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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

MAY 2, 2002

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The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, May 2, 2002, 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 Owensboro Metropolitan Board of Adjustment to order.

The first item on the business is to consider the minutes of the July 5th meeting. They're on file in the office and have been checked. I don't think any mistakes have been found in them or

CHAIRMAN: Call the meeting of the Owensboro Metropolitan Board of Adjustment meeting to order. Want to welcome each one of you this evening. Set down a couple of guidelines with the way we

1 operate before we get started.

2 Each one of you that want to speak can  
3 come to the microphone, one or the other, and be sworn  
4 in by our attorney. Then you can state your favor of  
5 an item or opposed to, whatever you wish to say. Each  
6 one of you will have the opportunity to be heard.

7 With that we'll start with the first item  
8 of the agenda.

9 Consider the minutes of the April 11th  
10 meeting. They're on record in the office on file.  
11 Any problems that have been found with them?

12 MR. NOFFSINGER: No, sir.

13 CHAIRMAN: Hearing none the Chair will  
14 entertain a motion to dipose of the minutes.

15 MS. DIXON: Move to approve.

16 MR. WILLIAMS: Second.

17 CHAIRMAN: A motion has been made and a  
18 second. All in favor raise your right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

21 Next item please, sir.

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23 CONDITIONAL USE PERMITS

24 ITEM 2

25 1501, 1647 Creek Haven Loop, in an R-1C zone

1 (Map N-22)(POSTPONED)  
2 Consider request for a Conditional Use Permit to  
3 construct a sign structure in a floodway.  
4 Reference: Zoning Ordinance, Article 18, Section  
5 18-6(b)(2)(e)  
6 Applicant: Creek Haven Development, Inc.

7 MR. NOFFSINGER: Mr. Chairman, this  
8 application was postponed from the last meeting and  
9 the applicant has requested a postponement for 90 days  
10 due to the engineering data is not available at this  
11 time. You need to consider or entertain a motion to  
12 postpone this until the August 2002 meeting.

13 MR. PEDLEY: Mr. Chairman, I need to  
14 disqualify myself from this item.

15 CHAIRMAN: So noted that Mr. Pedley  
16 disqualifies himself.

17 MR. WILLIAMS: I make a motion we approve  
18 the postponement.

19 MS. MASON: Second.

20 CHAIRMAN: A postponement has been made  
21 and a second. All in favor raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE  
23 WITH THE DISQUALIFYING OF MR. PEDLEY.)

24 CHAIRMAN: Motion carries. Postpone it  
25 for 90 days.

ITEM 3

101 Daviess Street, in a B-2 zone (Map N-4)

1 Consider request for a Conditional Use Permit to  
2 construct a new RiverPark Center patio in a floodway  
3 Reference: Zoning Ordinance, Article 8, Section  
4 18-6(b)(2)(a)  
5 Applicant: City of Owensboro, RiverPark Center

6 MR. NOFFSINGER: Mr. Chairman, the  
7 engineering data is not available at this time. The  
8 applicant has requested that the application be  
9 postponed until the June 6, 2002 meeting.

10 CHAIRMAN: Chair entertain a motion.

11 MS. DIXON: Move to postpone until June.

12 MR. MILLER: Second.

13 CHAIRMAN: A motion has been made and a  
14 second. All in favor raise your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries.

17 Next item.

18 ITEM 4

19 316 Hale Avenue, in an R-4DT zone (Map N-3)  
20 Consider request for a Conditional Use Permit to  
21 operate a day care center.  
22 Reference: Zoning Ordinance, Article 8, Section  
23 8.2B(3)  
24 Applicant: Housing Authority of Owensboro

25 MR. NOFFSINGER: Mr. Chairman, this  
26 application has been reviewed by the Planning Staff.  
27 It's found to be in order. Has been advertised for  
28 public hearing at this time and all adjoining property  
29 owners have been notified. With that I think the

1 housing authority is represented by Mr. David Condon,  
2 legal counsel. If you have any questions, he is here  
3 to entertain those questions.

4 CHAIRMAN: Has there been any objections  
5 or anything filed in the office?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: Anyone wishing to speak in  
8 opposition to this particular item?

9 (NO RESPONSE)

10 CHAIRMAN: Hearing none do you have  
11 anything you want to add to it?

12 MR. CONDON: Mr. Chairman, the application  
13 speaks for itself. Thank you.

14 CHAIRMAN: Any board member have any  
15 questions of the applicant?

16 (NO RESPONSE)

17 CHAIRMAN: Hearing none and seeing none I  
18 will entertain a motion to dispose of the item.

19 MS. DIXON: Move to approve.

20 MS. MASON: Second.

21 CHAIRMAN: Motion been made and a second.  
22 Any other discussion?

23 (NO RESPONSE)

24 CHAIRMAN: Hearing none all in favor raise  
25 your right hand.

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries unanimously.

