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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

MAY 1, 2008

The Owensboro Metropolitan Planning Commission met in regular session at 5:30 p.m. on Thursday, May 1, 2008, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Ward Pedley, Chairman
Judy Dixon, Vice Chairman
Ruth Ann Mason, Secretary
Gary Noffsinger, Director
Madison Silvert, Attorney
Marty Warren
Clay Taylor

* * * * *

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

We'll begin our meeting with the prayer and pledge of allegiance to the flag. Audie Pantle will lead us.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: I would like to welcome everyone. If you would like to speak on any item, we welcome your comments. We ask you to come to one of the podiums. State your name and be sworn in.

With that the first item on the agenda is to consider the minutes of the April 10, 2008 meeting. Are there any additions or corrections?

(NO RESPONSE)

1 CHAIRMAN: If not chair is ready for a motion.

2 MR. PANTLE: Move to approve the minutes.

3 CHAIRMAN: We've got a motion.

4 MR. WARREN: Second.

5 CHAIRMAN: All in favor raise your right hand.

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 CHAIRMAN: The minutes are approved.

8 Next item, please.

9 -----

10 CONDITIONAL USE PERMITS

11 ITEM 2

12 9310 Highway 1389, zoned A-R
13 Consider a request for a Conditional Use Permit to
14 construct a detached 40 foot by 60 foot fellowship
15 hall to the rear of an existing church building.
16 Reference: Zoning Ordinance, Article 8, Section 8.2B4
17 Applicant: Bethlehem Church

16 MR. SILVERT: State your name, please.

17 MR. WILLIAMS: Zack Williams.

18 (ZACK WILLIAMS SWORN BY ATTORNEY.)

19 ZONING HISTORY

20 A Conditional Use Permit was granted for the
21 construction of a fellowship hall at the December 2007
22 OMBA. The board found that the area was compatible
23 for an existing church on this lot as the church has
24 been located on the lot for a long time. The
25 Applicant desires to construct this building behind

1 the existing church building instead of beside it as
2 originally planned. This property is zoned Rural
3 Agricultural. Churches and accessory uses such as a
4 fellowship hall require a conditional use permit in an
5 agricultural zone.

6 LAND USES IN SURROUNDING AREA

7 The subject property is located in a rural
8 area with large agricultural and wooded tracts and
9 scattered rural large-lot residential uses. All
10 adjoining property is zoned A-R Rural Agriculture.

11 ZONING ORDINANCE REQUIREMENTS

12 1. One parking space per five seats in the
13 main auditorium.

14 2. Vehicular use area screening.

15 MR. WILLIAMS: We would like to enter the
16 Staff report into the record as Exhibit A.

17 CHAIRMAN: Anyone here representing the
18 applicant?

19 APPLICANT REP: Yes, sir.

20 CHAIRMAN: Anyone here have any comments or
21 questions of the applicant?

22 (NO RESPONSE)

23 CHAIRMAN: Any board members have any
24 questions on the application?

25 (NO RESPONSE)

1 CHAIRMAN: If not chair is ready for a motion.

2 MS. DIXON: Move to approve because it is a
3 logical use and compatible with the area and subject
4 to meeting the zoning ordinance requirements.

5 MR. PANTLE: Second.

6 CHAIRMAN: We have a motion by Ms. Dixon and a
7 second by Mr. Pantle. Any questions on the motion?

8 (NO RESPONSE)

9 CHAIRMAN: All in favor raise your right hand.

10 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

11 CHAIRMAN: Motion carries unanimously.

12 Next item.

13 ITEM 3

14 5404 Highway 54, zoned A-U/A-R
15 Consider a request for a Conditional Use Permit to
16 construct an addition to a mausoleum on the southeast
17 side of the property.
18 Reference: Zoning Ordinance, Article 8, Section 8.2J1
19 Applicant: Catholic Cemeteries; Diocese of Owensboro

18 ZONING HISTORY

19 A Conditional Use Permit was granted on April
20 11, 2002 for the construction of a mausoleum on the
21 southeast corner of Resurrection Cemetery. This
22 project was planned for two phases. The first of two
23 crypts was built in 2002. The applicant has requested
24 a Conditional Use Permit to build the second crypt and
25 place a permanent covering over both.

1 LAND USES IN SURROUNDING AREA

2 The subject property is located in a mixed use
3 area containing Urban Agricultural, Rural
4 Agricultural, Light Industrial, General Business and
5 Residential uses.

