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OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

NOVEMBER 3, 2016

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, November 3, 2016, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

- MEMBERS PRESENT: Judy Dixon, Chairman
- Robynn Clark, Vice Chairman
- Ruth Ann Mason, Secretary
- Brian Howard, Director
- Terra Knight, Attorney
- Fred Reeves
- Bill Glenn
- Lewis Jean

* * * * *

CHAIRMAN: Call the November 3, 2016 meeting of the Owensboro Metropolitan Board of Adjustment to order. The first item we're going to attend to is Mr. Gene is going to give us the prayer and the pledge.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: First item on the agenda is to consider the minutes of the October 6, 2016 meeting.

Members, you've have been mailed a copy and have had time to look at it. So at this time I will entertain a motion to dispose of the item.

MS. MASON: Motion to approve.

1 CHAIRMAN: Motion to approve by Ms. Mason.

2 MR. GLENN: Second.

3 CHAIRMAN: Second by Mr. Glenn. A question on
4 the motion?

5 (NO RESPONSE)

6 CHAIRMAN: All in favor of the motion raise
7 your right hand.

8 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

9 CHAIRMAN: Motion carries unanimously.
10 Mr. Howard.

11 -----

12 VARIANCE

13 ITEM 2

14 8735 Stillhouse Road, zoned A-R
15 Consider a request for a Variance in order to reduce
16 front yard building setback line from 60 feet from the
17 centerline of the road to 40 feet from the centerline
18 of the road.
Reference: Zoning Ordinance, Article 8,
Section 8.5.1(c)
Applicant: Charles D. & Linda E. Payne

19 MS. KNIGHT: Please state your name for the
20 record.

21 MS. EVANS: Melissa Evans.

22 (MELISSA EVANS SWORN BY ATTORNEY.)

23 MS. EVANS: This Staff Report is for a
24 recommendation of denial. It's typical when we have a
25 denial recommendation on a Staff Report that we do

1 read the whole Staff Report into the record.

2 SPECIAL CIRCUMSTANCES? Are there special
3 circumstances that do not generally apply to the land
4 in the general vicinity or in the same zone? Yes.

5 The Applicant proposes to build a residential
6 garage on the subject property. The subject property
7 is zoned A-R Rural Agriculture. The Applicant states
8 that because of the extreme drop off in grade at the
9 rear and sides of the property there is not sufficient
10 room to build a garage in any other location on the
11 property.

12 While it recognized there is a topography
13 issue on the site, it has not been demonstrated that
14 this topography would prevent the applicant from
15 constructing a garage in accordance with the
16 requirements of the Zoning Ordinance. Based on a site
17 visit, it appears that there may be sufficient room on
18 the site to construct the garage meeting the
19 applicable setback requirements.

20 The request will alter the essential character
21 of the general vicinity as there appear to be no other
22 structures in the area forward of the building setback
23 line. It will be an unreasonable circumvention of the
24 Zoning Ordinance requirement as it appears there could
25 be adequate room on the property to meet the

1 requirements, although not in the desired location.

2 If the variance were to be approved, Staff
3 would recommend that the garage door not be located on
4 the east side of the structure to prevent vehicles
5 backing into the road from the garage since the garage
6 would be located in such close proximity to Stillhouse
7 Road.

8 HARDSHIP? Would strict application of the
9 regulations deprive the applicant of the reasonable
10 use of the land or create an unnecessary hardship on
11 the applicant? No.

12 It appears that the applicant will be able to
13 build the proposed building in another location on the
14 property meeting the zoning ordinance requirements.

15 APPLICANT'S ACTIONS? Are the circumstances
16 from which relief is sought as a result of the
17 applicant's actions taken after adoption of the zoning
18 regulation? No.

