

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

AUGUST 1, 2019

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, August 1, 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
- Tori Morgan

* * * * *

CHAIRMAN: We will call the Owensboro Metropolitan Board of Adjustment August 1 meeting to order. Mr. Howard is going to lead in the prayer and the pledge.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: First item on the agenda is to consider the minutes of the July 11, 2019 meeting. All members have received a copy and should have had time to peruse them. So at this time I will entertain a motion.

MR. GLENN: Motion to approve the minutes.

CHAIRMAN: Motion by Mr. Glenn.

1 MS. MASON: Second.

2 CHAIRMAN: Second by Ms. Mason. Any questions
3 on the motion?

4 (NO RESPONSE)

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

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.

8 CHAIRMAN: Motion carries unanimously.

9 Mr. Howard.

10 -----

11 VARIANCES

12 ITEM 2

13 1911 Lexington Avenue, zoned R-1A Single-Family
14 Residential
15 Consider a request for a Variance in order to reduce
16 the required side yard building setback in an R-1A
17 zone from 10-feet from the side property line to
18 5-feet from the side property line and to reduce the
19 required rear yard building setback from 20-feet from
20 the rear property line to 10-feet from the rear
21 property line.
22 References: Zoning Ordinance, Article 8,
23 Section 8.5.5(d) and 8.5.5(e)
24 Applicant: CR Contracting; Gregory & Kimberly
25 Mullican

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

22 MR. PEDLEY: Trey Pedley.

23 (TREY PEDLEY SWORN BY ATTORNEY.)

24 MR. PEDLEY: The subject property is located
25 on Lexington Avenue between Griffith Avenue and Ford

1 Avenue in an area established before the current
2 zoning ordinance requirements were in place. The
3 owner would like to construct an addition to the home
4 that would encroach into both the required side yard
5 building setback and the required rear yard building
6 setback.

7 Such encroachments can commonly be found
8 elsewhere in the general vicinity; some of which were
9 constructed prior to the establishment of the zoning
10 regulations, and others, including on adjoining
11 properties, were allowed following approval of their
12 own Variance request.

13 An identical variance request was submitted by
14 the previous owner of the property and was heard at
15 the July 11, 2019 Owensboro Metropolitan Board of
16 Adjustment meeting. The OMPC Staff report made a
17 recommendation for approval because similar
18 encroachments can be found elsewhere throughout the
19 area. The previous Staff Report also noted that the
20 neighboring home at 1901 Lexington Avenue appears to
21 be at least 5-feet from the shared property line, and
22 so both requested encroachments will maintain the
23 10-foot separation distance between residences as
24 required by the Kentucky Residential Building Code.

25 At the aforementioned Owensboro Metropolitan

1 Board of Adjustment meeting, the Board denied the
2 variance request based on the belief that the request
3 may not be compatible with the area due to the
4 applicant's absence and inability to address concerns
5 brought forth by the neighbors that were present at
6 the meeting. Based on the history of the area,
7 existing encroachments, and the maintenance of
8 applicable building codes, the OMPC Staff believes
9 that statements within the original staff report
10 remain true; however, acknowledge the previously
11 voiced concerns of the neighbors and at this request
12 has been denied in the past. Consequently, the Staff
13 will not make a recommendation for this request as is
14 typically done.

15 However, if approved, the Staff recommends
16 that the applicant shall be required to obtain all
17 necessary building, electrical and HVAC permits,
18 inspections and certificates of occupancy and
19 compliance.

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

22 CHAIRMAN: Thank you, Mr. Pedley.

23 Is there someone here wishing to speak on
24 behalf of the applicant?

25 MS. KNIGHT: Please state your name.

1 MR. SULLIVAN: Mike Sullivan.

2 MS. KNIGHT: Mr. Sullivan, you're sworn as an
3 attorney.

4 MR. SULLIVAN: My name is Mike Sullivan. I'm
5 an attorney here in Owensboro, Kentucky.

6 The first thing I want to do is apologize on
7 behalf of my client, CR Contracting and it's owner
8 Gary Cecil. We're sorry to you, we're sorry to the
9 neighbors that we were late to last month's meeting.
10 It was one of those meetings that was moved from 5:30
11 to 5, I believe, and we missed it. We are very sorry
12 about that. We're sorry about the inconvenience to
13 everybody because of that.

14 I read the transcript of the meeting. Of
15 course, the neighbors had questions as they always do,
16 and they're always entitled to ask those. We are here
17 tonight to -- we've submitted the plans for the
18 proposed addition to this house at 1911 Lexington
19 Avenue. We're here to -- I'll have Gary Cecil come up
20 here in a second and talk to you about those plans so
21 that everybody knows what they are. We'll answer any
22 and all questions that anybody has about those plans.
23 I think that at the end of presenting that information
24 you'll see that this proposed addition to this house
25 is something that's consistent with the character of

1 the neighborhood and will cause absolutely no harm
2 whatsoever to the neighborhood or the neighbors in the
3 neighborhood.

