

COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 206
Tuesday, July 15, 1997, 1:30 p.m.

County Commission Room
Room 119
County Administration Building

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Alberty, Chair Eller Looney Walker	Tyndall	Gardner Beach Huntsinger	Meeks, Building Inspection

The notice and agenda of said meeting were posted in the Office of the County Clerk on Monday, July 14, 1997, at 9:09 a.m., as well as in the Reception Area of the INCOG offices.

After declaring a quorum present, Chair Alberty called the meeting to order at 1:30 p.m.

Chair Alberty announced that Robert F. Gardner is present for his last County Board of Adjustment Meeting and now he is going to enjoy retirement. He stated he could not think of anyone that deserves retirement any more than Bob Gardner. Mr. Alberty stated that he had the privilege of working under Mr. Gardner for ten (10) years and with the Board for over eleven (11) years. Mr. Alberty wished Mr. Gardner his best and hoped that he enjoyed his retirement.

Questions and Comments:

In response to Mr. Alberty, Mr. Gardner informed the Board that Jay Stump will be taking over his duties and someone will be hired to fill Jay Stump's vacated position.

MINUTES:

On **MOTION** of **WALKER**, the Board voted 4-0-0 (Alberty, Looney, Walker, "aye"; no "nays", no "abstentions"; Tyndall "absent") to **APPROVE** the minutes of June 17, 1997, (No. 205).

NEW APPLICATIONS

Case No. 1514

Action Requested:

Special Exception to permit a 180' monopole tower for a PCS antenna in an AG district. **SECTION 220. HEIGHT EXCEPTIONS** - Use Unit 4, located South of SW/c 161st Street and South Yale.

Case No. 1514 (continued)

Presentation:

The applicant, **Lee Ann Fager/SW Bell**, 11525 East Pine, submitted a site plan (Exhibit A-1) and stated that the proposed monopole is the standard monopole, which is a singular galvanized steel pole. The monopole will accommodate two (2) carriers as the new directive from the City of Tulsa and Tulsa County. Ms. Fager explained that currently the property is owned by a gentleman with two (2) parcels on the corner. Ms. Fager submitted photographs of the subject property (Exhibit A-2). The owner is a contractor and stores his trucks, cables, etc. on the subject property. The proposed tower will meet the setbacks that are required. There is a mobile home located on the property to the west and there is a permanent residence on the south and east. The proposed site is slightly south and west of 161st and Yale. She indicated that there is a tower currently owned by AT&T one mile south, however it will be removed in the near future and AT&T will relocate somewhere else. Ms. Fager explained that since the AT&T tower is coming down, SW Bell could not collocate on the tower and she is unaware of any other towers in the area.

Protestants:

Don Molimax, 16516 South Yale, stated that the tower will be located on the corner of 161st and Yale. The subject property is zoned AG, but it is also residential and it is only 1.9 acres. He indicated that he owns the 15 acres behind the proposed site and he intends to build a couple of houses for his kids. He commented that the proposed site is not an appropriate location for the tower. He expressed concerns that it will de-value his property, which he has already experienced with high line wires across 10 acres he sold at \$2,000 an acre. Mr. Molimax stated that towers are unattractive and he does not want the tower on the subject site.

Comments and Questions:

Mr. Beach reminded the Board and the protestant that the tower is a use by right in an AG district. The request is for the additional height in excess of 60'.

Applicant's Rebuttal:

Ms. Fager stated that she appreciates the concerns of the protestant and this is a large agriculture community. The owner does own two (2) parcels totaling seven (7) acres. She explained that the owner owns the property to the north and south of the subject site. The owner sold the property to the south approximately 10 years ago, which has a single-family residence. She indicated that the residence to the south does not have a problem with this application. It is a use by right, SW Bell is requesting a variance for the height of the tower.

Comments and Questions:

Mr. Walker asked the applicant why the tower needs to be 180' in height? Ms. Fager stated that SW Bell decided that they could negate the need for a second tower in the area if they went to 180' and it will also be able to hold another carrier.

Mr. Walker stated that the subject area is low density residential use and you can tell by the pictures that it is in an area that is appropriate for the tower.

