

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 JUNE 1, 2023

3 The Owensboro Metropolitan Planning Board of
4 Adjustment met in regular session at 5:30 p.m. on
5 Thursday, June 1, 2023, at City Hall, Commission
6 Chambers, Owensboro, Kentucky, and the proceedings
7 were as follows:

8 MEMBERS PRESENT: Judy Dixon, Chairman
9 Lewis Jean, Vice Chairman
10 Ruth Ann Mason, Secretary
11 Brian Howard, Director
12 Terra Knight, Attorney
13 Laurina Strehl
14 Tori Thompson
15 Bill Glenn

16 * * * * *

17 CHAIRMAN: We will call the Owensboro
18 Metropolitan Board of Adjustment June 1, 2023 meeting
19 to order. The first thing we're going to do is have a
20 prayer and pledge to the flag.

21 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

22 CHAIRMAN: The first item on the agenda is to
23 consider the minutes of the May 4, 2023 meeting. All
24 members have been given a copy either digitally or a
25 hard copy. At this time I will entertain a motion.

MS. THOMPSON: Motion to approve.

CHAIRMAN: Motion to approve by Tori.

MR. GLENN: Second.

1 CHAIRMAN: Second by Bill. All in favor of
2 the motion raise your right hand.

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 CHAIRMAN: Motion carries unanimously.

5 First item, Mr. Howard.

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7 CONDITIONAL USE PERMITS

8 ITEM 2

9 5341 Frederica Street, zoned A-R Rural Agriculture
10 Consider request for a Conditional Use Permit in order
11 to operate a commercial office as a Home Occupation
12 from the subject property.
13 References: Zoning Ordinances, Article 8,
14 Section 8.2(D)(5a)
15 Applicant: Marian Turley

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

18 MR. PEDLEY: Trey Pedley.

19 (TREY PEDLEY SWORN BY ATTORNEY.)

20 MR. PEDLEY: The subject property is zoned A-R
21 Rural Agriculture and is located near the intersection
22 of Frederica Street and Martin Luther King, Jr. Loop.

23 All adjoining properties to the north and west
24 are zoned commercially. To the south and east is a
25 large farm product that is zoned A-R Rural
Agriculture.

At this time the applicant proposes to utilize
a portion of the home for commercial office with three

1 employees operating Monday through Friday from 8 a.m.
2 to 6 p.m.

3 The submitted site plan illustrates four
4 parking spaces which should be adequate for three
5 employees and one client on the property at a time.
6 Additionally vehicular use area screens consisting of
7 a 3-foot tall continuous element and one tree per
8 40-linear feet shall be installed for vehicular area
9 adjoining Frederica Street.

10 All zoning ordinance requirements have been
11 met within the application with the exception of one
12 requested you waiver. The applicant proposes to allow
13 up to two nonresident employees at the subject
14 property.

15 If approved Suggested Conditions include:

16 1. It is recommended that the OMBA
17 separately:

18 * Limit the number of nonresident employees
19 on-site at one time;

20 * Limit the number of clients on-site at one
21 time;

22 * Limit the number of hours of operation; and,

23 * Establish a minimum number of parking spaces
24 to appropriately serve the proposed use.

25 2. Obtain all necessary building, electrical

1 and HVAC permits, inspections and certificate of
2 occupancy and compliance.

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

5 CHAIRMAN: Thank you, Mr. Pedley.

6 Is there someone here representing the
7 applicant?

8 (NO RESPONSE)

9 CHAIRMAN: I guess no one can have a question
10 of the applicant.

11 Is there anyone in the audience that has a
12 question about this use?

13 (NO RESPONSE)

14 CHAIRMAN: Anyone on the committee?

15 Mr. Glenn.

16 MR. GLENN: One of the conditions that we
17 might set would be to establish a minimum number of
18 parking spaces. On the previous diagram that was up
19 here, I only saw three parking spaces. If there are
20 three people working there, where will the clients
21 park?

