

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 AUGUST 6, 2009

3 The Owensboro Metropolitan Planning Commission
4 met in regular session at 5:30 p.m. on Thursday,
5 August 6, 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 Marty Warren
14 Judy Dixon

15 * * * * *

16 CHAIRMAN: I would like to call the Owensboro
17 Metropolitan Board of Adjustment to order. We welcome
18 you and we start our meeting each night with a prayer
19 and the pledge of allegiance. We ask you to join us
20 if you so desire. Marty Warren will be giving the
21 prayer.

22 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

23 CHAIRMAN: Again I want to welcome each one of
24 you to the meeting. If you have any comments on any
25 item or statements to say about each one of them,
please come to one of the podiums and state your name
so we'll have it of record.

1 With that the first item we have is to
2 consider the minutes of the July 2 meeting. They're
3 in the office. Are there any problems?

4 MR. NOFFSINGER: No, sir, other than the date
5 I think that's shown on the transcript has 2008. We
6 just need to make sure that it is clear that it's from
7 the July 2009 meeting.

8 CHAIRMAN: With that correction I'll entertain
9 a motion to dispose of the item.

10 MR. WARREN: Motion to approve the minutes as
11 written with the correction.

12 MS. MASON: Second.

13 CHAIRMAN: A motion has been made and a
14 second. All in favor raise your right hand.

15 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

16 CHAIRMAN: Motion carries.

17 Next item, please.

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19 CONDITIONAL USE PERMITS

20 ITEM 2

21 413 Booth Avenue, zoned R-1B
22 Consider a request for a Conditional Use Permit in
23 order to operate a church satellite location for
24 prayer ministry outreach.
25 Reference: Zoning Ordinance, Article 8, Section 8.2B4
26 Applicant: Word and Spirit Ministry Center; A&K
27 Properties, LLC - Karen K. Martin-member.

28 MR. SILVERT: State your name, please.

1 MS. EVANS: Melissa Evans.

2 (MELISSA EVANS SWORN BY ATTORNEY.)

3 ZONING HISTORY

4 The subject property is currently zoned R-1B
5 Single-Family Residential. OMPC records indicate
6 there have been no Zoning Map Amendments on the
7 subject property.

8 The applicant proposes to pave a gravel area
9 in the rear of the property to meet the parking
10 requirements.

11 LAND USES IN SURROUNDING AREA

12 The property to the north, south, west and
13 east are zoned R-1B Single-Family Residential and all
14 are used as single-family residences.

15 ZONING ORDINANCE REQUIREMENTS

16 1. Parking requirements - Churches, Sunday
17 Schools, Parrish Houses - for churches and Sunday
18 Schools; 1 for every 5 seats in the main auditorium
19 (minimum of 5); for parish houses; 1/each bed - total
20 required 5.

21 2. Landscaping requirements - none.

22 SPECIAL CONDITIONS

23 1. Pave the gravel area in the rear of the
24 property to the meet the parking requirements.

25 MS. EVANS: We would like to enter the Staff

1 Report into the record as Exhibit A.

2 CHAIRMAN: Are there any comments for or
3 against in the office?

4 MR. NOFFSINGER: No, sir.

5 CHAIRMAN: Is there anyone wishing to speak in
6 opposition of this item?

7 (NO RESPONSE)

8 CHAIRMAN: Hearing none is the applicant here
9 and do you have any comments on the item at this time?

10 APPLICANT REP: No comment.

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

13 MS. DIXON: Can you just explain a little bit
14 about what this is?

15 MR. SILVERT: State your name, please.

16 MS. MARTIN: Karen Martin.

17 (KAREN MARTIN SWORN BY ATTORNEY.)

18 MS. MARTIN: What we do is allow people to
19 come at a time to receive prayer ministry. It's just
20 a brief time of prayer. They just come in on
21 Wednesday afternoon from 2:30 to 5. We're just there
22 to receive people who want to come in and have a time
23 of prayer and then they leave. That's basically what
24 we do.