4 At this time, before I talk about the findings
5 you have to consider and the facts that are related to
6 findings you have to consider to approve the Variance,
7 I would like to have Gary Cecil come and talk to
8 everyone here about the plans and answer any questions
9 that anybody has about this proposed addition.

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

12 MR. CECIL: Gary Cecil.

13 (GARY CECIL SWORN BY ATTORNEY.)

14 MR. CECIL: I did send the elevations and I
15 think the floor plans made out by the owners. We are
16 just looking to do basically a master suite on the
17 main level. The family that's buying it obviously
18 would like to stay here for an extended period of
19 time.

20 You know, the lot doesn't really blend itself
21 to both an attached garage and this master suite to do
22 it behind the house. I think what we've designed I
23 think you can see it on the screen fits the
24 neighborhood. You know, we plan on saving the brick
25 and reusing the existing brick so that it matches

1 exactly. We've agreed to some changes with the
2 neighbors to satisfy their concerns, as far as
3 distance that we would agree to build to the rear
4 setback.

5 Otherwise, I think it's pretty, what you would
6 expect for the neighborhood. I live in that
7 neighborhood so I don't want to see anything but the
8 best for it. Other than that, I don't have a whole
9 lot to add.

10 The floor plan is a single-story structure
11 with a story and a half over the garage area, the
12 attached garage. So at no point could you stand on
13 the second floor of this addition and look into a
14 neighbor's backyard. So privacy really shouldn't be a
15 concern. Otherwise, it is right on the same level.
16 So there's no steps up, there's no steps down from the
17 existing floor heights and, you know, the roof lines
18 match and I think they're correct.

19 CHAIRMAN: Anyone on the Board have questions
20 of Mr. Cecil?

21 MR. REEVES: Your rendering from the front was
22 very helpful. You don't happen to have a rendering of
23 the back, do you?

24 MR. CECIL: I did not do a rear elevation.

25 I brought some copies of the floor plan where

1 you can see them. The site plan I guess is the only
2 thing you can see. What's on the screen now, the
3 bottom portion of the screen is the proposed addition.
4 Really, as you'll see, it's 9 foot walls, which is in
5 the existing house. The roof line above that is a
6 hip-structure so there are not windows looking over
7 into the neighbor at Littlewood. To the north the
8 only window shown is to allow light into a closet, and
9 it is below what is the existing brick fence that is
10 between the neighboring properties.

11 CHAIRMAN: Anybody else here have a question
12 of Mr. Cecil?

13 (NO RESPONSE)

14 CHAIRMAN: Stay right there because I'm sure
15 there will be.

16 Is there someone here wishing to speak in
17 opposition or voice concern over this item?

18 MS. KNIGHT: Madam Chairman, before we get
19 into that there was a letter brought to the Planning
20 Office today. I think we'll pass that around to the
21 other board members. It's from a Tom and May Gipe.
22 It's just a very short letter and we'll just let
23 everybody look at that. I don't believe Mr. and
24 Mrs. Gipe are here tonight.

25 AUDIENCE MEMBER: No. They live in

1 Louisville.

2 MS. KNIGHT: It's not a notarized statement or
3 anything. The board members can obviously give it
4 whatever weight they deem necessary, but we'll just
5 pass that around for the record.

6 CHAIRMAN: Thank you.

7 Someone wish to speak?

8 MR. SULLIVAN: Ma'am.

9 CHAIRMAN: Yes, Mr. Sullivan.

10 MR. SULLIVAN: I don't get over here too much.
11 I don't know what the protocol is, but if they want to
12 ask him questions first, I'm not judging.

13 CHAIRMAN: How about both of you stay there.

14 MR. SULLIVAN: We're done with our
15 presentation, but if they want to ask him questions
16 about the plan, maybe this is the right time to do it.

17 MS. KNIGHT: I think as far as protocol,
18 everything should be directed to the chair and then
19 she'll get it to the appropriate person.

20 CHAIRMAN: Does anyone have any questions of
21 Mr. Sullivan or Mr. Cecil at this point?

22 (NO RESPONSE)

23 CHAIRMAN: You want to go ahead and finish
24 your presentation. Sorry.

25 MR. SULLIVAN: No problem.

1 Mr. Dexter is here. Of course, I've know Bill
2 and Shirley forever. We practiced law together.

3 My understanding from Gary is that he talked
4 to Mr. Dexter. They can talk about a possible
5 agreement or concerns, to address his concerns with
6 the rear of the building. My understanding is that
7 there was a discussion where my client is voluntarily
8 agreeing to not request a setback, to reduce the
9 setback line to 10 feet on the rear, but to 11 feet 6
10 inches, which is about the minimum he thinks is
11 adequate so he can add that addition to the rear and
12 not be out there with a ruler making sure he wasn't
13 right up against whatever variance to be requested.
14 And that there would be no windows that could see into
15 the rear of the property. As you can see, the only
16 window suggested on the rear is on the ground level.