19 FINDINGS OF FACTS:

20 Granting this Variance will not adversely
21 affect the public health, safety or welfare; it will
22 alter the essential character of the general vicinity
23 as there appear to be no other structures located
24 forward of the building setback line in the area; it
25 will not cause a hazard or a nuisance to the public;

1 but it will allow an unreasonable circumvention of the
2 requirements of the zoning regulations as it appears
3 there could be adequate room on the property to meet
4 the setback requirements.

5 Staff would recommend denial of this Variance
6 request.

7 We would like to enter the Staff Report into
8 the record as Exhibit A.

9 CHAIRMAN: Is there anyone here representing
10 the applicant?

11 Would you step to the podium, please?

12 MS. KNIGHT: Would you please state your name
13 for the record?

14 MR. PAYNE: Charles D. Payne.

15 (CHARLES PAYNE SWORN BY ATTORNEY.)

16 CHAIRMAN: Mr. Payne, would you like to
17 comment on your application?

18 MR. PAYNE: Yes, I would like to make a couple
19 of comments here, if I could.

20 One, down there where there appears to be no
21 other structures located forward of the building
22 setback in the area. Well, right down the road from
23 me there's a block garage that's probably at least 40
24 foot of the road, and there's a swimming pool up there
25 close to the road and some trailers. I do have

1 pictures here showing my property, how it really
2 slopes down. There's a light pole back there where
3 this building, we're proposing where the building
4 would go. Probably three foot of it. On the west
5 side of it, if we build it there, there will be a drop
6 probably two foot. I do have, I have pictures with my
7 application. I don't know what happened to them, but
8 I do have pictures here if anyone would like to see
9 them.

10 CHAIRMAN: You're welcome to distribute them
11 for us.

12 MS. CLARK: How big of a garage are you
13 planning on building?

14 MR. PAYNE: 36 by 30.

15 MS. MASON: I have a question too.

16 Have you looked at other options of other
17 places to put the garage?

18 MR. PAYNE: Well, my house is built on a hill
19 in front of it. So when you get up in front of the
20 house it starts sloping way down and all back of it.
21 You know, it's pretty steep incline going down.

22 MS. MASON: So the people that are going to
23 build the garage for you have said that you can't put
24 it anyplace else but where you want to put it?

25 MR. PAYNE: No, they didn't say that. It's

1 possibility a person move the light pole and build up
2 four or five foot on the back end of it, you know. I
3 mean that's what it would take, that much. Then I
4 would have to pour another driveway, well, not a
5 driveway, but a parking area. The way I have it set
6 up here, the proposed building, I've got a blacktop
7 going in and a parking area. Plan to build it right
8 off the parking area. I mean that's the levellest spot
9 I've got on the property, unless you go all the way
10 back of it about 40 feet. There's an incline going
11 down.

12 MR. REEVES: Ms. Dixon, I have a question.

13 CHAIRMAN: Mr. Reeves.

14 MR. REEVES: Mr. Payne, I notice you already
15 have an existing garage attached to the house; is that
16 correct?

17 MR. PAYNE: Yes, that's correct.

18 MR. REEVES: So is that not adequate parking
19 for the number of vehicles that you have? What's
20 going to be the purpose of the new garage?

21 MR. PAYNE: No. We have three vehicles parked
22 there and we only have one garage. I have a tractor
23 sitting out in the field down there that I'm hoping,
24 you know, get a place for my tractor. Get it out of
25 the weather. I sold my farm and don't have no place

1 to keep it.

2 MR. REEVES: Thank you.

3 CHAIRMAN: Any other questions?

4 (NO RESPONSE)

5 CHAIRMAN: Mr. Payne, while they're
6 distributing these, do you want these entered into the
7 record? Do you want these pictures entered into the
8 record?

9 MR. PAYNE: That will be fine, yes.

10 Stillhouse Road is a little road between
11 Highway 54 and Morgantown Road is exactly two miles
12 long. This property is exactly in the middle of it.