22 MR. PEDLEY: So on the diagram, you're right,
23 they show three parking spaces in front of the house.
24 They're also showing a fourth one further up the
25 gravel driveway near the garage. So they have four on

1 their plan shown.

2 MR. HOWARD: Trey, would the person that
3 resides in the home, the applicant, would they also be
4 utilizing the garage for their parking?

5 MR. PEDLEY: They can use their garage. That
6 gravel drives goes back further also. There's
7 adequate space for the two spaces for the home
8 separate from the four shown for the business use.

9 MS. MASON: I have a question. If there are
10 three people working and one person visiting, what
11 happens when someone shows up? Let's say there's an
12 appointment from 12 to 1 and someone shows up at 1:00
13 and there's not a parking place for that person?

14 MR. PEDLEY: Right. Obviously, I'm not the
15 applicant.

16 MS. MASON: Right.

17 MR. PEDLEY: You could make a condition based
18 off of no more than one on the premises at a time, if
19 you would like, or you could make them require
20 additional parking if you feel necessary, but that's
21 up to you guys how you want to address that.

22 MS. MASON: I understand that.

23 CHAIRMAN: We could postpone until the
24 applicant here.

25 MS. MASON: Maybe we should do that.

1 I make a motion to postpone until the
2 applicant is here.

3 MS. THOMPSON: Second.

4 CHAIRMAN: Second. Any question on the
5 motion?

6 (NO RESPONSE)

7 CHAIRMAN: All in favor of postponing until
8 the applicant can be here raise your right hand.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries unanimously.

11 Next item.

12 ITEM 3

13 7405 Short Street, zoned R-1B Single-Family
14 Residential
15 Consider request for a Conditional Use Permit in order
16 to place a Class II Manufactured Home in an R-1B
17 Single-Family Residential zone.
References: Zoning Ordinance, Article 8,
Section 8.2(A)(10B)(7)
Applicant: Family Dream Homes; Monica Gonzalez

18 MR. PEDLEY: This property is located at the
19 corner of Short Street and Church Street in the
20 Stanley area.

21 As you can see on the aerial that's in front
22 of you, this property and all adjoining properties are
23 zoned R-1B Single-Family Residential. There are two
24 existing Class II Manufactured Homes on adjoining
25 properties.

1 At this time the applicant proposes to install
2 a 14 by 66 Class II Manufactured Home on the subject
3 property.

4 The submitted site plan with the application
5 indicates that each of the zoning ordinance
6 requirements will be full met with the exception of
7 three requested waivers.

8 1. A waiver of the required concrete
9 sidewalk;

10 2. A waiver of the paved parking pad and the
11 paved driveway apron; and,

12 3. A waiver to allow required skirting to be
13 made of vinyl rather than concrete or masonry block.

14 If approved Special Conditions include:

15 1. Obtain all necessary building, electrical
16 and HVAC permits, inspections and certificates of
17 occupancy and compliance; and,

18 2. The home shall be located on a permanent
19 foundation.

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

22 CHAIRMAN: Thank you, Mr. Pedley.

23 Is someone here representing the applicant?

24 (NO RESPONSE)

25 CHAIRMAN: Is there anyone in the audience

1 that has questions about this particular item?

2 Yes, come to the podium, please.

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

5 MR. MCKAY: Steve McKay.

6 (STEVE MCKAY SWORN BY ATTORNEY.)

7 MR. MCKAY: About two or three years ago I
8 looked into buying the property. I come and checked
9 on it and they told me you couldn't put a trailer
10 there, you couldn't put a house there or nothing. It
11 wasn't big enough. It was in the flood zone and you
12 couldn't haul dirt in to bring it up. I've been
13 living there 45 years. I would have liked to have
14 bought the property, but they said I couldn't do
15 anything with it.

16 CHAIRMAN: Who told you you couldn't do
17 anything with it?

18 MR. MCKAY: I checked with the zoning board
19 about two or three years ago.

20 CHAIRMAN: Okay.

21 MR. MCKAY: He told me I couldn't put a mobile
22 home there, couldn't build a house, couldn't put a
23 septic tank there.