17 I'll let Mr. Dexter speak to that, to confirm
18 that.

19 As Gary mentioned, in regard to the side
20 boundary line issue, we're putting up a quality
21 addition. It will have brick. They've torn off part
22 of the back of the house. They're going to save brick
23 so they can use it in construction of the addition.
24 There's only one window, and the window as is going to
25 be located is adjacent to where there's a brick wall

1 running between the two properties.

2 We did want to make sure everybody had
3 information with what the proposed addition was. I
4 would like to address the four factual findings that
5 you would have to make to approve the variance.

6 I think OMP Staff in its report filed in July
7 had all the information you needed to make those
8 findings. It's echoed for the most part in the Staff
9 Report for this meeting.

10 The first is, well, does this proposed
11 variance affect the public health, safety or welfare?
12 There's no evidence of that. There's an addition
13 coming onto the house, as noted by Mr. Pedley. That
14 addition will be at least 10 feet from the structure
15 at 1901 Lexington, which is compliant with Kentucky
16 Building Code. So there's no evidence of any issue
17 with public health, safety or welfare.

18 The second consideration, and that is a
19 finding that it will not alter the essential character
20 of the general vicinity, and reason it won't is
21 because as everybody knows -- I always think of
22 Littlewood and Lexington as "The Neighborhood." My
23 sister lives on Littlewood. My sister got a Variance,
24 side yard Variance a while back from the Board of
25 Adjustment for 1811 Littlewood. I always think of

1 these two streets the same; because the trees and the
2 houses have been sought out for years. Everybody
3 loves these two streets off Griffith Avenue.

4 These houses were built in the 1930s, 1940s,
5 thereabouts. The problem with these houses, in many
6 instances, is our lifestyle nowadays is different than
7 it was back then. Back then people had a kitchen that
8 was the size of a closet. Now everybody wants a
9 kitchen that's the size of the entire first floor.
10 Same thing with TV rooms and master bedrooms and
11 things like that.

12 What's happened over the years in this
13 neighborhood is that people have added on. Whether
14 it's a garage, or an attached garage, or a bedroom, or
15 a kitchen, or a TV room, or whatever, and there are
16 variance applications where people have done that.
17 Those include and are listed in the Staff Report.

18 They include 1914 Lexington Avenue, which is
19 one of the adjacent properties that was notified of
20 this request. They had a rear setback line
21 adjustment.

22 1924 Littlewood, another adjacent property,
23 which had a rear setback line adjustment.

24 As note by the Staff, 22 of 38 homes, that
25 being the homes on Lexington and the homes on the west

1 side of Littlewood Drive, 22 of 38 of them have rear
2 and/or side setback line encroachment. So you've got
3 58 percent of the neighborhood that has rear side
4 setback line encroachment. Again, some of that it
5 because it was already there. People had a garage in
6 the rear corner of their house, of their property.

7 I think 1901 Lexington has a two-story
8 structure that's almost right on the rear and side
9 boundary line. May not be near the side, but right
10 near, within a foot or so of the rear boundary line
11 because that's how structures were built back then.
12 They would go all the way back to the rear property
13 line.

14 I remember when Prince Berese owned that house
15 and had somebody living in that apartment above the
16 garage. There are numerous structures, including
17 those right next to this property, that have
18 encroachments. Whether that's because they were built
19 before the Zoning Ordinance or they've been Variance
20 applications.

21 I will also note that our research found that
22 you have only denied variance applications in this
23 area twice; is what our research found. One of them
24 was Prince -- I call her Prince. I think her legal
25 name was Ruth Berese, at 1901 Lexington who sought a

1 variance at one time. It was denied because it was
2 multi-family at that point. She had somebody living
3 in the apartments. So she had a multi-family use and
4 she was expanding a multi-family use in an area zoned
5 R-1 Single-Family Residential and it was denied.

6 The other denial was on 2001 Winston Drive,
7 and that was because the gentleman built his addition
8 that encroached before he came to you and asked for a
9 variance. One of the checkmarks is, has this person
10 violated a zoning ordinance before he came to you, and
11 the answer was, yes; so it was denied.

12 The history that we have been able to find
13 shows that in this neighborhood no variance
14 application of this nature involving this set of
15 circumstances or similar circumstances has ever been
16 denied.

17 I think that the evidence about the nature of
18 the neighborhood, the fact that most of the structures
19 and houses, if not all of them, were built before the
20 Zoning Ordinance was enacted. The fact that because
21 of that there's been numerous encroachments on rear
22 and side setback lines. Because of all the variances
23 that have been granted for rear and side setback line
24 variances, establishes that this variance will not
25 alter the essential character of the general vicinity.

1 Again, that was noted in the Staff Report filed last
2 month. Because no similar variance request have been
3 approved in the past and there are numerous structures
4 violating the setback lines that were constructed
5 before and after the Zoning Ordinance.

6 Third, this will not cause a hazard or
7 nuisance to the public. Again, you've got the
8 Kentucky Building Code 10-foot of separation. There's
9 just simply no evidence of a hazard or nuisance to the
10 public because of this addition being made.