25 MS. MASON: Only on Wednesday? It's only

1 going to be used on Wednesdays?

2 MS. MARTIN: At this time it's only used on
3 Wednesdays.

4 MR. WARREN: And this isn't like groups of
5 people, is it?

6 MS. MARTIN: It's just one or two people come
7 at a time during that period of time.

8 CHAIRMAN: Any other questions from the board?

9 MS. DIXON: What kind of signage do you plan
10 on having on the building? Just the shell that's
11 hanging there now.

12 MS. MARTIN: There's a sign that we took up
13 that just has Healing Wounds of Owensboro on it and a
14 time that we're open. It's up against the porch realm
15 at the flower bed. I don't know if it's allowed to be
16 out in the yard where it's more seeable. If it's not
17 allowable, we'll move it. If it's not, if it's okay
18 where we have it.

19 CHAIRMAN: Any other comments or questions?

20 (NO RESPONSE)

21 CHAIRMAN: Staff have anything else?

22 MR. NOFFSINGER: Mr. Chairman, I just want to
23 advise that the Board may wish to set conditions on
24 the Conditional Use Permit. You do have that
25 authority in terms of hours of operation, days,

1 signage and whatnot. Just want to advise you that you
2 do have that right to set limitations. Right now
3 there are no hours of operation, days or anything like
4 that contained in the application. So it would be at
5 this point wide open.

6 CHAIRMAN: Jim, come forward, please. State
7 your name.

8 MR. MISCHEL: Jim Mischel.

9 (JIM MISCHEL SWORN BY ATTORNEY.)

10 MR. MISCHEL: This is a residential zone. In
11 a residential zone of this kind the signage would be
12 limited 2 square feet.

13 I don't know if that is what you have or not.

14 MR. WARREN: That can be in the yard.

15 MR. MISCHEL: As far as the ordinance, it can
16 be in the yard or on the house, unless you all make it
17 a condition.

18 CHAIRMAN: Any questions of Jim?

19 (NORESPONSE)

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

22 MR. PEDLEY: Mr. Chairman, I make a motion for
23 approval based on findings that it is compatible in
24 the residential neighborhood and it will not have an
25 adverse influence on that, and with the condition that

1 it will pave the gravel area in the rear of the
2 property to meet the parking requirements, and that
3 their signage will be the zoning ordinance in a
4 residential zone.

5 CHAIRMAN: Is there a second to the motion?

6 MR. WARREN: Second.

7 CHAIRMAN: A motion has been made and a
8 second. Any other comments or questions from the
9 board?

10 (NO RESPONSE)

11 CHAIRMAN: Staff have any other comments?

12 MR. NOFFSINGER: No, sir.

13 CHAIRMAN: Do you understand the guidelines of
14 paving and sign and accept that?

15 MS. MARTIN: Yes.

16 CHAIRMAN: All in favor raise your right
17 hand.

18 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

19 CHAIRMAN: Motion carries.

20 Next item, please.

21 ITEM 3

22 3015 Rinaldo Road, zoned I-2
23 Consider a request for a Conditional Use Permit in
24 order to construct and operate an aerial pipeline from
25 the river or rail loop to transfer points and then to
a tank farm facility in the floodway.
Reference: Zoning Ordinance, Article 8, Section 18,
Section 8.2G4/27, 18-4(b)3, 18-5(b)4, 18-6(b)3

1 Applicant: Owensboro Riverport Authority

2 ZONING HISTORY

3 The subject property is currently zoned I-2
4 Heavy Industrial. OMPC records indicate there have
5 been no Zoning Map Amendments on the subject property.
6 The subject property is currently vacant.

7 There was a Conditional Use Permit approved at
8 the July 2009 meeting to construct and operate a tank
9 farm facility for liquid fertilizer products. A
10 condition of that Conditional Use Permit was to apply
11 for an additional Conditional Use Permit to build the
12 pipeline connecting the tank farm facility to transfer
13 points and the river or rail loop in the floodway.

14 All other permits as may be required by the
15 Army Corps of Engineers or the Kentucky Division of
16 Water must be obtained prior to the issuance of a
17 Conditional Use Permit as per Article 18-4(b)(3)(c).
18 Certification from a registered professional engineer
19 must be provided demonstrating that encroachments
20 shall not result in any increase in flood levels
21 during the occurrence of the base flood discharge as
22 required by Article 18-5(b)(4)(a) of the Zoning
23 Ordinance. Also in accordance with the Kentucky
24 Environmental and Public Protection Cabinet, Office of
25 Housing, Buildings, and Construction, a permit for

1 above ground storage facilities including associated
2 piping will need to be obtained. A Stream
3 Construction Permit from the Division of Water, a
4 letter from the Army Corps of Engineers, a letter of
5 no impact from a registered professional engineer, and
6 a permit from the Kentucky Environmental and Public
7 Protection Cabinet, Office of Housing, Buildings, and
8 Construction were all submitted with the application.

9 LAND USES IN SURROUNDING AREA

10 The property to the north, south, west and
11 east are zoned I-2 Heavy Industrial with existing
12 industrial activity.

13 ZONING ORDINANCE REQUIREMENTS

- 14 1. Parking requirements - none.
15 2. Landscaping requirements - none.

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

18 CHAIRMAN: Thank you.

19 Are there any comments for or against in the
20 office?

21 MR. NOFFSINGER: No, sir.

22 CHAIRMAN: Is there anyone wishing to speak in
23 opposition of this item?

24 (NO RESPONSE)

25 CHAIRMAN: Is the applicant here and have any

1 comments they want to bring for or against?

2 APPLICANT REP: We are here, but no comments
3 unless there are questions.

4 CHAIRMAN: Any board members have any
5 questions of the applicant?

6 (NO RESPONSE)

7 CHAIRMAN: Staff have anything to add?

8 MR. NOFFSINGER: No, sir.

9 CHAIRMAN: Hearing none entertain a motion to
10 dispose of the item.

11 MS. MASON: Mr. Chairman, I move for approval.
12 My findings of fact is since there's no opposition to
13 this application, it's a compatible use with the land
14 use in the surrounding area, and it's also compatible
15 with the approved July '09 Conditional Use Permit that
16 was approved, and that all necessary permits be
17 obtained.

18 CHAIRMAN: Is there a second?

19 MR. WARREN: Second.

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

23 (NO RESPONSE)

24 CHAIRMAN: Staff have anything else to add to
25 it?

1 MR. NOFFSINGER: Just for the record they have
2 completed the necessary permit with the Corps of
3 Engineers and Division of Water.

4 MS. MASON: I saw that down there, but I
5 wasn't sure about every permit they were supposed to
6 get.

7 MR. NOFFSINGER: They did and it was submitted
8 with the application, yes.

9 CHAIRMAN: Does the applicant understand all
10 the guidelines?

11 APPLICANT REP: Yes.

12 CHAIRMAN: All in favor then raise your right
13 hand.

14 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

15 CHAIRMAN: Motion carries.

16 Next item, please.

17 ITEM 4

18 2351 Triad Drive, zoned I-2 (postponed from the July
19 2, 2009 meeting)

20 Consider a request for a Conditional Use Permit in
21 order to construct and operate a marina in the
22 floodway.

Reference: Zoning Ordinance, Article 8, 18, Section
21 8.2K7/42, 18-4(b)3, 18-5(b)4, 18-6(b)3

Applicant: Owensboro Marina; Pilot Properties, LLC

23 ZONING HISTORY

24 The subject property is currently zoned I-2
25 Heavy Industrial. OMPC records indicate there have

1 been no Zoning Map Amendments on the subject property.
2 The subject property is currently used for industrial
3 activity.

4 The applicant is proposing to use an existing
5 gravel area for parking given the temporary nature of
6 the marina. The applicant is aware that if the marina
7 continues operation after this season the parking area
8 shall be paved.

9 All other permits as may be required by the
10 Army Corps of Engineers and the Kentucky Division of
11 Water must be obtained prior to the issuance of a
12 Conditional Use Permit as per Article 18-4(b)(3)(c).
13 Certification from a registered professional engineer
14 must be provided demonstrating that encroachments
15 shall not result in any increase in flood levels
16 during the occurrence of the base flood discharge as
17 required by Article 18-5(b)(4)(a) of the Zoning
18 Ordinance. A Stream Construction Permit from the
19 Division of Water, a letter from the Army Corps of
20 Engineers and a letter of no impact from a registered
21 professional engineer were all submitted with the
22 application.

23 LAND USES IN SURROUNDING AREA

24 The property to the north, south, west and
25 east are zoned I-2 Heavy Industrial with existing

1 industrial activity.

2 ZONING ORDINANCE REQUIREMENTS

3 1. Parking requirements - Recreational uses,
4 major outdoor, conditional - 1 for every employee on
5 maximum shift plus 1 per every 3 participants plus 1
6 per every 3 spectator seats.

7 2. Landscaping requirements - none.

8 SPECIAL CONDITIONS

9 1. Parking area shall be paved if the marina
10 continues operation after this season.

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

13 CHAIRMAN: Is there any opposition filed in
14 the office?

15 MR. NOFFSINGER: No, sir.

16 CHAIRMAN: Anyone in opposition to this item?

17 (NO RESPONSE)

18 CHAIRMAN: Is the applicant here and do you
19 have any comments?

20 MR. SILVERT: Mr. Hutchinson, I recognize the
21 oath you took as an attorney.

22 MR. HUTCHINSON: Thank you.

23 No comment other than to say that I wanted to
24 thank the Staff for their cooperation and help and
25 guidance that they've given us through this process.

1 It's kind of a mired of things we found in trying to
2 get a marina put on the river. We stumbled along the
3 way a few times. The Staff was really helpful to us
4 and I want to publicly thank, especially Gary. It's
5 meant a lot. We ended up having a pretty descent
6 boating season because of the marina down there. The
7 river has been pretty bad, but we have been able to
8 salvage this season. I did want to thank the Staff
9 for that before you voted.

10 CHAIRMAN: Appreciate your comment, sir.

11 Any other questions or comments from the Board
12 at this time?

13 MR. WARREN: I have a question.

14 What are we considering a season?

15 CHAIRMAN: Staff.

16 MR. NOFFSINGER: I would say we'll give them
17 until January 1. I doubt you're going to see a whole
18 lot of activity occur in November and December, but
19 that's not going to say they're going to be gone in
20 January. The boating season when it picks up say in
21 April, first of May of next season, if it's still
22 there, then he be thinking about paving a parking
23 area.

24 CHAIRMAN: Any other questions from the
25 Board?

1 (NO RESPONSE)

2 CHAIRMAN: Any other comments from the
3 Staff?

4 (NO RESPONSE)

5 CHAIRMAN: Hearing none I'll entertain a
6 motion to dispose of the item.

7 MR. PEDLEY: Mr. Chairman, I make a motion for
8 approval based on findings that it is compatible use
9 with the current zone and all permits have been
10 submitted with the application, Stream Construction
11 Permit, Division of Water, a letter from the Army
12 Corps of Engineers and a letter of no impact from a
13 registered professional engineer were all submitted
14 with the application. The condition is the parking
15 area shall be paved if the marina continues operation
16 after this season.

17 CHAIRMAN: Is there a second to the motion?

18 MR. WARREN: Second.

19 CHAIRMAN: A motion has been made and a
20 second. Any other question or comments from the
21 Board?

22 (NO RESPONSE)

23 CHAIRMAN: Staff have anything else?

24 MR. NOFFSINGER: No, sir.

25 CHAIRMAN: The Applicant, you understand the

1 requirements, guidelines as presented?

2 MR. HUTCHINSON: Yes, sir.

3 CHAIRMAN: Hearing no other comments all in
4 favor raise your right hand.

5 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

6 CHAIRMAN: Motion carries.

7 Next item, please.

8 -----

9 VARIANCES

10 ITEM 5

11 100, 101 Mallard Creek Drive, zoned R-1C
12 Consider a request for a Variance in order to increase
13 the height of a wall in a side yard along an arterial
14 street from 4' to 5'7" with posts to extend to 6'7".
15 Reference: Zoning Ordinance, Article 3,
16 Section 3-7(g)(3)
17 Applicant: JED Rentals Family Part

18 MS. EVANS: The applicant is requesting to
19 build a 5'7" wall with posts extending to 6'7" to
20 provide a sound barrier between a single-family
21 residential area and an arterial street, JR Miller
22 Boulevard.

23 There was similar Variance approved at the
24 June 2007 OMBA meeting increasing the fence between
25 the residential property of Fiddlesticks and the
26 arterial street of JR Miller Boulevard from 3' to 8'.

27 They are requesting that this be 5'7" with
28 posts at 6'7". The other variance that was approved

1 was from 3' to 8'.

2 FINDINGS OF FACT

3 Granting this Variance (1) will not adversely
4 affect the public health, safety or welfare because
5 the proposed wall will provide a sound barrier between
6 the residential property and the arterial street; (2)
7 it will not alter the essential character of the
8 general vicinity because there was a similar variance
9 request granted in the area; (3) it will not cause a
10 hazard or a nuisance to the public because it will
11 provide a barrier for the residential property from
12 the traffic noise on JR Miller Boulevard; (4) and it
13 will not allow an unreasonable circumvention of the
14 requirements of the zoning regulations because a
15 similar variance was granted at the June 2007 OMB
16 meeting. Staff recommends approval.

17 We would like to enter the Staff Report into
18 the record as Exhibit D.

19 CHAIRMAN: Thank you.

20 Is there any comments for or against filed in
21 the office?

22 MR. NOFFSINGER: Yes, sir, there have been.

23 I spoke with Jim Estes that owns property
24 adjoining this property. He called me on the phone
25 one morning. He made the statement -- well, not a

1 statement. I'll just kind of tell you what he said.

2 That he thinks that what they're doing out
3 there looks great. He's all for it. Appreciated our
4 notification to him. Letting him know what was going
5 on and that the opportunity that the neighbors had to
6 weigh in on an issue like this. He certainly was very
7 supportive and appreciated the work that has been on
8 this site.

9 CHAIRMAN: Is anyone wishing to speak in
10 opposition here this evening?

11 (NO RESPONSE)

12 CHAIRMAN: The Applicant, do you have any
13 comments you want to bring at this time?

14 APPLICANT: No comment.

15 CHAIRMAN: Board have any questions of the
16 applicant?

17 (NO RESPONSE)

18 CHAIRMAN: Staff have any other comments?

19 MR. NOFFSINGER: No, sir.

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

22 MR. WARREN: Motion to grant the Variance with
23 the findings that granting the Variance will not
24 adversely affect the public health, safety or welfare.
25 In fact, it will enhance the safety because of the

1 wall and hopefully would keep a possible veering car
2 or vehicle from moving on into a neighborhood area.
3 It will not alter the essential character of the
4 general vicinity due to the other variances that have
5 been granted. It will not cause a nuisance or a
6 hazard to the public because it is a barrier to sound
7 of traffic. It will not allow an unreasonable
8 circumvention due to the previous variances that have
9 been granted. Not only no opposition but actual
10 support from the neighborhood.

11 CHAIRMAN: Is there a second to the motion?

12 MS. DIXON: 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: Staff have anything else?

18 MR. NOFFSINGER: No, sir.

19 CHAIRMAN: All in favor raise your right hand.

20 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

21 CHAIRMAN: Motion carries.

22 I'll entertain one final motion.

23 MS. DIXON: Move to adjourn.

24 MS. MASON: Second.

25 CHAIRMAN: All in favor raise your right

1 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 20 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 26th day of August, 2009.

18
19 _____
20 JANE BELCHER
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