

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

SEPTEMBER 2, 2004

* * * * *

The Owensboro Metropolitan Board of Adjustment met in regular session at 6:00 p.m. on Thursday, September 2, 2004, 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
- Sean Dysinger
- Ward Pedley
- Stewart Elliott
- Attorney

* * * * *

CHAIRMAN: Call the Owensboro Metropolitan Board of Adjustment to order.

The first thing I want to invite you all, if you so desire, to stand up and have a pledge of allegiance and then the prayer after that. Join us if you will.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: I want to welcome all of you to the meeting. If you have anything you would like to add to any of the items that we have on the agenda,

1 please come forward to one of the podiums. State your
2 name, be sworn in because we'll have it on record if
3 there's a problem or something.

4 If there are arguments on more than one
5 thing and we start listening to the same thing over,
6 we will cut you off at that time.

7 With that we'll proceed with the first
8 item which is consider the minutes of the last meeting
9 on August 5th. They're on record in the office. I
10 don't think there has been any problems or need to
11 change anything.

12 With that we'll entertain a Motion to
13 dispose of the item.

14 MS. DIXON: Move to approve.

15 CHAIRMAN: Is there a second?

16 MS. MASON: Second.

17 CHAIRMAN: 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.

21 Next item, please, sir.

22 -----

23 CONDITIONAL USE PERMITS

24 ITEM 2

25 5400 Todd Bridge Road, in an A-R zone

1 Consider request to amend a Conditional Use Permit
2 to construct and operate a recreational complex
3 consisting of a softball field, baseball field, soccer
4 field, parking lot, concession building with
5 restrooms, locker rooms and press boxes.
6 Reference: Zoning Ordinance, Article 8, Section 8.2K7
7 Applicant: Brescia University

8 MR. NOFFSINGER: Mr. Chairman, this is an
9 amended application. An application was approved by
10 this board back several months ago. They have made
11 some modifications to the previously approved plan
12 which includes a different arrangement of the ball
13 fields, as well as some other changes to it. With the
14 change the application has to come back before this
15 board for review. The application is in order. It's
16 consistent with the adopted zoning regulations. If
17 the Board of Adjustment feels that it can be properly
18 integrated into the neighborhood, which they have
19 already found that by approving the first application,
20 the board may consider it for approval.

21 CHAIRMAN: Any objections in the office by
22 anybody?

23 MR. NOFFSINGER: No, sir.

24 CHAIRMAN: Is there anyone wishing to
25 object to the changes of this conditional permit?

(NO RESPONSE)

CHAIRMAN: Does the applicant have
anything they would like to add at this time?

1 (NO RESPONSE)

2 CHAIRMAN: Any board members have any
3 questions of the applicant?

4 (NO RESPONSE)

5 CHAIRMAN: If not entertain a motion to
6 dispose of the item.

7 MR. DYSINGER: Move to approve the
8 conditional use permit given that it's an amended of
9 the previously approved permit and the modifications
10 have no real impact.

11 CHAIRMAN: Is there a second?

12 MS. DIXON: Second.

13 CHAIRMAN: A motion has been made and a
14 second. Any other questions from the board?

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.

20 Next item, please, sir.

21 ITEM 3

22 2767 Veach Road, in a B-4 zone
23 Consider request for a Conditional Use Permit to
24 provide a Childcare and Learning Center to serve 45
25 children per shift (2 proposed) on week days and 40
children per day on weekends.

Reference: Zoning Ordinance, Article 8,
Section 8.2 B3

Applicant: Antoinette Lea Brown, Lee Kassinger
Ohio Valley Reporting
(270) 683-7383

1 MR. NOFFSINGER: Mr. Chairman, Planning
2 Staff has reviewed this application. It's found to be
3 in order. It's found to meet minimum requirements of
4 the zoning ordinance regarding parking, screening and
5 site development requirements. The proposal does
6 provide for on site parking as well as pick up and
7 drop off. With that it's ready for your
8 consideration.

