

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 OCTOBER 2, 2008

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday,
5 October 2, 2008, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

8 MEMBERS PRESENT: Ward Pedley, Chairman
9 Judy Dixon, Vice Chairman
10 Ruth Ann Mason, Secretary
11 Gary Noffsinger, Director
12 Madison Silvert, Attorney
13 Marty Warren
14 Clay Taylor

15 * * * * *

16 CHAIRMAN: Call the Owensboro Metropolitan
17 Board of Adjustment to order. We'll begin our meeting
18 with a prayer and the pledge of allegiance to the
19 flag. Mrs. Dixon will lead us.

20 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

21 CHAIRMAN: I would like to welcome everyone.
22 Anyone wishing to speak on any item, we welcome your
23 questions and comments. We ask that you come to one
24 of the podiums, state your name and be sworn in.

25 First item on the agenda is to consider the
minutes of the September 4, 2008 meeting. Are there
any additions or corrections?

(NO RESPONSE)

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

2 MR. PANTLE: Move for approval as in the
3 office.

4 MS. DIXON: Second.

5 CHAIRMAN: We have a motion and a second. All
6 in favor of the motion raise your right hand.

7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

8 CHAIRMAN: Motion carries unanimously. The
9 minutes are approved.

10 Next item.

11 MR. NOFFSINGER: Under Conditional Use
12 Permits, Item 2, Mr. Chairman, the City of Owensboro
13 has requested that this item be postponed until our
14 November meeting. That will be the first Thursday in
15 November. You will need to vote on a postponement.

16 CHAIRMAN: Chair is ready for a motion for
17 postponement on this item.

18 MS. DIXON: Move to postpone.

19 MS. MASON: Second.

20 CHAIRMAN: We have a motion and a second. All
21 in favor of the motion raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item, please.

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1 The subject property is zoned I-2 Heavy
2 Industrial. The property is bound to the west by the
3 Ohio River. The property to the north is zoned A-R,
4 Rural Agricultural and the properties to the east and
5 south are zoned I-2, Heavy Industrial.

6 ZONING ORDINANCE REQUIREMENTS

7 All of the requirements have been met by the
8 applicant:

9 1. A Stream Construction Permit for
10 Construction In or Along a Stream was issued by the
11 Kentucky Division of Water on July 28, 2008.

12 2. A determination from the U.S. Army Corps
13 of Engineers that a permit is not required from the
14 agency, dated August 29, 2008.

15 3. Certification from a design professional
16 was made on September 11, 2008, that the proposed
17 construction will not cause a rise in the base flood
18 elevation during a base flood discharge.

19 MR. WILLIAMS: I would like to enter the Staff
20 Report into the record as Exhibit A.

21 CHAIRMAN: Anyone here representing the
22 applicant?

23 APPLICANT REP: Yes.

24 CHAIRMAN: Anyone here like to speak in
25 opposition on this application?

1 (NO RESPONSE)

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

4 (NO RESPONSE)

5 CHAIRMAN: If not the chair is ready for a
6 motion.

7 MR. PANTLE: Mr. Chairman, hearing no
8 opposition I move for approval because it's compatible
9 in the area. It had conditional uses in 1998, 2001,
10 '03 and '06 to the same property, and all requirements
11 have been approved by the Division of Water, Corps of
12 Engineers and design professional certificate has been
13 obtained.

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

16 MR. WARREN: Second.

17 CHAIRMAN: We have a second. Comments or
18 questions on the motion?

19 (NO RESPONSE)

20 CHAIRMAN: All in favor of the motion raise
21 your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries unanimously.

24 Next item, please.

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VARIANCES

ITEM 4

3223 Baybrook Street, zoned R-1C
(Postponed at the September 4, 2008 meeting)
Consider a Variance to reduce the prescribed building
setback along Dalton Street from 25' to 15' for the
purpose of enlarging the principle building.
Reference: Zoning Ordinance, Article 8,
Section 8.5.7(c)
Applicant: J&W Building-Remodeling Dream Design,
Melissa Pate and Mary Ann B. Pate

MR. WILLIAMS: The subject property is at the
intersection of Baybrook and Dalton Street and was
developed with a platted street side yard building
setback of 15 feet.

