

**TULSA COUNTY BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 387  
Tuesday, August 21, 2012, 1:30 p.m.  
County Commission Room, Room 119  
County Administration Building  
500 South Denver Avenue

**MEMBERS PRESENT   MEMBERS ABSENT   STAFF PRESENT   OTHERS PRESENT**

Dillard	Charney, Chair	Back	West, Tulsa County
Draper	Osborne, Secretary	Sparger	
Walker, Vice Chair			

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 16<sup>th</sup> day of August, 2012 at 2:03 p.m., as well as in the Office of INCOG, 2 West Second Street, Suite 800.

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

Ms. Back explained the rules and procedures for the County Board of Adjustment Public Hearing.

Mr. Walker explained to the applicants that there were only three board members present at this meeting, and if an applicant would like to postpone his or her hearing until the next meeting he or she could do so. If the applicant wanted to proceed with the hearing today it would be necessary for him to receive an affirmative vote from all three board members to constitute a majority and if one board member voted no today the application would be denied. Mr. Walker asked the applicants if they understood and asked the applicants what they would like to do. The applicants stated that they would like to proceed with the hearing today.

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## MINUTES

On **MOTION** of **DRAPER**, the Board voted 3-0-0 (Dillard, Draper, Walker "aye"; no "nays"; no "abstentions"; Charney, Osborne "absent") to **APPROVE** the Minutes of July 17, 2012 (No. 386).

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## NEW APPLICATIONS

### Case No. 2437—Douglas R. Lane

#### Action Requested:

Variance of the maximum permitted floor area from 750 square feet to 1,500 square feet for a detached accessory building in an RS district (Section 240.2.E).

#### Presentation:

No presentation was made. Ms. Back explained that the applicant has requested a continuance to request additional relief.

#### Interested Parties:

There were no interested parties present.

#### Comments and Questions:

None.

#### Board Action:

On **MOTION** of **DILLARD**, the Board voted 3-0-0 (Dillard, Draper, Walker "aye"; no "nays"; no "abstentions"; Charney, Osborne "absent") to **CONTINUE** the request for a Variance of the maximum permitted floor area from 750 square feet to 1,500 square feet for a detached accessory building in an RS district (Section 240.2.E) to September 18, 2012; for the following property:

**LT 11 BLK B, BERRY HILL GARDENS, OF TULSA COUNTY, STATE OF OKLAHOMA**

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## **UNFINISHED BUSINESS**

### **Case No. 2434—Stephen Schuller**

#### **Action Requested:**

Use Variance to permit auto crushing operation and accessory uses (not within enclosed buildings), and permitting existing buildings to be situated less than 100 feet from centerline of abutting secondary arterial street (Section 1670); Special Exception for modification or waiver of screening requirement along lot line abutting R-zoned District (Section 250.3). **Location:** 6834 - 7002 North Peoria Avenue

#### **Presentation:**

**Stephen Schuller**, Attorney, 1100 OneOk Plaza, 100 West 5<sup>th</sup> Street, Tulsa, OK; stated the property is located on the west side of North Peoria Avenue, which is State Highway 11 at the location of the subject property. The subject property is situated in an IL District between the old Midland Valley Railroad and North Peoria Avenue. Along the south boundary of the subject property is sided by a bike trail, and properties to the north and east are consistent with CS zoning with a couple of small RS districts tucked in. In April 1994 the County Board of Adjustment approved a use variance to permit a mobile auto crushing operation on the subject property that is extended to this day. The use variance had a two-year term and has been extended once or twice. The property owners apparently did not understand the process requirement for further approvals by the Board and did not come back before the Board of Adjustment. Now the term has expired. All the other conditions imposed by the County Board of Adjustment in 1994 have been complied with. This operation has been continuously conducted on the subject property for 18 years. The equipment in use is a mobile auto crushing machine and it is necessary to operate it outdoors because of its enormous size, plus the autos to be crushed must be lifted by forklift to place them in the machine and take them back out of the machine. After the crushing process is complete the autos are hauled off within a few hours or a few days because the owner's revenue is from the sale of the crushed vehicle. The owners are in the process of cleaning up the entire area. The use of the property is screened from view of the nearby residentially zoned property, which is the opposite side of North Peoria Avenue, except for the entry gates to the subject property. The subject property is also screened from the old railway and the bike trail. There are a few buildings on the north side of the property that have been in place for approximately 30 years, and the requisite setbacks from the abutting street line of North Peoria Avenue have not always been strictly observed. The locations of these buildings are consistent with the locations of other buildings along North Peoria Avenue in the vicinity of the property and in the neighborhood. These buildings house equipment and related accessory operations for the mobile auto crushing operation. One building is approximately 80 feet from the centerline of Peoria Avenue and another one is approximately 70 feet from the centerline of Peoria Avenue, but they have been in place