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

11 MR. NOFFSINGER: No, sir.

12 CHAIRMAN: Is anyone wishing to object
13 against this conditional use permit?

14 (NO RESPONSE)

15 CHAIRMAN: Does the applicant have
16 anything they would like to add to this?

17 (NO RESPONSE)

18 CHAIRMAN: Any board member have any
19 questions?

20 (NO RESPONSE)

21 CHAIRMAN: Hearing none will entertain a
22 motion to dispose of the item.

23 MR. PEDLEY: Mr. Chairman, I make a motion
24 for approval based on findings it is compatible with
25 the surrounding neighborhood and it will not have a

1 negative impact on future development of the community
2 and meets requirements of the zoning ordinance.

3 CHAIRMAN: Is there a second?

4 MR. MILLER: Second.

5 CHAIRMAN: A motion has been made and a
6 second. Is there any other discussion from the board
7 or the office?

8 (NO RESPONSE)

9 CHAIRMAN: Hearing none all in favor raise
10 your right hand.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: Motion carries.

13 Next item, please, sir.

14 -----

15 VARIANCES

16 ITEM 4

17 4023 Buckland Square, in an R-1C zone
18 Consider request for a Variance to reduce the rear
19 yard setback from 20' to 18.5' in order to construct a
20 12' by 20' sunroom.

19 Reference: Zoning Ordinance, Article 8,
20 Section 8.5.7(e)

20 Applicant: Roy and Alice Cobb

21 MR. NOFFSINGER: Mr. Chairman, Planning
22 Staff has reviewed this application. The application
23 is found to be in order. The Planning Staff after
24 having reviewed is recommending the variance not be
25 granted in that the applicant has failed to cite

1 specific findings of fact related to why a variance
2 should be approved in this area.

3 Planning Staff went out and viewed the
4 adjoining properties in the neighborhood. Could not
5 find any encroachments within the area that would
6 warrant justification for this request. We find it
7 would alter the essential character of the general
8 vicinity and would allow an unreasonable circumvention
9 of the requirements of zoning regulations. With that
10 it's ready for your consideration.

11 CHAIRMAN: Is there any objections in the
12 office outside of the staff?

13 MR. NOFFSINGER: No, sir.

14 CHAIRMAN: Is the applicant here this
15 evening and have anything they want to bring up?

16 Come up and state your name for the
17 record.

18 MR. ELLIOTT: State your name, please.

19 MR. COBB: My name is Roy Cobb.

20 (MR. COBB SWORN BY ATTORNEY.)

21 MR. NUNNING: My name is Jim Nunning. I'm
22 representing Champion Window Company which would be
23 building the structure for Mr. Cobb.

24 (MR. NUNNING SWORN BY ATTORNEY.)

25 CHAIRMAN: Mr. Cobb, proceed with your

1 case, please.

2 MR. COBB: I'm sure that all of you read
3 the reason, the description of the variance request.
4 Each one of you read that and is familiar with it; is
5 that right?

6 MR. NUNNING: Did you say that it was not
7 complete?

8 MR. NOFFSINGER: No, sir.

9 MR. NUNNING: So all the paperwork was
10 done properly; is that correct?

11 MR. NOFFSINGER: Yes, sir.

12 MR. NUNNING: So it's the board's belief
13 that by granting this variance that it would cause
14 problems in the neighborhood. Is that basically what
15 you're saying?

16 MR. NOFFSINGER: No, it's not the board's
17 belief at this time. That's Planning Staff's
18 recommendation. Stating that the applicant failed to
19 cite specific reasons or justifications as to why the
20 variance should be approved.

21 Planning Staff went out into the
22 neighborhood in the area. We could not find any
23 encroachments of attached structures that encroached
24 that rear setback line or any other violations. The
25 applicant failed to cite that in the application.

