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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

SEPTEMBER 6, 2001

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, September 6, 2001, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: C. A. Pantle, Chairman
- Gary Noffsinger,
- Planning Director
- Marty Warren
- Ruth Ann Mason
- Judy Dixon
- Tim Miller
- Bill Williams
- Ward Pedley
- Stewart Elliott
- Attorney

\* \* \* \* \*

CHAIRMAN: Call the meeting of the Owensboro Metropolitan Board of Adjustment to order. I want to welcome you all this evening. Before we start set up a few guidelines. If you wish to speak on any item, come to one of the microphones on each side of the room. State your name and you'll be sworn in because we're recording everything for record in case there are appeals or anything.

First item on the agenda this evening is to consider the minutes of past meeting of August 2nd.

1 They're on file in the office. There have been no  
2 adjustments or problem discovered in the record?

3 MR. NOFFSINGER: That is correct, sir.

4 CHAIRMAN: Would entertain a motion to  
5 approve.

6 MS. DIXON: Move to approve.

7 MS. MASON: Second.

8 CHAIRMAN: A motion been made and a  
9 second. All in favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries.

12 First item on the agenda please, sir.

13 -----

14 CONDITIONAL USE PERMITS

15 ITEM 2

16 3133 Commonwealth Court, in a B-4 zone  
17 Consider request for a Conditional Use Permit in  
18 order to construct an individual storage structure  
(mini-warehouse units).

19 Reference: Zoning Ordinance, Article 8, Section  
8.2L7, Section 8.4/48

20 Applicant: Ward O. Pedley

21 MR. PEDLEY: Mr. Chairman, I need to  
22 disqualify myself from this item.

23 CHAIRMAN: So note it for the record  
24 please.

25 (MR. PEDLEY LEAVES ROOM AT THIS TIME.)

MR. NOFFSINGER: Mr. Chairman, this

1 particular request has been reviewed by the Planning  
2 Staff. It's found to be in order. It has been  
3 advertised for public hearing at this time and all  
4 adjoining property owners have been notified. This is  
5 an application to construct a mini-warehouse structure  
6 that will have retail sales in the front portion of  
7 the building. The structure is approximately 5,520  
8 square feet and it will have a parking area between  
9 the building and Commonwealth Court. Mr. Chairman,  
10 it's ready for consideration.

11 CHAIRMAN: Has there been any objections  
12 filed in the office?

13 MR. NOFFSINGER: No, sir.

14 CHAIRMAN: Is there anyone in the audience  
15 representing the applicant?

16 (NO RESPONSE)

17 CHAIRMAN: Anyone in the audience have any  
18 comments for or against the application?

19 (NO RESPONSE)

20 CHAIRMAN: Hearing none what is the  
21 board's pleasure?

22 MR. WILLIAMS: Mr. Chairman, I make a  
23 motion we approve this permit.

24 CHAIRMAN: You've heard the motion. Is  
25 there a second.

1 MS. DIXON: Second.

2 CHAIRMAN: Is there any other discussion  
3 from any board members or comments by the staff?

4 (NO RESPONSE)

5 CHAIRMAN: Hearing none all in favor raise  
6 your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously.

9 (MR. PEDLEY RE-ENTERS THE ROOM AND JOINS  
10 THE BOARD.)

11 CHAIRMAN: Next item of business.

12 ITEM 3

13 619 Frederica Street, in a B-2 zone  
14 Consider request for a Conditional Use Permit in  
15 order to use an existing building as a dormitory to  
16 house up to eight (8) students.  
17 Reference: Zoning Ordinance, Article 8, Section 8.2A7  
18 Applicant: Brescia University, Inc., Sr. Vivian M.  
19 Bowles, President

20 MR. NOFFSINGER: Mr. Chairman, this  
21 applicant has been advertised for public hearing at  
22 this time. All adjoining property owners have been  
23 notified. The application has been reviewed by the  
24 Planning Staff. It's found to be in order. Includes  
25 existing building that fronts Frederica Street with a  
parking area to the rear of the property. These  
improvements are existing and the building is in the  
stages of being redone, remodeled for residential

1 activity. I believe the president of the University  
2 is here tonight should you have any questions. It's  
3 ready for your consideration.

4 CHAIRMAN: Been any objections filed in  
5 the office?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: Anyone in the audience wishing  
8 to speak in opposition of this?