11 Four, this is not an unreasonable
12 circumvention of the zoning regulations. Again, this
13 goes back to what I just discussed with you. Because
14 most of the construction in this area predates the
15 Zoning Ordinance and in numerous instances violates
16 the setback line and since enactment of the zoning
17 Ordinance, numerous variances have been requested.

18 We believe the facts in evidence before you to
19 support the findings you need to make to grant this
20 variance.

21 Again, we are sorry that we were not here last
22 month, but we are here today on a new application to
23 present all the evidence, the additional evidence that
24 you need to hear from us to address any issues and to
25 grant the request. We're here to answer any questions

1 anybody may have. Thank you.

2 CHAIRMAN: Thank you.

3 MR. GLENN: I have a question now. Maybe I
4 misunderstood you towards the beginning of your
5 explanation. You were talking about the rear of the
6 house setback and you said that is now 11 feet.

7 MR. SULLIVAN: Of course it's 20 foot. We're
8 seeking A reduction to 10 feet. My understanding from
9 my client was we had talked to Mr. Dexter who lives on
10 Littlewood who would be one of the people concerned
11 about the rear setback.

12 My understanding from my client was that they
13 had talked about agreeing to only seek a rear setback
14 line. That we would go 11 1/2 feet, I think; 11 feet
15 6 inches. Instead of seeking a reduction to 10 feet,
16 we would only seek a reduction to 11 feet 6 inches.

17 MR. GLENN: Okay.

18 MR. SULLIVAN: Again, Mr. Dexter is here and
19 he can speak to what he recalls.

20 CHAIRMAN: Anyone else on the board have a
21 question of Mr. Sullivan?

22 (NO RESPONSE)

23 CHAIRMAN: Stay put.

24 Is there anyone here wishing to express
25 concerns or have questions?

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

2 MR. POTTS: Greg Potts and Rita Potts, 1901
3 Lexington Avenue.

4 (GREG AND RITA POTTS SWORN BY ATTORNEY.)

5 CHAIRMAN: Go ahead.

6 MR. POTTS: If you look at the site plan, it
7 doesn't show our property here, but the addition goes
8 the full length from our house all the way to the back
9 of the property with a roof 5 foot from our backyard
10 there. That's all we'll be able to see is the roof.
11 We have to stand in our backyard and look straight up
12 to see the sky.

13 It looks to me like there's plenty of room on
14 this lot here to build without having to get a
15 variance.

16 These variances were never meant to be given
17 out like Halloween candy. They're supposed to be
18 given by reason of exceptional narrowness, shallowness
19 or unusual shape of the site or for topographical
20 conditions like if there's a cliff in the back or
21 whatever. We just think that there's plenty of room
22 there without encroaching on the offset or setback.

23 MRS. POTTS: I also wanted to say that I've
24 done a lot of research on Zoning and Planning at a
25 federal level, state level and local level. The

1 intent of variances were for safety and to protect
2 property lines. Those easements, they were never
3 intent -- nowhere in any of the standards did I read
4 that it was intended to increase the size of homes.

5 Now, I've lived in this neighborhood and in
6 this house for 33 years. The view that the Burkes
7 built, they were the original owners of the home, was
8 beautiful, beautiful. Like my husband said, with this
9 new addition all we're going to see is brick wall and
10 roof.

11 I have a rental, it's zoned for four rentals
12 and I do not think that having a roof and brick walls
13 is going to increase the value of my house. It's
14 going to lessen it. I don't know if I'll get the
15 clients or if I want to rent it be able to rent to the
16 people that want to look at a brick wall or roof.

17 MR. POTTS: We won't have any view from our
18 yard at all except for out front.

19 CHAIRMAN: Do you want to address anything,
20 Mr. Sullivan?

21 MR. SULLIVAN: Well, I would say this, a
22 couple of things. In regard to room on the lot, I
23 think that it was pointed out by the Staff that the
24 house itself, I think, what, it's got 25 foot front.
25 Is that the setback on the front, 25 feet?

1 MR. HOWARD: Yes.

2 MR. SULLIVAN: Okay. Its setback 45 or 50
3 feet already. So the house itself, the front of the
4 house is so far back it restricts the amount where you
5 can add things onto the house. So as far as being
6 able to put it somewhere else, it is restricted. The
7 thing about blocking the view, you know, I understand
8 that concern. I don't know that this structure was
9 built four or five feet over from where we're
10 proposing it in exactly the same height; how much
11 additional view they would be granted. Of course,
12 you can put -- I know that the zoning ordinance, I was
13 just checking with Mr. Pedley, would allow a detached
14 structure to be able to be put within 3 feet of the
15 boundary line; so long as it's 6 feet behind the
16 house. So where their apartment is, there could be an
17 detached structure that goes all the way up. There's
18 no restriction on height, as long we meet the setback
19 lines, I think. You guys can speak to that. If
20 somebody wanted, if you wanted to put three stories
21 up, that was 5 feet over. That could happen.

22 MR. HOWARD: There's a maximum height
23 requirement. So you couldn't go unlimited, but I
24 believe in an R-1A zone it's 36 feet.

