

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 JANUARY 8, 2009

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:00 p.m. on Thursday,
5 January 8, 2009, at City Hall, Commission Chambers,
6 Owensboro, Kentucky, and the proceedings were as
7 follows:

- 8 MEMBERS PRESENT: C.A. Pantle, Chairman
- 9 Ward Pedley, Vice Chairman
- 10 Ruth Ann Mason, Secretary
- 11 Gary Noffsinger, Director
- 12 Madison Silvert, Attorney
- 13 Judy Dixon
- 14 Marty Warren
- 15 Sean Dysinger
- 16 Clay Taylor

17 * * * * *

18 MR. PEDLEY: Call the Owensboro Metropolitan
19 Board of Adjustment to order.

20 We will begin our meeting with a prayer and
21 the pledge of allegiance to the flag. Stand please.

22 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

23 MR. PEDLEY: At the beginning of each year we
24 elect new officers. I will turn that over to counsel
25 for that. I want to announce that I'm not a candidate
for chairman this year.

With that, Madison, will you take over.

MR. SILVERT: We have three offices to fill.

First we'll take nominations for the office of

1 Chairman.

2 MR. PEDLEY: I nominate Audie Pantle.

3 MS. MASON: Second.

4 MR. SILVERT: We've got a second for Audie
5 Pantle. Any other nominations?

6 MR. PEDLEY: Make a motion that nomination
7 cease.

8 MR. SILVERT: Do we have a second?

9 MS. DIXON: Second.

10 MR. SILVERT: Second. All in favor of
11 electing Audie Pantle as Chairman for the Board of
12 Adjustment please signify by saying aye.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 MR. SILVERT: All opposed.

15 (NO RESPONSE)

16 MR. SILVERT: Congratulation, Mr. Chairman.

17 Now I take the nominations for the office of
18 vice chair. Any nominations?

19 MS. DIXON: I nominate Ward Pedley.

20 MR. DYSINGER: Second.

21 MR. PANTLE: Move that nomination cease and he
22 be elected by acclamation.

23 MS. MASON: Second

24 MR. SILVERT: All in favor of the motion.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

1 MR. SILVERT: All opposed.

2 (NO RESPONSE)

3 MR. SILVERT: Congratulations, Ward.

4 And finally the office of secretary.

5 MS. DIXON: I nominate Ruth Ann Mason.

6 MR. WARREN: Second.

7 MR. PEDLEY: Move that nomination cease and

8 she be elected by acclamation.

9 MR. WARREN: Second.

10 MR. SILVERT: All in favor of the motion.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 MR. SILVERT: All opposed.

13 (NO RESPONSE)

14 MR. SILVERT: Congratulations, Ruth Ann.

15 That concludes our elections for this year.

16 Turn it back over to the Chair, Mr. Audie Pantle.

17 CHAIRMAN: Let the meeting proceed. At this

18 time I want to thank Ward Pedley for the job that he

19 did last year. Appreciate all your time that you've

20 donated. Thank you.

21 With that and with the other officers, I want

22 to welcome you all to your position.

23 With that the next item is the minutes of the

24 December meeting. They're on file in the office. I

25 don't think there's been any problems or anything with

1 them, have there?

2 MR. NOFFSINGER: No, sir.

3 CHAIRMAN: Entertain a motion.

4 MS. DIXON: Move to approve.

5 MS. MASON: Second.

6 CHAIRMAN: A motion has been made and a
7 second. Any other discussion?

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.

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15 CONDITIONAL USE PERMITS

16 ITEM 3

17 81 Church Street, zoned R-1A
18 Consider request for a Conditional Use Permit to
19 construct a 7,200 square foot parish hall on the
20 premises with an existing church.
21 Reference: Zoning Ordinance, Article 8, Section 8.2B4
22 Applicant: St. Peter of Alcantra Church

21 MR. SILVERT: State your name, please.

22 MS. EVANS: Melissa Evans.

23 (MELISSA EVANS SWORN BY ATTORNEY.)

24 ZONING HISTORY

25 The subject property is currently zoned R-1A

1 Single Family Residential. There are no records in
2 our office with OMPC to indicate any zoning changes of
3 the subject property. There is an existing church on
4 the property that is shown on the site plan that was
5 submitted with the application. There also was a
6 Minor Subdivision Plat approved in March 30 of 1995
7 that consolidated the property.