Mr. Alberty stated that the Board takes a closer view in an area that is residential and you can see by the photographs that there are a number of tract homes that front both 161st & South Yale Avenue. The applicant stated that the subject site, in all probability is a non-conforming use that has been in operation for 25 years. He expressed concerns with regard to the prevailing residential areas and the proximity. The protestant's comments are well taken that this communications tower, to some people, would impede the development of the subject property. He stated the County has established standards and the applicant has complied with all of the standards.

Case No. 1514 (continued)

Mr. Gardner reminded the Board that the tower is permitted by FCC to provide the services. If the tower was moved across the street it would still be within sight of the residential area. There are no other towers to collocate on in the subject area and in order to prevent additional towers within the area the applicant has agreed to build a tower that is collocatable.

Board Action:

On **MOTION** of **WALKER**, the Board voted 4-0-0 (Alberty, Eller, Looney, Walker, "aye"; no "nays", no "abstentions"; Tyndall "absent") to **APPROVE** a **Special Exception** to permit a 180' monopole tower for a PCS antenna in an AG district. **SECTION 220. HEIGHT EXCEPTIONS** - Use Unit 4; per plan submitted; finding that the approval of this application will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will be in harmony with the spirit and intent of the Code, on the following described property:

Prt. of NE/4, NE/4, beg. 346.72' S, NE/c, NE/4, thence S 374.8', thence W 443.3', thence N 374.8', thence E 444.3', to the POB, less the S 150' thereof, Sec. 28, T-17-N, R-13-E, Tulsa County, Oklahoma.

Case No. 1515

Action Requested:

Variance to permit a detached accessory building to be located in the front & side yards in an RS district. **SECTION 420.2.A.2 ACCESSORY USES IN RESIDENTIAL DISTRICTS; Accessory Use Conditions** - Use Unit 6, located 11505 East 139th Street North.

Presentation:

The applicant, **Jane or Oliver M. Lindle, Jr.**, submitted a letter to withdraw Case No. 1515 (Exhibit B-1).

Case No. 1516

Action Requested:

Special Exception to allow a single-wide mobile in a RE district. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 9 and a Variance to allow 2 dwelling units per lot of record. **SECTION 208. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD**; located 112 West 96th Street North.

Presentation:

The applicant, **Alice E. Dirck**, Route 2, Box 283-C, Sperry, submitted a site plan (Exhibit C-2) and photograph (Exhibit C-1). Ms. Dirck stated that she has moved a trailer house on the subject property and she tore down an older trailer house because it was not livable. The mobile home that was torn down had been located on the subject property since 1974. She explained that her grandmother lives in the permanent home next door to the trailer. Ms. Dirck stated that she needs to live next to her grandmother in order to care for her. She informed the Board that there are six (6) mobile homes on the street the subject property is located on.

Case No. 1516 (continued)

Comments and Questions:

Mr. Albery asked the applicant if her trailer home has a separate septic tank from the permanent home? She indicated that there are separate septic tanks systems for the permanent home and the trailer home. She stated that the perc test has been completed and passed.

Mr. Eller asked the applicant if she had City water for the trailer home? She answered affirmatively.

Mr. Albery asked the applicant if she wanted to split the property or keep it in under one ownership? She stated she wanted to keep the property under one name. She explained that the property was left to her and her two (2) brothers and they do not wish to split the land.

Board Action:

On **MOTION** of **LOONEY**, the Board voted 4-0-0 (Albery, Eller, Looney, Walker, "aye"; no "nays", no "abstentions"; Tyndall "absent") to **APPROVE** a **Special Exception** to allow a single-wide mobile in a RE district. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS** - Use Unit 9 and a **Variance** to allow 2 dwelling units per lot of record. **SECTION 208. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD**; per plan submitted; finding that the property could be split, however applicant would like to keep the property under one ownership; subject to skirting, tie downs and approval from the Health Department; subject to a building permit; finding that the approval of this application will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will be in harmony with the spirit and intent of the Code, on the following described property:

N 2.17 acs, Beg., 198'W, NE/c, NW, NE, TH W 237', S 210', W 105', S 450', E 342', N 660', POB, Sec. 23, T-21-N, R-12-E, Tulsa County, Oklahoma.

Case No. 1517

Action Requested:

Principal Use Variance to allow vending machine sales, services and accessory product storage in an AG district. **SECTION 208. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD**, located 13201 South Lewis Avenue.