6 MR. WILLIAMS: I'd like to enter the Staff
7 Report into the record as Exhibit B.

8 CHAIRMAN: Anyone here representing the
9 applicant?

10 MR. KAMUF: Yes, sir, Mr. Chairman.

11 MR. SILVERT: State your name, please.

12 MR. KAMUF: Charles Kamuf.

13 MR. SILVERT: Mr. Kamuf, I recognize the oath
14 you took when admitted to the bar.

15 MR. KAMUF: Let me show you what we have.

16 This is a picture of the mausoleum which is on
17 the southeast side of the cemetery on Highway 54.

18 What you see here is this little crypt that is on this
19 side. That has been built. That was built, I think,
20 according to Zack in 2002.

21 What we propose is to build another one
22 directly, it would be to the east of it. We didn't
23 ask for this at this time, but just as soon as we get
24 that built then we'll put a little chapel area right
25 in that particular area where you see the orange.

1 This will be about, it also cost about
2 \$178,000. We intend to do the construction right
3 away.

4 Art Hodde is here from the Catholic
5 Cemeteries. We have all kind of plans if you would
6 like to see them.

7 I've talked to Ms. Dame. She is one of the
8 neighbors. She has no objection to the mausoleum, but
9 she does have some complaint about the drainage.
10 Evidently there's been some drainage on the back farm.

11 This is on the front part of a farm that's
12 located out at Philpot. It's been there for years.
13 The back part of a farm. She has some questions about
14 it. We'll be glad to address her issues as they come
15 forward.

16 CHAIRMAN: Thank you, Mr. Kamuf.

17 Let's see if we have any opposition or
18 questions on this.

19 Would anyone like to speak in opposition or
20 have any comments or questions?

21 Please step to the podium, please.

22 MR. SILVERT: State your name, please.

23 DAME: Juanita Dame.

24 (JUANITA DAME SWORN BY ATTORNEY.)

25 MS. DAME: My main concern is water run-off.

1 We've been having major flood problems. We need some
2 road work done, some ditches opened up so this water
3 will flow through there. You know, the more we have
4 the more run-off we're going to have, the more
5 building up. I'm really concerned. We only have one
6 way to get in to where I live and that's through Ed
7 Foster Road, which is covered with water and has been
8 quite a few times. I don't know if this will have any
9 effect on it or not. That's my question. What can I
10 do about getting some road work done, some ditches
11 cleaned?

12 CHAIRMAN: Any board members have any
13 questions?

14 (NO RESPONSE)

15 CHAIRMAN: We will address this and get some
16 answers for you. I think the county engineer will be
17 involved in this to make sure the drainage is done
18 properly.

19 MS. DAME: I have already replaced part of my
20 driveway once. The way it's looking it's going to
21 have to be replaced again. There's just so much water
22 that gathers. There's a ditch that once was open and
23 it's closed up now. The water has no place to go.

24 CHAIRMAN: Again, the county engineer will be
25 involved in this and make sure that your --

1 MS. DAME: I have talked to him about it once
2 before and he said that the drainage was on private
3 property, the drain tile and he couldn't do anything
4 about it. Now, that's what he told me. It seems like
5 something could be done. I'm really concerned about
6 it.

7 CHAIRMAN: Let's see if we can get an answer
8 for you from the applicant.

9 MS. DAME: I'd appreciate it. Thank you.

10 CHAIRMAN: Mr. Kamuf, you want to address the
11 drainage issue.

12 MR. KAMUF: Mr. Chairman, I went out there
13 this afternoon and looked at it. I'll pass these
14 photographs around. Sorry I don't have larger photos.

15 The property that we're getting ready to
16 construct on is the green area; in other words, it's
17 in grass. I'll show you these pictures. There is
18 some run-off there, but mainly it's the farm that's to
19 the rear. I think recently the county has come out
20 and cleaned part of the ditch out. It shows that it's
21 a pretty, it looks like to me a pretty cleaned out
22 ditch. Some of this water also comes from the Hines
23 Center which is directly east of this. If you look at
24 the plat that I filed, on it it shows the drainage
25 area going to a particular ditch. I don't know

1 whether you can see this photograph. This shows the
2 rift-raft and also you can see that it's a large green
3 area of grass. In other words, the mud does not come
4 from the cemetery. It comes from the farm that is
5 directly behind.