9 (NO RESPONSE)

10 CHAIRMAN: Anyone want to add anything in  
11 favor of it?

12 (NO RESPONSE)

13 CHAIRMAN: Hearing none what's the board's  
14 pleasure?

15 MS. DIXON: Move to approve.

16 MS. MASON: Second.

17 CHAIRMAN: You heard the motion been made  
18 and a second. Any other questions or comments?

19 (NO RESPONSE)

20 CHAIRMAN: Hearing none all in favor raise  
21 your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item, please.

25

1       ITEM 4

2       10124 KY 258, in a proposed A-R zone  
3       Consider request for a Conditional Use Permit in  
4       order to expand an existing beauty shop.  
5       Reference: Zoning Ordinance, Article 8, Section  
6       8.2D3, and Section 8.4/46  
7       Applicant: Leslie L. & Lauran R. Gossett

8                   MR. NOFFSINGER: This application, Mr.  
9       Chairman, has been advertised for public hearing at  
10       this time. All adjoining property owners have been  
11       notified. The Planning Staff has reviewed the  
12       application. The application is in order. If this  
13       item is considered favorably, it should be approved  
14       subject to the Daviess County Fiscal Court taking  
15       final action to approve the rezoning of the property  
16       from A-U Urban Agricultural to A-R Rural Agricultural.  
17       With that it's ready for your consideration.

18                   CHAIRMAN: Has there been any objections  
19       filed in the office?

20                   MR. NOFFSINGER: No, sir.

21                   CHAIRMAN: Anyone in the audience wishing  
22       to speak in opposition?

23                   (NO RESPONSE)

24                   CHAIRMAN: Does the applicant or anyone  
25       have anything they want to add to it?

(NO RESPONSE)

MR. NOFFSINGER: Mr. Chairman, I would

1 like to add for the record the existing beauty salon  
2 is 20 by 14.5 deep. The addition will be similar,  
3 14.5 by 20 foot addition.

4 CHAIRMAN: Seeing none and hearing no  
5 comments, what's the board's pleasure?

6 MR. PEDLEY: Mr. Chairman, I make a motion  
7 for approval subject to the Fiscal Court approval to  
8 the A-R zone.

9 CHAIRMAN: So noted in the motion that the  
10 zoning change must be approved also before it's  
11 granted. Is there a second?

12 MR. MILLER: Second.

13 CHAIRMAN: Any other questions or  
14 comments?

15 (NO RESPONSE)

16 CHAIRMAN: Hearing none all in favor raise  
17 your right hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries unanimously.

20 Next item, please, sir.

21 ITEM 5

22 6850 Thoma Drive, in an R-1A zone  
23 Consider request for a Conditional Use Permit for  
24 placement of a 16-foot by 80-foot Class B manufactured  
25 home.

24 Reference: Zoning Ordinance, Article 8, Section  
25 8.2A10B, Section 8.4/7

25 Applicant: Francis & Loryene Litton

1 MR. NOFFSINGER: Mr. Chairman, this  
2 application has been advertised for public hearing at  
3 this time. All adjoining property owners have been  
4 notified. The application has been reviewed by the  
5 Planning Staff. It's found to be in order. This is  
6 for placement of a 16 by 80 foot single-wide  
7 manufactured home replacing and existing 12 by 60 foot  
8 wide home. With that it's ready for your  
9 consideration.

10 CHAIRMAN: Has there been any objections  
11 filed in the office?

12 MR. NOFFSINGER: No, sir.

13 CHAIRMAN: Anyone in the audience wishing  
14 to speak in opposition of this item?

15 (NO RESPONSE)

16 CHAIRMAN: Anyone want to add anything to  
17 the application?

18 (NO RESPONSE)

19 CHAIRMAN: Hearing none what's the board's  
20 pleasure?

21 MR. MILLER: Mr. Chairman, motion to  
22 approve the Conditional Use Permit based upon the  
23 application and stated recommendation.

24 MS. MASON: Second.

25 CHAIRMAN: Is there any other questions or



1 comments by the staff or the board?

2 (NO RESPONSE)

3 CHAIRMAN: Hearing none all in favor of  
4 the item raise your right hand.

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries unanimously.

7 Next item.

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9 VARIANCE

10 ITEM 6

11 10901 US 231, in an R-1A zone  
12 Consider request for a Variance to reduce the front  
13 building setback from 75 feet from the street  
14 centerline to 71.8 feet from the street centerline and  
15 to reduce the front building setback from 25 feet from  
16 the property line to 11.8 feet from the property line  
17 in order to construct a covered porch.  
18 Reference: Zoning Ordinance, Article 8, Section  
19 8.5(c)  
20 Applicant: David Lee & Tammy A. Hickey

21 CHAIRMAN: Mr. Chairman, this application  
22 has been advertised for public hearing at this time.  
23 All adjoining property owners have been notified.  
24 Planning Staff has reviewed the application and found  
25 the application to be in order.