3 Next item, please, sir.

4 ITEM 5

5 8646 Sawmill Road, in an I-2 zone (Map CO-77)  
6 Consider request for a Conditional Use Permit to  
7 operate an automobile storage and auction yard.  
8 Reference: Zoning Ordinance, Article 8, Section  
9 8.2G4/27  
10 Applicant: Allen Keith Knott, James W. Howard

11 MR. NOFFSINGER: Mr. Chairman, Item Number  
12 5 has been withdrawn by the applicant.

13 ITEM 6

14 4801 Sutherland Road, in an A-R zone (Map N-62)  
15 Consider request for a Conditional Use Permit to  
16 operate a golf driving range.  
17 Reference: Zoning Ordinance, Article 18, Section  
18 8.2K7  
19 Applicant: Sports Warehouse, Inc., Stephen E. Aull &  
20 Christine M. Aull

21 MR. NOFFSINGER: Mr. Chairman, this  
22 application has been reviewed by the Planning Staff.  
23 It's found to be in order. Has been advertised for  
24 public hearing at this time and all adjoining property  
25 owners have been notified.

26 This would be an application to construct  
27 a golf driving range behind the newly constructed  
28 Sports Warehouse facility on Sutherland Road. They  
29 are providing a minimum of eight parking spaces on  
30 site and these parking spaces are to be paved. With

1 that it's ready for your consideration.

2 CHAIRMAN: Has there been any objections  
3 filed in the office?

4 MR. NOFFSINGER: No, sir.

5 CHAIRMAN: Anyone in the audience wishing  
6 to object to this particular item.

7 (NO RESPONSE)

8 CHAIRMAN: Does the applicant have  
9 anything he wants to add on this particular item?

10 MR. AULL: No.

11 CHAIRMAN: Any board member have any  
12 questions of the applicant?

13 (NO RESPONSE)

14 CHAIRMAN: Seeing none and hearing none  
15 will entertain a motion to dispose of the item.

16 MR. MILLER: Motion to approve.

17 CHAIRMAN: Is there a second?

18 MR. HAYDEN: Second.

19 CHAIRMAN: Any other discussion?

20 (NO RESPONSE)

21 CHAIRMAN: Seeing none all in favor raise  
22 your right hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries unanimously.

25 Next item, please.

1 VARIANCE

2 ITEM 7

3 1501 Robin Road, in an R-1B zone (Map N-9)  
4 Consider request for a Variance to reduce the front  
5 building setback line along 15th Street from a platted  
6 30 feet to 14 feet 5 inches.

7 Reference: Zoning Ordinance, Article 8,  
8 Section 8.5.6(c)

9 Applicant: Robert D. Ballard

10 MR. NOFFSINGER: Mr. Chairman, this  
11 application for a Variance has been advertised for  
12 public hearing at this time and all adjoining property  
13 owners have been notified. There is a question as to  
14 the issue of whether or not this board can proceed and  
15 hear this variance due to a deed restriction that has  
16 been placed on the property. Mr. Elliott has reviewed  
17 the application and is prepared to speak to that  
18 issue.

19 CHAIRMAN: Mr. Elliott.

20 MR. ELLIOTT: Mr. Chairman and Board,  
21 there was filed with this application a letter from  
22 Russell Jones, attorney, which indicates that in a  
23 deed a record May of 1939 there contained restriction  
24 wherein there was a setback line established on both  
25 Lee Avenue and on West 15th Street, this 30 foot  
26 setback line.

27 The deed also refers to a plat. The plat  
28 was not included in that, but I got a copy of the plat

1 from the courthouse and it does indicate that there is  
2 a setback line, a front yard setback line both on West  
3 15th Street and on Lee Avenue which is now Robin Road.

4 It's been the policy of this board that if  
5 there are deed restrictions or if there are deed of  
6 dedications or if there is a plat of record that  
7 establishes setback lines, we do not consider those.  
8 We only consider granting the Variances to the setback  
9 lines that is establish in the ordinance and by law.

10 So we are unable to grant the release of  
11 this application.

12 If the applicant perhaps could proceed  
13 before circuit court and get this restriction removed,  
14 then that should be done and then we could consider a  
15 Variance on the ordinance.

16 CHAIRMAN: Is the applicant here?

17 MR. BALLARD: Yes.

18 CHAIRMAN: Come before us and be sworn in.

19 MR. ELLIOTT: State your name, please.

20 MR. BALLARD: Robert D. Ballard.

21 (MR. ROBERT BALLARD SWORN BY ATTORNEY.)