13 CHAIRMAN: Are there other questions of Mr.
14 Payne?

15 (NO RESPONSE)

16 CHAIRMAN: No other questions.

17 MS. MASON: I have a question for Melissa.

18 CHAIRMAN: Yes.

19 MS. MASON: When you all looked at the other
20 areas where the garage can be put, did you explain
21 that to him, where you thought that it could be put or
22 you all just determined by looking at the land that
23 there was other places the garage could be put?

24 MS. EVANS: Mr. Payne did come in last week
25 after he received a copy of the Staff Report, and we

1 did talk to him about that it was our opinion that
2 there could be other places on the property that it
3 could go or that the garage could be constructed
4 smaller, those sort of things.

5 It was our opinion, based on the way that it
6 looked out there, he has the garage situated behind
7 that parking pad. If he moved it on top of that
8 parking pad and moved it back a little bit or took up
9 part of the existing asphalt that was there, it
10 appears that it could meet the requirements. Maybe he
11 would have to make the garage a little bit smaller,
12 move it to a different location on the property, but
13 it appeared to us that there would be some other
14 options without granting the variance.

15 The picture that you do have up there on the
16 screen that you all have in front of you, that red
17 line does show where the 40 foot from the center line
18 of the road, where the variance that he's asking for,
19 and then that green line would be where the zoning
20 ordinance would require it to be. That's the 60-foot
21 from the center line of the road. That is the front
22 building setback.

23 You know, it was just our opinion. At the
24 time that we did the Staff Report we also weren't
25 appear of the pole that he says is at the back of that

1 building or the back of the driveway there, which is
2 something that would have to be relocated if that were
3 an area where he could build that, but we weren't
4 aware that pole was there at time of the application.
5 That was our opinion, that there could be other places
6 that it could be located.

7 CHAIRMAN: Mr. Payne, could you come back to
8 the microphone?

9 Are you aware of the other options that you
10 have?

11 MR. PAYNE: Well, they give me no other
12 option. I don't know how they could go out there and
13 look at it and they not see this light post sitting
14 there.

15 The only option would be to turn the building
16 another way, and then, like I say, it would have to be
17 built up real far, about four or five foot, you know.
18 That's the only option could be.

19 MR. GLENN: I've got another question for the
20 Staff.

21 Is the Staff's concern then, the way I'm
22 reading this, that if it's built the way that he's
23 talking about doing it, that they will be backing out
24 and into the road there on Stillhouse Road? Is that
25 what the worry is?

1 MR. HOWARD: Well, that's why we put a
2 statement in the Staff Report that would say, if they
3 are going to, if it is located where they ask it to be
4 located, that the doors be situated so that they can't
5 back out into Stillhouse Road due to the proximity
6 there.

7 What we're looking at with this is if there --
8 the point of a variance is to vary from what the
9 ordinance has established as the minimum requirements
10 if it can't be met. Topography is certainly one of
11 those things that could dictate that a variance be
12 issued; however, in the application materials that we
13 had, we didn't know the size of the building.

14 Mike, when he went out and looked at it, he
15 saw that there are topography issues. There's no
16 doubt about that, but there was nothing submitted with
17 the materials that say from the edge of the road, you
18 know, it's this distance. We didn't have any of that
19 information. We're just going out there eyeballing it
20 looking and saying, you know, where that green line
21 is, you know, two-thirds -- the parking pad, if you
22 put the front of the building there, it very well may
23 be possible that you could locate it at that site.
24 That's all we have to go on, and that's what we
25 reviewed.

1 Of course, he's told you tonight that there
2 isn't anyplace you can do it on that site other than
3 where he's proposing. It's up to you all then to
4 decide is that reasonable; and if not, where do you go
5 from there.

6 CHAIRMAN: Any other questions?

7 MR. PAYNE: I did bring drawings, and I left
8 them on the application. I don't know what happened
9 to them. Evidently they lost them, but I did bring
10 that stuff in.

