIANCES

23 ITEM 4

24 1911 Lexington Avenue, zoned R-1A Single-Family  
Residential  
25 Consider a request for a Variance in order to reduce  
the required side yard building setback in an R-1A

1 zone from 10-feet from the side property line to  
2 5-feet from the side property line and to reduce the  
3 required rear yard building setback from 20-feet from  
4 the rear property line to 10-feet from the rear  
5 property line.

References: Zoning Ordinance, Article 8, Section  
8.5.5(d) and 8.5.5(e)

Applicant: CR Contracting; Joseph & Katherine  
Mitchell

6 MR. PEDLEY: The subject property is zoned  
7 R-1A Single-Family Residential and located on  
8 Lexington Avenue between Griffith Avenue and Ford  
9 Avenue. The owner would like to construct an addition  
10 to the home, but in order to do so the addition will  
11 encroach into both the required side yard building  
12 setback and the required rear yard building setback.

13 Such an encroachment can be found elsewhere in  
14 the general vicinity. Some of which were constructed  
15 prior to the establishment of the zoning regulations  
16 and other, on adjoining properties, were allowed  
17 following the approval of their own respective  
18 variance requests.

19 In regards to reducing the side yard building  
20 setback to 5-feet, it should be noted that the  
21 neighboring home at 1901 Lexington Avenue appeared to  
22 be greater than 5-feet from the shared side property  
23 line; so such an encroachment will keep the two  
24 residences at least 10-feet from one another,  
25 maintaining the 10-foot separation distance between

1 residences as required by the Kentucky Residential  
2 Building Code.

3 In regards to reducing the rear yard building  
4 setback to 10-feet, it should be noted that the  
5 subject property sits back from the road approximately  
6 45-feet from the front yard line, well beyond the  
7 typical 25-foot front yard building setback as  
8 required along local streets. As a result, creating  
9 an addition to the rear of the home is difficult to  
10 accomplish without obtaining a variance.

11 Granting the variance to reduce the side yard  
12 building setback and the rear yard building setback as  
13 requested will not alter the essential character of  
14 the general vicinity; will not cause a public  
15 nuisance; will not be an unreasonable circumvention of  
16 the requirements of the zoning ordinance because there  
17 are many existing structures on neighboring lots that  
18 encroach into their own side yard and rear yard  
19 building setback. Additionally, granting this request  
20 will not adversely affect the public safety as the  
21 required separation distance between residences will  
22 be maintained.

23 Staff recommends approval with the condition  
24 that all necessary building, electrical and HVAC  
25 permits, inspections and certificates of occupancy and

1 compliance shall be obtained.

2 We would like to enter the Staff Report into  
3 the record as Exhibit C.

4 CHAIRMAN: Thank you, Mr. Pedley.

5 Is the applicant here to address this?

6 (NO RESPONSE)

7 CHAIRMAN: Is there anyone here wishing to  
8 address this issue?

9 MR. POTTS: Yes.

10 MS. KNIGHT: Sir, if you could state your name  
11 for the record, please.

12 MR. POTTS: Craig Dwayne Potts, 1901 Lexington  
13 Avenue, property adjoining to the north.

14 (CRAIG POTTS SWORN BY ATTORNEY.)

15 MR. POTTS: We've got concerns with what --  
16 nobody knows what they're wanting to construct. We  
17 haven't seen any pictures or plans. Five foot is, it  
18 is getting awful close to us on the side.

19 What I understand, there is an ordinances on  
20 how much of the property can be covered by a  
21 structure. That hasn't been addressed.

22 MRS. POTTS: I'm Rita Potts.

23 (RITA POTTS SWORN BY ATTORNEY.)

24 MRS. POTTS: My concerns are we have a very  
25 quaint neighborhood and it's an old established

1 neighborhood.

2           They mentioned that the variances that our  
3 house and other houses go beyond what they're supposed  
4 to be. My house is 97 years old so I would say that  
5 I'm probably one of the older homes in the  
6 neighborhood. If there has been encroachment, it's  
7 probably been towards my property.

8           I would also like to say that we have  
9 beautiful trees and beautiful views in that  
10 neighborhood, and I think by -- I'm sure that some of  
11 these trees are going to have to go and it's going to  
12 take away from like the quaintness of our  
13 neighborhood, and I'm concerned about that. The  
14 structures are old. Would like to maintain that type  
15 of neighborhood.

16           MR. POTTS: All the utilities on our street  
17 are behind the houses. A part of that offset is for  
18 utility right-of-way. So if they blocked the utility  
19 right-of-way they're going to have to access from  
20 somebody else's property.

21           MRS. POTTS: The other thing I would like to  
22 say is that there was a lot of neighbors -- we would  
23 just like to see what the plans are going to be so we  
24 know before anything is voted on here today because we  
25 have no idea.

1           CHAIRMAN: Thank you.

2           Is there anyone else wishing to speak?

3           MS. KNIGHT: If you could state your name for  
4 the record, please.

5           MR. DEXTER: William Dexter.

6           (WILLIAM DEXTER SWORN BY ATTORNEY.)

7           MR. DEXTER: Again, my name is William Dexter.  
8 My wife, Shirley, and I own the property at 1896  
9 Littlewood Drive, which is immediately adjacent to,  
10 behind the applicant's property.

11           We're not here tonight to make our neighbors  
12 mad, the Mitchells, but we do feel that when the  
13 Metropolitan Planning Commission passed the  
14 Comprehensive Plan, which was adopted by the local  
15 government, they did do with these setbacks and they  
16 did so for a reason, and that was to protect the  
17 adjacent properties.

