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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

FEBRUARY 6, 2014

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, February 6, 2014, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Ward Pedley, Chairman
Judy Dixon, Vice Chairman
Ruth Ann Mason, Secretary
Gary Noffsinger, Director
Tera Knight, Attorney
Jerry Yeiser
Sean Dysinger
Fred Reeves

* * * * *

CHAIRMAN: Call the Metropolitan Board of Adjustment February 6, 2014 meeting to order.

We will begin our meeting with a prayer and pledge of allegiance to the flag. If you would stand, please.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: The first item tonight will be a presentation to the Oattie Pantle family. Mr. Noffsinger will do the presentation.

(PRESENTATION TO OTTIE PANTLE FAMILY.)

CHAIRMAN: We will now be electing the chairman to replace Oattie.

1 The next item will be the election of officers
2 due to the vacancy of the chair. I turn it over to
3 counsel for that.

4 MS. KNIGHT: Thank you, Mr. Chairman.

5 Any time we have a vacancy of an officer, the
6 bylaws require the vacancy to be filled by regular
7 election procedures. So we will go through the same
8 process we just went through last month.

9 We elect officers in the order with which
10 they're listed in the bylaw. The nominations and
11 elections will be first for chairman, then vice chair
12 and then secretary/treasurer.

13 At this time are there any comment or
14 questions from the board?

15 (NO RESPONSE)

16 MS. KNIGHT: If not, I will open the floor for
17 nomination of chair.

18 MR. REEVES: I'd like to nominate Ward Pedley
19 for chairman, please.

20 MS. KNIGHT: Mr. Pedley, do you accept that
21 nomination?

22 MR. PEDLEY: I do accept.

23 MS. KNIGHT: Are there any other
24 nominations?

25 (NO RESPONSE)

1 CHAIRMAN: If not I'm ready for motion to
2 close nomination.

3 MR. DYSINGER: Move to close nomination.

4 MS. KNIGHT: Is there a second?

5 MS. DIXON: Second.

6 MS. KNIGHT: All in favor raise your right
7 hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 MS. KNIGHT: We will now take a vote. We
10 traditionally do that by show of hands.

11 All in favor of electing Ward Pedley to serve
12 as chair please raise your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 MS. KNIGHT: Congratulations, Mr. Pedley.

15 Move on to vice chair. Nomination for vice
16 chair. I'll open the floor for nomination of vice
17 chair.

18 MS. MASON: I nominate Judy Dixon.

19 CHAIRMAN: Second.

20 MS. KNIGHT: Ms. Dixon, do you accept that
21 nomination?

22 MS. DIXON: Yes.

23 MR. DYSINGER: Move to close nomination.

24 MR. REEVES: Second.

25 MS. KNIGHT: All in favor raise your right

1 hand.

2 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

3 MS. KNIGHT: Nominations are closed.

4 Now we will vote for vice chair. All in favor
5 raise your right hand.

6 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

7 MS. KNIGHT: Ms. Dixon is elected unanimously.

8 Mr. Chairman, I will turn it back over to you.
9 Thank you.

10 CHAIRMAN: Next item on the agenda will be to
11 consider the minutes of the January 2, 2014 meeting.
12 I believe everyone received a copy in the packet.

13 Are there any additions or corrections?

14 (NO RESPONSE)

15 MS. DIXON: Move to approve.

16 MS. MASON: Second.

17 CHAIRMAN: Any comments or questions on the
18 motion?

19 MR. NOFFSINGER: I would just like to add that
20 you should have received a set of minutes that was
21 prepared by Melissa. That's what you will be
22 receiving in the future. That's what you should read
23 and you should be voting on. The transcript that
24 Lynnette prepares will continue to be prepared word
25 for word. She will certify that. We will include

1 that online at our website. So if you'd like to read
2 the full transcript word for word, you can do that.
3 What you will be acting on in the future are the
4 contents of the minutes.

5 CHAIRMAN: Thank you.

6 We have a motion on the floor. All in favor
7 of the motion raise your right hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimously.

10 Next item, please.

11 -----

12 CONDITIONAL USE PERMITS

13 ITEM 4

14 5965 US Highway 60 E, zoned I-2
15 Consider a request for a Conditional Use Permit in
16 order to construct a 2,000,000 gallon storage tank,
17 truck loading building and an access road for the
18 purpose of storing hazardous materials.
Reference: Zoning Ordinance, Article 8,
Section 8.2G4/27
Applicant: Yellow Banks River Terminal, LLC;
Earl Clark

19 MS. KNIGHT: Would you state your name for
20 record, please.

21 MS. EVANS: Melissa Evans.

22 (MELISSA EVANS SWORN BY ATTORNEY.)

23 ZONING HISTORY

24 The subject property is zoned I-2, Heavy
25 Industrial. OMPC records contain no conditional use

1 permits or variances for the subject property.