11 MR. GLENN: Hand-drawing, this hand-drawing is
12 that what you're talking about?

13 MR. PAYNE: I'm not sure.

14 MR. GLENN: Look up on the screen. It's on
15 the screen here, TV screen. Is that what you're
16 referring to?

17 MR. PAYNE: Yes. Something like that, yes.

18 MR. GLENN: Yes, we have that.

19 MR. PAYNE: The doors of the proposed
20 building, the doors would be open to the north, to the
21 parking pad. They definitely would not be towards the
22 highway. Thank you.

23 MS. CLARK: Mr. Payne, I do have another
24 question for you. Are you proposing to keep the
25 parking pad the same that it is now?

1 MR. PAYNE: Yes, ma'am.

2 MS. CLARK: Has anybody helped you layout this
3 building or is this something that you're doing on
4 your own?

5 MR. PAYNE: I just got a guy draw me up, you
6 know, a sketch of it. See the parking pad, it would
7 be closer than 60 feet. If I come off the end of the
8 parking pad west, south parking pad, it would do no
9 good to tear it up because where you said to build
10 it's going to be closer than the 60 feet.

11 MR. GLENN: I have seen, and I don't know if
12 this will work in your situation. In houses with
13 driveways where they build a small spot off of their
14 driveway, like where they back in, so that when they
15 back out they can back up there and then pull around
16 it. They don't have to back all the way out. Do you
17 know what I'm trying to say there?

18 MR. PAYNE: Are you talking to me?

19 MR. GLENN: Yes, sir.

20 MR. PAYNE: That's the reason I've got this
21 parking pad fixed like this. So that you back right
22 out in the driveway and you won't have to -- we don't
23 back out in the road. It's right on top of a hill.

24 MR. GLENN: This parking pad from the south to
25 the north now that's going to stay there, how long,

1 what's the footage on that do you think, are you
2 thinking? The existing pad there.

3 MR. PAYNE: It's probably 50, 60 feet.

4 MR. GLENN: And the garage itself is going to
5 be built?

6 MR. PAYNE: In behind it.

7 MR. GLENN: In behind it.

8 MR. PAYNE: Yes. To the south of it, yes.

9 MR. GLENN: To the south of it. Okay.

10 CHAIRMAN: Any other questions of Mr. Payne?

11 MS. CLARK: I do have another question.

12 Have you not considered moving the pole or
13 checked into what it would be to move the pole in the
14 back, the utility pole?

15 MR. PAYNE: I haven't checked into it, no. I
16 just know if I moved it back it probably, at that
17 point, which is probably about 4 foot before that
18 point it really starts sloping down to the west real
19 fast, you know.

20 MR. REEVES: I have a question.

21 Because this drawing is not to scale, I'm
22 having difficulty. Are we saying that from the red
23 line on here to the edge of the current parking lot is
24 the size the building is going to be exactly?

25 MR. HOWARD: No. The red line is basically a

1 dimension of 10 feet from the blue line, which is the
2 property line. It's 10 feet to there. Then the green
3 line would be an additional 20 feet.

4 MS. KNIGHT: I think based on his drawing I
5 think you're right, Fred. He's showing that the
6 building would stop at the edge of the concrete pad.
7 Is that what you're asking?

8 MR. REEVES: Yes. I'm wondering if the
9 building he's proposing fits in between the 10-foot
10 setback red line and the current edge of the parking
11 here or if the garage is going to extend beyond the
12 current parking pad.

13 MS. KNIGHT: Do you understand his question?

14 MR. PAYNE: Not really I don't.

15 MR. HOWARD: You could not extend forward
16 towards Stillhouse Road beyond that red line.

17 MR. REEVES: Yes, I know that. Would it
18 extend further back? I guess when you go -- is north
19 --

20 MR. HOWARD: North is up.

21 MR. REEVES: North is up. So if I was going,
22 is the building he's proposing going to go west,
23 further west than the existing parking pad?