25 MR. SULLIVAN: Right. So you can go 36 feet

1 high, 5 feet over and still block somebody's view. I
2 understand the concerns. I've tried to address the
3 best I can as to why we have to build it where it is
4 and what can happen sometimes with planning issues.

5 CHAIRMAN: Thank you.

6 Do you have other comments you would like to
7 make?

8 MRS. POTTS: His structure, if they do not get
9 this permit and they build, because I was told by
10 Mr. Cecil that if the variance wasn't given he could
11 build a detached structure anywhere on the property 3
12 foot from the property line. I want to ask if that's
13 true; and two, if there is an associated structure
14 already there, would that have to be removed or tore
15 down to build this detached structure? The other
16 question is --

17 MR. POTTS: We've already discussed, it can't
18 be built anywhere on the property. It's got to be 6
19 foot behind the house.

20 MRS. POTTS: We would be willing to compromise
21 with that, if they built it behind the house and have
22 the structure detached for nonhuman occupancy. We
23 would compromise.

24 MR. POTTS: The reason they want this over
25 here is to get a two-car garage on the front of the

1 house. There's other means of doing this without
2 blocking the whole side of our yard.

3 MR. POTTS: My husband is a builder.

4 CHAIRMAN: Let's see if anyone else has a
5 question.

6 MR. REEVES: I have a question.

7 Ma'am, I have a question. It's my
8 understanding that you have rental property that is
9 adjacent to this, right?

10 MRS. POTTS: Yes.

11 MR. REEVES: I guess, Mr. Howard, my question
12 is: I did not realize rental property was allowed in
13 this neighborhood.

14 MR. HOWARD: It's zoned single-family
15 residential. My assumption would be that it predates
16 zoning.

17 MRS. POTTS: It does. It's grandfathered in.

18 MR. REEVES: You live on the property and in
19 addition you have renters who live on the property?

20 MRS. POTTS: I don't have any renters
21 currently.

22 MR. REEVES: But you have rental property that
23 you would like to rent; is that correct?

24 MRS. POTTS: Yes.

25 CHAIRMAN: Thank you. Let's see if we've got

1 anyone else that would like to add anything.

2 Is there anyone else that wishes to add
3 something to this discussion?

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

6 MR. DEXTER: William Dexter.

7 MS. KNIGHT: Mr. Dexter, you're sworn as an
8 attorney.

9 MR. DEXTER: Thank you.

10 Shirley and I are between a rock and a hard
11 place here. I'm reminded of the old joke about one of
12 my neighbors is for this and one of my neighbors is
13 against it and we're for our neighbors.

14 Since last month, we've talked to the
15 contractor and we've learned, which we didn't know at
16 the time, that our concern -- we live directly behind
17 the property on Littlewood as been described. We were
18 concerned about the loss of privacy. We respected the
19 setback on our side. But we've learned from the
20 contractor, that the proposed footprint that's been
21 shown tonight, at the back will be a one-story
22 addition and that the rear wall will not have any
23 windows. So that went a long way to satisfy our
24 concerns about the loss of privacy.

25 So we have agreed, as has been represented by

1 Mike, but just so there's no misunderstanding. What
2 we've agreed to, if you were to approve the ordinance,
3 was they could not encroach any more than 8 1/2 feet.
4 The 11 1/2 would be on our side.

5 MR. SULLIVAN: Yes.

6 MR. DEXTER: There's no misunderstanding about
7 that.

8 Now, Rita and Craig feel very strongly about
9 this and I respect their opinions and they're effected
10 differently than we are. This is a tough situation.
11 That's where we are on this. Thank you.

12 CHAIRMAN: Thank you.

13 Is there anyone else wishing to speak to voice
14 concerns or opposition to this item?

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

17 MR. BROWN: Aaron Brown.

18 (AARON BROWN SWORN BY ATTORNEY.)

19 MR. BROWN: I guess my comment is that
20 obviously anything that Mr. Sullivan has said is
21 correct. We've not lived there about ten years. We
22 have done one of those additions that did not require
23 any encroachments or variances. But I think it's sort
24 of a fallacy to -- and if it isn't, then I've got
25 another beef with you all. I think it's a fallacy to

1 say, well, just because 100 years ago or 80 years ago
2 or 60 years ago that we did this prior to the
3 existence of the Board, I don't think that really
4 counts. You likely see it differently.

5 As far as rental property, Mr. Reeves, you
6 said you didn't realize, there's a lot of rental
7 property on that street; at the Ford end especially.
8 When that came up, I made actually a trip over and
9 spoke to this young lady over here about that. Since
10 it was grandfathered in, well, it's okay. Well, maybe
11 it is and maybe it isn't. That's obviously a matter
12 of opinion. I don't know that it's necessarily an
13 awful thing for the neighborhood for this to happen,
14 but I have a feeling what will happen is builders, and
15 Mr. Cecil does good work. I saw what he did across
16 the street from the house he's working on now. It's
17 excellent work. That's not an issue either. As other
18 opportunities become available, other people are going
19 to come to you. You're going to give other people
20 variances and before I know it I'm going to live in a
21 neighborhood that 1) has zero lot lines; 2) has
22 property taxes that I can't even pass this house down
23 to my children because they couldn't afford; and 3)
24 yes, I enjoy my 45 minute yard, but I'd really rather
25 not have it turned into a 10 minute yard, to not have

1 any green space at all. That's my concern. Thank
2 you.