Mr. Chairman, this is an existing home  
that is located on the property. The property is  
about 1.786 acres in size. The existing home on the  
property is constructed toward the front portion of

1 the lot with a large rear yard available to the  
2 property. US 231 is an arterial roadway through the  
3 community and is one of our gateways and major  
4 corridors into Daviess County from Ohio County.

5 After reviewing the application we find  
6 that the existing home was constructed and encroaches  
7 upon the building setback line for few feet. This  
8 encroachment as proposed would further encroach, the  
9 building would further encroach into the building  
10 setback line area and place that structure closer to  
11 the major thoroughfare.

12 The applicant is proposing a porch, I  
13 believe, that will have a roof type covering over it.  
14 The roof covering is what necessitates the variance.  
15 The applicant could construct a patio off the front of  
16 the home without a porch covering, if you will, and  
17 would not meet this variance.

18 Planning Staff after having reviewed the  
19 application find that there is adequate area to the  
20 rear of the property, off the rear of the home to  
21 construct this kind of porch and would find that the  
22 granting of this variance would allow an reasonable  
23 circumventions of the requirements of the zoning  
24 regulations and therefore should not be approved.  
25 With that it's ready for your consideration.

1                   CHAIRMAN: Is the applicant here?

2                   MR. HICKEY: Yes, sir, I'm here.

3                   CHAIRMAN: Would you come up and state  
4 your feelings on it.

5                   MR. ELLIOTT: Let me swear you in. State  
6 your name, please.

7                   MR. HICKEY: David Lee Hickey.

8                   (MR. HICKEY SWORN BY ATTORNEY.)

9                   MR. HICKEY: I disagree with the Planning  
10 Director. I don't think it's going to be a problem.  
11 Has anybody seen the actual property line, physically  
12 looked at the property? If you look at the property  
13 line and the offsets, they drop that from 40 foot  
14 offset on the highway line to a 60 right in the middle  
15 of the road, up front where I want to build the front  
16 porch.

17                   I grew up with a front porch. My  
18 grandmother, everybody I've ever lived with had a  
19 front porch and I enjoy sitting on a front porch.  
20 I've got a back porch. I don't sit on it much. I  
21 like the back porch so I can associate with my  
22 neighbors across the street.

23                   That highway has been through there since,  
24 I think was planned in 1938. I think it was built in  
25 1946 when they actually put the highway through at

1 that point. At the rate of Owensboro growth it will  
2 be 210 years before they widen that road. So I don't  
3 see that it would be a problem.

4 CHAIRMAN: Any board members have any  
5 questions of the applicant?

6 (NO RESPONSE)

7 MR. NOFFSINGER: Mr. Chairman, for the  
8 record the offset in the right-of-way is not what's  
9 causing the need for the variance. If the  
10 right-of-way were uniform throughout the frontage of  
11 the property, this variance would still be necessary.  
12 It does require prior because of the offset a certain,  
13 in certain area the proposed porch that would require  
14 a greater variance to be approved, but regardless  
15 there would need to be a variance considered for  
16 approval.

17 Along this type of roadway, which is an  
18 arterial roadway, the setbacks are set to where future  
19 development of properties and future roadway  
20 improvements would be and could be compatible. It  
21 takes into account the traffic counts, future traffic  
22 counts as well as the right-of-way that would be  
23 necessary for widening those roadways and then  
24 describes a different setback pending on the type of  
25 roadway the classification it is.

1                   This being an arterial roadway, the 75  
2                   foot setback is taken into account to accommodate  
3                   future roadway improvements and so that your home and  
4                   your livability there would not be impinged when those  
5                   roadway improvements are made. That's the reason for  
6                   the setbacks. Planning Staff feel that those setbacks  
7                   that are put in place are there for a reason and  
8                   should be adhered to.

9                   MR. HICKEY: Am I to understand that if  
10                  anyone else puts any variance or anything into a  
11                  setback all through 231 that they're going to be  
12                  disapproved by this board?

13                 CHAIRMAN: We haven't voted yet so I can't  
14                 tell you how it's going to come out. That's the  
15                 Staff's recommendation. Sometimes we follow it and  
16                 sometimes we don't.