8 LAND USES IN SURROUNDING AREA

9 The property to the north, across US Highway
10 60 West is zoned B-4 General Business with an existing
11 convenience store and gas station on the property.
12 The property to the west is zoned R-1A Single-Family
13 Residential with a single-family residence. The
14 property to the east and to the south are both zoned
15 A-R Rural Agriculture, the property to the south is
16 used as farm land and the property to the east is used
17 as a single-family residence.

18 ZONING ORDINANCE REQUIREMENTS

19 1. Parking requirement - Churches - one space
20 for every five seats in the main auditorium (minimum
21 of 5). The applicant stated there were 222 seats
22 which equals 45 parking spaces required. The
23 applicant is providing 46 spaces including 4 handicap
24 spaces.

25 2. Landscape easement between the vehicular

1 use area and the right-of-way consisting of a three
2 foot continuous element with one tree every 40 feet.

3 We would like to enter the Staff Report as
4 Exhibit A into the record.

5 Are there any questions?

6 (NO RESPONSE)

7 CHAIRMAN: Thank you.

8 Were there any objections filed in the office
9 on this?

10 MS. EVANS: Not to my knowledge.

11 CHAIRMAN: Anyone in the audience wishing to
12 speak in opposition of this item?

13 (NO RESPONSE)

14 CHAIRMAN: If not, is the applicant here?

15 APPLICANT REP: Yes.

16 CHAIRMAN: Do you all have anything you want
17 to add at this time?

18 APPLICANT REP: No.

19 CHAIRMAN: Hearing none are there any
20 questions from the board?

21 (NO RESPONSE)

22 CHAIRMAN: Or anything else from the Staff?

23 MR. NOFFSINGER: No, sir.

24 MS. DIXON: Mr. Chairman, move to approve
25 based upon findings of fact that it is a logical

1 expansion of the existing use and is compatible with
2 surrounding property and subject to the zoning
3 ordinance requirements.

4 CHAIRMAN: Is there a second?

5 MR. DYSINGER: Second.

6 CHAIRMAN: A motion has been made and a
7 second.

8 Are there any other questions from the board
9 or comments from the Staff?

10 (NO RESPONSE)

11 CHAIRMAN: Hearing none we'll vote on the
12 item. All in favor raise your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: Motion passes.

15 Next item, please.

16 ITEM 4

17 2601 New Hartford Road, zoned B-4
18 Consider request for a Conditional Use Permit to
19 construct and operate a 9,600 square foot indoor
20 recreational facility.
21 Reference: Zoning Ordinance, Article 8,
22 Section 8.2B11
23 Applicant: Sonrise Chapel, LLC; Independene Bank

24 ZONING HISTORY

25 The subject property is currently zoned B-4
General Business and OMPC records do not indicate any
zoning changes on the subject property. There was a
Minor Subdivision Plat approved September 2, 2008,

1 with an identified access point. The other access
2 point on the subject property is to be closed with
3 redevelopment of the site, according to that minor
4 subdivision plat. The site plan submitted for this
5 Conditional Use Permit shows the approved access point
6 to be used with the other existing access to be
7 closed.

8 LAND USES IN SURROUNDING AREA

9 All surrounding properties are zoned B-4
10 General Business. The property to the north is a
11 grocery store, the south property is a bank, the west
12 property is a school and the east property, it's
13 listed in the Staff Report as vacant, but I think
14 there is a store, I think it's the Dollar General
15 Store, under construction on that property currently.

16 ZONING ORDINANCE REQUIREMENTS

17 1. Parking requirements - Recreational
18 activities, indoor - 1 per each employee-0, plus 1 per
19 every 2 participants-12, plus 1 per every 3 spectator
20 seats-17, 29 total required, plus 2 handicap spaces.

21 2. Landscape easement along west property
22 line with a three foot high continuous element and one
23 tree every 40 feet.

24 SPECIAL CONDITIONS

25 1. Access to New Hartford Road shall be

1 limited to the existing shared access point only as
2 required by the approved Minor Subdivision Plat, with
3 the second existing entrance to be closed and
4 curb/gutter, sidewalks and grass be installed.

