

COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 355
Tuesday, December 15, 2009, 1:30 p.m.
County Commission Room
Room 119
County Administration Building

MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT

Charney, Chair	Dillard	Butler	West, Co. Inspector
Osborne, Secretary		Cuthbertson	
Tyndall			
Walker, Vice Chair			

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, Wednesday, December 9, 2009 at 3:39 p.m., as well as in the Office of INCOG, 2 West Second Street, Suite 800.

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

Mr. Cuthbertson read the rules and procedures for the County Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **Osborne**, the Board voted 4-0-0 (Tyndall, Walker, Osborne, Charney "aye"; no "nays"; no "abstentions"; Dillard "absent") to **APPROVE** the Minutes of November 17, 2009 (No. 354).

NEW APPLICATIONS

Case No. 2353

Action Requested:

Appeal the determination of the Zoning Officer 'that a landscaping business is being operated on an AG zoned property' or in the alternative requesting a Use Variance to permit a (Use Unit 15) Landscaping Service in an AG district, located: 13503 East 130th Street South.

Presentation:

Stephen Schuller, 100 ONEOK Plaza, Tulsa, Oklahoma, 74103, represented James and Nicole Reed, the owners of the subject property. He stated they were cited with a violation of the zoning code, but they are not in violation of the zoning code on their property. He stated the property is zoned AG. He listed some other AG-zoned properties being used similarly such as, 13300 East 130th, and a tree service business on 129th East. He submitted photographs (Exhibit A-2), and stated these uses are typical of this kind of area. He noted there are also extensive businesses in the AG-zoned district with retail and employee traffic. He submitted a map of the area (Exhibit A-1) to identify the location of some of the properties to which he referred. He added there is significant retail traffic going in and out of those properties. He mentioned AAA Landscaping, 13243 South Mingo Road, has numerous buildings, trucks, tractors, other heavy equipment, pipes, irrigation equipment, and landscaping materials are spread out on the property and visible from the street. He referred to an operation on the north side of 141st Street between Mingo and Garnett that does not have a sign. There are trucks, trailers, tractors, other heavy equipment and piles of dirt, rock, pipes and such on the property. Mr. Schuller was making the point that these are characteristic of AG-zoned areas between Broken Arrow and Bixby in Tulsa County. He stated that the zoning code includes horticultural nursery as suitable in the AG district, in Section 1203. He added that this is the use that is being lawfully conducted on the subject property. He stated there are no retail sales conducted on this property. There is no business sign, retail business traffic, no customers, and no outside display of merchandise. He added that this property and the uses comply with all of the bulk and area requirements applicable to this zoning district. He pointed out that the character of the use is strikingly similar to the AG uses of similarly situated properties in the same zoning use district in the vicinity of this property. Mr. Schuller emphasized that the landscaping business equipment is stored on the subject property but the business is conducted off-site. He suggested that the County Inspector's photographs were a snapshot of time of the day they were taken and that the property does not usually appear the same way. He counseled his clients regarding compliance with provisions of the zoning code, such as parking on all-weather surfaces. He considered his clients' use to be less intensive than similar properties in the same zoning district.

Comments and Questions:

Mr. Charney asked about the businesses that Mr. Schuller used for examples, to find if they were all in unincorporated area, Tulsa County, and AG-zoned properties. Mr. Schuller replied that was correct. He also asked if the property is for horticultural nursery but without retail sales on site, to which Mr. Schuller agreed. Mr. Charney asked if the applicant felt that storing, maintaining, testing, cleaning of the landscaping equipment falls under the uses allowed in an AG district. Mr. Schuller believed the code does not prohibit this use.

Interested Parties:

Mr. Charney noted **Terry West**, the County Inspector, had a comment and asked him to come speak to the Board. Mr. West stated that AAA Landscaping is zoned commercial and is abutted by AG all around it. Mr. Osborne noted that Mr. Schuller stated that the current usage of the property in no way violates the AG zoning. He asked Mr. West to comment on that. Mr. West stated that in AG zoning, the code provides uses by right. He added that Use Unit 15 is not a use by right in the AG district. He stated that the landscaping business is classified as Use Unit 15. He mentioned that sod farms fall under Use Unit 3, and are allowed in the AG district. He informed the Board that the landscaping and irrigation business is not in compliance. Mr. West considered the storage of equipment, supplies, and the employees parking on the property for the landscaping/irrigation services indicative of a business within Use Unit 15. Mr. Cuthbertson stated that under the classification for landscaping services the work is almost never done on the business property but at other locations. The uses associated with the landscaping business are allowed in a Use Unit 15. Mr. Osborne asked for more detailed information, as to number of employees, or magnitude of the operation. Mr. West responded that with a home occupation everything has to be inside the residence. Mr. Cuthbertson added that vehicles used for the home occupation must be customary to the AG district. Employees from outside the home are not permitted by right.