3 CHAIRMAN: Thank you.

4 Anyone have a question of Mr. Brown?

5 (NO RESPONSE)

6 CHAIRMAN: Would you like to respond?

7 MR. SULLIVAN: I think the reason about things
8 in this area being non-compliant or encroachments that
9 were built 100 years ago or 70 years ago, the reason
10 it's relevant is when you look at your findings that
11 you have to make in Items 2 and 4 about whether it
12 will alter the essential character of the neighborhood
13 or is it an unreasonable circumvention of the Zoning
14 Ordinance. The reason those things are relevant is
15 because this isn't Lake Forest subdivision where
16 nothing -- well, I could be wrong, Mr. Howard. You
17 may correct me. But there's probably not a whole lot
18 out in Lake Forest subdivision where there's setback
19 lines, where they're encroaching on a setback line.
20 Here there are numerous encroachments on setback line
21 because that's how the houses were built back then.
22 That's where the garages were put. So that's why it's
23 relevant. Because it's relevant to findings 2 and 4
24 you'll make.

25 I understand Mr. Brown's concerns about

1 covering up the yard, but if you look at this house --
2 if you look at a lot of the houses, whether it's
3 driveways, people put in pools, whether it's
4 driveways, sidewalks, or whatever, there's some houses
5 that they don't have structures that are
6 encroachments, but there seems to be a lot of paving.
7 Once you get past the front yard, there's not that
8 much yard. Here you've got, we're still going to have
9 a very large front yard that will have a lot of curb
10 appeal. This house will still have a lot of curb
11 appeal and I think it will be, again, consistent with
12 the character of the neighborhood.

13 CHAIRMAN: Is there anyone else wishing to
14 speak to this item?

15 MRS. POTTS: I just wanted to say, and I have
16 pictures that I can send to the board. If you look at
17 the area of the neighborhood and the distances between
18 houses, even though there have been additions that
19 have been put on these homes, the views are absolutely
20 beautiful. There's no -- I can't see one neighbor
21 that has a view that is obstructed.

22 MR. POTTS: And there's no houses there that
23 have 10 feet between them either. They're all well
24 over 30 feet between the houses. There's not these
25 Brookhill or whatever type, the townhouse look that

1 we're trying to avoid in our neighborhood. The
2 townhouse affect that just destroys the character of
3 our neighborhood. That's just too close.

4 CHAIRMAN: Thank you.

5 MRS. POTTS: I did want to say we are the
6 Dogwood/Azalea Trail which is historical. It was put
7 in in the '70s by the city and many, many, many people
8 are in that neighborhood walking those neighbors and
9 look at the beauty and they walk it. Sometimes
10 they'll park at the high school, they live out of the
11 neighborhood, to walk in those neighbors.

12 I think, like my husband said, we start giving
13 variances out, and with Mr. Brown said, the value or
14 the look of our neighborhood will change. I think,
15 you know, that's one of the sites that the chamber of
16 commerce, you know, has listed on websites to visit.

17 CHAIRMAN: Thank you.

18 I think we've probably covered every aspect of
19 this one way or the other.

20 Does anyone else have anything to add.

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

23 MR. SANFORD: Jeff Sanford, 1914 Lexington
24 Avenue.

25 (JEFF SANFORD SWORN BY ATTORNEY.)

1 MR. SANFORD: I would just like to say with
2 the variances, when you start -- there's a reason why
3 you all are up here and why things were done the way
4 they were done 100 years ago. That's why you're here.
5 The character of the neighborhood if it's the way it
6 is the way it is.

7 My question would be: Is there a way to
8 compromise something between the builder and my
9 neighbors here? Is there anything out here? Is there
10 another idea, anything drawing? Is there anything
11 that you could do to compromise in any kind of way so
12 there's a win/win for everybody in the neighborhood?
13 That would be my question. Is there something out
14 there? I don't know if you've got another drawing or
15 something or what you may have in store. If you were
16 to vote no, what's Plan B. Is there a Plan B? I know
17 a lot of times when I'm up there I've got a Plan B. I
18 don't know if there is or there isn't. That's what I
19 would like to know. If there's a way to compromise so
20 everybody can get a win out of this.

21 CHAIRMAN: I think we had one concession made
22 with the 11.6, didn't we?

23 MR. SULLIVAN: Yes.

24 CHAIRMAN: Between Mr. Dexter and --

25 MR. SULLIVAN: Let me say this: I'm not a

1 builder so I don't know the answer to that question.
2 I don't think Gary has thought that far through. Let
3 me say about the side setback line. I think you're at
4 about 6 feet like the proposed construction. I can't
5 remember what it is. It might be like 6.13 feet or
6 something like that, if I recall. There's no wiggle
7 room to reduce it down to 5 feet. It's hard to say,
8 okay, we'll come off 5 feet with the proposed
9 addition. Again, you're going to be out there with a
10 ruler and there's just not as much wiggle room there
11 as there was on the rear boundary line.