1 Basically your justification for request
2 for this variance is that we only have 18 1/2 feet of
3 rear yard to construct that area, but we want to do a
4 20 foot sunroom. We want to be allowed to do that
5 because we want a 12, I guess it's a 12 by 20 sunroom,
6 when in fact you could go with say maybe a 12 by 18
7 sunroom or different size sunroom and meet with the
8 regulations, but you failed to give a justification as
9 to why the variance should be approved. Is there an
10 exceptional hardship? Are there special circumstances
11 in this case? Those would be two considerations this
12 board would consider. I can tell you financial
13 hardship is not a recognizable hardship by the state's
14 statutes.

15 MR. DYSINGER: That's just the Staff's
16 recommendation. The board hasn't made any decision at
17 all yet.

18 MR. NUNNING: So what I'm understanding
19 now, I want to make it clear, that if the room is to
20 be built like Mr. Cobb would like it to be built, then
21 there would be 18 1/2 feet left over. What I'm
22 getting at is we're not building on that 18 1/2 feet,
23 and granted I understand it's got to be 25 foot from
24 the end of the property, from the back yard to any
25 structure that's attached to the house. So that's

1 what we're trying to accomplish is relieve that from
2 25 to 18 1/2.

3 MR. NOFFSINGER: Right. You have 18 1/2
4 foot rear yard as opposed to 20 foot rear yard meaning
5 you could build a sunroom that's 10 by 20 and meet the
6 setback requirements.

7 MR. NUNNING: Actually we would only be
8 able to build a sunroom that is 5 by 20. In other
9 words, the back of his home is 30 foot off the
10 property line. So we're wanting to add a room onto
11 the back of this property coming out 12 feet, off the
12 back of this home.

13 MR. PEDLEY: Your rear yard setback is 20
14 feet. Not 25. So you're only having to cut in a foot
15 and a half off your sunroom. You're asking for 12.
16 You're only encroaching a foot and half into the
17 setback.

18 MR. NUNNING: So what you're saying,
19 basically you're saying that if the room was 10 1/2
20 foot instead of 12 we wouldn't need a variance?

21 CHAIRMAN: That's correct.

22 MR. DYSINGER: Mr. Cobb, did you want to
23 add anything to what we're saying here?

24 MR. COBB: I just want to say I talked to
25 the one neighbor that would be involved in this. His

1 backyard is adjoining mine. He assured me that he
2 certainly had no problems with me building a room that
3 I intended to. Of course, he was able to look and see
4 where the foundation had already been dug and footers
5 dug. So basically what it would mean is we would have
6 to cut concrete and redig one side of the footer, if
7 we make it a smaller room, which it looks like we'll
8 have to.

9 MR. DYSINGER: You haven't poured concrete
10 at this point yet; is that correct? Just dug the
11 footer. You haven't poured any concrete?

12 MR. COBB: Correct.

13 CHAIRMAN: The applicant have anything
14 else to add at this time?

15 MR. COBB: That's all.

16 CHAIRMAN: Board members have any
17 questions of the applicant?

18 (NO RESPONSE)

19 CHAIRMAN: I understand you've already
20 started the footer and everything on it?

21 MR. COBB: Yes, sir.

22 MR. NUNNING: Nothing has been poured.
23 It's been dug, yes, sir.

24 CHAIRMAN: Any comments from the board?

25 MR. PEDLEY: I have a comment about

1 approving this item.

2 Since there are no encroachment violations
3 in the neighborhood, what happens to this board once
4 we approve one of these, then we open the door for
5 anyone in that neighborhood or community wants a
6 variance to come down here. We have to approve this
7 one so we open the door for anyone. That creates a
8 major problem to this board. That's the real issue
9 with myself with approving it. It's not the one.
10 It's the one we create in the future. This board
11 would have to consider it. Anyone coming in here
12 wanting a variance in their community goes right
13 straight to yours and say, look, you approved his.
14 That creates a problem.