Presentation:

The applicant, **Sharon Phillips**, representing the owner, 1424 Terrace Drive, submitted a site plan (Exhibit D-1) and stated that there will not be any sales on the premises. She explained that her client has a vending machine company where he has all of the products loaded into vending machines. Her client loads his trucks and his employees deliver the products to the vending machines on site.

Comments and Questions:

Mr. Albery asked the applicant if her client basically warehouses the materials that go into the trucks for delivery? She answered affirmatively.

Case No. 1517 (continued)

Presentation: (continued)

Ms. Phillips submitted photographs (Exhibit D-3) and stated that the actual building in question is 30' x 50', approximately 1500 SF. The entrance road onto the property is an asphalt road that leads back to the building. She explained that there is a residence on the subject property, as well as a stable. Her client plans to live in the residence and would like to locate his business on the premises so that he can care for his teenage daughter. She stated that there are many trees that conceal the buildings from the road. She indicated that there are four (4) trailer houses located on the subject property with their own private entrances. The present owner of the subject property stated he obtained permits from the County for the location of each of the trailer houses. Each trailer home has its own septic system and is on the Creek County Rural Water System. She stated that her client was not aware that the trailer houses may be considered improper use of the property. Her client will either correct the uses or move the trailers out. Ms. Phillips stated that the subject building is 694' from South Lewis Avenue and is located on 35 acres of land. There is no entrance to the subject property or warehouse from 131st Street. She stated that the proposed building presently does not have any paved parking and if the variance is granted her client plans to pave the property surrounding the building with asphalt. There will be 15 parking spaces available around the building. She acknowledged that her client will have to prepare a site plan reflecting the correct legal description for the subject property. She stated that her client will have a hardship if he is not allowed to utilize the subject property as he has proposed. Ms. Phillips expressed the opinion that the proposed use for the subject property would not be out of line. There is only one owner for the 35 acres and the nearest residence is at 131st and South Lewis.

Comments and Questions:

Mr. Walker asked the applicant how much traffic would be coming and going to the subject property? She stated that there are deliveries two (2) to three (3) times a week.

In response to Mr. Walker, Ms. Phillips stated that the deliveries are the products that are to go inside the vending machines. She explained that a new vending machine or a vending machine being repaired may be stored in the proposed building. She stated that her client has four (4) vans that will be kept on site over night and loaded each morning to make deliveries. She commented that the only traffic to and from the subject property would be the four (4) delivery vans, which leave early in the morning and return around 5:00 p.m.

Mr. Walker asked the applicant how many employees would be employed by her client? She stated that there are six (6) employees and four (4) to five (5) employees would be in vans. The owner of the company and his father would be the only employees there most of the day.

Mr. Walker asked the applicant if the proposed warehouse would be located in the existing barn? She answered affirmatively.

In response to Mr. Walker, Ms. Phillips stated that the subject building has a concrete floor, but it does not have the asphalt parking at this time.

Mr. Walker asked the applicant if the warehouse has restroom facilities or water and utilities? Ms. Phillips indicated that the proposed warehouse will be brought up to code if the application is approved.

Mr. Alberty asked the applicant where the business is being currently conducted? She stated that the business is not being operated from the subject property at this time. She explained that currently the only thing on the subject property is the residence, a stable, a steel building and the four (4) trailer homes.

Mr. Looney asked the applicant if her client intends to utilize the area surrounding the building in question? She stated the applicant is proposing to utilize the steel building for the warehouse.

Case No. 1517 (continued)

Protestants:

Ed Schermerhorn, 2820 South Utica, stated that the neighbors of Hampton Hills are concerned with this application. He commented that the traffic is heavy in the subject area because of the Kimberly/Clark Company. He stated that the neighborhood can live with orderly traffic, however there is a hill that makes it very difficult to see oncoming vehicles. He commented that the subject area is a residential area, with homes ranging from \$400,000 to trailer homes. He stated he did not see any hardship that would warrant granting this application. A business with six (6) employees should not be operated from their home. Mr. Schermerhorn requested a continuance to meet with the applicant and the protestants. He commented that the area is developing into a first class development with doctors and other people who want to build nice houses. The terrain lends itself to problems with traffic and visibility. Mr. Schermerhorn concluded that he is opposed to this application.