24 MR. HOWARD: Do you remember who you spoke
25 with?

1 MR. MCKAY: No. I added onto my house, that
2 was several years, I had to talk to people to add on
3 there. I just checked with them. I though, well,
4 there's no need to try to buy it if I can't do
5 anything with it.

6 MR. HOWARD: I have no idea who he spoke to.
7 I don't know.

8 MR. MCKAY: How much ground do you have to
9 have to put a mobile home?

10 MR. HOWARD: Well, it's an existing lot of
11 record. That's why I guess I'm surprised if someone
12 from our staff said you couldn't do anything with it.
13 It's an existing lot of record. Provided that the
14 setbacks can be met, we should be able to issue
15 permits for it. Now, if it's in the flood plain and
16 you have to elevate and do that type of thing, that's
17 an additional bit that would go along with it.

18 MR. MCKAY: But that's part of what they told
19 me, but they said it wasn't big enough to put a mobile
20 home on.

21 MR. HOWARD: I don't know.

22 MR. MCKAY: Do you know how big of a lot you
23 have to have to put one on it?

24 MR. HOWARD: That's what I'm saying, if it's
25 an existing lot of record you can put a manufactured

1 home on it.

2 MR. MCKAY: I've been there 45 years and
3 nobody has been there since I've been there.

4 MR. HOWARD: Of course, I don't know how many
5 people or if anybody has ever approached it over the
6 years. I don't know. I can't speak to the history of
7 it. It is an existing lot of record meaning that even
8 if it's undersized, even if it doesn't meet current
9 zoning requirements, it's an existing lot and a permit
10 should be able to be issued for it. Again, provided
11 that you meet whatever setback and whatever
12 requirements may be needed for floodplain elevation.

13 MR. MCKAY: They didn't give me any, they just
14 said it wasn't big enough, in a flood zone, and you
15 couldn't haul dirt in to build it up.

16 MR. HOWARD: As far as bringing dirt in, that
17 would be a question that probably would have come from
18 the county engineer in regard to the mitigation
19 requirements for fill in for a floodplain, but again,
20 I can't speak for him either.

21 MR. MCKAY: If I had known you could have done
22 that, I would have been interested in it. I just
23 forgot about it.

24 CHAIRMAN: Is it in a floodplain?

25 MR. HOWARD: Yes, it is still in the

1 floodplain, yes.

2 MS. KNIGHT: Sir, do you have an objection to
3 this application or are you just gathering
4 information?

5 MR. MCKAY: Yes, because I would have like to
6 have bought it. That's the reason I didn't buy it
7 because I couldn't do nothing with it. Now they're
8 going to let somebody else do it.

9 MS. STREHL: I would like to ask a question.
10 If we approve it here, it doesn't mean it necessarily
11 happens because they still have to meet other
12 requirements; is that true?

13 MR. HOWARD: They'll be required to get
14 building permits and meet whatever requirements based
15 on the zoning ordinance and for floodplain mitigation,
16 yes.

17 MS. STREHL: So what he's indicating, those
18 issues could come at that time?

19 MR. HOWARD: If their site plan, you know,
20 they meet the setback requirements along Church Street
21 and Short Street, there appears to be sufficient room
22 on the site to put a single-wide on it. Of course, we
23 don't know about the floodplain.

24 MS. STREHL: And the sewage and the septic.

25 MR. HOWARD: Right.

1 MS. STREHL: There are septic requirements for
2 land, how much land you have to install a septic.
3 Those are things that are subject to stop this later,
4 right, when they actually go to --

5 MR. HOWARD: They will have to meet all of
6 those requirements before a home could be placed
7 there.

8 MS. KNIGHT: Not something that this Board
9 does.

10 MS. STREHL: That's what I'm saying.

11 MR. McKAY: They told me I couldn't do
12 anything.

13 MR. HOWARD: Without any point of reference
14 for any conversation that may have taken place in the
15 past, without you knowing who you spoke to on the spot
16 here, I didn't talk to you. I don't think anybody on
17 our staff did.