24 MS. EVANS: The way you have it drawn here
25 shows that it is the full length of the driveway and

1 parking pad. He's asking if that is correct or if the
2 building actually would stop before the park pad ends
3 or if it would go further?

4 MR. PAYNE: It would stop before the parking
5 pad ends.

6 MR. REEVES: Okay. That's my question.

7 CHAIRMAN: Have you worked out a resolution?

8 MR. REEVES: I haven't worked out a
9 resolution. I just needed to understand my own now.
10 I was having difficulty, because it wasn't to scale
11 here, trying to figure out what was going on.

12 CHAIRMAN: Any other questions or comments to
13 Mr. Payne?

14 MR. REEVES: I guess I have one more.

15 The building you're proposing from the front
16 of the garage to the back of the garage, what's the
17 drop off there, the one you're proposing to build?

18 MR. PAYNE: Approximately 2 foot.

19 MR. REEVES: If you moved it back adjacent to
20 the current garage, what would be the drop off be?

21 MR. PAYNE: Probably 5, 6, 7 foot.

22 MR. REEVES: Thank you.

23 CHAIRMAN: Any other questions while Mr. Payne
24 is there?

25 (NO RESPONSE)

1 CHAIRMAN: Are we ready for a motion?

2 MR. REEVES: I'll make one.

3 CHAIRMAN: All right, Mr. Reeves.

4 MR. REEVES: I make a motion we deny the
5 application based on the fact that it will alter the
6 essential character of the general vicinity as it
7 appears to be, there appears to be no other structures
8 located for the building setback line in the area.
9 Secondly, it will allow an unreasonable circumvention
10 of the requirements of the zoning regulations as it
11 appears there could be adequate room on the property
12 to meet the setback requirements.

13 CHAIRMAN: We have a motion on the floor. Do
14 I have a second?

15 MS. CLARK: Second.

16 CHAIRMAN: Second by Ms. Clark. Any questions
17 on the motion?

18 (NO RESPONSE)

19 CHAIRMAN: All in favor of the motion raise
20 your right hand.

21 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

22 CHAIRMAN: Motion carries unanimously. The
23 Variance is denied.

24 ITEM 3

25 624 East Third Street, zoned B-2
Consider a request for a Variance in order to reduce

1 the distance of a non-residential driveway from the
2 right-of-way of an intersecting street from 50 feet to
3 23 feet.

4 Reference: Zoning Ordinance, Article 13,
5 Section 13.22

6 Applicant: Sts. Joseph and Paul Catholic Church

7 MS. KNIGHT: Please state your name for the
8 record.

9 MR. HILL: Mike Hill.

10 (MIKE HILL SWORN BY ATTORNEY.)

11 MR. HILL: The applicant here is Sts. Joseph
12 and Paul Catholic Church. They acquired the subject
13 property recently and they're proposing to extend
14 their existing adjacent parking lot onto the subject
15 property, which was previously utilized as an auto
16 care business until a recent fire.

17 The applicant desires to utilize the same
18 parking layout that's in their existing parking lot
19 with regard to where the drive lanes are located,
20 where the rows of parking currently are. In order to
21 do that, when you extend their drive lane, the
22 easternmost drive lane north toward Third near the
23 intersection of Triplett, it exits out onto Triplett,
24 the driveway I'm speaking of, approximately 23 feet
25 from the intersection of Triplett and Third. There's
a requirement in the Zoning Ordinance that
nonresidential driveways be located a minimum of 50

1 feet from intersecting streets.

2 The Staff did some research all along Third
3 Street, several blocks in either direction, and found
4 two other examples of nonresidential driveways that
5 exist within that 50 foot distance to the nearest
6 intersection.

7 Staff also confirms doing prior research that
8 when the property was previously developed and used as
9 the auto care center it basically had wide open curb
10 cuts along both frontages along Triplett and along
11 East Third Street. In other words, cars could pull in
12 and out of there basically just about anywhere along
13 the entire frontage of the car business.