22 MR. BALLARD: I think the letter from Mr.  
23 Jones said or Lee or 15th Street.

24 MR. ELLIOTT: I don't want to interrupt  
25 you, but it goes on to say after that in that same

1 deed, "the reference is hereby made of the plat of  
2 this addition in connection with said building line."  
3 If you look on the plat that is of record, the  
4 building line is established both on Robin Road and on  
5 West 15th Street. With that plat of record I can see  
6 no other interpretation, but the setback line applied  
7 for both those two streets. Here is a copy of the  
8 plat. I don't know if you've seen it or not.

9 MR. BALLARD: I saw it. I went down to  
10 Mr. Jones and he gave me a plat of that whole block  
11 there. Every house on that street doesn't meet those  
12 requirements or in that subdivision.

13 CHAIRMAN: Sir, it's not what the others  
14 meet or not. It's what we can legally do by law. If  
15 it was regulation or in the ordinance, we could hear  
16 it and change, but be it's in the deed of dedication  
17 we cannot change that.

18 MR. BALLARD: Even though part of those  
19 regulations was unconstitutional?

20 CHAIRMAN: Not unless you get a  
21 clarification from the circuit court.

22 That's correct isn't it, Mr. Elliott?

23 MR. ELLIOTT: Yes.

24 CHAIRMAN: We sympathize with you, but our  
25 hands are tied.

1                   MR. ELLIOTT: That's been our policy for  
2 years on this board. That we do not consider  
3 application for variances that have deed of  
4 dedication, plat setback lines, or restrictions.  
5 We've had a lot of people that have been able to get  
6 deed of dedications changed because deed of dedication  
7 provides for a way to get that changed. In this  
8 particular case here, the deed restriction and also a  
9 plat of record.

10                   MR. BALLARD: Even though the deed  
11 restriction doesn't really say the same thing as the  
12 plat of record does?

13                   MR. ELLIOTT: But it makes reference to  
14 the plat. The plat is of record. That's going to  
15 have to be changed. If you can get that changed, then  
16 this board can consider it. You really have two  
17 different things. You have setback lines established  
18 by ordinance and that's what we give variances to, but  
19 we cannot give variances to deed of dedications or  
20 plats. The developer/subdividers have established  
21 those and we don't have the authority to do that.

22                   MR. NOFFSINGER: I do want to add this for  
23 the record because I don't want the applicant to leave  
24 here thinking that if you're successful in removing  
25 this deed restriction through the circuit court that

1 this board will be in a position to approve the  
2 variance. What we're saying is the board would be in  
3 a position to be able to consider the variance whether  
4 it be approved or denial.

5 The Planning Staff in their review of this  
6 particular case did an on-site inspection of the  
7 neighborhood and determined that, yes, there are some  
8 encroachments within this area, and particularly on  
9 this particular street; however, the encroachments are  
10 not as great as what you're asking for. Meaning this  
11 carport is beings proposed to come I think 14 1/2 feet  
12 from the right-of-way line. The encroachment is  
13 within this area into the 30 foot setback are only  
14 minor and do not come as close as this particular  
15 proposed encroachment. So the Planning Staff based  
16 upon the deed restriction as well as inspection of the  
17 neighborhood were in a position not to recommend the  
18 variance for approval. Now, that's not to say the  
19 board would automatically deny it, but Planning Staff  
20 is not recommending it.

21 We were wondering, and don't want to try  
22 the case tonight. I just want to make you aware of  
23 that. We were wondering if there might be an  
24 alternate location for the proposed carport. Maybe  
25 behind the existing, to the side to the existing

1 residence over near that side property line.

2 MR. BALLARD: Possibly and that was an  
3 alternate that I kind of had in mind. That's not what  
4 I would like. Also since you brought up going out  
5 there, the house actually doesn't face Robin and Lee  
6 like mine does. There is a porch out there that's  
7 about 10 foot off the street. That has nothing to do  
8 with my particular issue, the second house down.

9 CHAIRMAN: I think you have two choices  
10 then. To try to remove the restriction from your deed  
11 through the court system or come in with the staff and  
12 try to work out an alternate. Then if we can hear it  
13 they'll be glad to. Thank you.

14 MR. NOFFSINGER: I would recommend that  
15 you talk to Jim Mischel in our office and Becky Watson  
16 in our office about maybe an alternate location to see  
17 what can be worked out. It might still require a  
18 variance, but it might not require a front yard  
19 variance.

20 MR. BALLARD: This is not a front yard  
21 variance. It's side yard.

22 MR. NOFFSINGER: Let me rephrase that. A  
23 street yard variance.

24 CHAIRMAN: Next item, please, sir.

25 MR. MILLER: Does that item need to be

1 withdrawn or postpone or you just don't consider it?

2 CHAIRMAN: Can't hear upon advice of  
3 counsel.

4 MR. ELLIOTT: I guess you officially  
5 should just go ahead and deny because we can't  
6 consider it. We have to take some action on the  
7 application.

