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

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

MS. MASON: Second.

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

(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: Motion carries unanimously.

First item, Mr. Howard.

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CONDITIONAL USE PERMIT

ITEM 2

4240 Benttree Drive, zoned B-4 General Business
Consider a request for a Conditional Use Permit in order to construct and operate an individual self-storage facility from the subject property which is zoned B-4 General Business and located within unincorporated Daviess County.

References: Zoning Ordinance, Article 8, Section 8.2L7/40
Applicant: Owensboro Self-Storage, LLC; Robert H. Steele Charitable Unitrust

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

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

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

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

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

Where the vehicle use area adjoins public right-of-way, a 3-foot wide landscape easement with a 3-foot tall continuous element and 1 tree every 40 linear feet shall be required. Additionally, a 10-foot wide landscape easement with an 8-foot tall solid wall or fence and 1 tree every 40 linear feet shall be installed and maintained where the subject property adjoins neighboring residential properties.
If approved special conditions include:

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

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

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

CHAIRMAN: Thank you, Mr. Pedley.

Is there anyone here representing the applicant?

Do you want to come to the podium?

APPLICANT REP: If you have any questions.

CHAIRMAN: We’ll let you know.

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

(NO RESPONSE)

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

Mr. Glenn.

MR. GLENN: I'd make a motion to approve this application based on the information that's been
presented here to us tonight, and also that they meet the two special conditions listed.

CHAIRMAN: Do I have a second?

MS. MORGAN: Second.

CHAIRMAN: Any 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.

Next item, Mr. Howard.

ITEM 3

1203 & 1217 Center Street; 1200, 1202 & 1204 Hathaway Street, zoned R-4DT Inner-City Residential

Consider a request for a Conditional Use Permit in order to construct and operate an adult daycare center from the subject properties

References: Zoning Ordinance, Article 8

Section 8.2B3

Applicant: Wabuck Development Company, Inc.; Owensboro Health, Inc.

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

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

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

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

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

If approved, special conditions include:

1) Obtain approval of Minor Subdivision Plat;
2) Obtain approval of a Site Plan or Final
Development Plan;

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

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

CHAIRMAN: Thank you, Mr. Pedley.

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

Hold right there and see if there are any questions.

Are there any questions?

MR. GIBSON: I've got a question.

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

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

MR. GIBSON: Hubert Gibson.

(HUBERT GIBSON SWORN BY ATTORNEY.)

MR. GIBSON: My question is, me and my mom here, we live at 1227 Center Street. We're part of where that development is going to be. We were told it was going to adult apartments, but they're saying daycare. What's the difference? We were told daycare.
CHAIRMAN: We'll get the answers for you.

Just a minute.

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

MR. ELMORE: Anthony Elmore.

(ANTHONY ELMORE SWORN BY ATTORNEY.)

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

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

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

Maybe I can state the hospital does own this property. They've had lots of options through the
years. You know, they can utilize this property. They are working with us. They see the affordable housing for the elderly. The services that we're proposing to provide for the tenants in the community. This is something that's good and that's why they are co-applicants of this application.

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

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

CHAIRMAN: Does that answer all your questions?

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

CHAIRMAN: You're welcome.

Any other questions or comments on this item?
Chairman: At this point I'll entertain a motion.

Mr. Reeves.

Mr. Reeves: Motion to approve this item based on the Staff Report and their findings of fact, and also that it does appear that this development will be compatible with the neighborhood and will not create a public nuisance.

Ms. Knight: Were the conditions on this one?

Mr. Reeves: Yes, and conditions 1 through 3.

Chairman: We need a second?

Mr. Andrew Howard: Second.

Chairman: We have a motion and a second. Is there any 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.

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VARIANCES

ITEM 4

1911 Lexington Avenue, zoned R-1A Single-Family Residential

Consider a request for a Variance in order to reduce the required side yard building setback in an R-1A

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

References: Zoning Ordinance, Article 8, Section 8.5.5(d) and 8.5.5(e)
Applicant: CR Contracting; Joseph & Katherine Mitchell

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

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

In regards to reducing the side yard building setback to 5-feet, it should be noted that the neighboring home at 1901 Lexington Avenue appeared to be greater than 5-feet from the shared side property line; so such an encroachment will keep the two residences at least 10-feet from one another, maintaining the 10-foot separation distance between
residences as required by the Kentucky Residential Building Code.

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

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

Staff recommends approval with the condition that all necessary building, electrical and HVAC permits, inspections and certificates of occupancy and
compliance shall be obtained.

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

CHAIRMAN: Thank you, Mr. Pedley.

Is the applicant here to address this?

(NO RESPONSE)

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

MR. P OTTS: Yes.

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

MR. P OTTS: Craig Dwayne Potts, 1901 Lexington
Avenue, property adjoining to the north.

(CRAIG P OTTS SWORN BY ATTORNEY.)

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

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

MRS. P OTTS: I'm Rita Potts.

(RITA P OTTS SWORN BY ATTORNEY.)

MRS. P OTTS: My concerns are we have a very
quaint neighborhood and it's an old established
neighborhood.

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

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

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

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

Is there anyone else wishing to speak?

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

MR. DEXTER: William Dexter.

(WILLIAM DEXTER SWORN BY ATTORNEY.)

MR. DEXTER: Again, my name is William Dexter.

My wife, Shirley, and I own the property at 1896 Littlewood Drive, which is immediately adjacent to, behind the applicant's property.

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

In this case, the encroachments that they're asking for is a 40 percent encroachment into the rear setback and a 50 percent encroachment on the side setback. So those are significant encroachments on our adjacent property. This is not a minimus thing where they've accidently gone over the line. We enjoy the privacy of our backyard and we'd like to continue to do so. If all you have to do is avoid the setbacks
that were in the Comprehensive Plan is to just ask for
a variance, then it diminishes the protections that
were there. Thank you.

CHAIRMAN: Is there anyone else wishing to
address this?

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

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

(MR. SANFORD SWORN BY ATTORNEY.)

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

CHAIRMAN: Thank you. Anyone else?

(NO RESPONSE)

CHAIRMAN: Is the applicant here?

(NO RESPONSE)

CHAIRMAN: It doesn't look like it.

Have you seen any plans?

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

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

CHAIRMAN: Thank you.

Any ideas?

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

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

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

CHAIRMAN: Let's go.

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

CHAIRMAN: Thank you.

MS. MORGAN: Second.

CHAIRMAN: Any question on the motion?
MS. KNIGHT: Well --

CHAIRMAN: Do we have need more information?

MR. REEVES: And also lack of information.

CHAIRMAN: Will that work?

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

MR. BRIAN HOWARD: Right.

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

CHAIRMAN: Mr. Dexter.

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

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

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

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

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

CHAIRMAN: All right. Fix it.

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

MS. KNIGHT: Yes.

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

MS. MORGAN: Yes.

CHAIRMAN: Any 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. The
variance is denied.

Anything else, Mr. Howard?

MR. HOWARD: No.

CHAIRMAN: We're ready for one final motion.

MS. MASON: Move 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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STATE OF KENTUCKY )
) SS: REPORTER'S CERTIFICATE
COUNTY OF DAVIESS )

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

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

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

COMMISSION EXPIRES:    DECEMBER 16, 2022
COUNTY OF RESIDENCE:   DAVIESS COUNTY, KY

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