The zoning regulations enacted after the
Scottish Home Subdivision developed in the '50s have a
prescribed street side yard setback of 25 feet.

This application is before you because the
applicant's desire to construct a room addition on the
house that will encroach into the prescribed 25 foot
setback, but will not encroach into the platted 15
foot setback. The applicants are requesting a
variance of 10 feet, effectively returning the
building envelope to what was intended when the
property was developed.

The situation is typical for this area in the
Scottish Home Subdivision. One-half of the homes on
corner lots within one block of the subject

1 intersection have structures that encroach into the
2 prescribed 25 street side yard setback. For this
3 reason and the fact that the subdivision was planned
4 in such a way that it expected the development of up
5 to 15 feet of the street side yard lot line.

6 Approving the variance will not alter the
7 essential character of the general vicinity.
8 Additional, if approved, the Variance will not cause a
9 hazard or nuisance and will not affect public health,
10 safety or welfare because the proposed room addition
11 will be 16 feet 11 inches from the public
12 right-of-way.

13 Finally, since the Scottish Homes Subdivision
14 was planned and platted to accommodate this request
15 and 50 percent of the corner lots in the vicinity are
16 developed in the same way, approving this variance
17 will not be an unreasonable circumvention of the
18 zoning regulations.

19 By these findings the Staff recommends
20 approval.

21 CHAIRMAN: Anyone here representing the
22 applicant?

23 APPLICANT REP: Yes.

24 CHAIRMAN: Anyone here like to speak in
25 opposition of this application?

1 (NO RESPONSE)

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

4 (NO RESPONSE)

5 CHAIRMAN: Chair is ready for a motion.

6 MR. TAYLOR: Mr. Chairman, move to approve the
7 Variance based on the finding of facts that there was
8 the intended purpose of the subdivision to be platted
9 like this. So it will adversely affect the public
10 safety or welfare, and will not alter the essential
11 character of the general vicinity since currently
12 homes in the area are developed along the same way.
13 It will not cause a hazard or nuisance to the public
14 and will not allow an unreasonable circumvention of
15 the requirements of the zoning regulations.

16 CHAIRMAN: We have a motion by Mr. Taylor.

17 MR. PANTLE: Second.

18 CHAIRMAN: Second by Mr. Pantle. Comments or
19 questions on the motion?

20 (NO RESPONSE)

21 CHAIRMAN: All in favor of the motion raise
22 your right hand.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries unanimously.

25 Next item.

1 ITEM 5

2 3200 Highland Pointe Drive, zoned B-4
3 Consider a Variance to reduce the number of parking
4 spaces for a proposed planned multi-family residential
5 development from 528 required parking spaces to 455
6 spaces as per Article 13, Section 13.77 of the
7 Owensboro Metropolitan Zoning Ordinance and to
8 increase the maximum building height allowed in a
9 Multi-Family Residential Zone from 36' to 40'.
10 Reference: Zoning Ordinance, Article 13,
11 Section 13.77 and Article 8, Section 8.5(f).
12 Applicant: Thompson Thrift, d/b/a Watermark
13 Residential and Highland Pointe Holdings, LLC

14 MR. WILLIAMS: The subject property is zoned
15 general business and must be rezoned to multi-family
16 residential before building permits may be issued.

17 The applicants are seeking the Variances first
18 in order to determine whether the project can be built
19 as designed. The applicant has requested two
20 variances that will be handled in turn beginning with
21 the reduction in parking.

22 The zoning ordinance mandates required parking
23 and spillover parking. The applicant intends to
24 provide all of the required 408 parking spaces and
25 request a reduction in the spillover parking from 120
26 to 47 spaces. This is a reduction of 14 percent from
27 the total parked parking mandated.

28 State as ratio design ordinance mandates 2.44
29 parking spaces per dwelling unit for this development
30 as planned. The applicants are requesting to provide

1 2.11 parking spaces per dwelling units.

2 Because the applicant is planned to provide
3 the necessary vehicle use area screening and adequate
4 maneuvering space, a reduction in the number of
5 parking spaces will not adversely alter the character
6 of the area.