5 We would like to enter the Staff Report into
6 the record.

7 CHAIRMAN: Any objection filed in the office?

8 MR. NOFFSINGER: No, sir.

9 CHAIRMAN: Is anyone in the audience wishing
10 to speak in opposition to this?

11 (NO RESPONSE)

12 CHAIRMAN: Is the applicant present and have
13 anything he would like to add at this time?

14 (NO RESPONSE)

15 CHAIRMAN: Hearing none the board is ready for
16 a motion.

17 MS. MASON: Mr. Chairman, I make a motion for
18 approval. My findings of fact is that it is
19 compatible with the land use in the area and special
20 conditions that were mentioned beforehand need to be
21 used in this, with this report.

22 CHAIRMAN: Is there a second?

23 MR. PEDLEY: Second.

24 CHAIRMAN: A motion has been made and a
25 second. Any other comments from the office or Staff?

1 (NO RESPONSE)

2 CHAIRMAN: Any other questions or comments
3 from the board members?

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.

9 Next item, please.

10 ITEM 5

11 4801 Towne Square Court, zoned B-4
12 Consider request for a Conditional Use Permit to
13 operate a licensed child care facility for a maximum
14 of 120 children.
15 Reference: Zoning Ordinance, Article 8, Section 8.2B3
16 Applicant: Franklin J. (Jerry) Dockery; Susan J.
17 Dockery

18 ZONING HISTORY

19 The subject property is currently zoned B-4
20 General Business and OMPC records do not indicate any
21 zoning changes on the subject property. The subject
22 property is developed with an existing building,
23 existing paved parking with the vehicular use area
24 landscaping.

25 LAND USES IN SURROUNDING AREA

26 The property to the north is zoned R-3MF
27 Multi-Family Residential with existing apartments on
28 the property. The properties to the south, west and

1 east are zoned B-4 General Business with service and
2 commercial businesses.

3 Since the adjoining property to the north is
4 zoned R-3MF Multi-Family Residential, screening
5 between the subject property and the residential
6 property will be required. The screening requirement
7 includes a 10 foot landscape buffer with a six foot
8 high continuous element with one tree every 40 linear
9 feet. Upon inspection of the property, the six foot
10 high element is intact for a portion of the north
11 boundary but is not complete from the existing fence
12 to the property line along Towne Square Court.

13 ZONING ORDINANCE REQUIREMENTS

14 1. Parking requirement - Daycare - 2 plus one
15 per 10 children - 14 total.

16 2. Ten foot landscape buffer with a six foot
17 high fence and one tree every 40 feet along the entire
18 north boundary.

19 SPECIAL CONDITIONS

20 1. Complete the screening requirements by
21 extending the existing fence with required trees along
22 the north property line to Towne Square Court.

23 MS. EVANS: Staff would like to enter this
24 Staff Report as Exhibit C.

25 CHAIRMAN: Thank you.

1 Are there any objections or comments filed in
2 the office?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Is anyone in the audience wishing
5 to speak in opposition on this?

6 (NO RESPONSE)

7 CHAIRMAN: Is the applicant here?

8 APPLICANT REP: Yes.

9 CHAIRMAN: Do you have any comments?

10 APPLICANT REP: No.

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

13 (NO RESPONSE)

14 CHAIRMAN: Staff have anything else?

15 MR. NOFFSINGER: No, sir.

16 CHAIRMAN: Hearing none entertain a motion to
17 dispose of the item.

18 MR. PEDLEY: Mr. Chairman, I make a motion for
19 approval based on that we have heard no opposition.
20 Requirements of the zoning ordinance, it will allow
21 proper integration, because it is a compatible use it
22 will not have an adverse influence on the
23 neighborhood. With conditions, complete the screening
24 requirements by extending the fence with required
25 trees along the north property line to the property

1 boundary at Towne Square Court.

2 MR. WARREN: Second.

3 CHAIRMAN: A motion has been made and a
4 second. Any other comments or anything from the
5 Staff?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: Board members have any other
8 comments or questions?

9 (NO RESPONSE)

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

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Next item, please.

15 -----

16 VARIANCES

17 ITEM 6

18 1811 Littlewood Drive, zoned R-1A
19 Consider request for a Variance to reduce the side
20 yard setback from 10 feet to 6 feet to construct a 16
21 foot by 16 foot in-ground swimming pool and an 8 foot
22 by 8 foot pergola.

