

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OWENSBORO METROPOLITAN BOARD OF ADJUSTMENT

AUGUST 2, 2018

The Owensboro Metropolitan Board of Adjustment met in regular session at 5:30 p.m. on Thursday, August 2, 2018, at City Hall, Commission Chambers, Owensboro, Kentucky, and the proceedings were as follows:

MEMBERS PRESENT: Judy Dixon, Chairman
Brian Howard, Director
Terra Knight, Attorney
Jerry Yeiser
Fred Reeves
Bill Glenn
Lewis Jean

* * * * *

CHAIRMAN: We will call the August 2, 2018 meeting of the Owensboro Metropolitan Board of Adjustment to order. The first item on the agenda will be the our prayer and pledge.

(INVOCATION AND PLEDGE OF ALLEGIANCE.)

CHAIRMAN: We will consider the minutes of the July 5, 2018 meeting. All members have been either mailed or e-mailed a copy of them. So at this time we'll entertain a motion to dispose of the item.

MR. JEAN: Motion to approve.

CHAIRMAN: Motion to approve by Mr. Jean.

MR. GLENN: Second.

CHAIRMAN: Second by Mr. Glenn. Any question

1 on the motion?

2 (NO RESPONSE)

3 CHAIRMAN: All in favor raise your right hand.

4 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

5 CHAIRMAN: Motion carries unanimously.

6 -----

7 VARIANCE

8 ITEM 2

9 3850 Frederica Street, zoned B-4 General Business
10 Consider a request for a Variance in order to reduce a
11 30-foot long portion of the required side street yard
12 building setback along the future extension of
13 Monticella Drive that is shown on the preliminary
14 subdivision plat from 25-feet from the property line
15 to 15-feet from the property line as illustrated on
16 the variance site plan.

17 Reference: Zoning Ordinance, Article 8.5.16c
18 Applicant: Levi Reames and The Shoppes at 3800
19 Frederica, LLC

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

22 MR. PEDLEY: Trey Pedley.

23 (TREY PEDLEY SWORN BY ATTORNEY.)

24 MR. PEDLEY: This is a recommendation for
25 denial so the entire Staff Report will be read into
the record.

SPECIAL CIRCUMSTANCES? Are there special
circumstances that do not generally apply to land in
the general vicinity, or in the same zone? No.

The subject property is zoned B-4 General

1 Business, approximately 148 feet by 251 feet in size
2 and is located at the northern corner of Frederica
3 Street and the future extension of Monticello Drive,
4 directly across Frederica Street from the Fairfax
5 Drive intersection. The site is currently vacant,
6 although the site plan indicates plans for a future
7 4,445 square-foot car-wash with 23 accessory vacuum
8 stations located on this lot.

9 Because this is a corner lot with road
10 frontage on three sides, the subject property has 25
11 foot wide building setback along three of the four
12 property lines. In an attempt to maximize their
13 square footage, the applicant has requested a variance
14 to reduce a 30-foot long portion of the required
15 building setback along the future extension of
16 Monticello Drive from 25-feet to 15-feet from the
17 property line, as shown on the site plan, to allow a
18 payment kiosk to be located within the planned service
19 drive.

20 The subject property is vacant and is located
21 within the The Shoppes at 3800 Frederica Street, a
22 29.7 acre development which received preliminary
23 subdivision plat approval at the December 2017 OMPC
24 meeting. The proposal development consists of 11 lots
25 with an internal private street network. This will be

1 one of the first lots to develop within this proposed
2 new development and will set precedence as to how the
3 other properties are developed in the future.

4 Granting the variance to reduce the building
5 setback will alter the essential character of the
6 general vicinity and will allow an unreasonable
7 circumvention of the requirements of the zoning
8 ordinance because this is an open lot within a newly
9 planned subdivision where there are no special
10 circumstances that would prohibit the applicant from
11 meeting all required setbacks, and approving this
12 request may create a precedence for future variances
13 in the area as other lots are developed. However,
14 granting this variance will not adversely affect the
15 public health and may not cause a nuisance to the
16 public because the portion of the reduced setback is
17 only large enough for the kiosk and so additional
18 structures will not be able to be located within the
19 reduced setback.