The following protestants expressed the same concerns as Mr. Schermerhorn:

Jane Gibson, 13411 S. Lewis, **Debra Roberts**, 13116 North Yorktown Avenue, (Submitted a letter of Protest Exhibit D-3), **Nancy England**, 2012 East 131st Street.

Applicant's Rebuttal:

Ms. Phillips stated that there will be no sales at the subject property, only storage. She explained that the 15 parking spaces are not for expansion, but to demonstrate to the Board that they can be in compliance with required parking (1 parking space for each 400 SF of building space, which is 1500 SF). If a variance is not granted, there will be a hardship on the seller, as well as Mr. Beets (buyer). Mr. Beets does own a vending machine business and it is not a type of business that needs to be in a commercial location. The business is operated by Mr. Beets and assisted by his father. The employees deliver the vending products during the day and there are no employees on site except for Mr. Beets and his father. The Kimberly/Clark Company is located 1 ½ miles from the subject property and Mr. Beets' employees will be an insignificant contribution to the traffic. The traffic is already being generated by Kimberly/Clark and Mr. Beets' employees will not impact the traffic any further. She stated that there are subdivisions being developed and they do not want anyone else to have use of their property, which is zoned AG. It was not zoned residentially at the time the subdivisions started developing. Ms. Phillips stated that the variance is strictly for the proposed business and if the land was sold the variance would no longer be effective.

Comments and Questions:

Mr. Looney asked the applicant to state the hardship relevant to the land that would allow the Board to consider the variance? Ms. Phillips stated that the subject property is zoned agricultural and it cannot be used for anything else unless someone comes before this Board to grant a variance. Mr. Beets could utilize the subject property as his residence and operating his business. She explained that her client is a single dad and is raising his teenage daughter. She commented that being away for long periods of time, he can not be effective in raising his daughter. By having his business and residence located on the subject property, he is available to his daughter at all times and he would be able to conduct his business more economically. Ms. Phillips stated that there is no other use for the subject property that would be as effective as this type of residence/business combined. It would be a hardship for her client if he is not able to locate the business and residence on the subject property.

In response to Mr. Looney, Chair Alberty read Section 1670.3 from the Tulsa County Zoning Code Book. He commented that to meet the hardship test for a use variance is almost impossible.

In response to Chair Alberty's comments and reading of Section 1670.3, Ms. Phillips stated that it is her opinion that the proposal will not affect the public good since it is located on 35 acres. She explained that there are no residences located in the subject area, except for the four (4) trailer homes located on the 35 acres. The property is shielded by trees and one of the protestants stated she can see the proposed property, but only if she is at her pond.

Case No. 1517 (continued)

Mr. Looney stated that there has not been a legitimate explanation of a hardship and the Board has no choice but to deny this application.

Board Action:

On **MOTION** of **LOONEY**, the Board voted 4-0-0 (Alberty, Eller, Looney, Walker, “aye”; no “nays”, no “abstentions”; Tyndall “absent”) to **DENY** a **Variance** to allow vending machine sales, services and accessory product storage in an AG district. **SECTION 208. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD**; finding that the applicant failed to present a hardship unique to the property that would warrant the granting of the variance request; on the following described property:

NW/4, NW/4, NW/4 & N/2, SW/4, NW/4, NW/4, & W/2, E/2, NW/4, NW/4, LESS and EXCEPT W 132', S/2, SE/4, NW/4, NW/4, Tulsa County, Oklahoma.

Case No. 1518

Action Requested:

Variance to allow two dwelling units on one lot of record AG-R. **SECTION 208. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD**, located NE/c West 118th Street South & South Tacoma.

Presentation:

The applicant, **James J. Higgins**, 11737 South Tacoma, submitted a site plan (Exhibit E-1) and stated he owns 2 ½ acres at the above address. He explained that his granddaughter would like to build a house on the subject property in order to help out with her grandmother who is ill. He stated that the subject property is on a side street and there is enough room to build the house. Mr. Higgins explained that it is difficult to mow the 2 ½ acres and he needs his granddaughter's help.

