

COUNTY BOARD OF ADJUSTMENT
Meeting No. 123
Tuesday, August 21, 1990, 1:30 p.m.
County Commission Room
Room 119
County Administration Building

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Alberty, Chairman Eller Tyndall	Looney Walker	Gardner Moore Richards	Dent, Building Inspection Fields, Building Inspection

The notice and agenda of said meeting were posted in the Office of the County Clerk, as well as in the Reception Area of the INCOG offices, on Monday, August 20, 1990 at 9:51 a.m.

After declaring a quorum present, Chairman Alberty called the meeting to order at 1:00 p.m.

MINUTES:

On **MOTION** of ELLER, the Board voted 3-0-0 (Alberty, Eller, Tyndall, aye"; no "nays"; no "abstentions"; Looney, Walker "absent") to **APPROVE** the **Minutes** of July 17, 1990 (No. 122).

UNFINISHED BUSINESS

Case No. 980

Action Requested:

Variance of the minimum lot width from 200' to 130' and 150' - Section 330. **BULK AND AREA REQUIREMENTS IN THE AGRICULTURE DISTRICTS** - Use Unit 6.

Variance of the minimum lot area from 2 acres to 0.58 acre and 0.90 acre, to permit a lot split - Section 330. **BULK AND AREA REQUIREMENTS IN THE AGRICULTURE DISTRICTS** - Use Unit 6, located 2615 South 52nd West Avenue.

Comments and Questions:

Mr. Alberty noted that the reduction of the lot width from 200' to 130' and 150' is a significant amount, and asked why the property was not rezoned, as there is RS zoning in the area.

Mr. Gardner informed that the property in question abuts RS zoning on two sides and AG zoned districts on the remaining sides. He stated that it takes less time to get to the Board for a decision.

Case No. 980 (continued)

Presentation:

The applicant, **Harold Whitels**, 5220 West 27th Street, Tulsa, Oklahoma, stated that he does not understand the rezoning process, but is only attempting to split his property into three lots. He pointed out that there are lots in the area that are the same size as his smallest lot.

In response to Mr. Alberty, the applicant replied that he owns other property in the area. After pointing out that the smaller lots in the area are located in RS Districts, Mr. Alberty asked the applicant if he is proposing to split other property, and he stated that he does not think he will divide the remaining land. He recommended that any further division of property be handled through the zoning process.

Mr. Gardner stated that, if it is the desire of the Board that those seeking similar relief file a zoning application, Staff could direct future applicants seeking several variances for self created hardships to apply for zoning.

It was the consensus of the Board that a zoning change in similar situations would be more appropriate than seeking multiple variances.

Protestants: None.

Board Action:

On **MOTION** of **TYNDALL**, the Board voted 3-0-0 (Alberty, Eller, Tyndall, "aye"; no "nays"; no "abstentions"; Looney, Walker, "absent") to **APPROVE** a **Variance** of the minimum lot width from 200' to 130' and 150' - Section 330. **BULK AND AREA REQUIREMENTS IN THE AGRICULTURE DISTRICTS** - Use Unit 6; and to **APPROVE** a **Variance** of the minimum lot area from 2 acres to 0.58 acre and 0.90 acre, to permit a lot split - Section 330. **BULK AND AREA REQUIREMENTS IN THE AGRICULTURE DISTRICTS** - Use Unit 6; finding that there are similar sized lots in the area; on the following described property:

Lot 9, Elliott's Subdivision, City of Tulsa, Tulsa County, Oklahoma.

NEW APPLICATIONS

Case No. 982

Action Requested:

Special Exception to permit Use Unit 15 and Use Unit 17 in a CS District - **Section 710. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** - Use Units 15 and 17.

Use Variance to permit the storage of dismantled and inoperative automobiles in a CS District - **Section 1670. VARIANCES** - Use Unit 27, located west of 209th West Avenue, north side of Keystone Expressway.