20 Hardship? Would strict application of the
21 regulation deprive the applicant of the reasonable use
22 of the land, or create an unnecessary hardship on the
23 applicant? No. If the application is denied, the
24 applicant can relocate this kiosk outside of the
25 required building setback.

1 Applicant actions? Are the circumstance from
2 which relief is sought a result of the applicant's
3 actions taken after the adoption of the zoning
4 regulations? No.

5 If yes: Willful actions? Did the applicant
6 take willful actions in violation of the zoning
7 regulation? If so, the board shall deny the variance.
8 No.

9 FINDINGS: Granting this Variance:

10 1. Will not adversely affect the public
11 health, safety or welfare because the setback along
12 Frederica Street is being upheld, limiting traffic
13 visibility concerns at the intersection;

14 2. Granting this variance will alter the
15 essential character of the general vicinity because
16 allowing the reduced setback may create a precedence
17 for future requests in the area as other vacant lots
18 are developed.

19 3. Granting this variance may not cause a
20 hazard or a nuisance to the public because the portion
21 of the reduced setback is only long enough for the
22 kiosk, and so additional structures will not be able
23 to be located within the reduced setback; and

24 4. Granting this variance will allow an
25 unreasonable circumvention of the requirements of the

1 zoning regulations because this is a newly proposed
2 subdivision with no special circumstances that would
3 prohibit the applicant from meeting all required
4 setbacks.

5 Staff recommendation: Denial.

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

8 CHAIRMAN: Thank you, Mr. Pedley.

9 Is there anyone here wishing to speak on
10 behalf of the applicant?

11 (NO RESPONSE)

12 CHAIRMAN: Is there anyone here wishing to
13 address this issue one way or the other?

14 (NO RESPONSE)

15 CHAIRMAN: Commission members?

16 Mr. Reeves.

17 MR. REEVES: Question for Mr. Pedley, I
18 suppose.

19 The applicant not being present, I assume
20 they're aware of our recommendation for denial?

21 MR. PEDLEY: We sent the Staff Report to both
22 Levi Reames and The Shoppes at 3800 Frederica, LLC,
23 and to the engineering firm who prepared the site
24 plan.

25 MR. REEVES: Thank you very much.

1 CHAIRMAN: Any board members have a question
2 or comment?

3 (NO RESPONSE)

4 CHAIRMAN: I'll entertain a motion.
5 Mr. Glenn.

6 MR. GLENN: I would make a motion to deny this
7 application on this request based upon the findings
8 presented here tonight; although, they will not
9 adversely affect the public health, safety or welfare
10 because the setback along Frederica is being upheld;
11 but it will alter the essential character of the
12 general vicinity because allowing the reduced setback
13 may create a precedence for future request in the area
14 as other vacant lots are developed. Although it may
15 not cause a hazard or nuisance to the public because
16 the portion of the reduced setback is only long enough
17 for the kiosk, and so additional structures will not
18 be able to be located within the reduced setback; but
19 it would allow an unreasonable circumvention of the
20 requirements of the zoning regulations because this is
21 a newly proposed subdivision, and there are no special
22 circumstances that would prohibit the applicant from
23 meeting all the required setbacks.

24 CHAIRMAN: Thank you, Mr. Glenn.

25 Is there a second on the motion?

1 MR. YEISER: Second.
2 CHAIRMAN: Second by Mr. Yeiser. Any question
3 on the motion?
4 (NO RESPONSE)
5 CHAIRMAN: All in favor of the motion raise
6 your right hand.
7 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
8 CHAIRMAN: Motion carries unanimously.
9 Next item, Mr. Howard.

10 ITEM 3

11 2400 Winning Colors Way, zoned R-1C Single-Family
12 Residential
13 Consider a request for a Variance in order to increase
14 the allowed height of a fence along a side street yard
15 from 4 feet tall to 6 feet tall.
16 References: Zoning Ordinance, Article 3-7(g)(3)
17 Applicant: Mary Catherine Head

18 MR. PEDLEY: The subject property is zoned
19 R-1C Single-Family Residential and is located at the
20 southwest intersection of Trifecta Place and Winning
21 Colors Way in the Keeneland Trace Subdivision. The
22 subject property backs up to a single-family
23 residential home and has driveway on the far side of
24 the property. In order to create privacy on the
25 corner lot, the property owner enclosed her backyard
with an existing 6-foot tall fence; however, the
because zoning ordinance requires a fence in a side
yard along the street forward of the building setback

1 line to be no more than 4-feet tall, the applicant is
2 seeking a variance to increase the allowed height of
3 the fence, just as others within Keeneland Trace have
4 previously done.