14 Even with this variance Staff feels like that
15 the situation will come into compliance because they
16 would be defining the access points to Third Street to
17 propose the existing parking lot to the south has one
18 access point onto Triplett. So Staff feels that even
19 though the Variance is being requested, it would still
20 improve the overall situation with the circulation of
21 traffic flow in the area around the church,
22 particularly during peak usage time. It would provide
23 several additional parking spaces off street that
24 don't exist now; whereas, I'm sure the patrons are
25 utilizing on-street parking spaces during church time.

1 Staff feels that Granting the Variance will
2 not adversely affect the public health, safety or
3 welfare because the variance will allow for an
4 improved circulation pattern near the church during
5 peak hours.

6 Granting the Variance will not alter the
7 essential character of the general vicinity because
8 vehicles have accessed the subject property within 50
9 feet of the intersection for many years during
10 previous ownership.

11 Granting the Variance will not cause a hazard
12 or nuisance to the public because the Variance will
13 allow significant expansion of the existing parking
14 lot providing more off-street parking spaces for the
15 patrons of the church.

16 Granting this Variance will not allow an
17 unreasonable circumvention of the requirements of the
18 zoning regulations because even with this Variance the
19 site will come more into compliance with access
20 management requirements compared to the wide open curb
21 cuts that previously were utilize on the site.

22 Staff recommends approval with the following
23 Conditions:

- 24 1. Obtain approval of a Site Plan.
- 25 2. Obtain all necessary building and

1 electrical permits, inspections and certificate of
2 occupancy and compliance.

3 Staff request that the Staff Report be entered
4 into the record as Exhibit B.

5 CHAIRMAN: Thank you.

6 Is there someone here representing Sts. Joe
7 and Paul?

8 MS. KNIGHT: Please state your name for the
9 record.

10 MR. WARD: Kelly Ward, Jr.

11 (KELLY WARD, JR. SWORN BY ATTORNEY.)

12 CHAIRMAN: Do you have anything you would like
13 to add to the application?

14 MR. PAYNE: No. I think they done a great job
15 summarizing what we were trying to do anyhow. Like I
16 say, we're trying to get the vehicles off the street
17 and safety for our parishioners. We've been wanting
18 to do this for a year.

19 We're okay with the way it's drawn up.

20 CHAIRMAN: Stay put unless you want to get a
21 lot of exercise getting up and down, in case anybody
22 has got any questions.

23 Any board members have questions of Mr. Ward?

24 (NO RESPONSE)

25 CHAIRMAN: If not I'll entertain a motion to

1 dispose of the item.

2 MR. JEAN: Motion to approve based on the
3 Staff Report, Findings 1 through 4 with Conditions 1
4 and 2.

5 CHAIRMAN: Thank you.

6 Do we have a second?

7 MR. GLENN: Second.

8 CHAIRMAN: Second by Mr. Glenn. Any questions
9 on the motion?

10 (NO RESPONSE)

11 CHAIRMAN: All in favor of the motion raise
12 your right hand.

13 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

14 CHAIRMAN: The motion carries unanimously.

15 I'll entertain one more motion.

16 MS. MASON: Motion to adjourn.

17 MR. GLENN: Second.

18 CHAIRMAN: All in favor raise your right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 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 22 typewritten pages; and that no signature
15 was requested to the foregoing transcript.

16 WITNESS my hand and notary seal on this the
17 25th day of November, 2016.

18

19

LYNNETTE KOLLER FUCHS
NOTARY ID 524564
OHIO VALLEY REPORTING SERVICES
2200 E. PARRISH AVE., SUITE 106-E
OWENSBORO, KENTUCKY 42303

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23 COMMISSION EXPIRES: DECEMBER 16, 2018

24 COUNTY OF RESIDENCE: DAVIESS COUNTY, KY

25