

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 APRIL 5, 2012

3 THE OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT
4 MET IN REGULAR SESSION AT 5:30 P.M. ON THURSDAY, APRIL
5 5, 2012, AT CITY HALL, COMMISSION CHAMBERS, OWENSBORO,
6 KENTUCKY, AND THE PROCEEDINGS WERE AS FOLLOWS:

7 MEMBERS PRESENT: C.A. PANTLE, CHAIRMAN
8 WARD PEDLEY, VICE CHAIRMAN
9 RUTH ANN MASON, SECRETARY
10 MADISON SILVERT, ATTORNEY
11 BRIAN HOWARD
12 REV. LARRY HOSTETTER
13 MARTY WARREN
14 SEAN DYSINGER
15 SHANNON RAINES

16 * * * * *

17 CHAIRMAN: LET ME CALL THE OWENSBORO
18 METROPOLITAN BOARD OF ADJUSTMENT TO ORDER. I WANT TO
19 WELCOME YOU ALL THIS EVENING. WE START OUR PROGRAM
20 EACH EVENING WITH A PRAYER AND THE PLEDGE TO THE FLAG.
21 WE INVITE YOU TO JOIN WITH US. FATHER LARRY WILL HAVE
22 OUR PRAYER THIS EVENING.

23 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

24 CHAIRMAN: AGAIN, I WANT TO THANK YOU AND
25 WELCOME YOU THIS EVENING COMING TO THIS MEETING. IF
YOU HAVE ANY COMMENTS ON ANY ITEM, PLEASE COME TO ONE
OF THE PODIUMS AND STATE YOUR NAME SO WE'LL HAVE
RECORD ON FILE IF THERE'S A PROBLEM OR SOMETHING DOWN
THE ROAD.

1 WITH THAT THE FIRST ITEM THIS EVENING IS TO
2 CONSIDER THE MINUTES OF THE MARCH 1ST MEETING. WE
3 HAVEN'T HAD ANY PROBLEMS IN THE OFFICE?

4 MR. HOWARD: NO, SIR.

5 CHAIRMAN: ANYBODY HAVE ANY ADDITIONS?

6 (NO RESPONSE)

7 CHAIRMAN: IF NOT ENTERTAIN A MOTION TO
8 DISPOSE OF THE ITEM.

9 MR. DYSINGER: MOVE TO APPROVE.

10 MR. WARREN: SECOND.

11 CHAIRMAN: A MOTION HAS BEEN MADE AND A
12 SECOND. ALL IN FAVOR RAISE YOUR RIGHT HAND.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: MOTION CARRIES.

15 NEXT ITEM, PLEASE, SIR.

16 -----

17 VARIANCE

18 ITEM 2

19 1052 PLEASURE POINTE EAST, ZONED R-1A
20 CONSIDER A REQUEST FOR A VARIANCE IN ORDER TO REDUCE
21 THE FRONT YARD BUILDING SETBACK LINE FROM 25 FEET FROM
22 THE PROPERTY LINE TO 14 FEET FROM THE PROPERTY LINE
23 AND TO REDUCE THE NORTH SIDE YARD BUILDING SETBACK
24 LINE FROM 10 FEET FROM THE PROPERTY LINE TO 8 FEET
25 FROM THE PROPERTY LINE.

REFERENCE: ZONING ORDINANCE, ARTICLE 8,
SECTION 8.5.5(C), 8.5.5(D)

APPLICANT: DENNIS L. GEER

MR. SILVERT: WOULD YOU STATE YOUR NAME,

1 PLEASE.

2 MS. EVANS: MELISSA EVANS.

3 (MELISSA EVANS SWORN BY ATTORNEY.)