08.21.90:123(2)

Case No. 982 (continued)

Comments and Questions:

Mr. Richards informed that the Sand Springs Board of Adjustment has recommended that Use Unit 15 uses be approved and all Use Unit 17 uses be denied (Exhibit B-3) at this location.

Mr. Gardner pointed out that a construction type business with building materials would be classified under Use Unit 15; however automotive and related business would be under Use Unit 17.

Presentation:

The applicant, Esther Harger, 1105 Valley Drive, Sand Springs, Oklahoma, stated that the neighbors seem to be concerned that salvage will be stored on the subject property. Ms. Harger pointed out that she has previously had a license to operate a salvage business, but did not make an application for renewal when it expired (Exhibit B-2). She explained that her construction business has a very limited amount of work in the winter, and requested permission to paint and sell cars during the slack season. Ms. Harger stated that all work will be completed inside the 40' by 150' building, and the cars will be ready for sale when they are moved outside. She remarked that a bus is parked on the property at this time, but will be removed.

Comments and Questions:

Mr. Alberty asked what type of business is being conducted on the property, and the applicant stated that there is no business activity at this time, however, the garage is being used for some automobile repairs. She informed that the pole barn sales and used car sales have been moved to her business at 7742 Charles Page Boulevard.

Mr. Alberty asked Ms. Harger what she is requesting the Board to approve today, and she requested permission to work in the garage, do some painting and sell used cars. In response to Mr. Alberty, the applicant stated that she was not sure if the pole barn business would be allowed to operate on the property by right.

Mr. Alberty explained to the applicant that, although the property in question is located inside the Sand Springs fence line, Tulsa County has zoning jurisdiction in the area. He further noted that all such applications are sent to Sand Springs for their recommendation before being heard by the County Board. Ms. Harger stated that she was unable to present the application, so her husband, who was not at all familiar with the case, attended the Sand Springs meeting on her behalf. Mr. Alberty explained that the Sand Springs Board has recommended that the pole barn business be approved, but that the request for automotive activities be denied on the property.

Mr. Alberty asked if there will be outside storage of automobiles, other than those for sale, and the applicant replied that the only cars parked on the property will be those that have been completed for sale.

Case No. 982 (continued)

In response to Mr. Eller, the applicant stated that she does not have a license to sell cars at this location.

Mr. Alberty inquired as to the number of operative vehicles currently stored on the property, and Ms. Harger stated that there are four or five stored on the back portion of the property, and two in a small building. The applicant informed that she also keeps a truck on the premises to pick up things.

Mr. Tyndall asked the applicant to state the types of things that she would pick up, and she replied that she hauls rocks and trimmings. He asked Ms. Harger if the truck is equipped with wrecker equipment, and she replied that it is not.

Mr. Alberty asked where the construction office for the pole barn business is located, and the applicant replied that she operates that business from the used car lot at 7742 Charles Page Boulevard.

In response to Mr. Alberty, the applicant replied that she does not store materials for the pole barn business on the subject property. She explained that the materials are delivered directly to the construction site, with only a few left over materials being brought back to the property in question.

Mr. Fields stated that he has viewed the site and found that there were six cars stored on the property. In response to Mr. Alberty, Mr. Fields stated that he would describe the operation as a garage business with outside storage of inoperative automobiles. He noted that there is no evidence of automobile sales or a pole barn business being conducted on the premises.

Protestants:

Hugh Applegate submitted photographs (Exhibit B-1) and stated that he owns abutting property to the north and to the east of the subject tract. He stated that the applicant has salvage operations at other locations, and she has the subject property listed in the telephone directory as a salvage business. He pointed out that, if the application is approved, the business could change ownerships and a large salvage operation could be conducted at this location. Mr. Applegate stated that Commissioner John Selph has instructed Ms. Harger to remove the inoperable vehicles; however, they are still on the property at this time.