18           In this case, the encroachments that they're  
19 asking for is a 40 percent encroachment into the rear  
20 setback and a 50 percent encroachment on the side  
21 setback. So those are significant encroachments on  
22 our adjacent property. This is not a minimus thing  
23 where they've accidentally gone over the line. We enjoy  
24 the privacy of our backyard and we'd like to continue  
25 to do so. If all you have to do is avoid the setbacks

1 that were in the Comprehensive Plan is to just ask for  
2 a variance, then it diminishes the protections that  
3 were there. Thank you.

4 CHAIRMAN: Is there anyone else wishing to  
5 address this?

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

8 MR. SANFORD: Jeff Sanford. I live at 1914  
9 Lexington Avenue, across the street from the property.

10 (JEFF SANFORD SWORN BY ATTORNEY.)

11 MR. SANFORD: I would like to see actually  
12 would be exactly what they want to do. I haven't seen  
13 a single thing of what they want to do. I think it  
14 would be fair to at least let us see what they're  
15 attempting to do with the property. That's it.

16 CHAIRMAN: Thank you. Anyone else?

17 (NO RESPONSE)

18 CHAIRMAN: Is the applicant here?

19 (NO RESPONSE)

20 CHAIRMAN: It doesn't look like it.

21 Have you seen any plans?

22 MR. HOWARD: No. The site plan that's on the  
23 screen now represents the location of the proposed  
24 addition, but it doesn't depict what the construction  
25 type or look of the residential addition would be.



1           CHAIRMAN: You have addition?

2           MR. POTTS: Yes. What I understand, Jody and  
3 Kate, they've actually sold the property. I think  
4 they were supposed to close Monday, the Mitchells. I  
5 don't know if that has anything to do with this or  
6 not. Their name is on the application.

7           CHAIRMAN: Thank you.

8           Any ideas?

9           MR. REEVES: I've got a question. I think,  
10 Mr. Howard, the only thing we can deal with are  
11 dimensions. Appearance is not an issue that we can  
12 consider in our decision making process; is that  
13 correct?

14          MR. BRIAN HOWARD: That's correct. There are  
15 no design guidelines that are in the zoning ordinance  
16 that would dictate what it has to look like.

17          MR. REEVES: I'm prepared to make a motion, if  
18 you're ready for a motion.

19          CHAIRMAN: Let's go.

20          MR. REEVES: I would make a motion to not  
21 approve this application based on the comments and  
22 concerns expressed by the neighbors.

23          CHAIRMAN: Thank you.

24          MS. MORGAN: Second.

25          CHAIRMAN: Any question on the motion?

1 MS. KNIGHT: Well --

2 CHAIRMAN: Do we have need more information?

3 MR. REEVES: And also lack of information.

4 CHAIRMAN: Will that work?

5 MS. KNIGHT: I would suggest we vote, and I  
6 don't get to make a motion, but I would suggest maybe  
7 to postpone until next month so that perhaps the  
8 applicant can appear, and the rest of these questions  
9 and issues and give everybody a chance. If we deny  
10 tonight, it's done, of course. They have to reapply,  
11 right?

12 MR. BRIAN HOWARD: Right.

13 MS. KNIGHT: And I think the question about  
14 the findings of fact is whether -- -

15 CHAIRMAN: Mr. Dexter.

16 MR. DEXTER: Well, the lawyer in me come out.  
17 You posted the notice. We got the notice. We were  
18 aware and we came. I don't know why the applicant  
19 couldn't be here.

20 I also meant to say, you know, there's been a  
21 lot of talk about other things up and down the streets  
22 between Lexington and Littlewood. We've complied with  
23 the setback in our entire yard. We just think our  
24 neighbors ought to do the same thing.

25 CHAIRMAN: Thank you.

1 MS. KNIGHT: If we deny, we have to have facts  
2 as to, again, that are based upon the ordinance as to  
3 why it's been denied. Because, again, appearance, as  
4 you said, is not necessarily a reason for approval or  
5 denial either one.

6 MR. BRIAN HOWARD: So that could be like the  
7 40 percent encroachment, 50 percent encroachment, and  
8 the setbacks.

9 MR. REEVES: I'm really not inclined to  
10 withdraw my motion, but I will fix the motion.

11 CHAIRMAN: All right. Fix it.

12 MR. REEVES: Add to the motion that we are  
13 concerned that the setbacks, both the rear setback and  
14 the side setback, seem to be an issue that should not  
15 be approved. Is that sufficient?

16 MS. KNIGHT: Yes.

17 CHAIRMAN: He amended his motion. Are you  
18 still comfortable with your second, Tori?

19 MS. MORGAN: Yes.

20 CHAIRMAN: Any question on the motion?

21 (NO RESPONSE)

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

24 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

25 CHAIRMAN: Motion carries unanimously. The

1       variance is denied.

2               Anything else, Mr. Howard?

3               MR. HOWARD:  No.

4               CHAIRMAN:  We're ready for one final motion.

5               MS. MASON:  Move to adjoin.

6               MR. GLENN:  Second.

7               CHAIRMAN:  All in favor raise your right hand.

8               (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9               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 foregoing 10  
14 typewritten pages; and that no signature was requested  
15 to the foregoing transcript.

16 WITNESS my hand and notary seal on this the  
17 30th day of July, 2019.

18

19

\_\_\_\_\_  
LYNNETTE KOLLER FUCHS  
NOTARY ID 613522  
OHIO VALLEY REPORTING SERVICES  
2200 E. PARRISH AVE, SUITE 106E  
OWENSBORO, KY 42303

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23 COMMISSION EXPIRES: DECEMBER 16, 2022

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25