Mr. Schuller stated that AAA Landscaping is not on commercially zoned property according to the most current map from INCOG, unless it was very recently rezoned.

Mr. Osborne obtained the name of this landscaping business, RLS, Inc. and information about it through Mr. Schuller. There is no other business address for the business. Mr. Charney asked Mr. Schuller for his interpretation regarding the use unit that speaks to a landscaping business that would require a use variance in the AG district. Mr. Schuller replied that if customers came to the property for consultation and designs it would be a Use Unit 15 use. He stated that in this case where no such activity occurs there is nothing in the AG zoning that prohibits what his client does.

Carrie Sanders, 13510 East 130th Street, stated she has lived to the west of the subject property for 15 years. She pointed out that 130th Street South is a dead end street. The other businesses that were mentioned are on through streets. She added that this is the only business on this street. She described the arrival and departure on a daily basis anytime between 7:00 a.m. to 10:00 a.m. or 12:00 p.m. even on some Sundays. She stated she has counted as many as ten vehicles parked in the front yard. Ms. Sanders stated there would be two to three diesel trucks with trailers full of equipment. She added they stacked all of the materials in the back yard on the ground. There is no barn or place for storage or greenhouse for the nursery. She informed the Board that they make noise starting

up lawnmowers and equipment and disturb the neighbors. She also complained of the traffic, and decreased value of her property from this activity.

Daryl Heartsler, 13971 East 130th Street, stated he has lived east of the subject property for about eight years. He appreciates having the applicants in the neighborhood, and the nice landscaping and lighting of their property. He feels it has increased the value of his property.

Dustin Concord, 13300 East 130th Street, was glad the applicant has done well. He mentioned the increase in parked cars from six to seven last year and eight or ten cars this year. He suggested it is time to seek a larger location when your business grows.

Mitchell Johnson, 1160 East 131st Place, Glenpool, Oklahoma, 74033, stated his parents own the property to the west of the subject property. They are concerned about the parking, as some of the employees are parking over the property line on their property.

Applicant's Rebuttal:

Mr. Schuller stated his client informed him that they do not work on their vehicles and equipment on the subject property. He suggested that some of the vehicles Ms. Sanders sees on the property are the owner's personal vehicles. Mr. Osborne asked how many personal vehicles the applicant owns and Mr. Schuller replied there are three.

Board discussion ensued regarding the appeal and the alternative request for a use variance. Mr. Charney agreed with the other Board members that a healthy portion of the Use Unit 15 landscaping business seems to be conducted on site. He supported the Official Code Violation Notice that the applicant should stop and remove all business related activities (UU #15) from the property.

Board Action:

On **Motion of Walker**, the Board voted 4-0-0 (Tyndall, Walker, Osborne, Charney "aye"; no "nays"; no "abstentions"; Dillard "absent") to **DENY** an Appeal the determination of the Zoning Officer 'that a landscaping business is being operated on an AG zoned property'; finding by the applicant's admission the applicant is operating a landscaping business; and parking and storing vehicles and equipment for that business on the subject property.

Mr. Cuthbertson asked of the Board, if the applicant has had an opportunity to express the unique circumstances related to the property to warrant a Use Variance. He noted that much of the previous discussion was related to the appeal. Mr. Charney invited Mr. Schuller to present new information regarding a use variance.

Mr. Schuller stated what is unique about this property is the location in this AG area. He then mentioned similar businesses and stated it is characteristic of this unincorporated area. He stated it would be a hardship to move everything to another location.

Mr. Cuthbertson reminded the Board that to the south of this street is zoned residential for single-family residences. Mr. Walker noted the subject tract is just a few hundred feet from a large residential area to the east and to the south. He stated it appears that this area is a growth area for residential. Mr. Osborne considered the business to have outgrown this property.