18 MR. McKAY: I just came in and talked with
19 somebody and they set it up and then they called me
20 back and said I couldn't do it.

21 MR. HOWARD: Unless there were, of course, we
22 have a letter from the attorney stating that there's
23 nothing. I was going to say unless there's some kind
24 of private restriction that would limit it, which we
25 wouldn't know about at that time anyway, you know, I

1 didn't speak to you. I don't think anybody here spoke
2 to you. I don't know how to, honestly how to address
3 that. It's always been our existing and continued
4 policy and I think meeting the requirements that if
5 it's an existing lot you can put a home on it, we
6 could issue a permit for it.

7 MR. MCKAY: I've always heard that it had to
8 be so big.

9 MR. HOWARD: There's nothing in the zoning
10 ordinance that says a lot has to be "X" number of
11 square feet or acreage to put a manufactured home on
12 it.

13 MR. MCKAY: Thank you.

14 CHAIRMAN: Do you want to come up, sir?

15 MS. KNIGHT: Go ahead and state your name for
16 the record, please.

17 MR. McFADDEN: Jeremiah McFadden.

18 (JEREMIAH McFADDEN SWORN BY ATTORNEY.)

19 CHAIRMAN: Your question.

20 MR. McFADDEN: I own the property right beside
21 it. What is the law on squatters rights? Because we
22 had kept that piece of property up for 60 plus years,
23 my granddad done it. My dad has done it. I've done
24 it for 60 plus years. There's never been a word said
25 about nothing.

1 MS. KNIGHT: I would say this board can't
2 adjudicate whether you adversely possess that property
3 or not. You need to talk to an attorney and see what
4 you can do about that, if you think that's -- this
5 board doesn't determine ownership or make any rulings
6 on that.

7 MR. McFADDEN: So that's it?

8 MS. KNIGHT: A court of law is the only place
9 you can go to get rights adjudicated on that question,
10 yes.

11 MR. McFADDEN: Okay.

12 CHAIRMAN: Thank you.

13 Anyone else.

14 (NO RESPONSE)

15 CHAIRMAN: Any board members have a question?

16 (NO RESPONSE)

17 CHAIRMAN: I guess we'll entertain a motion.

18 Mr. Glenn.

19 MR. GLENN: I'm going to I make a motion to
20 approve this Conditional Use Permit that they've
21 applied for. It talks about meeting a waiver for a
22 concrete pad or driveway or skirt, and in that area
23 there are other living houses and places that don't
24 have concrete so it won't be out of character with
25 that area. Same way with the driveway apron. The

1 skirting to be vinyl instead of concrete, as long as
2 it's on a permanent foundation, I don't think that's
3 going to be out of character with that neighborhood
4 and with the area that it's going to be put in. Also,
5 they need to make sure that they meet all of the
6 zoning ordinances that are required, except for the
7 three that they have applied a waiver for. They
8 should also meet the two special conditions that are
9 listed in this application.

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

12 (NO RESPONSE)

13 CHAIRMAN: The motion dies for a lack of a
14 second. Where do we go from here?

15 MS. MASON: Can we postpone this until we can
16 get the applicant here to explain some things? What's
17 the Board's feeling on that? What's everyone else
18 think about this, where we understand it a little bit
19 better?