Reference: Zoning Ordinance, Article 8,
Section 8.5.5(d)

Applicant: Shannon S. Wright

23 MS. EVANS: A little background information on
24 this property.

25 It was developed prior to the current zoning

1 ordinance. They're asking for this variance because
2 there is a power line running through the back of
3 their property. According to OMU there's not a
4 specific easement set on a plat of this property, but
5 according to OMU that a pool has to be ten feet from
6 any power line. That's according to the Standards of
7 the National Electric Code. So with that there leaves
8 very little room to put anything in their backyard.
9 That's why they're asking this to be in the side yard
10 and that setback reduced.

11 The applicant has also proposed the four foot
12 fence required around the swimming pool and pergola,
13 and upon inspection of the area we did find several
14 instances where there are encroachments, other
15 encroachments in that side yard setback.

16 Granting this variance will not adversely
17 affect the public health, safety or welfare; it will
18 not alter the essential character of the general
19 vicinity; it will not cause a hazard or a nuisance to
20 the public; and it will not allow an unreasonable
21 circumvention of the requirements of the zoning
22 ordinance. Staff recommends approval.

23 We would like to enter this as Exhibit D in
24 the record.

25 CHAIRMAN: Thank you.

1 Is there any opposition filed in the office?

2 MR. NOFFSINGER: No, sir.

3 CHAIRMAN: Is anyone in the office wishing to
4 speak in opposition of this?

5 (NO RESPONSE)

6 CHAIRMAN: The applicant here and have any
7 statements you would like to add at this time?

8 MR. SILVERT: State your name, please.

9 MR. JACOBS: Marty Jacobs.

10 MR. SILVERT: I recognize the oath you took as
11 an attorney, Mr. Jacobs.

12 MR. JACOBS: I'm here simply to answer any
13 questions on behalf of the applicant that the board
14 may have.

15 CHAIRMAN: Any board members have any
16 questions of the applicant?

17 (NO RESPONSE)

18 CHAIRMAN: Staff have anything else to add?

19 MR. NOFFSINGER: No, sir.

20 CHAIRMAN: Hearing none entertain a motion.

21 MR. TAYLOR: Mr. Chairman, move to grant the
22 variance considering there are special circumstances.
23 It will not cause a hazard or nuisance to the public.
24 There are other homes in the area that appear to
25 encroach using the same setback variance. Granting

1 this variance will not adversely affect the public
2 health, safety or welfare; and it will not alter the
3 essential character of the general vicinity; it won't
4 cause a hazard or a nuisance to the public; and will
5 not allow an unreasonable circumvention of the
6 requirements of the zoning regulations. So I do move
7 to grant the variance.

8 MR. PEDLEY: Second.

9 CHAIRMAN: A motion has been made and a
10 second. Any other comments from the Staff?

11 MR. NOFFSINGER: No, sir.

12 CHAIRMAN: Any other questions or comments
13 from the board?

14 (NO RESPONSE)

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

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: Motion carries.

19 ITEM 7

20 1564 River Road, zoned I-2
21 Consider request for a Variance to eliminate the 8
22 foot solid fence screen required along the south and
23 west property lines, to eliminate the 10 foot
24 landscape easement and perimeter trees required along
25 the south and west property lines.

Reference: Zoning Ordinance, Article 17.8,
Section 17.311(d), 17.3112, 17.3113, 17.3114, 8.4/27
Applicant: N.T.N. Properties, LLC

1 MS. EVANS: A little background information on
2 this property. There was a season conditional use
3 permit approved last month by the board. There was
4 also a similar variance application approved in July
5 of 2007 for the neighboring property to the north
6 requesting to eliminate this same requirement along
7 their western boundary.

8 Along the southern boundary there is an
9 existing 201 foot fence already. So this variance is
10 just to eliminate the remaining 561 feet of fence that
11 would be required for the southern boundary.

12 Along the western boundary of the property and
13 the southern boundary of this property the topography
14 limits the effectiveness of the required screening
15 because there is an elevation change and it's heavily
16 wooded. That separates the subject property from the
17 balance of the neighboring properties.

18 Staff recommends approval of this. It will
19 not adversely affect the public health, safety or
20 welfare; will not alter the essential character of the
21 general vicinity; it will not cause a hazard or a
22 nuisance to the public; and it will not allow an
23 unreasonable circumvention of the requirements of the
24 zoning regulations.

25 Staff recommends approval with the following

1 conditions:

2 1. If development occurs on the property to
3 the west or south, the applicant shall be required to
4 install the screening requirements.

5 2. Access shall be limited to the existing
6 access point on River Road.

7 3. Stacking of material shall not exceed the
8 required screening height of eight feet.

9 We would like to enter the Staff Report as
10 Exhibit E.

11 CHAIRMAN: Any other comments from the Staff
12 at this time or any objection in the office?

13 MR. NOFFSINGER: No, sir.

14 CHAIRMAN: Anyone wishing to speak in
15 opposition of this item?

16 (NO RESPONSE)

17 CHAIRMAN: Is the applicant here and have any
18 comments?

19 MR. KAMUF: We're here to answer any
20 questions, Mr. Chairman.

21 CHAIRMAN: Thank you.

22 Any questions of the applicant from the board?

23 (NO RESPONSE)

24 CHAIRMAN: Other comments from the Staff?

25 MR. NOFFSINGER: I would just ask Mr. Kamuf:

1 You have heard the conditions. Are you agreeable to
2 the conditions?

3 MR. KAMUF: We do. I looked at my client as
4 she was reading them and he agreed to them.

5 MR. NOFFSINGER: Thank you.

6 MR. PEDLEY: Mr. Chairman, I have a question
7 on the conditions.

8 It says, "If this development occurs on the
9 property to the west or south the applicant shall be
10 required to install the screening requirements." I
11 think it should be added and the 100 foot buffer into
12 that condition. It says screening.

13 MR. WARREN: And what?

14 MR. PEDLEY: Add 100 foot buffer. Because
15 that is the zoning ordinance.

16 MR. KAMUF: Mr. Chairman, along that line I
17 only have one question.

18 When you development, the property now is
19 vacant. It's pretty well grown up. It's trees and
20 kind of rugged. When you say development, you're
21 talking about any type of development? What are we
22 talking, Gary, just for clarification?

23 MR. NOFFSINGER: I think Staff's perspective
24 we would be looking at it if it's a residential type
25 development. If it were to be an industrial type

1 development, I would say probably would not be
2 warranted. But the way it's written it's not
3 specified, but I think the intent there, at least from
4 the Staff's level, would be if it's a residential type
5 development.

6 MR. KAMUF: We agree to that. We agree to
7 those conditions.

8 CHAIRMAN: That is in the record.

9 Any other comments?

10 MR. TAYLOR: Mr. Chairman, move to grant the
11 variance based upon we have granted similar variances
12 to adjoining properties in the past. Topography
13 extremely limits the effectiveness of the zoning
14 requirements and required screening. It will not
15 adversely affect the public health, safety or welfare;
16 will not alter the essential character of the general
17 vicinity; and will not cause a hazard or a nuisance to
18 the public; and won't allow an unreasonable
19 circumvention of the requirements of the zoning
20 regulations.

21 I do place these special conditions upon the
22 variance: That if development occurs on the property
23 to the west or south the applicant shall be required
24 to install the screening requirements, and adhere to
25 the 100 foot buffer. Access shall be limited to the

1 existing access point on River Road, and stacking of
2 material shall not exceed the required screening
3 height of eight feet.

4 MR. PEDLEY: Second.

5 CHAIRMAN: A motion has been made and a
6 second. Is there any other questions from the boards?

7 (NO RESPONSE)

8 CHAIRMAN: Staff have any other comments?

9 MR. NOFFSINGER: No, sir.

10 CHAIRMAN: The applicant understand all the
11 conditions that were stated?

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

13 CHAIRMAN: Hearing none all in favor raise
14 your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries.

17 We need one final motion.

18 MS. DIXON: Move to adjourn.

19 MS. MASON: Second.

20 CHAIRMAN: All in favor raise your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: We are adjourned.

23 -----

24

25

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 25th day of January, 2009.

18

19

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

22

COMMISSION EXPIRES: DECEMBER 19, 2010

23

COUNTY OF RESIDENCE: DAVIESS COUNTY, KENTUCKY

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