On **Motion of Walker**, the Board voted 4-0-0 (Tyndall, Walker, Osborne, Charney "aye"; no "nays"; no "abstentions"; Dillard "absent") to **DENY** the alternative request for a Use Variance to permit a (Use Unit 15) Landscaping Service in an AG district, based on the fact there is nothing unique about the land except that it is in an AG setting, but the growth around it is residential; the use of a landscaping business is not appropriate, and would be harmful to the neighborhood, on the following described property:

W.330'N.635'E.660'SESW SEC. 4-17-14, Tulsa County, State of Oklahoma

Case No. 2354

Action Requested:

Variance of the maximum permitted floor area for a detached accessory building in an RS district from 750 sq. ft. to 2,100 sq. ft. (Section 240.2.E), located: 5823 South 170th West Avenue.

Presentation:

Oscar Garcia, 5823 South 170th West Avenue, Sand Springs, Oklahoma, 74063, was present and **Earnesto Galvez**, came to interpret for the applicant. Mr. Garcia proposed to build a 2,100 sq. ft. accessory building for the storage of an RV, tractor, motorcycle, and personal property.

Comments and Questions:

Mr. Charney asked if there would be any commercial use in the building. Mr. Galvez stated it is not for commercial use. Mr. Walker noted there were no other metal buildings, nor any with the increased height. He noted others matched the materials and architecture of the homes. Mr. Charney mentioned that though the Board does not consider the covenants of a neighborhood, the applicant should be aware of any that would also be important as a private matter. Mr. Galvez stated the applicant would be willing to use brick on the accessory building to match the house. Mr. Charney found there were no other accessory structures on the property.

Interested Parties:

Mike Roberts, 5721 South 170th West Avenue, expressed concern that the applicant would bring cars from his used car business or use it for a shop. He has had some vehicles parked on the property in the past.

Bryan Chatham, 5822 South 170th West Avenue, was opposed to the size and metal construction. He was not opposed to a size and height within the code requirements and materials that match the house. He would not be opposed to a 14 ft. wall height to store a trailer. He stated all the other accessory buildings in the neighborhood match the materials of the house. He submitted photographs to the Board (Exhibit B-2).

Ray Pertilis, 5809 South 170th West Avenue, stated his property is to the north and adjacent to the subject property. He has made improvements to his back yard with plans to entertain there. He was opposed to the height, size, and metal construction of the proposed accessory building. He has noted trailers in the driveway with auto parts, and numerous farm animals, such as ponies, sheep and goats on the property.

Mr. Cuthbertson reminded the Board that the residential zoning prohibits keeping farm animals.

Brad Sherills, 16918 West 58th Place South, stated he is not opposed to the building. He was opposed to building in the side yard and having live stock, which are both against the covenants. He also mentioned at some time the applicant had two to three hundred old tires stacked along the privacy fence. He would not want tires stored that could catch fire. He did not think the building needs to be any taller than necessary to store an RV. He submitted photographs (Exhibit B-3).

Mr. Roberts asked if the building turned into a commercial venture what recourse the neighbors would have. Mr. Charney responded that they can contact the County Inspector's office.

James Walker, 5650 South 168th West Avenue, stated he has lived there for 15 years. He was concerned that the subject property could decrease the value of the surrounding properties. He commented that the proposed building is out of character with the neighborhood.

Charles Collins, 17017 West 59th Street, expressed concern that the access to the building crosses over lateral lines. He stated there is already leakage of those lines into the yard and down the drainage ditch. He was not opposed to the proposed building but within the zoning ordinances.

An email with photographs attached was received on the day of this meeting (Exhibit B-1).

Applicant's Rebuttal:

The applicant apologized through Mr. Galvez for upsetting the neighbors. When he understood he is not supposed to bring his work home, he stopped. He proposed to build a brick accessory building in the back yard. He was trying to do something quickly but he wants it to be ok with the neighbors.

Mr. Charney suggested the applicant needs a site plan, showing size, height, roof pitch, and information regarding the building materials. This would help the Board and the neighbors to understand what he proposes to build. Mr. Cuthbertson stated he would help the applicant to prepare for the next hearing.

Board Action:

On **Motion of Charney**, the Board voted 3-1-0 (Tyndall, Osborne, Charney "aye"; Walker "nay"; no "abstentions"; Dillard "absent") to **CONTINUE** Case No. 2354 to the meeting on February 16, 2010, to allow the applicant time to prepare plans for the proposed building, on the following described property:

LT 5 BLK 1, HIDDEN OAKS, Tulsa County, State of Oklahoma

Case No. 2355

Action Requested:

- Special Exception to permit petroleum storage tanks (Use Unit 27) in the IM district (Section 910), located: 3132 West 21st Street.