17                 MR. HICKEY: I understand. Tonight is my  
18                 first time.

19                 CHAIRMAN: You're getting a little ahead  
20                 of us.

21                 Any board member have any questions of  
22                 applicant?

23                 (NO RESPONSE)

24                 CHAIRMAN: You have anything else?

25                 Does anybody else in the audience have any

1 comments for or against this item?

2 (NO RESPONSE)

3 CHAIRMAN: Anything been filed in the  
4 office?

5 MR. NOFFSINGER: No, sir.

6 CHAIRMAN: What's the board's wishes on  
7 this?

8 MR. HICKEY: Mr. Chairman, I have one more  
9 thing. I know it's a different county, but a mile  
10 down the road there's another building that was built  
11 there and it's a lot closer to that highway than what  
12 I am in Ohio County. Just one mile down the road.

13 CHAIRMAN: Do you have any other comments?

14 MR. HICKEY: No, sir.

15 CHAIRMAN: What's the board's wishes on  
16 this particular item?

17 MS. DIXON: Mr. Chairman, move for denial  
18 because it would allow an unreasonable circumvention  
19 of the requirements of the zoning regulations.

20 CHAIRMAN: You've heard the motion. Is  
21 there a second?

22 MR. PEDLEY: Second.

23 CHAIRMAN: Is there any other discussion  
24 or comments?

25 (NO RESPONSE)

1                   CHAIRMAN:  Anyone else have anything else  
2   to add?

3                   MR. HICKEY:  I would like to know what  
4   constitutes an unreasonable infringement on the  
5   offset?  Is it three feet?  Is it five feet?  Where is  
6   the cut off?

7                   CHAIRMAN:  You want to add why you made  
8   that motion.

9                   MS. DIXON:  I think the Staff's  
10   recommendation addresses the fact that there's ample  
11   property to the rear and the side that would allow for  
12   you to build a porch without an encroachment.  You  
13   have to draw the line somewhere.

14                  MR. HICKEY:  I understand that, but is the  
15   line the actual 25 foot offset?  Is that where we're  
16   drawing the line or is it three feet for the variance?  
17   Where are we drawing the line?

18                  MS. DIXON:  There's a big difference  
19   between 25 feet and 11.8 feet.

20                  MR. HICKEY:  That's what I'm saying.  If  
21   you see where the pin settings are, that 40 feet run  
22   all the way across - - I'm asking for three feet.  Why  
23   they drop it from 40 to 60 is beyond me.  The thing  
24   was drawn in 1938.  I don't know.

25                  MR. NOFFSINGER:  Mr. Hickey, if I might

1 ask: Do you know when your home was constructed?

2 MR. HICKEY: I believe it was built in the  
3 1950's.

4 MR. NOFFSINGER: What happened in that  
5 particular situation is there was a setback prescribed  
6 on that lot. Since that time when setbacks were put  
7 in place, you enjoyed what is known as being  
8 grandfathered in. Your home, the premises becomes  
9 legally non-conforming in that situation because it  
10 was constructed prior to the ordinance, but after that  
11 time since 1977 if you proposed to enlarge or alter  
12 that structure to where you further encroach on the  
13 building setback lines then that necessitates the  
14 variance.

15 Then this board has to determine, and they  
16 have to determine on a case by case basis the  
17 specifics of the case taking into consideration the  
18 roadway, the functional classification of that  
19 roadway, its status being arterial or its local street  
20 and determine whether or not what's being proposed  
21 would allow a certain unreasonable circumvention and  
22 ordinance which is defined by statutes.

23 This particular case, to project that home  
24 any further out into that building setback line  
25 certainly has an impact upon the roadway, the



1 transportation system within the community. This  
2 board has to take a look at that on a case by case  
3 basis and can't apply these standards across the  
4 board.

5 I want to get back to your question  
6 earlier. In this particular case where you have  
7 adequate area on the property to build an addition or  
8 do an addition then - - you know, the Planning Staff  
9 at least feel that you should explore those  
10 possibilities as opposed to further encroaching upon  
11 that front building setback.

12 MR. HICKEY: Sitting on a front porch  
13 watching traffic go by is a totally different thing  
14 than building something on the back. I've got a back  
15 porch. I want a front porch is what I want. The  
16 alternative you're giving me is not satisfactory for  
17 the purposes that I want it for. As far as the  
18 traffic going through there, like I say that's not  
19 going to infringe on that traffic at all. The rate of  
20 road could be 200 years now before you need to widen  
21 that road. We also have the - - what is it going to  
22 the Green River? What road is that?

23 CHAIRMAN: Natcher Parkway.

24 MR. HICKEY: Natcher Parkway goes from  
25 Owensboro to Hartford to Beaver Dam. If traffic

1 increases at that point, that would be the major  
2 thoroughfare anyway in my opinion.