5 Granting this variance will not adversely
6 affect the public safety because the location of the
7 fence will not violate the sight triangle; will not
8 alter the essential character of the general vicinity
9 or allow an unreasonable circumvention of the zoning
10 regulations because similar variance requests in the
11 neighborhood have been previously approved; and may
12 not cause a hazard to the public because the home
13 behind the subject property has a driveway on the far
14 side of the property, which should allow sufficient
15 visibility around the existing fence.

16 Staff recommends approval of this request, and
17 we would like to enter the Staff Report into the
18 record as Exhibit B.

19 CHAIRMAN: Thank you.

20 Is there anyone here wishing to speak on
21 behalf of the applicant?

22 APPLICANT REP: Yes.

23 CHAIRMAN: Does the applicant have anything to
24 add?

25 APPLICANT REP: Nothing to add.

1 CHAIRMAN: Anyone wishing to speak in
2 opposition to this item?

3 (NO RESPONSE)

4 CHAIRMAN: Any board member have any
5 questions?

6 (NO RESPONSE)

7 CHAIRMAN: If not I'll entertain a motion.
8 Mr. Reeves.

9 MR. REEVES: I move to approve this
10 application based on Staff Recommendations and the
11 Staff Findings of Fact 1 through 4.

12 CHAIRMAN: We have a motion by Mr. Reeves. Is
13 there a second?

14 MR. YEISER: Second.

15 CHAIRMAN: Second by Mr. Yeiser. Any question
16 on the motion?

17 (NO RESPONSE)

18 CHAIRMAN: All in favor raise your right hand.

19 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)

20 CHAIRMAN: Motion carries unanimously.

21 ITEM 4

22 2403 Winning Colors Way, zoned R-1C Single-Family
Residential
23 Consider a request for a Variance in order to increase
the allowed height of a fence along a side street yard
24 from 4 feet tall to 6 feet tall.
Reference: Zoning Ordinance, Article 3-7(g)(3)
25 Applicant: Bin Yang & Jiang J. Yang

1 MR. PEDLEY: The subject property is zoned
2 R-1C Single-Family Residential and is located at the
3 northwest intersection of Trifecta Place and Winning
4 Colors Way in the Keeneland Trace Subdivision. The
5 subject property backs up to the planned future
6 extension of Trifecta Place; which is currently vacant
7 land. The property owners have recently enclosed
8 their backyard with a 6-foot tall fence; however,
9 because the zoning ordinance requires a fence in a
10 side yard along a street forward of the building
11 setback line to be no more than 4-feet tall, the
12 applicant is seeking a variance to increase the
13 allowed height of the fence, just as others within
14 Keeneland Trace has previously done.

15 As the site plan shows, the property obtained
16 an 8-foot wide public utility and drainage easement
17 along the rear property line. The applicant was
18 denied the utility encroachment permit to place a
19 fence within this easement.

20 Granting this variance will not adversely
21 affect the public safety because the location of the
22 fence will not violate the sight triangle. It will
23 not alter the essential character of the general
24 vicinity because similar variance requests in the
25 neighborhood have been previously approved; and will

1 not cause a hazard to the public or allow an
2 unreasonable circumvention of the zoning regulations
3 because the property behind the subject property is
4 undeveloped; but should homes be built behind the
5 subject property, there will be an 8-foot wide
6 separation between the fence line and the shared
7 property line due to the public utility and drainage
8 easement that a fence shall not be constructed within.