6 I'll pass this around. You can see this
7 mausoleum here in the picture. All around the
8 mausoleum is green area. The run-off, mainly the
9 run-off comes from the farm that is directly behind.
10 You can see it from this photograph. I'll pass these
11 around. This shows the farm. I'm sure that when they
12 put out the crop that there is dirt that comes across
13 the road. I can see where there was dirt along the
14 road.

15 Here is another one which shows the ditch. I
16 guess the county commissioner has recently cleaned out
17 the ditch. It looks like it's better. Let me pass
18 these around and let you look at them. If you have
19 more questions, I'll be glad to answer them.

20 Ark can explain to you, if you would like to
21 hear it, the history of the ditch. It's been somewhat
22 of a problem. What we're doing here today will not
23 add anything to whatever the drainage problem is.

24 As you can see, the only thing that we're
25 doing is on the pad which is on, would be my right

1 side. We're just adding a pad which is already, the
2 ground is already prepared for it.

3 Let me pass these around. We've got plenty of
4 pictures. I imagine there will be some questions.
5 Art can tell you the history of it, if you'd like to
6 hear that.

7 I don't know whether that's helped Ms. Dame or
8 not. As far as, I explained some of this to her
9 before the meeting.

10 I think the issue is what we're doing here
11 tonight will not add any more water. It's in a green
12 area. It will not add any more dirt because all we do
13 is cut the grass. It's on the southeast part way back
14 in a field. Ms. Dame's house is, what, a mile back,
15 half a mile?

16 MS. DAME: Not quite a half mile.

17 MR. KAMUF: About half a mile of the road and
18 this lays in-between them.

19 CHAIRMAN: Have you had the county engineer
20 out to look at it?

21 MR. KAMUF: Art will answer that.

22 MR. SILVERT: State your name, please.

23 MR. HODDE: Arthur Hodde.

24 (ARTHUR HODDE SWORN BY ATTORNEY.)

25 MR. HODDE: Ms. Dame called me a while back

1 about the ditch. I contacted the county office and
2 they told me they would come out and clean it out,
3 which I'm assuming they did. I never saw it. I never
4 saw them out there, but as Charlie said the ditch is
5 relatively clean right now.

6 There has to be some run-off when we have
7 down-pours. I don't have any doubt about that. The
8 area where she's talking about, I think I'm right,
9 it's almost like a bowl situation. It comes from all
10 different directions. It just comes into one area. I
11 know the road does flood. Not all of it is
12 necessarily from us, but it does flood.

13 CHAIRMAN: Any board members have any
14 questions?

15 (NO RESPONSE)

16 CHAIRMAN: Mr. Noffsinger, would you fill us
17 in on the county engineer's role, what he has to do
18 before a building permit can be issued on this.

19 MR. NOFFSINGER: The county engineer will be
20 required to review the applicant's drainage plan and
21 sign off on the drainage plan before we issue the
22 permits. It's the landowner's responsibility to take
23 care of their own storm water run-off, to make sure
24 that they don't impede upon the adjoining property
25 owner's rights.

1 At this point we do not have a drainage plan.
2 There are no engineers to speak about drainage on
3 either side. There's not a whole lot I can comment on
4 there except to say the county engineer will review
5 any drainage plan prior to the issuance of a permit.
6 You can certainly make that a condition to this permit
7 which reinforces that requirement.

8 CHAIRMAN: Any board members have any
9 questions on the drainage issue or any other
10 questions?

11 (NO RESPONSE)

12 CHAIRMAN: Have we answered your questions?

13 MS. DAME: Pretty much. We need some ditches
14 cleaned. We need more cleaned out. We just need more
15 ditches cleaned than what's been cleaned. It's just a
16 partial job.

17 I would like to see this drainage tile looked
18 at again that he told me he couldn't do anything
19 about. That used to be a free-flowing water way
20 there. That's part of the problem.

21 CHAIRMAN: It's not up to this board to say
22 what will be done and will not be done. We can put a
23 condition on the approval. Whatever the board might
24 decide that needs to be on there. As Mr. Noffsinger
25 stated, we can't say, in my opinion, we can't say what

1 must be done. We can only put a condition.

2 MS. DAME: I don't want to be a bad neighbor,
3 but I would like some of that looked into, the water
4 issue. I appreciate you all listening to me.