3 MR. NOFFSINGER: Certainly right now in  
4 terms of transportation the Planning, we are looking  
5 at having an interchange to be constructed on the  
6 Natcher Parkway. That change is currently being  
7 looked at and Kentucky 142 or 764. Where it will go,  
8 we don't know. If we were to have an interchange at  
9 764, then I think it's certainly likely that there  
10 could be roadway improvements within this area.

11 You're located in close proximity to that  
12 area. Plus the growth area of Pleasant Ridge is where  
13 - - we are anticipating that there will be more type,  
14 more urban type development occurring in those areas  
15 more so than out in the remote areas of Daviess  
16 County, but certainly you could construct a patio off  
17 the front of the property without enclosing it or  
18 without covering that patio and still sit out on the  
19 front porch and watch the traffic go by. There are  
20 other options is what I'm getting at as opposed to  
21 having a covered structure that could be if not now  
22 could be enclosed in the future.

23 MR. HICKEY: The cover structure was also  
24 going to enhance the value of my home. It was going  
25 to increase the beauty of the home. I put \$30,000 in

1 this house and this was part of my building plan.  
2 I've got other building plans for this place, but this  
3 right here throws a wrench in everything. I've  
4 already put - - I've put a metal roof. I've put vinyl  
5 siding. I've remodeled the entire inside of this  
6 house. I've got carport going on the north end of it  
7 and this was part of the building plan that I had for  
8 this property to increase the value and the beauty and  
9 enhance the looks of it and be able to set on my front  
10 porch and watch traffic go by. That was my whole  
11 plan.

12 I think all I'm really asking for is 3.2  
13 feet on part of that offset. The other part is  
14 because the way the pin placement is right in the  
15 middle of my property, you know, the other part of the  
16 offset there. I really don't think it would hurt the  
17 traffic. I mean I've still got 70 feet from the  
18 center line of the highway. I guess that's all I've  
19 got. Thank you very much.

20 CHAIRMAN: Appreciate it.

21 Any other questions or comments from the  
22 board?

23 (NO RESPONSE)

24 MR. WARREN: Did we have a second to the  
25 motion

1 CHAIRMAN: Yes. Mr. Pedley had it.

2 Comments by the board?

3 (NO RESPONSE)

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

6 (MR. WARREN, MS. MASON, MS. DIXON, MR.  
7 MILLER, MR. WILLIAMS AND MR. WARD RESPONDED AYE.)

8 CHAIRMAN: Opposed like sign.

9 (MR. C.A. PANTLE RESPONDED NAY.)

10 CHAIRMAN: One objection. The motion  
11 carries.

12 Is there any other business that comes  
13 before this board this evening?

14 MR. NOFFSINGER: No, sir.

15 MR. HICKEY: Mr. Chairman.

16 CHAIRMAN: Yes, sir.

17 MR. HICKEY: Do I have any readdress for  
18 the board's decision?

19 MR. ELLIOTT: You have 30 days to appeal  
20 this decision to the circuit court. You have to file  
21 a petition.

22 MR. HICKEY: Okay. Thank you very much.

23 MR. ELLIOTT: Thirty 30 days from today.

24 CHAIRMAN: Mr. Elliott is our attorney.

25 If you need some other questions, he can answer them

1 for you.

2 Any other business come before this  
3 evening?

4 MR. WILLIAMS: Make a motion we adjourn.

5 CHAIRMAN: Don't forget the training  
6 school on the 23rd.

7 Now we'll take a second.

8 MS. MASON: Second.

9 CHAIRMAN: All in favor raise your right  
10 hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Meeting is adjourned.

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1 STATE OF KENTUCKY)  
 ) SS: REPORTER'S CERTIFICATE  
2 COUNTY OF DAVIESS)

3 I, LYNNETTE KOLLER, Notary Public in and for  
4 the State of Kentucky at Large, do hereby certify that  
5 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 the  
14 foregoing 21 typewritten pages; and that no signature  
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this  
17 the 22nd day of September, 2001.

18

19

\_\_\_\_\_  
LYNNETTE KOLLER, NOTARY PUBLIC  
OHIO VALLEY REPORTING SERVICE  
202 WEST THIRD STREET, SUITE 2  
21 OWENSBORO, KENTUCKY 42303

22 COMMISSION EXPIRES:  
DECEMBER 19, 2002

23

COUNTY OF RESIDENCE:  
24 DAVIESS COUNTY, KENTUCKY

25