7 The applicant argues that the parking mandated
8 by the zoning ordinance is in excess by comparison to
9 standards recommended by the Urban Land Institute and
10 the American Planning Association. These standards
11 are 1.75 and 1.5 parking spaces per housing unit
12 respectively. Documentation of these recommendations
13 have been provided by the applicants.

14 Staff review of a field study conducted by the
15 Institute of Traffic Engineers determined that the
16 average peak demand for a suburban apartment complex
17 of this size is 1.36 spaces per unit or 293 parking
18 spaces. This is actual observed peak demand in the
19 field. This number is based upon 44 suburban
20 apartment complexes.

21 The highest observation in the study did not
22 exceed 1.94 parking spaces per unit. Thus it's
23 reasonable to conclude that the applicant's proposal
24 to provide 2.11 parking spaces per unit is adequate to
25 handle the average peak parking demand and will not

1 create an unsafe or congestive parking situation or
2 cause a hazard or nuisance to the public.

3 Additionally, because the applicants will
4 provide all of the required parking, 39 percent of the
5 mandated spillover parking and the anticipated demand
6 should not exceed that which will be provided.
7 Granting this variance is not an unreasonable
8 circumvention of the zoning ordinance.

9 By these findings the Staff recommends
10 approval with the following condition:

11 1. Subject to rezoning the property from
12 general business to multi-family residential.

13 With regards to the variance requesting an
14 increase in the maximum building height, the
15 applicants contend that the zoning regulation will
16 accommodate an average ceiling height of 8 feet. The
17 applicant is determined that a particular market
18 segment can be served by providing luxury apartments
19 at this location with 9 feet ceilings.

20 Because the development will be in a mixed use
21 area containing zones with no height limitation,
22 granting the variance will not alter the general
23 character of the area.

24 For the same reason granting the variance will
25 have no affect on public health, welfare or safety and

1 will not create a nuisance to the public.

2 The ceiling height is an essential part of the
3 character and the appeal of the apartment design.
4 Since adjacent properties have no limit on the height
5 of buildings, denial of this variance is unnecessary.
6 Therefore approval will not allow an unreasonable
7 circumvention of the zoning regulations.

8 By these findings the Staff recommends
9 approval with the following condition:

10 1. Subject to rezoning the property from
11 general business to multi-family residential.

12 I would like to enter the Staff Report into
13 the record as Exhibit C.

14 CHAIRMAN: Anyone here representing the
15 applicant?

16 APPLICANT REP: Yes.

17 CHAIRMAN: Anyone here like to voice an
18 opinion or have any questions or concerns of this
19 application?

20 (NO RESPONSE)

21 CHAIRMAN: Any board members have any comments
22 or questions on the application?

23 (NO RESPONSE)

24 CHAIRMAN: This is a two-part variance.
25 Variance for the height and variance for parking

1 spaces. It may be considered jointly or separately.

2 Chair is ready for a motion.

3 MR. TAYLOR: Mr. Chairman, I move for approval
4 both variances jointly. I do this on the condition
5 that the subject property does be rezoned from B-4 to
6 R-3 MF.

7 I do this based on the fact that neither
8 variances will adversely affect the public health,
9 safety or welfare. Because of the screening and
10 maneuver space being provided it will not alter the
11 essential the essential character of the general
12 vicinity on either variance, and it will not cause a
13 hazard or nuisance to the public, nor will it allow an
14 unreasonable circumvention of the requirements since
15 it does exceed the amount of the demand for the
16 parking area.

17 CHAIRMAN: We have a motion by Mr. Taylor. Is
18 there a second?

19 MS. DIXON: Second.

20 CHAIRMAN: Second by Ms. Dixon. Comments or
21 questions on the motion?

22 (NO RESPONSE)

23 CHAIRMAN: All in favor of the motion raise
24 your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 CHAIRMAN: Motion carries unanimously.

2 We need one final motion.

3 MR. WARREN: Motion to adjourn.

4 MS. MASON: Second.

5 CHAIRMAN: All in favor raise your right hand.

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 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 14 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 30th day of October, 2008.

18

19

LYNNETTE KOLLER FUCHS
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
21 OWENSBORO, KENTUCKY 42303

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COMMISSION EXPIRES: DECEMBER 19, 2010

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COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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