12 I don't like -- next thing I don't like to say
13 is reality, but I don't like having to say this, and
14 I've already said it a little bit, but we can put --
15 we can move 5-feet back from where we are and go
16 36-feet high and still obstruct the view. You can
17 plant a bunch of trees that grow 50-feet high on your
18 property line and obstruct the view. I mean there's
19 things that can be done that don't involve a variance
20 that can result in people's views being obstructed. I
21 don't like saying that, but there are things that can
22 happen in compliance with the zoning plan that can
23 even obstruct your view more. I don't know that
24 moving this addition 4 feet further over the property
25 line the same height is significant. Again, I don't

1 like making these arguments, but if it's on the
2 10-foot setback line and it goes up the same amount of
3 height, how much less view is obstructed than if it's
4 3 foot, 4 foot over. I don't know.

5 CHAIRMAN: Thank you.

6 MR. SANFORD: I'd just like to say about the
7 view. There's a difference in the view of a tree and
8 a brick wall.

9 MR. SULLIVAN: Okay.

10 MR. SANFORD: If I'm going to look at a brick
11 wall outside of my house or a tree.

12 MR. SULLIVAN: You're not going to look at a
13 brick wall outside of your house. Well, there is a
14 brick wall outside their house already.

15 MR. SANFORD: Yes, but there will be a bigger
16 one.

17 Also, if we do this, can I do the same thing
18 at my house across the street to the Reeds and build a
19 garage next to my house so they can't -- if you open
20 the door, you open the door to other things. Final
21 point. Thanks.

22 MR. SULLIVAN: My answer, Mrs. Chair, we could
23 build at the 10-foot line and you'll still be looking
24 out your window at a brick wall.

25 CHAIRMAN: Thank you.

1 MR. SULLIVAN: You can't stop the brick wall.

2 CHAIRMAN: Anyone on the board have a question
3 or suggestion at this point?

4 Mr. Reeves, you're always full of ideas.

5 MR. REEVES: This response is to Mr. Sanford.
6 I appreciate what he has to say.

7 This board doesn't make precedence. Every
8 single solitary issue that comes before this board is
9 a unique issue. Somebody in the audience might cite
10 that. We may choose not to consider it. We've heard
11 an awful lot of testimony tonight on both sides, which
12 I think is excellent. I was the one that made the
13 motion last month to not approve it. I'll not tell
14 you if I'd make a motion what is at this point in
15 time. That was based on the fact that we did not have
16 anything in evidence by Mr. Cecil's side that we could
17 consider other than the written documents that we had
18 in front of us. It's been helpful for me to see you
19 be here tonight.

20 By the way, he paid two fees to be here. He
21 paid a fee for last months. He paid a fee again this
22 month. That would be my only comments.

23 I think the discussions have been extremely
24 helpful. As all of you know, when we leave every
25 night half are happy and half are mad. That's part of

1 job up here.

2 CHAIRMAN: That's right.

3 MR. SULLIVAN: Ms. Chair, I do have one
4 question of Mr. Dexter and that is, he had mentioned
5 no windows on the rear of the structure, and I didn't
6 know whether it was acceptable or not if there was a
7 window on the structure, it's on the first floor and
8 it's height is no greater than the height of the
9 existing brick wall.

10 CHAIRMAN: Mr. Dexter.

11 MR. DEXTER: You're the one that represented
12 to me that there were no windows on the back. I
13 thought I heard earlier tonight someone say that there
14 was a window and a closet on the side. That doesn't
15 affect us.

16 MR. CECIL: That's correct, there is a window
17 on the side facing north. It would be toward 1901
18 Lexington.

19 MR. DEXTER: So there's no windows on the
20 south side?

21 MR. CECIL: The reason I actually called you
22 earlier was there is a window shown, but I was going
23 to strike it here tonight on this plan, you know,
24 based on our conversation. I'm good without the
25 window.

1 MR. DEXTER: Well, I would like the ordinance,
2 whether they pass it, you represented that you talked
3 with the Staff about it and if they were to approve
4 it, either as a condition or as part of the variance
5 itself, that these things be in there; both the 8 1/2
6 feet and the no windows on the east side.

7 MR. CECIL: Yes, east side.

8 We did look at trying to shrink this addition
9 down and stay within that 10-foot setback.
10 Unfortunately, there's not enough space to get a two
11 car garage, which doesn't work for the owners of the
12 property. They wanted to stick with enough space to
13 get two vehicles in their garage.

14 CHAIRMAN: Mrs. Potts.

15 MRS. POTTS: They can bring that drawing back
16 up.

17 If you look at the principle structure, if
18 that was built off of the principle structure, I think
19 it would be a compromise for all of us and a win/win.
20 There's plenty of room off of that back structure.
21 They have a garage already that could be probably
22 attached to that structure if you built it off of the
23 principle part of the house, then it's not even near
24 the wall. Keep it within the strength of the
25 variance. Is there a reason for that?

