

1 OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

2 AUGUST 1, 2013

3 THE OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

4 MET IN REGULAR SESSION AT 5:30 P.M. ON THURSDAY,

5 AUGUST 1, 2013, AT CITY HALL, COMMISSION CHAMBERS,

6 OWENSBORO, KENTUCKY, AND THE PROCEEDINGS WERE AS

7 FOLLOWS:

8 MEMBERS PRESENT: WARD PEDLEY, CHAIRMAN
9 RUTH ANN MASON, SECRETARY
10 GARY NOFFSINGER, DIRECTOR
11 CLAUD PORTER, ATTORNEY
12 SEAN DYSINGER
13 FRED REEVES

14 * * * * *

15 CHAIRMAN: CALL THE OWENSBORO METROPOLITAN
16 BOARD OF ADJUSTMENT TO ORDER. WE'LL BEGIN OUR MEETING
17 WITH A PRAYER AND PLEDGE OF ALLEGIANCE TO THE FLAG.
18 WOULD YOU STAND, PLEASE.

19 (INVOCATION AND PLEDGE OF ALLEGIANCE.)

20 CHAIRMAN: I WOULD LIKE TO WELCOME EVERYONE.
21 IT LOOKS LIKE WE HAVE A BIG CROWD. ANYONE WISHING TO
22 SPEAK, WE ASK YOU TO COME TO ONE OF THE PODIUMS AND
23 STATE YOUR NAME AND SPEAK INTO THE MICROPHONE, PLEASE.

24 ALSO, BOARD MEMBERS, YOU DO THE SAME. WHEN
25 YOU'RE SPEAKING, WOULD YOU PLEASE SPEAK INTO THE
MICROPHONE.

WITH THAT, THE FIRST ITEM ON THE AGENDA IS TO

1 CONSIDER THE MINUTES OF THE JUNE 11, 2013. ARE THERE
2 ANY ADDITIONS OR CORRECTIONS?

3 (NO RESPONSE)

4 CHAIRMAN: IF NOT THE CHAIR IS READY FOR A
5 MOTION.

6 MR. DYSINGER: MOVE TO APPROVE.

7 MS. MASON: SECOND.

8 CHAIRMAN: WE HAVE A MOTION FOR APPROVAL AND A
9 SECOND. ALL IN FAVOR OF THE MOTION RAISE YOUR RIGHT
10 HAND.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: MOTION CARRIES UNANIMOUSLY.

13 NEXT ITEM, PLEASE.

14 -----

15 CONDITIONAL USE PERMIT

16 ITEM 2

17 1010 JACKSON STREET, ZONED R-4DT
18 CONSIDER A REQUEST FOR A CONDITIONAL USE PERMIT IN
19 ORDER TO INSTALL A CLASS 2 MANUFACTURED HOME IN AN
20 R-4DT ZONE.

21 REFERENCE: ZONING ORDINANCE ARTICLE 8,
22 SECTION 8.2A10B/7

23 APPLICANT: SARA E. OLLER

24 MR. PORTER: WOULD YOU STATE YOUR NAME,
25 PLEASE?

MS. EVANS: MELISSA EVANS.

(MELISSA EVANS SWORN BY ATTORNEY.)

ZONING HISTORY

1 THE SUBJECT PROPERTY IS CURRENTLY ZONED R-4DT
2 INNER-CITY RESIDENTIAL. OMP RECORDS INDICATE THERE
3 HAVE BEEN NO ZONING MAP AMENDMENTS FOR THE SUBJECT
4 PROPERTY.

5 A CONDITIONAL USE PERMIT TO INSTALL A CLASS 2
6 MANUFACTURED HOME ON THE SUBJECT PROPERTY WAS APPROVED
7 IN 1992 BY THE OMBA. ACCORDING TO A NOTE IN THE FILE
8 SIGNED BY THE PREVIOUS OWNER OF THE PROPERTY, THAT
9 MANUFACTURED HOME WAS REMOVED IN 2006.