2 The applicant is proposing to store bulk urea
3 on the property.

4 LAND USES IN SURROUNDING AREA

5 The property to the north is zoned I-2 Heavy
6 Industrial. The property to the south is zoned A-U
7 Urban Agriculture. The properties to the east are
8 zoned I-2 Heavy Industrial and B-4 General Business.
9 The subject property is bordered by the Ohio River to
10 the west.

11 ZONING ORDINANCE REQUIREMENTS

12 The hazardous material shall be located 300
13 feet from any residential zone and 100 feet from any
14 other zone except for I-1 and A-R zones. Based on the
15 information submitted, it appears that these
16 requirements will be met on site.

17 SUGGESTED CONDITIONS

18 Obtain necessary building, electrical and
19 mechanical permits, inspections and certificates of
20 occupancy and compliance.

21 MS. EVANS: We would like to enter the Staff
22 Report into the records as Exhibit A.

23 CHAIRMAN: Is anyone here representing the
24 applicant?

25 APPLICANT REP: Yes.

1 MS. KNIGHT: State your name, please.

2 MR. GARDNER: Kelly Gardner.

3 (KELLY GARDNER SWORN BY ATTORNEY.)

4 CHAIRMAN: Evidently, we don't have anyone
5 here in opposition. If any of the board member have
6 any questions of you.

7 MR. REEVES: I have one, please.

8 Kelly, would you mind to talk to us about the
9 provisions for safety and so forth in case there were
10 to be some leakage here or something. How that's
11 taken care of and so forth. It is in fair proximity
12 to the river.

13 MR. GARDNER: Yes. As part of the permitting
14 process of the tank itself, which is done at the state
15 level, it's the piping from the river to the tank is
16 double wall. I don't know exact regs, but double wall
17 type. Then the tank has in and of itself a secondary
18 containment as well.

19 MR. REEVES: Thank you very much.

20 CHAIRMAN: Any other board members have any
21 comments or questions on this item?

22 (NO RESPONSE)

23 CHAIRMAN: Thank you, sir.

24 If not the chair is ready for a motion.

25 MR. REEVES: Mr. Chairman, I move for approval

1 based on the finding of fact that there are
2 regulations and specification in place must be
3 approved by the state to insure the safety of this
4 project. It is not inconsistent with other facilities
5 in river ports across the community. It will not
6 interfere with the health and safety of anyone in the
7 community. With the one condition they do get all the
8 necessary electrical and other approvals.

9 MR. DYSINGER: Second.

10 CHAIRMAN: We have A motion for by Mr. Reeves
11 for approval and a second by Mr. Dysinger. Any
12 comments or questions on the motion?

13 (NO RESPONSE)

14 CHAIRMAN: If not, all in favor of the motion
15 raise your right hand.

16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

17 CHAIRMAN: Motion carries unanimous.

18 Next item, please.

19 MR. DYSINGER: Mr. Chairman, as an adjacent
20 property owner, I find it necessary to recuse myself
21 from this item.

22 CHAIRMAN: So noted.

23 -----

24 VARIANCE

25

1 ITEM 5

2 830 Bolivar Street, zoned I-1
3 Consider a request for a Variance in order to reduce
4 the front yard building setback line along Bolivar
5 Street from 25 feet from the property line to 19.1
6 feet from the property line, to reduce the side street
7 yard building setback line along East Ninth Street
8 from 75 feet from the street centerline to 42 feet
9 from the street centerline and to eliminate the 40
10 foot roadway buffer along East Ninth Street.
11 Reference: Zoning Ordinance, Article 8 and 13,
12 Section 8.5.3(c) and 13.6221
13 Applicant: Ryan McDaniel; Greater Yelvington
14 Investments, LLC

15 MS. EVANS: The subject property is an
16 industrially zoned property at the intersection of
17 East Ninth Street and Bolivar Street.

18 In the vicinity of the subject property, Ninth
19 Street is classified as a minor arterial roadway with
20 a prescribed building setback line of 75 feet from the
21 street centerline and a 40 foot roadway buffer.

22 The building setback along Bolivar Street is
23 25 feet from the property line. The structure to the
24 north of the subject property at 824 Bolivar Street is
25 13.2 feet from the property line according to the
26 applicant. The other structures on the west side of
27 Bolivar Street in the 800 block appear to be less than
28 25 feet from the property line as well, according to
29 the aerial photography on GIS. The dimension for the
30 variance requested is an average of the prescribed
31 building setback and the current building setback to

1 the property to the north.

2 The subject property is 40 feet by 127.46
3 feet. The right-of-way combined with the width of the
4 property is 72 feet, 3 feet less than the prescribed
5 building setback; virtually making the subject
6 property non-buildable lot. A building currently sits
7 on the subject property that is approximately 1 foot
8 from the property line. According to the applicant
9 this building is proposed to be torn down.