1 MR. CECIL: I would ask Staff, we understand
2 we couldn't attach to that existing garage. The fact
3 it's already, I guess, encroaching on the property
4 line. We couldn't attach to it and use it as an
5 attached garage without getting this variance.

6 MR. HOWARD: Right. You would have to request
7 a different variance for that because you would be
8 creating -- if you attach without a variance, you
9 would be creating a zoning violation because the
10 principle structure would be located too close to the
11 property line.

12 MRS. POTTS: Well, most of the houses in our
13 neighborhood do have detached garages. I don't know
14 what the hardship would be to not have it attached.

15 MR. POTTS: There's only one attached garage
16 on our whole street.

17 MR. CECIL: I don't know that I have a good
18 answer for that.

19 Even if we took the addition and split the
20 master bedroom up, it's still going to be in violation
21 of that setback. If we weren't having an attached
22 garage question and it was this addition just slid
23 forward without a garage, that master suite would
24 still be in violation or still in need of a variance.

25 MR. POTTS: They could over behind the house

1 some. There's no -- like I said there's -- the lot is
2 not narrow. It's not exceptionally shallow. It's not
3 oddly shaped. Surely somebody could draw a plan where
4 they could get an addition within the boundaries of
5 the ordinance.

6 MR. CECIL: We could potentially come straight
7 out the back of this house and do a deeper addition.
8 To shed the water, we would have to do a two
9 full-story I feel like, which would increase that roof
10 line. We would be back into the situation where maybe
11 we violate that 36-foot height by the time that roof
12 line increased to shed water. I don't know that for
13 sure. I'm not standing here with a set of plans where
14 we've designed this house. I would expect that if you
15 did that and you did a garage in the back that used
16 the existing driveway, you wouldn't be able to turn
17 around and pull out if it was attached to the house.

18 MR. POTTS: We're still getting the townhouse
19 effect if we get our houses built that close together.

20 MRS. POTTS: And all driveways on that block,
21 people back out of their driveways; so I don't
22 understand. The people that lived there before used
23 that driveway, backed out of it. Every tenant or
24 owner of that home used that driveway to get in and
25 out with no problem.

1 CHAIRMAN: Thank you.

2 Anyone else have something to add?

3 (NO RESPONSE)

4 CHAIRMAN: Any board member have a question or
5 comment?

6 (NO RESPONSE)

7 CHAIRMAN: Are we ready for a motion?

8 MR. REEVES: I'm going to move for approval
9 for this application of the Variance based on the
10 extensive comments we've had from the audience
11 tonight. It was appreciated. And the Staff's
12 Findings of Fact 1 through 4 that relate to approving
13 this motion.

14 CHAIRMAN: Is there a question on the motion?

15 MR. GLENN: Shouldn't we also add that there'd
16 be no window on that backside? They said he wouldn't
17 and he wanted to make sure.

18 MR. REEVES: Also with the condition that
19 there be no window placed on the back side of the
20 addition.

21 MR. HOWARD: The setback on the rear they
22 agreed to reduce to 11.6.

23 MR. REEVES: The second condition, that they
24 agreed on the setback with Mr. Dexter.

25 MS. KNIGHT: There's also a recommended Staff

1 condition on there; to obtain all necessary building,
2 electrical and HVAC permits.

3 MR. REEVES: Yes, that condition.

4 MRS. POTTS: Could I also request that there
5 is no window on our side of the property as well?
6 They don't have a window; I don't think we should have
7 one either.

8 CHAIRMAN: Mr. Sullivan.

9 MR. SULLIVAN: The window in the plan is
10 adjacent to the brick wall that is on the side. If
11 you want to restrict it to the window that's on the
12 plan that's been submitted, that's not a problem, but
13 it's got the brick wall as view on the first floor.

14 MRS. POTTS: Can you see the window above the
15 brick wall?

16 MR. SULLIVAN: The window is for a closet that
17 is across from a brick wall that, from my
18 recollection, is at least about 5-feet tall.

19 CHAIRMAN: Thank you. Is there a second to
20 the motion?

21 MR. GLENN: I'll second it.

22 CHAIRMAN: Second by Mr. Glenn. Any question
23 on the motion?

24 (NO RESPONSE)

25 CHAIRMAN: All in favor of the motion raise

1 your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries unanimously.

4 Mr. Howard, anything else?

5 MR. HOWARD: No, ma'am.

6 CHAIRMAN: We have one more motion.

7 MR. GLENN: Motion to adjourn.

8 CHAIRMAN: We have a motion to adjourn. We
9 need a second?

10 MS. MORGAN: Second.

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

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: We are adjourned.

15 -----

16

17

18

19

20

21

22

23

24

25

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 38
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 August, 2019.

18

19

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

20

21

22

23 COMMISSION EXPIRES: DECEMBER 16, 2022

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25