Comments and Questions:

Mr. Walker asked Mr. Higgins if he is aware of any other tracts of land that have more than one dwelling unit on one lot of record? He stated that he was told that the property across the creek had a lot split, which is in the same addition.

Mr. Looney asked Mr. Higgins if he could state a hardship for the Board to determine if the variance may be granted? He stated he did not come prepared to state a hardship. He commented that if the variance is granted, his granddaughter will build a home that will blend in well with all of the homes in the area.

Protestants:

Harold Cooper, 12011 South Quanah, Jenks, stated that he has known Mr. Higgins for approximately 20 years and considers him his friend. Mr. Cooper explained that when the residents purchased their land they had to sign a covenant with restrictions. One of the restrictions is against moving trailer vehicles and each lot is supposed to contain only a single-family dwelling. The subdivision was built in 1974 and property owners made a commitment by signing the covenant. He stated that he is opposed to this application.

Case No. 1518 (continued)

The following protestants expressed the same concerns as Mr. Cooper:

Aaron Peters, 1314 West 118th Street South, **Doug Wordhane**, 1414 West 118th Street South, **Ed & Martha Rutter**, 1415 West 118th Street South, (submitted a letter of protest Exhibit E-2), **Lelia Edwards**, 1313 West 118th Street South, **Corine Hoover**, 11910 South Quanah, **Paula Friez**, 12003 South Quanah.

Interested Parties:

Linda Olson, 11728 South Tacoma, stated that she lives directly across the street from the Higgins. She explained that originally the neighborhood thought the Higgins wanted to place a trailer on their land, but actually it will be a home. The Higgins will not be selling their land, but simply building another dwelling on the land for his granddaughter and her husband. She explained that Ms. Higgins has had a long term illness and needs her granddaughter close by to help out. Ms. Olson stated that she would be opposed to a lot split or dividing and selling the lot.

Applicant's Rebuttal:

Mr. Higgins stated that he tried to contact his immediate neighbors regarding the second dwelling proposal. He explained that he had the perc test performed and did everything that the County told him to do in preparation for this application. He commented that he lives on a dead-end street with plenty of room for the second dwelling. Mr. Higgins stated he did not understand why the neighbors oppose his proposal since he does have 2 ½ acres. He explained that his wife has been sick for the past 9 years with cancer and leukemia. He stated that he needs help with keeping the 2 ½ acres mowed and with caring for his wife. He explained that with his wife's illness they are gone weeks at a time for her therapy, which is why he would like to have his granddaughter and her husband living close by keeping an eye on his property.

Comments and Questions:

Mr. Alberty reminded the applicant that there must be a hardship stated in order for the Board to grant a variance. He commented that the restrictive covenants are private agreements, which the Board can only take under consideration. The Board has no power to enforce covenants, however the neighbors can file with the District Court. He informed Mr. Higgins that if he did try to split his lots, he would have a legal problem due to the restrictive covenants.

Mr. Walker stated he could not support this application due to the applicant's failure to state a hardship with regard to the land.

Board Action:

On **MOTION** of **WALKER**, the Board voted 4-0-0 (Alberty, Eller, Looney, Walker, "aye"; no "nays", no "abstentions"; Tyndall "absent") to **DENY** a **Variance** to allow two dwelling units on one lot of record AG-R. **SECTION 208. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD**; finding that the applicant failed to present a hardship unique to the property that would warrant the granting of the variance request; on the following described property:

The W 304.0', E 914.0', S 370.0', N 1110.0', W/2, SW/4, Sec. 35, T-18-N, R-12-E, I.B.M., Tulsa County, Oklahoma.

OTHER BUSINESS

Case No. 1500

Action Requested:

Correction of Minutes of May 20, 1997, Meeting No. 204.

Comments and Questions:

Mr. Beach explained to the Board that the correction to the minutes is for a correction to the legal description.

Board Action:

On **MOTION** of **LOONEY**, the Board voted 4-0-0 (Alberty, Eller, Looney, Walker, "aye"; no "nays", no "abstentions"; Tyndall "absent") to **APPROVE** Correction of Minutes of May 20, 1997, Meeting No. 204.

There being no further business, the meeting was adjourned at 2:45 p.m.

Date approved: AUG. 19, 1997

 Wayne Alberty
Chair