Jerry Abbott submitted additional photographs (Exhibit B-1), and stated that he lives in the area and is concerned that the Harger's other salvage businesses might be moved to this location. He stated that he is opposed to a salvage operation on the subject tract.

Mr. Alberty asked Mr. Abbott if he is opposed to a pole barn business being operated on the property, and he replied that he is not opposed to this type of business. Mr. Abbott stated that he is opposed to any type of automotive activity on the tract, as there could be a problem with spare parts being stored outside.

Case No. 982 (continued)

J. D Bishop stated that, although he does not reside in the neighborhood, he does own property in the area. He pointed out that there were cars for sale on the lot when the Hargers moved to the subject property. Mr. Bishop stated that he is opposed to the storage of cars at this location, and asked that the application be denied.

Aileen Bishop pointed out that the Hargers have previously stated that they purchase wrecked automobiles to rebuild. She pointed out that the area around the property is heavily wooded and the torches used in the garage could cause a fire which would be difficult to contain.

Ray McDonald stated that it is approximately 4 to 5 miles to the nearest fire station, and the torches are sometimes used outside the building. He further added that, in his opinion, the Hargers are proposing to operate a salvage business on the property in question. Mr. McDonald pointed out that Mr. Harger's attitude at previous meetings seemed to be one of total disregard for the neighbors.

In response to Mr. Alberty's inquiry, approximately 16 area residents indicated that they were in opposition to Ms. Harger's requests.

Applicant's Rebuttal:

Ms. Harger stated that she was not aware the Zoning Code did not allow the proposed use when she acquired the property. She pointed out that this issue did not come to her attention until she made application for licenses, and the ad had already been placed in the telephone directory at that time. Ms. Harger stated that the protestants obviously think that she operates the businesses on her property at other locations; however, these properties are leased to other individuals who operate businesses. She pointed out that the only business she operates is at 7742 Charles Page Boulevard, and added that she is not aware of what her husband said at the previous meeting.

Additional Comments:

Mr. Alberty remarked that he is in agreement with the Sand Springs action and is not inclined to be supportive of a salvage business at this location; however, some of the uses in Use Unit 15 may be compatible with the surrounding area. He suggested that the case be continued to the next scheduled meeting to allow the Board to view the site. Mr. Alberty stated that, in the event of a continuance, it will not be necessary for the protestants to be present at that meeting, as the hearing will not be open to further discussion from the audience.

Mr. Eller advised the protestants that this case will be heard and a determination made on September 18, 1990.

Case No. 982 (continued)

Board Action:

On **MOTION** of **TYNDALL**, the Board voted 3-0-0 (Alberty, Eller, Tyndall, "aye"; no "nays"; no "abstentions"; Looney, Walker, "absent") to **CONTINUE** Case No. 982 to September 18, 1990, to allow the Board sufficient time to view the site.

Case No. 983

Action Requested:

Special Exception to permit a mobile home as a dwelling on a permanent basis - **Section 410. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 9, located 613 Terrace Drive, Sand Springs, Oklahoma.

Comments and Questions:

Mr. Richards informed that the Sand Springs Board of Adjustment heard this case on August 14, 1990 (Exhibit C-1) and recommended denial, as the applicant was not in attendance to present the application.

Presentation:

The applicant, **Rusty Cowan**, 613 Terrace Drive, Sand Springs, Oklahoma, informed that there is an existing house on the property that is not habitable, and requested permission to install a mobile home for a permanent dwelling. He stated that the house was built on concrete blocks without a footing, and the wood has deteriorated around the base of the structure. A petition of support (Exhibit C-2) was submitted.

Comments and Questions:

Mr. Alberty asked if the existing structure will be removed, and he answered in the affirmative.

In response to Mr. Alberty, Mr. Cowan stated that there are other mobile homes in the area.

Due to the recommendation for denial by the Sand Springs Board of Adjustment, and the fact that the applicant did not receive notification of the meeting, Mr. Alberty asked Mr. Cowen if he would have a problem with the case being referred back to Sand Springs.