10 The city engineer's office has reviewed this
11 application and supports the variance request to
12 reduce the building setback lines along Bolivar Street
13 and East Ninth Street and to eliminate the roadway
14 buffer along East 9th Street.

15 Granting the variance to reduce the front yard
16 building setback line along Bolivar Street will not
17 adversely affect the public health, safety or welfare
18 because other properties on this side of Bolivar
19 Street appear to encroach into the front building
20 setback with no adverse effect on the public; it will
21 not alter the essential character of the general
22 vicinity because essentially all other properties in
23 the 800 block of the west side of Bolivar Street
24 encroach into the front yard building setback as well;
25 it will not cause a hazard or a nuisance to the public

1 because the house to the north of the subject property
2 encroaches into the front setback further than the
3 requested variance and causes no problems; it will not
4 allow an unreasonable circumvention of the
5 requirements of the zoning regulations based on the
6 recommendations by the City Engineer's office and the
7 other structures in the area.

8 Granting the variance to reduce the side yard
9 building setback line along East Ninth Street will not
10 adversely affect the public safety or welfare because
11 other structures in the area already encroach into the
12 building setback line and do not adversely affect the
13 public; it will not alter the essential character of
14 the general vicinity because several other structures
15 along East Ninth Street encroach into the building
16 setback line; it will not cause a hazard or a nuisance
17 to the public because other structures in the area
18 already encroach into the setback and do not
19 negatively impact the public; it will not allow an
20 unreasonable circumvention of the requirements of the
21 zoning regulations because if relief from the
22 prescribed setback is not granted, the subject
23 property is a non-buildable lot.

24 Granting the variance to eliminate the roadway
25 buffer along East Ninth Street will not adversely

1 affect the public health, safety or welfare because
2 roadway improvements were completed in 1999 on this
3 area of East Ninth Street and the 32 feet of
4 right-of-way remaining provides sufficient room for
5 future improvements if needed; it will not alter the
6 essential character of the general vicinity because it
7 appears other structures in the area encroach into the
8 roadway buffer; it will not cause a hazard or a
9 nuisance to the public because there is currently 32
10 feet of right-of-way providing sufficient room along
11 Ninth Street; it will not allow an unreasonable
12 circumvention of the requirements of the zoning
13 regulations because the City Engineer's office
14 supports the variance request in this location.

15 Staff recommends approval of all three
16 variance requests.

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

19 CHAIRMAN: Evidently, we have no one here
20 representing the applicant and no one here in
21 opposition.

22 Counsel, we have three different variances in
23 a row. Do we need to do each of them separately?

24 MS. KNIGHT: Yes. I'd take a separate vote on
25 each one.

1 CHAIRMAN: The first one would be the front
2 building setback along Bolivar Street. That would be
3 our first.

4 Any board members have any comments or
5 questions on that?

6 (NO RESPONSE)

7 CHAIRMAN: If not the chair is ready for a
8 motion.

9 MS. MASON: Mr. Chairman, I make a motion for
10 approval based on the Staff's findings that it will
11 not adversely affect the public health, safety or
12 welfare; it will not alter the essential character of
13 the general vicinity; it will not cause a hazard or a
14 nuisance to the public; and it will not allow an
15 unreasonable circumvention of the requirements of the
16 zoning regulations.

17 CHAIRMAN: We have a motion for approval by
18 Ms. Mason. Do I hear a second?

19 MR. YEISER: Second.

20 CHAIRMAN: Second by Mr. Yeiser. Comments or
21 questions on the motion?

22 (NO RESPONSE)

23 CHAIRMAN: All in favor of the motion raise
24 your right hand.

25 (ALL BOARD MEMBERS PRESENT -WITH

1 DISQUALIFICATION OF SEAN DYSINGER - RESPONDED AYE.)

2 CHAIRMAN: Motion carries unanimous.

3 Next one will be East Ninth Street.

4 Evidently we have no comments or questions
5 from the audience.

6 Board members have any comments or questions?

7 (NO RESPONSE)

8 CHAIRMAN: If not the chair is ready for a
9 motion.

10 MR. NOFFSINGER: If someone does make a
11 motion, I would just ask that if you want to adopt the
12 Staff's Findings of Fact that you read the entire
13 findings, please.

14 MR. REEVES: I make a motion for approval
15 based on the Staff's Findings of Fact that this will
16 not adversely affect the public health, safety or
17 welfare; it will not alter the essential character of
18 the general vicinity; it will not cause a hazard or
19 nuisance to the public; and it will not allow an
20 unreasonable circumvention of the requirements of the
21 zoning ordinance.