5 CHAIRMAN: Thank you.

6 Any board members have any questions or
7 comments?

8 (NO RESPONSE)

9 CHAIRMAN: Chair is ready for a motion.

10 MR. TAYLOR: Mr. Chairman, I move to approve
11 the Conditional Use Permit based upon the findings of
12 fact it's in general doing with the Conditional Use
13 Permit which was granted back in 2002, as well as the
14 zone surrounding. This property I guess we could also
15 place a condition on there like Mr. Noffsinger said.
16 That even though it is part of the process anyway, but
17 as long as it does not contribute to the excess
18 drainage and the county engineer signs off on it. I
19 move to approve based on those conditions.

20 CHAIRMAN: We have a motion. Is there a
21 second?

22 MR. WARREN: Second.

23 CHAIRMAN: We have a motion and a second. Any
24 comments or questions on the motion?

25 (NO RESPONSE)

1 CHAIRMAN: All in favor raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: Motion carries unanimously.

4 Next item, please.

5 ITEM 4

6 2501 Old Hartford Road, zoned R-3MF
7 Consider a request for a Conditional Use Permit to
8 construct a building addition to the front of the
9 existing main structure, an attached canopy located
10 near the front entrance, a parking area on the
11 southwest corner of the subject property, and to
12 renovate existing parking areas at an existing rest
13 home.

14 Reference: Zoning Ordinance, Article 8, Section 8.2C1
15 Applicant: Carmel Home; Carmelite Sisters of the
16 Divine of Heart of Jesus

17 ZONING HISTORY

18 OMPC records indicate that the Carmel Home was
19 built before zoning regulation. Two (2) Conditional
20 Use Permits have been granted in 1985 and 1989 for
21 additions to the facility. The facility is a
22 convalescent and rest home, which is conditionally
23 permitted in a R-3MF zone.

24 LAND USES IN SURROUNDING AREA

25 The subject property surrounded by residential
zoning. Multi-Family Residential Zoning is located to
the northeast, north and southwest. A large portion
of this area is used for a cemetery. Single family
residences are located to the south and southeast, and
a professional zone is located to the east.

1 ZONING ORDINANCE REQUIREMENTS

2 1. One (1) parking space for every four (4)
3 beds plus one (1) space for each employee on maximum
4 shift.

5 2. Vehicular use area screening along Old
6 Hartford Road and along the west edge of the proposed
7 new parking area.

8 MR. WILLIAMS: We would like to enter the
9 Staff Report into the record as Exhibit C.

10 CHAIRMAN: Anyone here representing the
11 applicant?

12 APPLICANT REP: Yes.

13 CHAIRMAN: Anyone here have any comments or
14 opposition on the application?

15 MR. HOBBS: Yes.

16 MR. SILVERT: State your name, please.

17 MR. HOBBS: Thomas Hobbs.

18 (THOMAS HOBBS SWORN BY ATTORNEY.)

19 MR. HOBBS: My only concern is I live right
20 next-door to the Carmel Home or two house down.
21 There's a vacant house in-between. I'm concerned
22 about the water run-off that comes down that way.
23 That's my only concern.

24 CHAIRMAN: Anyone have any questions or
25 comments?

1 (NO RESPONSE)

2 CHAIRMAN: Anyone here from the Carmel Home
3 application that would like to address his question?

4 MR. SILVERT: State your name, please.

5 MR. BAKER: Jason Baker.

6 (JASON BAKER SWORN BY ATTORNEY.)

7 MR. BAKER: Where do you say you live?

8 MR. HOBBS: I live at 2541 Old Hartford Road.
9 There's a house next-door to me and then I'm the next
10 residence.

11 MR. BAKER: The proposed construction has been
12 submitted through, there's an existing site plan that
13 has been approved through the city engineer's office
14 on this. We haven't modified really the drainage
15 patterns at all. The construction includes the
16 addition of a parking lot to the west of the existing
17 structure. That parking lot is going to be used to
18 aid in providing parking while they take out some
19 existing parking in front of the building to construct
20 the proposed building addition.

21 As I said, the drainage patterns will not
22 change as a result of the construction. We are
23 required to design the parking lot such that the
24 run-off cannot increase due to the construction work.

25 CHAIRMAN: Is it city engineer or county

1 engineer?