15 MR. COBB: Could I comment to that?

16 CHAIRMAN: Yes.

17 MR. COBB: When I talked to them in the
18 Planning Commission office we talked about that. The
19 lady, I don't even know her name, but anyhow, I
20 assured her that I was not going to go out in the
21 neighborhood and cause problems with my neighbors.
22 Certainly I didn't do that. Like you say you went and
23 looked, then you know that there are four houses on
24 the same side of Buckland Square between my house and
25 Tammarack Road that do have attached rooms on their

1 house. I don't know what the setback is because I
2 didn't measure them. Did you?

3 MR. NUNNING: I think what you were saying
4 before, whatever committee that checks into that
5 apparently went out and looked; is that correct?

6 MR. NOFFSINGER: Yes. We're saying we
7 note no violations, but it's not the Planning Staff's
8 responsibility to find those violations. It's the
9 applicant's responsibility to find those and make that
10 a part of the application.

11 For the record, as I stated, the applicant
12 did not do that. The applicant has made an assumption
13 here with no fact.

14 MR. ELLIOTT: State your name, please.

15 MR. MISCHEL: Jim Mischel.

16 (MR. MISCHEL SWORN BY ATTORNEY.)

17 MR. MISCHEL: I would just like to make a
18 statement.

19 One of the, I guess, primary reasons for a
20 building permit is to assure that we have uniformity
21 throughout the community that everybody's setbacks are
22 the same and we have this.

23 Essentially the permit fee on something
24 like this does not cover the cost for us sending
25 people out for inspections and everything. It's a

1 fact of service. That service is a big part of the
2 service. Before you start that construction spend any
3 money digging any footers, you come in and talk with
4 us and give us a site plan. We look that over to make
5 sure you meet the setbacks. In this case, they did
6 turn in their site plan and it shows the 20 foot rear
7 yard. We permitted that structure based on that. The
8 permit shows that it requires a 20 foot rear yard.
9 That's the big reason for that.

10 So before you even start building
11 everybody knows what to do. The homeowner, the
12 contractor, when they go out there they know they have
13 to meet a certain standard and here is what it is.
14 It's on the permit. We talked to them about that when
15 they come in. It's to prevent things like this. I
16 don't know what went wrong out in the field, but in
17 the office they did submit the site plan that shows
18 the 20 feet. When our guy went out there I guess
19 that's what he expected to find was the 20 feet. I
20 don't know if you have any questions or not.

21 MR. DYSINGER: Does that answer your
22 question, sir?

23 MR. NUNNING: Yes, we're aware of that.
24 What happened was we started from the wrong spot
25 obviously measuring. Yes, we're aware of that.

1 Champion gets a lot of permits here in Owensboro.

2 Yes, we're aware of that.

3 CHAIRMAN: Any other comments from the
4 board or questions from the Staff? Anything else?

5 (NO RESPONSE)

6 CHAIRMAN: The applicant have anything
7 else you want to add before we make a decision?

8 MR. COBB: No.

9 CHAIRMAN: Board entertain a motion for or
10 against.

11 MR. PEDLEY: Mr. Chairman, I make a motion
12 for denial based on findings that it will alter
13 essential character of the general vicinity and it
14 will allow unreasonable circumvention and requirements
15 of the zoning regulations.

16 CHAIRMAN: Is there a second?

17 MR. DYSINGER: Second.

18 CHAIRMAN: Any other comments or
19 questions?

20 (NO RESPONSE)

21 CHAIRMAN: Hearing none all in favor of
22 the motion raise your right hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: The variance is denied.

25 Anything else for this meeting at this

1 time?

2 MR. NOFFSINGER: No, sir.

3 CHAIRMAN: Entertain one final motion.

4 MR. WARREN: Motion to adjourn.

5 MR. MILLER: Second.

6 CHAIRMAN: All in favor raise your right

7 hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: We are adjourned.

10 -----

11

12

13

14

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, 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 16 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notarial seal on this
17 the 25th day of September, 2004.

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, 2006

24 COUNTY OF RESIDENCE:
25 DAVIESS COUNTY, KENTUCKY