Mr. Cowan stated that he does not object to another Sand Springs hearing, as he would have been in attendance at the prior meeting if he had been notified.

It was the consensus of the Board that, due to the permanent nature of the request, the case should be referred back to Sand Springs for their consideration before making a final determination.

Mr. Cowen asked if it is imperative that he attend the next County Board of Adjustment meeting, as he has to take off work to attend, and Mr. Alberty pointed out that a representative should be present to answer any Board questions.

Case No. 983 (continued)

Mr. Alberty requested that Staff contact the Sand Springs Board of Adjustment to insure that Mr. Cowen will receive notice of that Board of Adjustment meeting.

Board Action:

On **MOTION** of ELLER, the Board voted 3-0-0 (Alberty, Eller, Tyndall, "aye"; no "nays"; no "abstentions"; Looney, Walker, "absent") to **CONTINUE** Case No. 983 to September 18, 1990, to allow sufficient time for a Sand Springs Board of Adjustment hearing.

Case No. 984

Action Requested:

Special Exception to permit a mobile home to be used as a dwelling on a permanent basis - Section 310. **PRINCIPAL USES PERMITTED IN THE AGRICULTURE DISTRICTS** - Use Unit 9, 4531 South 252nd West Avenue, Sand Springs, Oklahoma.

Presentation:

The applicant, **Andy Kirk**, 2403 West 91st Street South, Tulsa, Oklahoma, submitted a copy of a Building Permit (Exhibit D-1) application, and explained that there are numerous mobile homes in the area, with undeveloped land to the south, and one home and other mobiles to the north of his property. Mr. Kirk stated that he was unaware that mobile homes were not allowed by right in the area at the time of purchase, and was not aware of the Zoning Code regulations until application was made for electrical service.

Comments and Questions:

Mr. Alberty asked Mr. Kirk if a percolation test has been completed, and he replied that he has not had the land tested at this time. Mr. Alberty explained that Health Department approval will be made a condition of approval and any action taken at this meeting will be void if the Health Department does not approve the sewage disposal system.

Board Action:

On **MOTION** of TYNDALL, the Board voted 3-0-0 (Alberty, Eller, Tyndall, "aye"; no "nays"; no "abstentions"; Looney, Walker, "absent") to **APPROVE** a **Special Exception** to permit a mobile home to be used as a dwelling on a permanent basis - Section 310. **PRINCIPAL USES PERMITTED IN THE AGRICULTURE DISTRICTS** - Use Unit 9; subject to Building Permit and Health Department approval; finding that there are numerous mobile homes in the neighborhood, and the granting of the request will not be detrimental to the area; on the following described property:

South 330', north 2640', east 380', west 760' of E/2, NW/4, Section 29, T-19-N, R-10-E, Tulsa County, Oklahoma.

Case No. 985

Action Requested:

Special Exception to expand a nonconforming use and to move a portion of such nonconforming use to a portion of the property other than that occupied by such use on the effective date of the Tulsa County Zoning Ordinance - **Section 1410.C. NONCONFORMING USES OF UNIMPROVED LAND** - Use Unit 17, located near 187th Street South, East of Highway 75.

Presentation:

The applicant, **Gerald Wells**, Route 1, Box 73, Mounds, Oklahoma, was represented by **Howard Medford**, who informed that his client lives on an acreage on Highway 75 and began rebuilding and selling trucks on the back portion of his property in 1979. He informed that Mr. Wells has operated a quarter horse ranch at this location, as well as the auto repair business. Mr. Medford stated that documents have been found which substantiate the fact that the business was in operation in 1982. He further informed that the applicant has fenced approximately one-half acre of land on Highway 75 and is currently displaying approximately four or five pickup trucks for sale. Mr. Medford requested permission for his client to expand a nonconforming use to include the sales area near the highway. He pointed out that two similar sales businesses are in operation within one and one-half miles of the Wells property. Photographs (Exhibit E-1) were submitted.