4 MS. EVANS: FIRST OF ALL, I WOULD LIKE TO JUST
5 MAKE NOTICE THAT ALL APPROVAL OF ITEMS HERE TONIGHT
6 DOES NOT CONSTITUTE A BUILDING PERMIT AND DOES NOT
7 ALLOW THE APPLICANT OR OWNER TO ALTER, MODIFY OR
8 OCCUPY ANY OF THE BUILDINGS ON THE SUBJECT PROPERTY.
9 IT'S STILL THE APPLICANT'S RESPONSIBILITY TO OBTAIN
10 ALL THE NECESSARY PERMITS, INSPECTIONS AND CERTIFICATE
11 OF OCCUPANCY. ALL THOSE THINGS CAN BE DONE THROUGH
12 OUR OFFICE BY CONTACTING JIM MISCHEL.

13 SPECIAL CIRCUMSTANCES

14 UPON INSPECTION IT WAS DETERMINED THAT A NEW
15 HOME ENCROACHED INTO THE SETBACK LINES. THE APPLICANT
16 WAS REPLACING AN OLD SINGLE-WIDE MANUFACTURED HOME
17 WITH A DOUBLE-WIDE MANUFACTURED HOME; THE OTHER
18 BUILDINGS ON THE PROPERTY WERE ALREADY EXISTING.

19 TOPOGRAPHY IN THE AREA LIMITS WHERE STRUCTURES
20 CAN BE PLACED. MOST PROPERTIES SLOPE DRAMATICALLY
21 DOWNGRADE FROM THE STREET, RESULTING IN A MAJORITY OF
22 THE STRUCTURE'S ENCROACHING IN THE FRONT BUILDING
23 SETBACK LINE. THE RESIDENCE AT 1073 PLEASURE POINT
24 EAST APPEARS TO ENCROACH INTO THE FRONT YARD BUILDING
25 SETBACK LINE, WHILE ACCESSORY STRUCTURES AT 1030,

1 1045, 1061, 1070 AND 1073 PLEASURE POINTE EAST APPEAR
2 TO ENCROACH INTO THE FRONT AND SIDE YARD BUILDING
3 SETBACK LINES.

4 GRANTING THIS VARIANCE WILL NOT ALTER THE
5 ESSENTIAL CHARACTER OF THE GENERAL VICINITY BECAUSE
6 THERE ARE MANY OTHER ENCROACHMENTS IN THE AREA. IT
7 WILL NOT CAUSE A HAZARD OR A NUISANCE TO THE PUBLIC
8 BECAUSE THIS IS A NARROW ROAD IN A RESIDENTIAL AREA
9 WHERE TRAFFIC TRAVELS AT A SLOW SPEED. IT WILL NOT
10 ALLOW AN UNREASONABLE CIRCUMVENTION OF THE
11 REQUIREMENTS OF THE ZONING REGULATIONS BECAUSE THE
12 TOPOGRAPHY OF THE LAND AND THE EXISTING PROPERTY
13 BOUNDARIES LIMIT WHERE STRUCTURES COULD BE PLACED ON
14 THE PROPERTY.

15 STAFF RECOMMENDS APPROVAL WITH THE FOLLOWING
16 CONDITIONS: OBTAIN NECESSARY BUILDING, ELECTRICAL AND
17 MECHANICAL PERMITS, INSPECTIONS AND CERTIFICATES OF
18 OCCUPANCY AND COMPLIANCE.

19 WE WOULD LIKE TO ENTER THE STAFF REPORT INTO
20 THE RECORD AS EXHIBIT A.

21 CHAIRMAN: THANK YOU.

22 HAVE WE HAD ANY COMMENTS OR QUESTIONS IN THE
23 OFFICE?

24 MR. HOWARD: NO, SIR.

25 CHAIRMAN: IS ANYONE THIS EVENING WISH TO

1 SPEAK IN OPPOSITION OF THIS ITEM?

2 (NO RESPONSE)

3 CHAIRMAN: IS THE APPLICANT HERE AND DO YOU
4 HAVE ANY COMMENTS YOU WANT TO PRESENT AT THIS TIME?

5 APPLICANT REP: NO.

6 CHAIRMAN: HEARING NONE DOES ANYONE --

7 MR. SILVERT: COULD YOU STATE YOUR NAME,
8 PLEASE.

9 MR. SIPES: GENE SIPES.

10 (GENE SIPES SWORN BY ATTORNEY.)

11 MR. SIPES: MY BROTHER AND I OWN THE PROPERTY
12 NEXT-DOOR TO THE GENTLEMAN THERE. THEY'RE ASKING US
13 FOR PERMISSION TO DO THIS?

14 MR. HOWARD: BASICALLY YOU RECEIVED
15 NOTIFICATION BECAUSE YOU'RE AN ADJOINING PROPERTY
16 OWNER. YOU ARE NOT REQUIRED TO GIVE APPROVAL OR
17 DISAPPROVAL, BUT IT GIVES YOU THE OPPORTUNITY TO COME
18 TO THE PUBLIC HEARING AND VOICE ANY TYPE OF OPINION
19 THAT YOU MIGHT HAVE WHETHER IN FAVOR OR AGAINST. SO
20 THAT'S WHY YOU WERE NOTIFIED. IF YOU HAVE ANY
21 COMMENTS, NOW WOULD BE THE TIME.

22 MR. SIPES: SO WE HAVE NO CONTROL OVER IT
23 BASICALLY?

24 MR. HOWARD: NO. YOU CERTAINLY HAVE CONTROL,
25 BUT YOU'RE NOT REQUIRED TO EITHER APPROVE IT OR SAY

1 THAT YOU DON'T WANT IT TO BE THERE. YOU WERE NOTIFIED
2 AS AN ADJOINING PROPERTY OWNER. THIS IS A PUBLIC
3 HEARING. THIS IS THE TIME THAT YOU CAN ENTER ANY
4 TESTIMONY. THE BOARD WILL TAKE INTO CONSIDERATION
5 WHATEVER COMMENTS YOU HAVE BEFORE THEY MAKE A DECISION
6 TO APPROVE OR DENY THE APPLICATION.

7 MR. SIPES: SAY I DECIDED I WAS AGAINST THIS,
8 YOU ALL WOULD TAKE THAT INTO CONSIDERATION?

9 MR. HOWARD: YES.

10 MR. SIPES: THE ONLY REASON I WOULD BASICALLY
11 BE AGAINST IT, I DON'T KNOW IF THIS WOULD MAKE A
12 DIFFERENCE OR NOT. A TREE FROM HIS PROPERTY FELL OVER
13 AND CRUSHED OUR FENCE, OUR PROPERTY LINE FENCE. ALL
14 WE WOULD LIKE IS FOR HIM TO REMOVE THAT TREE AND
15 REPLACE OUR PROPERTY LINE FENCE AND THEN WE WOULD BE
16 FINE WITH WHATEVER. I DON'T KNOW IF THAT MATTERS OR
17 NOT.

18 MR. HOWARD: THIS IS A VARIANCE REQUEST ON
19 LOCATION OF HIS RESIDENTIAL STRUCTURE. ANY TYPE OF A
20 TREE FALLING ON A FENCE IS REALLY, THAT'S MORE OF A
21 PRIVATE CIVIL ISSUE THAT SHOULD BE RESOLVED BETWEEN
22 NEIGHBORS. WHAT THIS BOARD WOULD BE CHARGED WITH IS
23 EVALUATING WHETHER OR NOT THE REQUESTING VARIANCE IS
24 IN COMPLIANCE OR IS IN CHARACTER WITH WHAT IS
25 TYPICALLY FOUND IN THE NEIGHBORHOOD. THEY WOULDN'T

1 REALLY BE ABLE TO GIVE YOU ANY TYPE RELIEF OR AID IN
2 DETERMINING WHAT TYPE OF ACTION SHOULD BE TAKEN IF A
3 TREE WAS TAKEN DOWN OR FELL ON A FENCE.

4 MR. SIPES: SO YOU ALL REALLY --

5 MR. HOWARD: NOT ON THIS ISSUE.

6 MR. SIPES: THANK YOU.

7 CHAIRMAN: YOU HAVE ANY OTHER COMMENTS?

8 MR. SIPES: NO, I SUPPOSE NOT. THAT PRETTY
9 MUCH COVERS IT.

10 CHAIRMAN: THANK YOU.

11 ANY BOARD MEMBERS HAVE ANY COMMENTS OR
12 QUESTIONS OF THE APPLICANT?

13 (NO RESPONSE)

14 CHAIRMAN: STAFF HAVE ANY OTHER COMMENTS?

15 MR. HOWARD: NO, SIR.

16 CHAIRMAN: ENTERTAIN A MOTION TO DISPOSE OF
17 THE ITEM.

18 MR. DYSINGER: MR. CHAIRMAN, GIVEN THE
19 FINDINGS OF THE SPECIFIC NATURE OF THIS PROPERTY WOULD
20 MAKE STRICT A APPLICATION OF ZONING ORDINANCE A BURDEN
21 ON THE PROPERTY OWNER, AND FURTHER GRANTING THE
22 VARIANCE WOULD NOT ADVERSELY AFFECT THE PUBLIC HEALTH,
23 SAFETY OR WELFARE, I MOVE THAT WE APPROVE THE VARIANCE
24 WITH THE FOLLOWING CONDITIONS: 1) SUBMISSION AND
25 APPROVAL OF AMENDED FINAL DEVELOPMENT PLAN AND 2)

1 OBTAIN NECESSARY BUILDING, ELECTRICAL AND MECHANICAL
2 PERMITS, INSPECTIONS AND CERTIFICATES OF OCCUPANCY AND
3 COMPLIANCE.

4 MR. WARREN: SECOND.

5 CHAIRMAN: A MOTION HAS BEEN MADE AND A
6 SECOND. ANY OTHER COMMENTS OR QUESTIONS BY THE BOARD?

7 MR. HOWARD: I DO HAVE A QUESTION, IF I COULD.

8 YOUR CONDITION ON THE DEVELOPMENT PLAN, THAT
9 WOULD NOT BE SOMETHING THAT IS TYPICALLY FOUND ON A
10 RESIDENTIAL APPLICATION.

11 MR. DYSINGER: I WILL WITHDRAW THAT CONDITION.

12 MR. HOWARD: I JUST WANT YOU TO TAKE THAT
13 UNDER CONSIDERATION. WE WOULDN'T REQUIRE A
14 DEVELOPMENT PLAN ON A RESIDENTIAL BUILDING PERMIT
15 TYPICALLY.

16 MR. DYSINGER: MR. CHAIRMAN, I WILL AMEND MY
17 MOTION TO REMOVE THE FIRST CONDITION, ADMISSION AND
18 APPROVAL OF FINAL DEVELOPMENT PLAN; IS THAT CORRECT?

19 MR. HOWARD: YES.

20 MR. WARREN: I WILL SECOND IT.

21 CHAIRMAN: THE SECOND APPROVES IT WITH THE
22 WITHDRAW. ANY OTHER COMMENTS OR QUESTIONS FROM THE
23 BOARD?

24 (NO RESPONSE)

25 CHAIRMAN: STAFF HAVE ANYTHING ELSE?

1 MR. HOWARD: NO, SIR.

2 CHAIRMAN: HEARING NONE ALL IN FAVOR RAISE
3 YOUR RIGHT HAND.

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: MOTION CARRIES.

6 NEXT ITEM, PLEASE, SIR.

7 ITEM 3

8 1007, 1017, 1025 TAMARACK ROAD, ZONED B-4, P-1
9 CONSIDER A REQUEST FOR A VARIANCE IN ORDER TO REDUCE
10 THE ROADWAY BUFFER FROM 40 FEET FROM THE CENTERLINE OF
11 THE ROAD TO 30 FEET FROM THE CENTERLINE OF THE ROAD.
12 REFERENCE: ZONING ORDINANCE, ARTICLE 13, SECTION
13 13.6221

14 APPLICANT: ROBERT H. STEELE

15 SPECIAL CIRCUMSTANCES

16 THE APPLICANT IS WISHING TO REDEVELOP THE
17 SUBJECT PROPERTY. CURRENTLY THERE ARE TWO BUILDINGS
18 ON THE SUBJECT PROPERTY AND THE APPLICANT INTENDS TO
19 REMOVE THE EXISTING BUILDINGS AND CONSTRUCT A SINGLE,
20 9,900 SQUARE FOOT STRIP MALL.

21 ROADWAY BUFFERS ARE GENERALLY ESTABLISHED TO
22 ALLOW FOR POSSIBLE WIDENING OF ROADWAYS IN THE FUTURE.
23 ACCORDING TO THE CITY ENGINEER'S OFFICE, THERE ARE NO
24 PLANS TO WIDEN THIS PORTION OF TAMARACK ROAD. THE
25 PROPERTIES LOCATED AT 933, 1035 AND 1115 TAMARACK ROAD
ALL APPEAR TO ENCROACH INTO THE REQUIRED 40 FOOT
ROADWAY BUFFER AS WELL.

FOUR PREVIOUS DEVELOPMENT PLANS FOR THE

1 SUBJECT PROPERTIES HAVE BEEN APPROVED IN 1993, 1995,
2 1996 AND 1998, ALL SHOWING A 30 FOOT ROADWAY BUFFER.

3 GRANTING THIS VARIANCE WILL NOT ADVERSELY
4 AFFECT THE PUBLIC HEALTH, SAFETY OR WELFARE BECAUSE
5 THE ROADWAY BUFFER WAS PREVIOUSLY APPROVED AT 30 FEET
6 ON THE SUBJECT PROPERTY AND DOES NOT CAUSE ANY
7 PROBLEMS CURRENTLY. IT WILL NOT ALTER THE ESSENTIAL
8 CHARACTER OF THE GENERAL VICINITY BECAUSE THERE ARE
9 MANY OTHER ENCROACHMENTS INTO THE ROADWAY BUFFER IN
10 THE AREA. IT WILL NOT CAUSE A HAZARD OR A NUISANCE TO
11 THE PUBLIC BECAUSE, ACCORDING TO THE CITY ENGINEER'S
12 OFFICE, THERE ARE NO PLANS TO WIDEN TAMARACK ROAD IN
13 THIS AREA. IT WILL NOT ALLOW AN UNREASONABLE
14 CIRCUMVENTION OF THE REQUIREMENTS OF THE ZONING
15 REGULATIONS BECAUSE THERE HAVE BEEN FOUR PREVIOUS
16 DEVELOPMENT PLAN APPROVED SHOWING A 30 FOOT ROADWAY
17 BUFFER.

18 STAFF RECOMMENDS APPROVAL WITH THE FOLLOWING
19 CONDITIONS: 1) SUBMISSION AND APPROVAL OF AN AMENDED
20 FINAL DEVELOPMENT PLAN. 2) OBTAIN NECESSARY BUILDING,
21 ELECTRICAL AND MECHANICAL PERMITS, INSPECTIONS AND
22 CERTIFICATES OF OCCUPANCY AND COMPLIANCE.

23 WE WOULD LIKE TO ENTER THE STAFF REPORT INTO
24 THE RECORD AS EXHIBIT B.

25 CHAIRMAN: THANK YOU.

1 HAVE WE HAD ANY COMMENTS OR QUESTIONS IN THE
2 OFFICE?

3 MR. HOWARD: I BELIEVE WE HAD ONE PHONE CALL
4 BASICALLY JUST GATHERING INFORMATION, BUT THAT'S IT.
5 NO OPPOSITION WERE EXPRESSED, NO.

6 CHAIRMAN: ANYONE WISHING TO SPEAK IN
7 OPPOSITION OF THIS ITEM?

8 (NO RESPONSE)

9 CHAIRMAN: APPLICANT HAVE ANYTHING YOU WOULD
10 LIKE TO SAY AND COME FORWARD?

11 APPLICANT REP: NO.

12 CHAIRMAN: BOARD HAVE ANY QUESTIONS OF THE
13 APPLICANT?

14 (NO RESPONSE)

15 CHAIRMAN: STAFF HAVE ANY OTHER COMMENTS?

16 MR. HOWARD: NO, SIR.

17 CHAIRMAN: ENTERTAIN A MOTION TO DISPOSE OF
18 THE ITEM.

19 FATHER HOSTETTER: MR. CHAIRMAN, MOVE TO GRANT
20 THE VARIANCE. FINDINGS OF FACT: IT WILL NOT
21 ADVERSELY AFFECT THE PUBLIC HEALTH, SAFETY OR WELFARE
22 OF THE PUBLIC; IT WILL NOT ALTER THE ESSENTIAL
23 CHARACTER OF THE GENERAL VICINITY; IT WILL NOT CAUSE A
24 HAZARD OR A NUISANCE TO THE PUBLIC; AND IT WILL NOT
25 ALLOW AN UNREASONABLE CIRCUMVENTION OF THE

1 REQUIREMENTS OF THE ZONING REGULATIONS BECAUSE THERE
2 HAVE BEEN FOUR PREVIOUS DEVELOPMENT PLAN APPROVED.
3 WITH THE CONDITIONS 1 AND 2: SUBMISSION AND APPROVAL
4 OF AN AMENDED FINAL DEVELOPMENT PLAN. OBTAINING
5 NECESSARY BUILDING, ELECTRICAL AND MECHANICAL PERMITS,
6 INSPECTIONS AND CERTIFICATES OF OCCUPANCY AND
7 COMPLIANCE.

8 MR. DYSINGER: SECOND.

9 CHAIRMAN: A MOTION HAS BEEN MADE AND A
10 SECOND. ANY OTHER COMMENTS OR QUESTIONS FROM THE
11 BOARD?

12 (NO RESPONSE)

13 CHAIRMAN: STAFF HAVE ANYTHING ELSE?

14 MR. HOWARD: NO, SIR.

15 CHAIRMAN: HEARING NONE ALL IN FAVOR RAISE
16 YOUR RIGHT HAND.

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: MOTION CARRIES.

19 NEXT ITEM, PLEASE.

20 MR. DYSINGER: MOVE TO ADJOURN.

21 MS. MASON: SECOND.

22 CHAIRMAN: ALL IN FAVOR RAISE YOUR RIGHT HAND.

23 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

24 CHAIRMAN: WE ARE ADJOURNED.

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 STENOGRAPHY AND
 12 ELECTRONICALLY RECORDED AND WAS THEREAFTER, BY ME,
 13 ACCURATELY AND CORRECTLY TRANSCRIBED INTO THE
 14 FOREGOING 13 TYPEWRITTEN PAGES; AND THAT NO SIGNATURE
 15 WAS REQUESTED TO THE FOREGOING TRANSCRIPT.

16 WITNESS MY HAND AND NOTARY SEAL ON THIS THE
 17 29TH DAY OF APRIL, 2012.

18

19

 LYNNETTE KOLLER FUCHS
 NOTARY ID 433397
 OHIO VALLEY REPORTING SERVICES
 202 WEST THIRD STREET, SUITE 12
 OWENSBORO, KENTUCKY 42303

22

23 COMMISSION EXPIRES: DECEMBER 16, 2014

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25