20 CHAIRMAN: Okay. For postponement.

21 MS. MASON: What does everybody else think?

22 MS. STREHL: I don't know that the homeowner
23 is going to provide anything.

24 MR. GLENN: That's what I think. I don't know
25 what the homeowner can provide.

1 MS. MASON: Okay.

2 MS. KNIGHT: So is there motion for denial?

3 CHAIRMAN: We're going to have to have a
4 motion one way or the other to start over.

5 MS. THOMPSON: I'll second it.

6 CHAIRMAN: We let the other motion die.

7 Mr. Glenn, you need to re-enter your motion.

8 MR. GLENN: I will reenter the motion.

9 I'm going to I make a motion to approve this
10 Conditional Use Permit that they've applied for. It
11 talks about meeting a waiver for a concrete pad or
12 driveway or skirt, and in that area there are other
13 living houses and places that don't have concrete so
14 it won't be out of character with that area. Same way
15 with the driveway apron. The skirting to be vinyl
16 instead of concrete, as long as it's on a permanent
17 foundation, I don't think that's going to be out of
18 character with that neighborhood and with the area
19 that it's going to be put in. Also, they need to make
20 sure that they meet all of the zoning ordinances that
21 are required, except for the three that they have
22 applied a waiver for. They should also meet the two
23 special conditions that are listed in this
24 application.

25 MS. THOMPSON: Second.

1 CHAIRMAN: Any question on the motion?

2 (NO RESPONSE)

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

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries unanimously.

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8 VARIANCE

9 ITEM 4

10 3700 Frederica Street, zoned B-4 General Business
11 Consider request for a Variance in order to eliminate
12 200-linear-feet of vehicular use area screening where
13 the subject property adjoins Tamarack Road
14 References: Zoning Ordinance, Article 17,
15 Section 17.312(b)
16 Applicant: 3700 Frederica, LLC

17 MS. THOMPSON: I need to recuse myself from
18 this item, please.

19 CHAIRMAN: So noted.

20 MR. PEDLEY: So this property is zoned B-4
21 General Business and is located at the corner of
22 Tamarack Road and Frederica Street.

23 On the screen right now you'll see a site plan
24 that was approved in November of 2022, which as you
25 can see shows the vehicular use area runs parallel to
26 Tamarack Road and does show the required screening
27 elements.

28 Since then AT&T has submitted a letter saying

1 that AT&T will not permit the installation of
2 approximately 200-linear-feet of landscaping on the
3 northern curb line as shown on the existing drawing,
4 and as a result the applicant has requested a waiver
5 to eliminate that requirement right there.

6 The Board should be assured that approval of
7 this variance will not create a precedence in the
8 area. As future plans are submitted, all required
9 landscaping elements will be located outside of public
10 utility easements; otherwise, the development will be
11 required to submit a final development plan in order
12 to ensure that all utilities have an opportunity to
13 review the plan prior to approval.

14 Approval of this variance will not adversely
15 affect the public safety, will not create an
16 unreasonable circumvention of the requirements of the
17 zoning regulations because the proposal will protect
18 the existing utilities in the vicinity; will not alter
19 the essential character of the general vicinity
20 because this shall not constitute as a precedence for
21 similar requests in the future within this
22 development. However, approval may cause a nuisance
23 to the public as it will leave the vehicular use area
24 unscreened from Tamarack Road.

25 Staff recommends approval.

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

3 CHAIRMAN: Thank you.

4 Is there anyone here representing the
5 applicant?

6 MR. RAY: Madam Chairman, at this time there
7 is. Ed Ray on behalf of the applicant. Also here
8 with Mr. Lee Mills from Bryant Engineering who is the
9 site engineer. Here to answer any questions you may
10 have.

11 The only comment is that the owner was fully
12 prepared to install the landscaping as required under
13 the code, but utility is not granting us that access.
14 We appreciate your consideration of the variance.

15 CHAIRMAN: Thank you.

16 Anyone in the audience that has questions of
17 Mr. Ray?

18 (NO RESPONSE)

19 CHAIRMAN: I don't think so. Anyone on the
20 board?

21 (NO RESPONSE)

22 MR. RAY: Thank you.

23 CHAIRMAN: I will entertain a motion.
24 Lewis.

25 MR. JEAN: I would like to make a motion for

1 approval based on the Staff Report, site visit,
2 testimony heard here this, with the four Findings of
3 Fact that are listed.