8 MR. NOFFSINGER: Would it be best to see  
9 if the applicant would consider withdrawing?

10 MR. ELLIOTT: Probably so, yes.

11 CHAIRMAN: Mr. Ballard, would you consider  
12 withdrawing the item from the thing and then we'll  
13 take no action.

14 MR. BALLARD: Yes, I withdraw it.

15 CHAIRMAN: The applicant has asked to  
16 withdraw it. So noted for the record.

17 Next item, please

18 ADMINISTRATIVE APPEAL

19 ITEM 8

20 1104 Werner Avenue, in a B-4 zone (Map N-10)  
21 Consider request for an Administrative Appeal to  
22 change form a non-conforming use of a residence and a  
23 dentist's office to another non-conforming use as a  
24 residence and a clothing/gift shop.  
25 Reference: Zoning Ordinance, Article 8, Section 4.53  
Appellant: Brad & June Lanham, Keith & Terri Kentizer

24 MR. NOFFSINGER: Mr. Chairman, this  
25 Administrative Appeal has been properly advertised and

1 all parties of record have been notified.

2 The subject property is zoned B-4 General  
3 Business which is appropriate for retail uses. The  
4 non-conformity exist in terms of parking. There are  
5 no on-site parking spaces provided for the retail use  
6 of this business. The applicant's proposal to use the  
7 square footage of 855 square feet for retail use would  
8 actually decrease the non-conformity in that a dentist  
9 office or a chiropractor office, whatever it might  
10 have been in the past, would require more parking by  
11 the zoning ordinance than what a retail sales use of  
12 the property would. For example, the dentist is at  
13 one for 200 square feet where retail based upon the  
14 size of this building is one parking space for 400  
15 square feet.

16 It's coming before this board so that you  
17 can make a decision to grant or not grant the change  
18 in use, but so that we have a paper trail on this  
19 property should someone wish to change the use in the  
20 future.

21 Staff, I believe we have not had any  
22 comments registered in the office either for or  
23 against this particular proposal and would recommend  
24 that you give it favorable consideration.

25 CHAIRMAN: You said you've had no

1 objections or anything in the office?

2 MR. NOFFSINGER: No, sir.

3 CHAIRMAN: Is the applicant here?

4 APPLICANT: Yes.

5 CHAIRMAN: Do you have anything you want  
6 to present to us?

7 APPLICANT: No, sir.

8 CHAIRMAN: Does Staff have anything else  
9 they want to add to it, please?

10 MR. NOFFSINGER: Mr. Mischel.

11 CHAIRMAN: Jim, come up and be sworn in,  
12 please.

13 MR. ELLIOTT: State your name, please.

14 MR. MISCHEL: Jim Mischel.

15 (MR. JIM MISCHEL SWORN BY ATTORNEY.)

16 MR. MISCHEL: I's just like to make a  
17 comment. I think the people here are aware that if  
18 this is approved tonight, that in the future if this  
19 changes to another use or business use or whatever,  
20 that they will need to come back in front of the board  
21 to get that use approved. That's all I have.

22 CHAIRMAN: Thank you, Mr. Mischel.

23 Does any board members have anything they  
24 want to add to this, questions to ask the applicant or  
25 the staff?

1 (NO RESPONSE)

2 CHAIRMAN: Is there a motion to approve or  
3 deny?

4 MR. MILLER: Mr. Chairman, motion to  
5 approve the change in the con-forming use.

6 CHAIRMAN: From one non-conforming to  
7 another non-conforming, correct?

8 MR. MILLER: Yes, that's correct.

9 CHAIRMAN: Is that the way it should be  
10 stated?

11 MR. NOFFSINGER: As submitted by the  
12 appellant.

13 CHAIRMAN: Is there a second to the  
14 motion?

15 MR. WILLIAMS: Second.

16 CHAIRMAN: A motion has been made and a  
17 second. Any other discussion?

18 (NO RESPONSE)

19 CHAIRMAN: Questions from the board?

20 (NO RESPONSE)

21 CHAIRMAN: Any comments from the  
22 applicant?

23 APPLICANT: No.

24 CHAIRMAN: Hearing none all in favor of  
25 the motion raise your right hand

1 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

2 CHAIRMAN: Motion carries unanimously.

3 Anything else on the agenda?

4 MR. NOFFSINGER: No, sir.

5 MR. WARREN:: Motion to adjourn.

6 MR. MILLER: Second.

7 CHAIRMAN: All in favor raise your right

8 hand.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 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 18 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 May, 2002.

18  
19

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

22 COMMISSION EXPIRES:  
23 DECEMBER 19, 2002

24 COUNTY OF RESIDENCE:  
25 DAVIESS COUNTY, KENTUCKY