Presentation:

Tim Terrill, Tulsa Engineering Planning Associates, 6737 South 85th East Avenue, stated his request. He pointed out some setback dimensions they specified on a plan (Exhibit C-1), which come from the Federal Fire Code. He also pointed out three tanks one of which is on two easements, and a pipe line. Those pipelines would be relocated. Magellan Midstream Partners currently owns the property to the east and south. They have a contract on the property in question, and once that is finalized this will all be under one common ownership. He is in the process of looking into a lot combination that may be needed.

Bryan Young, One Williams Center, Tulsa, is with the Magellan Midstream Partners, and displayed an enlargement of an aerial of the area.

Mr. Terrill stated that nothing will be added to the infrastructure. He pointed out various other types of tanks in the area. They feel that the request for the special exception is in character with the neighborhood and is in harmony. They did not feel there would be any kind of adverse affect on the surrounding properties based on the existing structures in the area.

Interested Parties:

There were no interested parties.

Board Action:

On **Motion of Charney**, the Board voted 4-0-0 (Tyndall, Walker, Osborne, Charney "aye"; no "nays"; no "abstentions"; Dillard "absent") to **APPROVE** a Special Exception to permit petroleum storage tanks (Use Unit 27) in the IM district (Section 910), as requested; finding it is not injurious to the neighborhood, or otherwise detrimental to the public welfare, on the following described property:

BEG 984.64E NWC NW TH E340 TO NEC NW NW TH S720 W340 N720 POB LESS N50 FOR RD SEC 15 19 12, Tulsa County, State of Oklahoma

Case No. 2356

Action Requested:

Special Exception to permit a manufactured home in an RS district (Section 410), located: 1338 East 61st Street North.

Presentation:

William Askins, 749 East 61st Street North, proposed to establish a permanent residence for himself. He has been improving the property. Mr. Askins noted the property is so narrow that it would not leave room for a yard due to the existing driveway and trees. He submitted photographs of existing mobiles in a two to three block radius (Exhibit D-1). He informed the Board there is an existing carport with a concrete pad and a gravel drive to it.

Interested Parties:

There were no interested parties.

Board Action:

On **Motion of Charney**, the Board voted 4-0-0 (Tyndall, Walker, Osborne, Charney "aye"; no "nays"; no "abstentions"; Dillard "absent") to **APPROVE** a Special Exception to permit a manufactured home in an RS district (Section 410), with conditions for tie-downs, skirting installed appropriately, and a paved parking pad, on the following described property:

LT 3 BLK 3, EAST TURLEY ADDN AMD B1&4-5&8, Tulsa County, State of Oklahoma

Case No. 2357

Action Requested:

Variance of the 30 ft. of frontage required on a public street to permit the re-construction of a dwelling in an AG district. (Section 207), located: 5804 South 185th West Avenue.

Presentation:

Leroy Johnson, Jr., 2609 East 123rd Street North, Skiatook, Oklahoma, proposed to rebuild a home for a client on the subject property. The house was built in 1976 and only has a twelve-foot frontage.

Comments and Questions:

Mr. Charney noted a long pan-handle driveway that connects with West 61st Street. Mr. Cuthbertson did not think the driveway is in the twelve-foot panhandle. Mr. Johnson stated he has an 18 ft. easement for the driveway.

Interested Parties:

There were no interested parties.

Board Action:

On **Motion of Osborne**, the Board voted 4-0-0 (Tyndall, Walker, Osborne, Charney "aye"; no "nays"; no "abstentions"; Dillard "absent") to **APPROVE** a Variance of the 30 ft. of frontage required on a public street to permit the re-construction of a dwelling in an AG district (Section 207), finding the exceptional circumstances peculiar to this piece of property, and on the grounds that it will not cause substantial detriment to the public good, on the following described property:

PRT E/2 SW BEG SECR SE SW TH W12 N1002 NWLY449.72W230 N660 W760 N660 E1320 S2640 POB SEC 36 19 10, Tulsa County, State of Oklahoma

There being no further business, the meeting adjourned at 3:47 p.m.

Date approved: 1-19-10


Chair