4 MS. MASON: Second.

5 CHAIRMAN: Second by Ms. Mason. Any questions
6 on the motion?

7 MR. GLENN: Should it be included in that
8 motion that the next time that this happens, that it
9 shouldn't be happening, that we need to, whoever is
10 the engineer needs to make sure that the planning
11 scheme that he has that it falls within those
12 parameters? Because we don't want this to be
13 something that is going to happen over and over, and
14 we don't want to set a precedence about that. That's
15 my only question.

16 CHAIRMAN: I'm not sure we can attach that.

17 MR. HOWARD: Our attorney can correct me if
18 I'm wrong. I don't know that we can attach a
19 condition that would stipulate requirements on future
20 developments that aren't a part of this application.

21 Just a little background. In the past the
22 utilities have allowed landscaping to go within their
23 easements. There's been a recent change. The way
24 that some of them are looking at it, they're not
25 allowing anything to go in their easements now. We

1 think the applicant's engineer and other local
2 engineers are aware of this change and policy and are
3 aware of it because they're dealing with it first, and
4 then we're following up, you know, on the back end.
5 We've seen a couple of these. I think everybody
6 should be aware at this point moving forward for new
7 site development, new plans, they either need to be
8 outside of the public utility easements or easements
9 in general or they'll need a final development plan
10 that you sign off agreeing to it. I think in this
11 interim where we've had some plans approved, but
12 they've not been developed yet, we may see a few
13 issues, but long-term it will be corrected so that
14 this isn't a consistent thing that happens.

15 MR. GLENN: Okay. I was a little concerned
16 because I wouldn't want someone to come in there, like
17 has happened here, and they think they're doing
18 everything right and they've got concrete down,
19 gutters up, everything is going in and then all of a
20 sudden they find out that they're not going to be able
21 to plant anything in that easement. I'm wondering how
22 to avoid that because are we going to deny the next
23 one if that happened or approve it conditionally
24 because of --

25 MR. HOWARD: I think any future ones will come

1 down to timing. When was the plan approved? It will
2 be something that's been approved recently, but not
3 yet built, if it does happen again.

4 CHAIRMAN: Will likely bring the plans here
5 and then your staff will --

6 MR. HOWARD: Our Staff, in moving forward,
7 proceeding from here, our Staff will certainly be
8 looking at plans as they come in to assure that
9 landscaping is not within the easements. Again, I
10 think BEI is aware of it. We've contacted all of the
11 usual suspects that we see plans from just to kind of
12 let them know, hey, this utility is looking at things
13 different now. As you lay out your site, you need to
14 be aware of it because they're not going to let you
15 put landscaping in their easements anymore.

16 MR. GLENN: That puts my mind at ease.

17 MR. HOWARD: There will be a few lumps, and
18 we've seen a couple already, but hopefully there won't
19 be that many. Then moving forward we'll address it
20 before the site plan or development plan is even
21 approved.

22 MR. GLENN: Okay.

23 MS. KNIGHT: Mr. Glenn, you could make a
24 finding, well, you didn't make the motion. A finding
25 could be made that this is, as stated in the Staff

1 Report, a Special Circumstance applicable only to this
2 site. You can't make a finding on anything other than
3 this tonight. I think you could throw that in there.

4 MR. GLENN: I'm satisfied with the explanation
5 that I got. I don't necessarily think this is going
6 to be happening a lot.

7 MR. HOWARD: Yes. We certainly hope that it
8 doesn't and that's why we try to make sure everybody
9 is on the same page moving forward.

10 MR. GLENN: Okay. Fine.

11 CHAIRMAN: We had a motion. Who made the
12 second?

13 MS. MASON: I did.

14 CHAIRMAN: Any question on the motion.

15 (NO RESPONSE)

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

18 (ALL BOARD MEMBERS PRESENT - WITH TORI
19 THOMPSON RECUSING HERSELF - RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

21 We need one more motion.

22 MR. GLENN: Motion to adjoin.

23 MS. STREHL: Second.

24 CHAIRMAN: All in favor raise your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: We are adjourned.

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