9 Staff recommends approval of this request.

10 We would like to enter the Staff Report into
11 the record as Exhibit C.

12 CHAIRMAN: Thank you, Mr. Pedley.

13 Is there anyone wishing to speak on behalf of
14 this application?

15 APPLICANT REP: Yes.

16 CHAIRMAN: Add anything?

17 APPLICANT REP: No.

18 CHAIRMAN: Is there anyone wishing to speak in
19 opposition to this item?

20 (NO RESPONSE)

21 CHAIRMAN: Any board members have a question
22 or comment?

23 (NO RESPONSE)

24 CHAIRMAN: I'll entertain a motion.

25 MR. JEAN: Motion to approve based on the

1 Staff Report and Findings of Fact 1 through 4.

2 MR. GLENN: Second.

3 CHAIRMAN: A motion by Mr. Jean and a second
4 by Mr. Glenn. Any question on 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 Next item, Mr. Howard.

11 ITEM 5

12 1609 West 5th Street, zoned R-4DT Inner-City
13 Residential

14 Consider a request for a Variance in order to increase
15 the allowed height of a fence in the front yard from 3
16 feet tall to 4 feet tall.

17 Reference: Zoning Ordinance, Article 3-7(g)(3)

18 Applicant: Mark and Ruth Gordon

19 MR. PEDLEY: The subject property is zoned
20 R-4DT Inner-City Residential and is located on West
21 5th Street between other residential properties. The
22 property owners would like to install a 4-foot tall
23 aluminum picket fence in their front yard; however,
24 because the zoning ordinance requires a fence in the
25 front yard that is forward of the building setback
line to be no more than 3-feet tall, the applicant is
seeking a variance to increase the allowed height of
the fence.

1 The neighboring property to the west currently
2 has a 4-foot tall chain link fence in the font yard,
3 which is believed to predate this zoning regulation.
4 Within this block, all vehicular access to the
5 properties is done so through the alley located to the
6 rear of the homes.

7 Granting this variance will not alter the
8 essential character of the general vicinity or allow
9 an unreasonable circumvention of the zoning
10 regulations because there are fences of the same
11 height in front yard of the continuous property; and
12 will not adversely affect the public health safety or
13 cause a nuisance to the public because access to all
14 properties within this block of West 5th Street is
15 limited to the alleys to the rear of the home, and the
16 4-foot tall fence will not created visibility issues
17 for vehicles accessing West 5th Street.

18 Staff recommends approval of this request.

19 We would like to enter the Staff Report into
20 the record as Exhibit D.

21 CHAIRMAN: Thank you, Mr. Pedley.

22 Anyone wishing to address this item or add
23 anything?

24 (NO RESPONSE)

25 CHAIRMAN: Anyone wishing to speak in

1 opposition to this item?
2 (NO RESPONSE)
3 CHAIRMAN: Any board member have a question?
4 (NO RESPONSE)
5 CHAIRMAN: If not I'll entertain a motion.
6 MR. GLENN: I'll make a motion to approve this
7 application based on the findings presented here by
8 the Staff, Numbers 1 through 4.
9 CHAIRMAN: We have a motion by Mr. Glenn.
10 MR. JEAN: Second.
11 CHAIRMAN: Second by Mr. Jean. Any question
12 on the motion?
13 (NO RESPONSE)
14 CHAIRMAN: All in favor of the motion raise
15 you right hand.
16 (ALL BOARD MEMBERS PRESENT RESPONDED AYE.)
17 CHAIRMAN: Motion carries unanimously.
18 Are there any other items, Mr. Howard?
19 MR. HOWARD: No, ma'am.
20 CHAIRMAN: One more item.
21 MR. GLENN: Motion to adjourn.
22 CHAIRMAN: Motion to adjourn by Mr. Glenn. Do
23 I have a second?
24 MR. REEVES: Second.
25 CHAIRMAN: Second by Mr. Reeves. All in favor

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

raise your right hand.

(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 stenotype and
12 electronically recorded and was thereafter, by me,
13 accurately and correctly transcribed into the
14 foregoing 16 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 August, 2018.

18
19 _____
20 LYNNETTE KOLLER FUCHS
21 NOTARY ID 524564
22 OHIO VALLEY REPORTING SERVICES
23 2200 E. PARRISH AVE., SUITE 106-E
24 OWENSBORO, KENTUCKY 42303

25 COMMISSION EXPIRES: DECEMBER 16, 2018
COUNTY OF RESIDENCE: DAVIESS COUNTY, KY