22 CHAIRMAN: We have a motion for approval by
23 Mr. Reeves. Do I hear a second?

24 MS. MASON: Second.

25 CHAIRMAN: We have a second by Ms. Mason.

1 Comments or questions on the motion?

2 (NO RESPONSE)

3 CHAIRMAN: All in favor of the motion raise
4 your right hand.

5 (ALL BOARD MEMBERS PRESENT - WITH THE
6 DISQUALIFICATION OF SEAN DYSINGER - RESPONDED AYE.)

7 CHAIRMAN: Motion carries unanimous.

8 MS. KNIGHT: The adoption of the findings of
9 fact as listed on the Staff Report, incorporate those
10 into the motion will help.

11 MS. MASON: Should we make an amendment on
12 that?

13 MR. NOFFSINGER: You're not going to be able
14 to do that. There's no opposition to this and no one
15 is challenging it. If someone were to challenge it,
16 we would be concerned that you need to elaborate more
17 than just "will not, will not." You need to give
18 examples of why it will not. That's why the Staff
19 Report gives you those examples that you may
20 incorporate into the Staff Report or into your
21 findings.

22 CHAIRMAN: Actually if you have no opposition
23 you can read the Staff's findings, but you would state
24 why it will not adversely affect the public health,
25 safety or welfare. You need to make the findings of

1 why.

2 In this case it's okay to just merely read
3 what the Staff's findings were. If you need
4 additional findings, you can state that. If you have
5 opposition here and you had the applicant here, you
6 might go into something different.

7 Counsel, you recommend that we don't just say
8 "will not." You want the because in there.

9 MS. KNIGHT: Ideally you would go on with the
10 because and reason. At a minimum, like I said, if you
11 adopted the Staff's Findings 1 through 4 as enumerated
12 on the Staff Report which has been incorporated here
13 that would be sufficient as well.

14 CHAIRMAN: Especially when we don't have
15 opposition or anything.

16 MS. KNIGHT: It's even more important to do so
17 when we do have opposition that you do have findings
18 of fact.

19 MS. MASON: It's better to read them?

20 MS. KNIGHT: Yes.

21 CHAIRMAN: Are we okay with the motion and
22 approval?

23 MS. KNIGHT: It's been done and carried
24 unanimously. We will move on to the third.

25 CHAIRMAN: We will move to the next one, 40

1 foot road buffer.

2 Any board members have any comments or
3 questions on that?

4 (NO RESPONSE)

5 MR. REEVES: Is this on Bolivar Street?

6 MS. MASON: Along Ninth Street.

7 MR. NOFFSINGER: Buffer along East Ninth
8 Street. This is the Variance to eliminate the roadway
9 buffer along East Ninth Street.

10 CHAIRMAN: If there no questions or comments,
11 chair is ready for a motion.

12 MS. MASON: Mr. Chairman, I make a motion for
13 approval to eliminate the roadway buffer along East
14 Ninth Street. My findings are it will not adversely
15 affect the public health, safety or welfare because
16 roadway improvements were completed in 1999 on this
17 area of East Ninth Street and the 32 feet of
18 right-of-way remaining provides sufficient room for
19 future improvements if needed.

20 It will not alter the essential character of
21 the general vicinity because it appears other
22 structures in the area encroach into the roadway
23 buffer.

24 It will not cause a hazard or nuisance to the
25 public because there is currently 32 feet of

1 right-of-way providing sufficient room along East
2 Ninth Street.

3 It will not allow an unreasonable
4 circumvention of the requirements of the zoning
5 regulation because the city engineer's office supports
6 the variance request in this location.

7 CHAIRMAN: We have a motion for approval by
8 Ms. Mason. Do I hear a second?

9 MR. YEISER: Second.

10 CHAIRMAN: We have a second by Mr. Yeiser.
11 Comments or questions on the motion?

12 (NO RESPONSE)

13 CHAIRMAN: All in favor of the motion raise
14 your right hand.

15 (ALL BOARD MEMBERS PRESENT - WITH THE
16 DISQUALIFICATION OF SEAN DYSINGER - RESPONDED AYE.)

17 CHAIRMAN: Motion carries unanimous.

18 We need one final motion.

19 MS. MASON: Motion to adjourn.

20 CHAIRMAN: We have a motion to adjourn by Ms.
21 Mason.

22 MR. REEVES: Second.

23 CHAIRMAN: Second by Mr. Reeves. All in favor
24 raise your right hand.

25 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

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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 stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 19 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 28th day of February, 2014.

18

19

LYNNETTE KOLLER FUCHS
NOTARY ID 433397
OHIO VALLEY REPORTING SERVICES
2200 E. PARRISH AVE., SUITE 106-E
OWENSBORO, KENTUCKY 42303

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23 COMMISSION EXPIRES: DECEMBER 16, 2014

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25