10 THE APPLICANT PROPOSES TO INSTALL A 16' BY 80'
11 MANUFACTURED HOME ON THE SUBJECT PROPERTY.

12 LAND USES IN SURROUNDING AREA

13 ALL SURROUNDING PROPERTIES ARE ZONED R-4DT
14 INNER-CITY RESIDENTIAL. THERE APPEARS TO BE OTHER
15 MANUFACTURED HOMES IN THE AREA.

16 THE PLAN SITE SUBMITTED DOES INDICATE THAT THE
17 APPLICANT WILL ABIDE BY ALL OF THE CLASS 2
18 MANUFACTURED HOME SITE STANDARD BASED ON THE ZONING
19 ORDINANCE REQUIREMENTS.

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

22 CHAIRMAN: IS ANYONE HERE REPRESENTING THE
23 APPLICANT?

24 (NO RESPONSE)

25 CHAIRMAN: EVIDENTLY WE HAVE NO QUESTIONS OR

1 COMMENTS.

2 BOARD MEMBERS HAVE ANY COMMENTS OR QUESTIONS
3 ON THE APPLICATION?

4 (NO RESPONSE)

5 CHAIRMAN: IF NOT THE CHAIR IS READY FOR A
6 MOTION.

7 MS. MASON: MR. CHAIRMAN, I MAKE A MOTION FOR
8 APPROVAL WITH THE FINDINGS OF FACTS THAT IT'S
9 CONSISTENT WITH THE PREVIOUSLY APPROVED CONDITIONAL
10 USE PERMIT AND IT'S ALSO COMPATIBLE WITH THE
11 NEIGHBORHOOD AS THERE ARE OTHER MANUFACTURED HOMES IN
12 THE NEIGHBORHOOD.

13 MR. DYSINGER: SECOND.

14 CHAIRMAN: WE HAVE A MOTION FOR APPROVAL AND A
15 SECOND. ANY COMMENTS OR QUESTIONS ON THE MOTION?

16 (NO RESPONSE)

17 CHAIRMAN: ALL IN FAVOR OF THE MOTION RAISE
18 YOUR RIGHT HAND.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: MOTION CARRIES UNANIMOUS.

21 NEXT ITEM, PLEASE.

22 -----

23 VARIANCE

24 ITEM 3

25 1735 FREEMAN AVENUE, ZONED R-1A

1 CONSIDER A REQUEST FOR A VARIANCE IN ORDER TO REDUCE
2 THE SIDE YARD SETBACK FOR AN ACCESSORY STRUCTURE FROM
3 3 FEET FROM THE PROPERTY LINE TO 1 FOOT FROM THE
4 PROPERTY LINE AND TO REDUCE THE REAR YARD SETBACK FOR
5 AN ACCESSORY STRUCTURE FROM 3 FEET FROM THE PROPERTY
6 LINE TO 1 FOOT FROM THE PROPERTY LINE TO CONSTRUCT A
7 DETACHED GARAGE.

8 REFERENCE: ZONING ORDINANCE, ARTICLE 3,
9 SECTION 3-7(B)(2)

10 APPLICANT: NICK SETTLES

11 MS. EVANS: THE SUBJECT PROPERTY IS LOCATED IN
12 AN AREA ESTABLISHED BEFORE THE CURRENT ZONING
13 ORDINANCE REQUIREMENTS WERE IN PLACE. THERE IS AN
14 ALLEY WHICH RUNS BEHIND THE SUBJECT PROPERTY PARALLEL
15 WITH FREEMAN AVENUE.

16 THE APPLICANT PROPOSES TO CONSTRUCT A 20 FOOT
17 BY 20 FOOT DETACHED GARAGE TOWARDS THE REAR OF THE
18 PROPERTY IN LINE WITH THE EXISTING DRIVEWAY ACROSS
19 FROM FREEMAN AVENUE.

20 UPON INSPECTION OF THE AREA, THERE APPEAR TO
21 BE A NUMBER OF ACCESSORY STRUCTURES THAT ENCROACH INTO
22 THE REAR AND SIDE YARD BUILDING SETBACK ALONG THE EAST
23 SIDE OF FREEMAN AVENUE ALONG THAT ALLEY. ACCORDING TO
24 THE DIGITAL AERIAL PHOTOGRAPHY ON GIS THERE APPEAR TO
25 BE APPROXIMATELY 20 DETACHED ACCESSORY STRUCTURES THAT
MAY ENCROACH INTO THE REAR AND SIDE YARD BUILDING
SETBACK LINES ALONG FREEMAN AVENUE.

GRANTING THIS VARIANCE TO REDUCE THE REAR AND
SIDE YARD BUILDING SETBACK LINES FOR A DETACHED

1 ACCESSORY STRUCTURE FROM 3 FEET FROM THE PROPERTY LINE
2 TO 1 FOOT FROM THE PROPERTY LINES WILL NOT ADVERSELY
3 AFFECT THE PUBLIC HEALTH, SAFETY OR WELFARE OR CAUSE A
4 HAZARD OR NUISANCE TO THE PUBLIC BECAUSE THE STRUCTURE
5 WILL BE LOCATED WITHIN AN ENCLOSED BACK YARD ALONG A
6 PUBLIC ALLEY. IT WILL NOT ALTER THE ESSENTIAL
7 CHARACTER OF THE GENERAL VICINITY OR BE AN
8 UNREASONABLE CIRCUMVENTION OF THE REQUIREMENTS OF THE
9 ZONING REGULATIONS BECAUSE THERE ARE A NUMBER OF OTHER
10 DETACHED ACCESSORY STRUCTURES THAT APPEAR TO ENCROACH
11 INTO THE REAR AND SIDE YARD BUILDING SETBACK ALONG
12 FREEMAN AVENUE.

13 STAFF RECOMMENDS APPROVAL AND WE WOULD LIKE TO
14 ENTER THE STAFF REPORT INTO THE RECORD AS EXHIBIT B.

15 CHAIRMAN: ANYONE HERE REPRESENTING THE
16 APPLICANT?

17 (NO RESPONSE)

18 CHAIRMAN: DOES ANYONE HAVE ANY COMMENTS OR
19 QUESTIONS ON THIS?

20 (NO RESPONSE)

21 CHAIRMAN: BOARD MEMBERS HAVE ANY COMMENTS OR
22 QUESTIONS?

23 (NO RESPONSE)

24 CHAIRMAN: IF NOT THE CHAIR IS READY FOR A
25 MOTION.

1 MR. DYSINGER: MR. CHAIRMAN, GIVEN THE SPECIAL
2 CONSIDERATIONS AND AFFIRMING THE FINDINGS AND THE
3 STAFF'S REVIEW, I MOVE WE APPROVE THE VARIANCE
4 REQUEST.

5 MR. REEVES: SECOND.

6 CHAIRMAN: WE HAVE A MOTION FOR APPROVAL AND A
7 SECOND. ANY COMMENTS OR QUESTIONS ON THE MOTION?

8 (NO RESPONSE)

9 CHAIRMAN: IF NOT ALL IN FAVOR RAISE YOUR
10 RIGHT HAND.

11 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

12 CHAIRMAN: MOTION CARRIES UNANIMOUS.

13 ITEM 4

14 3418, 3420, 3422, 3424, 3426, 3432, 3434, 3436, 3438
15 PROFESSIONAL PARK DRIVE, ZONED R-3MF
16 CONSIDER A REQUEST FOR A VARIANCE TO REDUCE THE
17 REQUIRED SPILLOVER PARKING FROM 102 SPACES TO 27
18 SPACES AND TO INCREASE THE MAXIMUM BUILDING HEIGHT
19 FROM 36 FEET TO 46 FEET FOR BUILDING TYPES 1, 2 AND 3
20 AS NOTED ON THE DEVELOPMENT PLAN.
21 REFERENCE: ZONING ORDINANCE, ARTICLE 10 & 8,
22 SECTIONS 10.46, 8.5.10(F)
23 APPLICANT: G&T, LLC; FMU, LLC

24 MS. EVANS: THE APPLICANT PROPOSES TO
25 CONSTRUCT 108 APARTMENT UNITS OVER 1,000 SQUARE FEET
AND 42 APARTMENT UNITS UNDER 1,000 SQUARE FEET. THERE
ARE NO EXISTING PHYSICAL CONSTRAINTS ON THE SITE THAT
WOULD DICTATE THE NEED TO WAIVER FROM THE REQUIRED
SPILLOVER PARKING OR WHICH WOULD PREVENT STRUCTURES TO

1 BE BUILT IN CONFORMANCE WITH THE SPECIFIC HEIGHT
2 REQUIREMENTS WITHIN THE ZONING ORDINANCE.

3 HOWEVER, VARIANCES HAVE BEEN APPROVED IN THE
4 PAST FOR BOTH BUILDING HEIGHT AND SPILLOVER PARKING IN
5 A SIMILAR ZONE AND IN A SIMILAR SITUATION. VARIANCES
6 WERE APPROVED BY THE OMBA IN OCTOBER OF 2008 FOR THE
7 PROPERTY LOCATED AT 3200 HIGHLAND POINTE DRIVE. ON
8 JANUARY 10, 2013 BY THE OMPC IN CONJUNCTION WITH THE
9 REZONING REQUEST FOR THE PROPERTY LOCATED AT 3750
10 RALPH AVENUE, THAT'S THE PROPERTY DIRECTLY ADJACENT TO
11 THE SUBJECT PROPERTY.

12 THE STAFF WOULD RECOMMEND APPROVAL WITH THE
13 FOLLOWING FINDINGS: GRANTING THIS VARIANCE FOR
14 SPILLOVER PARKING WILL NOT ADVERSELY AFFECT THE PUBLIC
15 HEALTH, SAFETY OR WELFARE BECAUSE SUFFICIENT ROOM
16 SHOULD EXIST ON SITE TO PARK AND MANEUVER VEHICLES; IT
17 WILL NOT ALTER THE ESSENTIAL CHARACTER OF THE GENERAL
18 VICINITY BECAUSE THE SITE IS ADJACENT TO EXISTING
19 COMMERCIAL AND PROPOSED MULTI-FAMILY RESIDENTIAL
20 DEVELOPMENTS THAT HAVE SIMILAR PARKING REQUIREMENTS;
21 IT WILL NOT CAUSE A HAZARD OR A NUISANCE TO THE PUBLIC
22 BECAUSE EVIDENCE PRESENTED INDICATES SUFFICIENT
23 PARKING WILL BE PROVIDED FOR THE DEVELOPMENT; IT WILL
24 NOT ALLOW AN UNREASONABLE CIRCUMVENTION OF THE
25 REQUIREMENTS OF THE ZONING REGULATIONS BECAUSE THE

1 PARKING PROPOSED MEETS THE MINIMUM PRESCRIBED PARKING
2 REQUIREMENTS, PROVIDES 26 PERCENT OF THE REQUIRED
3 SPILLOVER PARKING, AND MEETS OR EXCEEDS NATIONAL
4 PARKING AVERAGES FOR SIMILAR DEVELOPMENTS.

5 GRANTING THIS VARIANCE FOR THE BUILDING HEIGHT
6 WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH, SAFETY OR
7 WELFARE BECAUSE EXISTING FIRE EQUIPMENT WITHIN THE
8 COMMUNITY IS SUFFICIENT TO SERVE THE SITE; IT WILL NOT
9 ALTER THE ESSENTIAL CHARACTER OF THE GENERAL VICINITY
10 BECAUSE THE SITE IS ADJACENT TO EXISTING COMMERCIAL
11 DEVELOPMENT WHICH DOES NOT HAVE A MAXIMUM BUILDING
12 HEIGHT AND A PROPOSED MULTI-FAMILY RESIDENTIAL ZONING
13 WHICH WILL HAVE A VERY SIMILAR DEVELOPMENT PATTERN; IT
14 WILL NOT CAUSE A HAZARD OR A NUISANCE TO THE PUBLIC
15 BECAUSE EXISTING FIRE EQUIPMENT WITHIN THE COMMUNITY
16 IS SUFFICIENT TO SERVE THE SITE; IT WILL NOT ALLOW AN
17 UNREASONABLE CIRCUMVENTION OF THE REQUIREMENTS OF THE
18 ZONING REGULATIONS BECAUSE THE BUILDING HEIGHT IS
19 CONSISTENT WITH PREVIOUSLY APPROVED VARIANCES IN A
20 SIMILAR ZONE.

21 STAFF RECOMMENDS APPROVAL WITH THE CONDITION
22 OF APPROVAL OF AN AMENDED FINAL DEVELOPMENT PLAN.

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

25 CHAIRMAN: COUNSEL, SHOULD WE VOTE ON THESE

1 SEPARATELY?

2 MR. PORTER: YES, WE SHOULD.

3 CHAIRMAN: THE FIRST TO CONSIDER IS THE
4 SPILLOVER PARKING.

5 IS ANYONE HERE REPRESENTING THE APPLICANT?

6 APPLICANT REP: YES.

7 CHAIRMAN: DO YOU HAVE ANY COMMENTS?

8 APPLICANT REP: NO.

9 CHAIRMAN: BOARD MEMBERS HAVE ANY COMMENTS?

10 (NO RESPONSE)

11 CHAIRMAN: CHAIR IS READY FOR A MOTION.

12 MR. REEVES: I MOVE WE APPROVE THIS VARIANCE
13 IN THAT IT MEETS THE REQUIREMENTS AND THAT SIMILAR
14 VARIANCES HAVE BEEN GRANTED IN THE SAME NEIGHBORHOOD.

15 MR. PORTER: FOR THE SPILLOVER PARKING.

16 MR. REEVES: YES, ON THE SPILLOVER PARKING.

17 MR. DYSINGER: SECOND.

18 CHAIRMAN: WE HAVE A MOTION FOR APPROVAL AND A
19 SECOND. COMMENTS OR QUESTIONS ON THE MOTION?

20 (NO RESPONSE)

21 CHAIRMAN: ALL IN FAVOR RAISE YOUR RIGHT HAND.

22 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

23 CHAIRMAN: MOTION CARRIES UNANIMOUS.

24 NOW WE'LL VOTE ON THE BUILDING HEIGHT. CHAIR
25 IS READY FOR A MOTION.

1 MS. MASON: I MOVE FOR APPROVAL OF THE
2 BUILDING HEIGHT WITH THE STAFF FINDINGS, TO USE THE
3 STAFF FINDINGS. EXISTING FIRE EQUIPMENT WITHIN THE
4 COMMUNITY IS SUFFICIENT TO SERVE THE SITE, IT WILL NOT
5 CAUSE A HAZARD OR A NUISANCE TO THE PUBLIC BECAUSE THE
6 FIRE EQUIPMENT WITHIN THE COMMUNITY IS SUFFICIENT; AND
7 IT WILL NOT ALLOW AN UNREASONABLE CIRCUMVENTION OF THE
8 REQUIREMENTS OF THE ZONING REGULATION BECAUSE THE
9 BUILDING HEIGHT IS CONSISTENT WITH PREVIOUSLY APPROVED
10 VARIANCES IN A SIMILAR ZONE.

11 MR. DYSINGER: SECOND.

12 CHAIRMAN: WE HAVE A MOTION FOR APPROVAL AND A
13 SECOND. ANY COMMENTS OR QUESTIONS ON THE MOTION?

14 (NO RESPONSE)

15 CHAIRMAN: ALL IN FAVOR OF THE MOTION RAISE
16 YOUR RIGHT HAND.

17 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

18 CHAIRMAN: MOTION CARRIES UNANIMOUS.

19 ANY NEW BUSINESS?

20 (NO RESPONSE)

21 CHAIRMAN: IF NOT WE'RE READY FOR ONE FINAL
22 MOTION.

23 MS. MASON: MOVE TO DISMISS.

24 MR. DYSINGER: SECOND.

25 CHAIRMAN: ALL IN FAVOR RAISE YOUR RIGHT HAND.

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(ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

CHAIRMAN: WE ARE ADJOURNED.

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 12 TYPEWRITTEN PAGES; AND THAT NO SIGNATURE
15 WAS REQUESTED TO THE FOREGOING TRANSCRIPT.

16 WITNESS MY HAND AND NOTARY SEAL ON THIS THE
17 2ND DAY OF AUGUST, 2013.

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19

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

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23 COMMISSION EXPIRES: DECEMBER 16, 2014

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25