Comments and Questions:

Mr. Alberty asked if automobiles and trucks will also be sold at this location, and Mr. Wells stated that only pickup trucks will be sold from the lot. He stated that there will be no storage of materials or junk on the property.

Mr. Tyndall asked if there will be a sales office on Highway 75, and the applicant replied that the property in question will be used for display purposes only.

In response to Mr. Alberty as to the maximum number of pickups that will be displayed, the applicant stated that he will have a maximum of 12.

Mr. Eller remarked that he has viewed the proposed site, and that Mr. Well's property is properly maintained and neat in appearance.

Mr. Fields informed that the nearby used car businesses acquired a zoning change for the property involved in their sales operation.

Mr. Gardner advised that, if the Board is inclined to approve the application, the legal description should reflect the exact portion of land to be used for the sales operation and the number of automobiles to be displayed should be specific.

Case No. 985 (continued)

Mr. Tyndall voiced a concern with the use being referred to as a nonconforming use and asked the applicant to specifically describe the nonconforming use. Mr. Wells stated that the nonconforming use is truck repair and sales. He stated that the truck repairs were completed in the barn, which is located a short distance from Highway 75. Mr. Tyndall mentioned that the use has not been continuous at this location on the highway.

Mr. Dent stated that the repair and sales operation has been conducted in the barn and out of sight prior to this time.

Mr. Fields advised that the applicant was unable to verify the fact that the truck repair and sales business was operating in 1979.

Mr. Gardner stated that it is the applicant's burden to prove nonconformity and if it is concluded by the Board that the use is not nonconforming, a use variance could be approved to allow the operation of the car sales business at this location.

Mr. Tyndall stated that he is not inclined to approve the expansion of a nonconforming use, as there is no evidence to prove that this is a legal nonconforming use; however, he would not oppose to automobile sales at this location.

Mr. Gardner asked the applicant how much land is being used for the sales business, and he replied that he is using one-half acre in the southwest corner of the 80-acre tract.

Mr. Fields pointed out that the Code prohibits the moving of a nonconforming use from one portion of land to another.

Board Action:

On **MOTION** of ELLER, the Board voted 3-0-0 (Alberty, Eller, Tyndall, "aye"; no "nays"; no "abstentions"; Looney, Walker, "absent") to **DENY** a **Special Exception** to expand a nonconforming use and to move a portion of such nonconforming use to a portion of the property other than that occupied by such use on the effective date of the Tulsa County Zoning Ordinance - **Section 1410.C. NONCONFORMING USES OF UNIMPROVED LAND** - Use Unit 17; finding that the applicant failed to submit evidence to substantiate nonconformity; and to **APPROVE** a **Use Variance** to permit a Use Unit 17, automobile sales, in an AG zoned district - **Section 310. PRINCIPAL USES PERMITTED IN THE AGRICULTURE DISTRICTS** - Use Unit 17; subject to automobile and pickup sales only; and subject to a maximum of 12 vehicles (cars or pickups) being sold on a vacant half acre in the southwest corner of the property in question; finding that there are similar sales operations being conducted in this area along Highway 75, and that the granting of the request will not impair the spirit, purposes or intent of the Code; on the following described property:

The south 200' of the west 100' of the NW/4, SW/4, Section 2, T-16-N, R-12-E, Tulsa County, Oklahoma.

Case No. 985 (continued)

Additional Comments:

In response to Mr. Alberty, Mr. Gardner advised that the Board could make a policy statement that would discourage an applicant from attempting to split lots in an AG or AG-R District to create a lot substantially smaller than the Code requires. He informed that a hardship in this type of application is self-imposed, and Staff could advise the applicant to seek a zoning change in these instances.

There being not further business, the meeting was adjourned at 2:57 p.m.

Date Approved

Sept. 18, 1990

Wayne Alberty
Chairman