2 MR. BAKER: City engineer.

3 CHAIRMAN: Has the engineer signed off on it?

4 MR. BAKER: Yes, sir.

5 CHAIRMAN: Thank you.

6 Any boards member have any questions or
7 comments?

8 (NO RESPONSE)

9 CHAIRMAN: Chair is ready for a motion.

10 MS. MASON: Mr. Chairman, I move for approval.

11 My findings of fact are the addition is compatible
12 with the use of the property and renovating the
13 parking area will create a visual upgrade to the
14 property and adding an attached canopy will shelter
15 residents and visitors from the weather as they enter
16 and exist the building. Then adding additional
17 parking is needed for the addition.

18 CHAIRMAN: I hear a motion. Is there a
19 second?

20 MS. DIXON: Second.

21 CHAIRMAN: We have a motion and a second. Any
22 comments or questions on the motion?

23 (NO RESPONSE)

24 CHAIRMAN: All in favor raise your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries unanimously.

2 Next item.

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4 VARIANCE

5 ITEM 5

6 9063 Highway 1389, zoned A-R
7 Consider a Variance to reduce a building setback from
8 49 feet from the centerline of Highway 1389 to 45 feet
9 from the centerline of Highway 1389
10 Reference: Zoning Ordinance, Article 8,
11 Section 8.5.1(c)
12 Applicant: Larry and Debra Smeathers

13 MR. WILLIAMS: The Staff finds that there are
14 special circumstances with regards to this
15 application.

16 On March 6, 2003, the applicants were granted
17 a variance to reduce the front yard building setback
18 from 60 to 49 feet from the centerline of Highway
19 1389.

20 Due to topographical limitations of the lot,
21 the manufactured home had to be placed or has to be
22 placed perpendicular to the road in this vicinity.
23 That is the way the original home was oriented.

24 The replacement home is two feet longer than
25 the original. Due to unforeseen circumstances when
they placed the home, it ended up being 46 feet from
the centerline of the road, which the granted variance
would not satisfy.

1 So they're back to request a variance from 49
2 feet down to 45 feet from the centerline of Highway
3 1389.

4 If this is not granted, it will put some
5 hardship on the applicants because there is nowhere
6 else on this portion of the property where they can
7 place the home due to the topography. They would have
8 to relocate. The purpose of applying for the variance
9 was to mitigate cost and not have to move from the
10 site where they are. The septic system is already
11 there, etcetera.

12 The Staff finds that this application would
13 not adversely affect the public health, safety or
14 welfare; will not alter the essential character of the
15 general vicinity; will not cause a hazard or a
16 nuisance to the public; and will not allow an
17 unreasonable circumvention of the requirements of the
18 zoning regulations. Therefore, we recommend approval.

19 I would like to enter the Staff Report into
20 the record as Exhibit D.

21 CHAIRMAN: Anyone here representing the
22 applicant?

23 APPLICANT REP: Yes.

24 CHAIRMAN: Anyone here have any questions or
25 comments for the applicant?

1 (NO RESPONSE)

2 CHAIRMAN: Board members have any questions or
3 comments?

4 (NO RESPONSE)

5 CHAIRMAN: Chair is ready for a motion.

6 MR. PANTLE: Move to grant the Variance for
7 the reasons stated in the conditions and on May 6,
8 2003 there was a request for 45 foot setback and it
9 only came out with 46 foot setback. That was one of
10 the things that was because of the setback and the
11 reason with topography effecting on it. Approve the
12 Variance for findings 1, 2, 3 and 4 that were read
13 into the record.

14 CHAIRMAN: We have a motion. Do I hear a
15 second?

16 MR. TAYLOR: Second.

17 CHAIRMAN: We have a motion and a second. Any
18 comments or questions on the motion?

19 (NO RESPONSE)

20 CHAIRMAN: All in favor raise your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously.

23 We need one more motion.

24 MR. WARREN: Move to adjourn.

25 MR. TAYLOR: Second.

1 CHAIRMAN: All in favor raise your right hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 CHAIRMAN: We are adjourned.

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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 the
14 foregoing 21 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 27th day of May, 2008.

18
19 _____
20 LYNNETTE KOLLER FUCHS
21 OHIO VALLEY REPORTING SERVICES
22 202 WEST THIRD STREET, SUITE 12
23 OWENSBORO, KENTUCKY 42303

24 COMMISSION EXPIRES: DECEMBER 19, 2010
25 COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY