

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 MARCH 5, 2009

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday, March
5 5, 2009, at City Hall, Commission Chambers, Owensboro,
6 Kentucky, and the proceedings were as follows:

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

12 * * * * *

13 CHAIRMAN: Call the meeting to order of the
14 Owensboro Metropolitan Board of Adjustment at this
15 will time. We start our program each day with a
16 prayer and pledge of allegiance. We invite you to
17 join us at this time. Judy Dixon will have our
18 prayer.

19 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

20 CHAIRMAN: Again, I want to welcome all of you
21 to the Board of Adjustment meeting at this time. If
22 you have any items you need to discuss or speak on any
23 item, please come to one of the podiums, state your
24 name and be sworn in. We'll recognize you and go from
25 there.

1 Multi-Family Residential. OMPC records indicate there
2 have been no Zoning Map Amendments on the subject
3 property. The subject property has been shown on
4 previous Major Subdivision Preliminary Plats, noted
5 for future development. The subject property is
6 currently vacant.

7 A new Combined Major Subdivision Preliminary
8 Plat/Final Development Plan for this multi-family
9 residential development is planned to be submitted in
10 the near future.

11 The proposed use of the new building will
12 include 3,906 square feet dedicated for use by only
13 the residents of the proposed multi-family
14 developments. It will additionally contain 2,665
15 square feet for a public community center and 3,948
16 square feet for office spaces for various
17 philanthropic service agencies.

18 LAND USES IN SURROUNDING AREA

19 The property to the north is zoned R-3MF
20 Multi-Family Residential and is being used as
21 duplexes. The property to the south is zoned R-3MF
22 Multi-Family Residential with an existing
23 neighborhood. The property to the west is zoned A-U
24 Urban Agriculture and is single family residences.
25 The property to the east is zoned R-1C and is an

1 existing neighborhood.

2 ZONING ORDINANCE REQUIREMENTS

3 1. Parking requirements - Community Centers,
4 Public - 1 per every 600 square feet - 5;
5 Philanthropic institutions and clubs - 1 per every 250
6 square feet - 16; total required 21.

7 SPECIAL CONDITIONS

8 1. Submittal of a Combined Major Subdivision
9 Preliminary Plat/Final Development Plan.

10 MS. EVANS: We would like to enter the Staff
11 Report into the record as Exhibit A.

12 CHAIRMAN: Is there any comments on record in
13 the office before or against?

14 MR. NOFFSINGER: No, sir.

15 CHAIRMAN: Is anyone wishing to speak in
16 opposition of this item?

17 (NO RESPONSE)

18 CHAIRMAN: Is the applicant here?

19 APPLICANT REP: Yes.

20 CHAIRMAN: Do you have anything you would like
21 to add at this time?

22 APPLICANT REP: Not unless you have questions.

23 CHAIRMAN: Any board members have any comments
24 or questions of the applicant?

25 (NO RESPONSE)

1 CHAIRMAN: Staff have anything else to add?

2 MR. NOFFSINGER: No, sir.

3 CHAIRMAN: Hearing none entertain a motion to
4 dispose of the item.

5 MS. MASON: Mr. Chairman, I move for approval.
6 My findings of fact since there's no opposition and
7 it's a logical expansion, the community center is a
8 logical expansion of the existing use of the property
9 and is a compatible development to the land use in
10 this neighborhoods, and subject to the zoning
11 ordinance that was mentioned earlier and it's subject
12 to the special conditions that were mentioned earlier.

13 CHAIRMAN: Is there a second?

14 MR. DYSINGER: Second.

15 CHAIRMAN: A motion has been made and a
16 second. Any other comments or questions from the
17 board?

18 (NO RESPONSE)

19 CHAIRMAN: Anything else from the Staff?

20 MR. NOFFSINGER: No, sir.

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

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: Motion carries.

25 Next item, please.

1 ITEM 3

2 9378 Highway 144, zoned B-4, R-1A to A-U
3 Consider request for a Conditional Use Permit to
4 maintain and operate an existing cemetery.
5 Reference: Zoning Ordinance, Article 8, Section 8.2J1
6 Applicant: St. Williams Cemetery; Ernest T. Isbill &
7 Diocese of Owensboro

8 ZONING HISTORY

9 The subject property is currently zoned B-4
10 General Business and R-1A Single-Family Residential.
11 OMPC records indicate there was a Zoning Map Amendment
12 application submitted and approved by the Planning
13 Commission on February 12, 2009. The subject property
14 is currently used as a cemetery.

15 A Minor Subdivision Plat has been submitted
16 and will be approved once the Zoning Map Amendment has
17 been finalized.

18 The existing cemetery was found to encroach
19 into the Isbill property to the west, requiring the
20 rezoning of the cemetery property to an appropriate
21 zone and an application for a Conditional Use Permit
22 to bring the existing property into conformance with
23 the current zoning ordinance.

24 LAND USES IN SURROUNDING AREA

25 The property to the north is zoned R-1A
26 Single-Family Residential and a B-4 General Business
27 with existing residences and an existing business.

1 The property to the south is zoned A-U Urban
2 Agriculture with an existing farm. The property to
3 the west is zoned B-4 General Business with an
4 existing business. The property to the east is zoned
5 R-1A and is the Knottsville Fire Department.

6 ZONING ORDINANCE REQUIREMENTS

- 7 1. Parking requirements - none.
8 2. Landscaping requirements - none.

9 SPECIAL CONDITIONS

10 1. Final approval of the Zoning Map Amendment
11 Application.

12 2. Approval of the Minor Subdivision Plat.

13 MS. EVANS: We would like to enter the Staff
14 Report into the record as Exhibit B.

15 CHAIRMAN: Is there any opposition or comments
16 in the office?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: Hearing none is there anyone
19 wishing to speak in opposition of this item?

20 (NO RESPONSE)

21 CHAIRMAN: Does the applicant have anything
22 you would like to add at this time?

23 APPLICANT REP: No.

24 CHAIRMAN: Hearing none any comments or
25 questions from the board?

1 (NO RESPONSE)

2 CHAIRMAN: Anything else from the Staff?

3 MR. NOFFSINGER: No, sir.

4 CHAIRMAN: Hearing none entertain a motion to
5 dispose of the item.

6 MR. WARREN: Motion to approve the Conditional
7 Use Permit. The findings that it is current use for
8 the property, there is no opposition, and that the
9 special conditions must be met, the final approval of
10 the zoning map amended application, and an approval of
11 the minor subdivision plat.

12 MR DYSINGER: Second.

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

16 (NO RESPONSE)

17 CHAIRMAN: Anything else from the Staff?

18 MR. NOFFSINGER: No, sir.

19 CHAIRMAN: Hearing none all in favor raise
20 your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries.

23 Next item, please.

24 ITEM 4

25 4815 US Highway 60 East, zoned I-2

1 Consider request for a Conditional Use Permit to
2 construct and operate a storage and handling facility
3 for liquid petroleum products, by-products and various
4 derivative products, and other liquid materials.
5 Reference: Zoning Ordinance, Article 8,
6 Section 8.2G4/27
7 Applicant: Yager Materials

8 ZONING HISTORY

9 The subject property is currently zoned I-2
10 Heavy Industrial. OMPC records indicate there have
11 been no Zoning Map Amendments on the subject property.
12 The subject property is currently vacant.

13 A Minor Subdivision Plat will need to be
14 submitted and approved for the lot division. An
15 additional Conditional Use Permit will need to be
16 approved to construct the pipe line shown on the site
17 plan in the floodway.

18 LAND USES IN SURROUNDING AREA

19 The property to the north, west and east are
20 zoned I-2 Heavy Industrial with existing industrial
21 activity. The property to the south is zoned I-1 with
22 existing farm land.

23 ZONING ORDINANCE REQUIREMENTS

24 1. Parking requirements - Heavy industrial
25 uses, conditional permitted - 1 for every 2 employees
on maximum shift (minimum 5) - total required 5.

2. Landscaping requirements - none.

26 SPECIAL CONDITIONS

- 1 1. Approval of a Minor Subdivision Plat.
2 2. Approval of an additional Conditional Use
3 Permit to build the pipe line shown on the site plan
4 in a floodway.

5 MS. EVANS: We would like to enter the Staff
6 Report into the record as Exhibit C.

7 MR. NOFFSINGER: Mr. Chairman, I would like to
8 also add a third condition on this Conditional Use
9 Permit. That be the access to the property be limited
10 to the existing haul road and that there be no direct
11 access to US Highway 60 East. The lot that's being
12 created is a flag-shaped lot which would be okay in an
13 industrial zone and it's being created this way to
14 gain frontage to a public right-of-way, but that
15 frontage that this lot will have should not be used to
16 access the property. It's my understanding the
17 applicant is aware of that and is agreeable to it.

18 CHAIRMAN: Any comments or objections in the
19 office?

20 MR. NOFFSINGER: No, sir.

21 CHAIRMAN: Does anyone wish to speak in
22 opposition of this item?

23 (NO RESPONSE)

24 CHAIRMAN: Does the applicant have anything
25 you would like to understand at this time or bring up?

1 MR. BILL WILSON: No.

2 CHAIRMAN: You understand the third item and
3 accept that?

4 MR. BILL WILSON: (MR. WILSON NODS YES IN THE
5 AFFIRMATIVE.)

6 CHAIRMAN: Hearing none entertain a motion to
7 dispose of the item.

8 MR. PEDLEY: Mr. Chairman, I make a motion for
9 approval based on findings that we've heard no
10 opposition on this application. This is compatible
11 use in an I-2 zone. It will not adversely affect
12 future development because there are similar uses in
13 the area.

14 The conditions: 1) approval of Minor
15 Subdivision Plat; 2) approve additional Conditional
16 Use Permit to build the pipe line shown on the site
17 plan in a flood; and 3) the condition stated by Mr.
18 Noffsinger.

19 MR. WARREN: Second.

20 CHAIRMAN: A motion has been made and a
21 second. Any other comments or questions or questions
22 from the board?

23 MR. SILVERT: I have one comment.

24 I want to make sure that the reporter
25 reflected that the attorney for the applicant nodded

1 in agreement to the third condition.

2 CHAIRMAN: You understand all three of the
3 conditions?

4 MR. BILL WILSON: Yes.

5 CHAIRMAN: Any other comments from the Staff?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: Hearing none all in favor raise
8 your right hand.

9 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

10 CHAIRMAN: Motion carries.

11 Next item, please.

12 ITEM 5

13 10680 US Highway 431, zoned B-4
14 Consider request for a Conditional Use Permit to
15 construct two (2) two hundred (200) by thirty (30)
16 foot individual storage buildings.
17 Reference: Zoning Ordinance, Article 8, Section 8.2L7
18 Applicant: L.D. Jennings, Jr.

17 ZONING HISTORY

18 The subject property is currently zoned B-4
19 General Business. OMPC records indicate there was a
20 Zoning Map Amendment application approved in November
21 2000 to rezone the subject property from A-U to B-4.
22 The subject property is currently vacant. Landscaping
23 is required between the subject property and the
24 agricultural property of less than 10 acres to the
25 north and west consisting of one tree for every 40'

1 feet of the linear boundary plus a continuous six foot
2 element. Vehicular Use Area landscaping is also
3 required along the east boundary consisting of one
4 tree every 40 feet along the Vehicular Use Area
5 boundary plus a 3 foot continuous element. The site
6 plan as submitted shows the appropriate required
7 screening.

8 A Major/Minor Subdivision Plat was approved
9 October 1999 and a Minor Subdivision Plat was approved
10 October 2000 for the subject property. A Final
11 Development Plan was submitted February 19, 2009 for
12 the subject property as well.

13 LAND USES IN SURROUNDING AREA

14 The property to the north is zoned B-4 General
15 Business and A-U Urban Agriculture consisting of a
16 vacant lot, a rental house, and a church. The
17 property to the south is zoned B-4 General Business
18 with an existing business. The property to the west
19 is zoned A-U Urban Agriculture with existing farm
20 land. The property to the east is zoned B-4 General
21 Business and A-U Urban Agriculture with vacant land
22 and existing residences.

23 ZONING ORDINANCE REQUIREMENTS

24 1. Parking requirements - Individual storage
25 - none.

1 2. Landscaping elements - 1 tree for every 40
2 feet of the linear boundary plus a continuous 6 foot
3 element along the north and west boundary and 1 tree
4 every 40 feet along the Vehicular Use Area boundary
5 plus a 3 foot continuous element along the east
6 boundary.

7 3. In the B-4 zone, conditionally permitted
8 individual storage uses also shall be subject to the
9 following restriction;

10 a) Structures to be used as individual
11 storage units shall not be located closer than 25 feet
12 to any residential zone.

13 b) An 8 foot high solid wall or fence
14 shall be installed and maintained on all sides that
15 adjoin any other property, except those properties
16 zoned B-1, B-2, B-3, B-4, B-5, I-1 or I-2. Tree
17 planting may also be required as per Article 17 of
18 this Zoning Ordinance.

19 c) Building height shall not exceed 15
20 feet, measured from the finish grade at the loading
21 door(s), to the top of the roof ridge or edge.

22 d) Outdoor storage shall be prohibited on
23 the same property as the individual storage
24 structure(s). This shall include automobiles, boats,
25 personal items, etc.

1 e) All uses other than individual storage
2 shall be prohibited within structures while those
3 structures are being used for individual storage,
4 except for one office or caretaker's residences,
5 which, if present, shall be directly related to the
6 management of the individual storage units.

7 f) The Owner of the individual storage
8 structure(s) shall be responsible for policing the
9 material and/or items being stored. The Owner shall
10 notify the Zoning Administrator upon discovering any
11 storage not meeting the requirements set forth herein,
12 providing the name, address and phone number of the
13 renter whose storage is in question.

14 SPECIAL CONDITIONS

15 1. Approval of a Final Development Plan.

16 MS. EVANS: We would like to enter the Staff
17 Report into the record as Exhibit D.

18 CHAIRMAN: Thank you.

19 Are there any objections in the office?

20 MR. NOFFSINGER: No, sir.

21 CHAIRMAN: Any special requirement from the
22 Staff?

23 MR. NOFFSINGER: No, sir. There has been one
24 issue raised with the Staff regarding an issue that
25 Staff and our attorney was made aware of. You may

1 want to hear from our attorney regarding what
2 discussion there was pertaining to that, but other
3 than that I have heard of no question or opposition.

4 CHAIRMAN: Attorney have any comments?

5 MR. SILVERT: The issue that was brought to
6 our attention is one of a personal nature between a
7 neighbor and the applicant. It is one frankly in this
8 attorney's opinion one of confidential nature because
9 it took place in a closed court hearing. Does not
10 reflect, should not be taken into consideration in
11 this attorney's opinion regarding whether or not this
12 property could be properly used for this use and
13 whether this Conditional Use Permit should been
14 granted in this situation.

15 I would ask respectfully, ask if there's
16 anyone in the audience today who is going to speak on
17 this item as to a personal nature, particularly one
18 that may be of a confidential court proceeding nature,
19 that they refrain from doing so because those comments
20 will not be considered and should not be considered by
21 this board. The nature of our inquiry has to deal
22 with the land use and the Conditional Use Permit
23 that's been applied for and does not have, the nature
24 of our inquiry does not have anything to do with the
25 personal feelings between a neighbor and the

1 applicant. I will leave it at that. I hate to be
2 that vague, but I feel like I need to.

3 CHAIRMAN: Appreciate your comments.

4 Is anyone wishing to speak in opposition of
5 this item here this evening?

6 (NO RESPONSE)

7 CHAIRMAN: Hearing no objections from someone
8 against the item, is the applicant here and have any
9 comments you would like to add at this time?

10 (NO RESPONSE)

11 CHAIRMAN: Hearing no comments from either
12 side, does the board have any questions at this time?

13 (NO RESPONSE)

14 CHAIRMAN: Staff have anything else to add?

15 MR. NOFFSINGER: No, sir.

16 CHAIRMAN: Entertain a motion to dispose of
17 the item.

18 MR. TAYLOR: Mr. Chairman, move to approve the
19 Conditional Use Permit based that there is no
20 opposition. It is generally permitted in this zone.
21 Won't alter the essential charter of the neighborhood
22 and provided that all zoning ordinance requirements
23 are met and that one special condition, the approval
24 of a final development plan.

25 MS. MASON: Second.

1 CHAIRMAN: A motion has been made and a
2 second. Any other comments from the board?

3 (NO RESPONSE)

4 CHAIRMAN: Staff have anything else you want
5 to add?

6 MR. NOFFSINGER: No, sir.

7 CHAIRMAN: The applicant understand the
8 requirements and everything that are given at this
9 time and agree to them?

10 APPLICANT REP: Yes, sir.

11 CHAIRMAN: All in favor raise your right hand.

12 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

13 CHAIRMAN: Motion carries.

14 Next item.

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16 VARIANCES

17 ITEM 6

18 2645 Frederica Street, zoned P-1
19 Consider request for a Variance to reduce the roadway
20 buffer from 60 feet from the centerline of the road to
21 35 feet from the centerline of the road.

22 Reference: Zoning Ordinance, Article 13,
23 Section 13.6221

24 Applicant: Gavin C. Roberts, South Central Bank

25 MS. EVANS: Just a little background on this
piece of property.

This Variance has come to us because the
applicant is proposing an office building on the

1 subject property with their required landscaping and
2 parking that will meet the zoning ordinance.

3 The building proposed, as it's proposed the
4 vehicular use area and the required landscaping would
5 encroach 25 feet into the roadway buffer. The
6 property becomes more shallow as it moves to the north
7 which would prevent the proposed development from
8 meeting the requirements of this lot. The proposed
9 building will be similar in size and charter and that
10 it will be a two-story building of similar size to
11 that building just south of the subject property
12 keeping with the character of the area.

13 This board has also granted similar variances
14 in this area. For example, properties as 2524
15 Frederica Street, which was approved in November of
16 2005; 3515 and 3525 Frederica Street approved May
17 2001; 3601 Frederica Street approved in June of 2002;
18 and 3633 Frederica Street approved in October of 1993.

19 All applicable site development requirements
20 other than the roadway buffer can be met as shown on
21 this site plan.

22 Granting this variance will not adversely
23 affect the public health, safety or welfare; it will
24 not alter the essential charter of the general
25 vicinity; it will not cause a hazard or a nuisance to

1 the public; and it will not allow an unreasonable
2 circumvention of the requirements of the zoning
3 regulations.

4 Staff recommends approval with the following
5 conditions:

- 6 1. Approval of a Final Development Plan.
- 7 2. The proposed office building shall be
8 similar in size, height and character to that of the
9 building to the south.

10 Staff would like to enter the Staff Report
11 into the record as Exhibit E.

12 CHAIRMAN: Thank you.

13 MR. NOFFSINGER: Mr. Chairman, Planning Staff
14 would ask that if this board does make a favorable or
15 take favorable action on this variance request that in
16 your findings of fact you include reference to the
17 Staff Report that has been prepared and submitted into
18 the record. You need to make your findings, but also
19 I believe it ask that you include specifically this
20 Staff Report in your findings.

21 CHAIRMAN: Thank you.

22 Any other objections filed in the office?

23 MR. NOFFSINGER: No, sir.

24 CHAIRMAN: Anyone wishing to speak in
25 opposition of this item?

1 (NO RESPONSE)

2 CHAIRMAN: The applicant have anything you
3 want to add at this time?

4 MR. SILVERT: State your name, please.

5 MR. BRANCATO: My name is Frank Brancato. I'm
6 here on behalf of the co-applicant, South Central
7 Bank.

8 We would simply join in Mr. Noffsinger's
9 Recommendation that Staff Report be incorporated in
10 the favorable decision by the panel and be joined in
11 the application because it is consistent with other
12 variances which have been granted by this board over
13 the last 12 years.

14 CHAIRMAN: Thank you.

15 Any other comments from the applicant?

16 (NO RESPONSE)

17 CHAIRMAN: Hearing none the board have any
18 other comments?

19 (NO RESPONSE)

20 CHAIRMAN: Staff?

21 MR. NOFFSINGER: No.

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

24 MS. DIXON: Move to approve based upon the
25 Planning Staff report that was entered into the

1 record. The fact that there have been other similar
2 variances granted in the same area. That denying this
3 would create a hardship on the applicant. That it
4 will not adversely affect the public health, safety or
5 welfare; it will not alter the essential character of
6 the general vicinity; it will not cause a hazard or a
7 nuisance to the public; nor will it allow an
8 unreasonable circumvention of the requirements of the
9 zoning regulations.

10 Based upon Planning Staff Recommendation and
11 subject to Conditions 1 and 2 in the Staff Report.

12 MS. MASON: Second.

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

15 (NO RESPONSE)

16 CHAIRMAN: Anything else from the Staff?

17 MR. NOFFSINGER: No, sir.

18 CHAIRMAN: The applicant understand all the
19 conditions and approve to them?

20 MR. BRANCATO: Yes.

21 CHAIRMAN: All in favor raise your right hand.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: Motion carries.

24 Next item, please.

25 MS. DIXON: Move to adjourn.

1 MR. DYSINGER: Second.

2 CHAIRMAN: All in favor raise your right hand.

3 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

4 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 23 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 16th day of March, 2009.

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LYNNETTE KOLLER FUCHS
OHIO VALLEY REPORTING SERVICES
202 WEST THIRD STREET, SUITE 12
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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