for approximately 30 years. The CS zoning districts in the area have intensive commercial uses. One the corner of 71<sup>st</sup> Street North and North Peoria Avenue there is a tire store with a salvage yard in the rear, which appears not to be screened because the salvage yard can be seen from the street. There is another automobile salvage yard in operation on the other side of North Peoria at 69<sup>th</sup> Street North. These are a couple of examples of the automobile and industrial uses that are common in this neighborhood. In addition, there is a motor vehicle crushing operation directly south of the subject property so it is not unusual in this neighborhood. There are also commercial businesses up and down Peoria Avenue in this area, and they generally consist of automotive repair, salvage, and a metal processing business. The subject property is a business that is similar to other business operations in the area, especially in the immediate vicinity of the subject property. With the existing screening in place along Peoria and the other borders of the property, with the conditions imposed by the Board in 1994, there is no harm to the surrounding neighborhood or the surrounding commercial or industrial areas. He would ask the Board for a modification of the screening requirement in order to eliminate it for the entry gates to the subject property. He would request the grant of the use variance, the same that was granted in 1994, for the continued operation of an existing mobile motor vehicle crushing operation and the accessory uses, and to not have the operation within enclosed buildings. He would also request the grant of the use variance to permit the well established buildings on the north end of the property be situated less than 100 feet from the centerline of North Peoria Avenue. He would request the grant of the special exception to modify the screening requirements so screening would be required at the driveway entrance.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **DRAPER**, the Board voted 3-0-0 (Dillard, Draper, Walker “aye”; no “nays”; no “abstentions”; Charney, Osborne “absent”) to **APPROVE** the request for a Use Variance to permit auto crushing operation and accessory uses (not within enclosed buildings), and permitting existing buildings to be situated less than 100 feet from centerline of abutting secondary arterial street (Section 1670); Special Exception for modification or waiver of screening requirement along lot line abutting R-zoned District (Section 250.3). The screening requirements are waived only for the current two points of access. The hardship for the subject property is that the buildings are existing non-conforming and the use is existing non-conforming because they were established before the regulatory Board of Adjustment was in effect; for the following property:

**NE/4 NE/4 SE/4 and N/2 SE/4 NE/4 SE/4 lying or situated East of Midland Valley Railroad Right of Way described in Quit-Claim Deed recorded in Book 6718/Page 2175, in Section 36, Township 21 North, Range 12 East, Tulsa County, Oklahoma**

(subject to adjacent highway/roadway dedications of record), OF TULSA COUNTY, STATE OF OKLAHOMA

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## **NEW APPLICATIONS**

### **Case No. 2435—Clark Boyd**

#### **Action Requested:**

Special Exception to allow Fireworks Stand (Use Unit 2) in an AG District for five years (Section 310); Variance of all-weather surface for parking (Section 1340.D).

Location: 22423 West Coyote Trail

#### **Presentation:**

**Clark Boyd**, 22423 West Coyote Trail, Sand Springs, OK; stated he would like to have a fireworks stand as a fund raiser for the young people of his church, so they can make an annual trip to Mexico.

#### **Interested Parties:**

**Janny Simpson**, 22112 West Coyote Trail, Sand Springs, OK; stated she is opposed to the fireworks stand. The subject property is located near a very dangerous intersection, and she has had several feet of her pipe fence demolished by cars several times because of the configuration of the intersection. The neighbors have requested the Sheriff's Department patrol Coyote Trail to curtail the speeding. There was a traffic count taken and in a 24 hour period there were 1,530 cars that passed the intersection. The neighbors are also concerned about fire because the area is heavily wooded. The last two summers the area has been under a fire ban, and if there had been an active fireworks stand on the subject property there would have been the possibility of a fire. There is a fireworks stand that is six miles east, there is plenty of parking for that stand, and it is taken down almost immediately after the holiday. Mr. Boyd's stand has been sitting on his property for months and it is not attractive. The area residents have made, and are making, a great effort to keep their homes clean and attractive, and they do not want a detraction added, even temporarily, to the residential area.

#### **Rebuttal:**

Clark Boyd came forward and stated the fireworks stand is not attractive, but he has been told by the company that brought it to the property that he is on the list to have it removed, and it should be gone by tomorrow. He has lived on the property for approximately eight years, and he wants to have the fireworks stand only as a fund raiser for the July 4<sup>th</sup> holiday.

Mr. Draper asked Mr. West what enforcement restrictions could be placed on the fireworks stand if today's request were approved. Mr. West stated the Board would

need to stipulate the conditions in their motion, i.e., the stand is to be removed by July 31<sup>st</sup>. The state approves the sale of fireworks from June 15<sup>th</sup> to July 5<sup>th</sup>.

Mr. Draper stated that as in this case the applicant is at the mercy of another party and the stand is still on the property, so if the Board makes the condition that the fireworks stand is to be removed by July 7<sup>th</sup> and it is not, what can be done? Mr. West stated that at that point he can send a letter to the party operating the fireworks stand stating that he is not in compliance with the conditions placed on the fireworks stand by the Board of Adjustment so no further permits will be issued. Every fireworks stand is required to obtain a permit every year, even if the Board grants a time of limit of more than one year, as in this case the request is for five years.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **DILLARD**, the Board voted 3-0-0 (Dillard, Draper, Walker “aye”; no “nays”; no “abstentions”; Charney, Osborne “absent”) to **APPROVE** the request for a **Special Exception** to allow Fireworks Stand (Use Unit 2) in an AG District for three years (Section 310); **Variance** of all-weather surface for parking (Section 1340.D). The three year approval will be from August 21, 2012 to August 21, 2015, with the fireworks stand delivery to be no sooner than June 10<sup>th</sup> and the stand is to be removed no later than July 20<sup>th</sup>. The approved operating dates to be June 15<sup>th</sup> to July 5<sup>th</sup>, and the hours of operation are to be 10:00 A.M. to 10:00 P.M. The variance for all-weather surface for parking to be waived will be approved only for June 15<sup>th</sup> to July 5<sup>th</sup>, and from 10:00 A.M. to 10:00 P.M.; for the following property:

**LT 1 BLK 4, HERRINGTON ACRES, OF TULSA COUNTY, STATE OF OKLAHOMA**

**Case No. 2436—Jim Coleman**

**Action Requested:**

**Variance** of the required front yard from 35 feet to 20 feet (Section 430.1).

**Location:** 180 North 256<sup>th</sup> West Avenue

**Presentation:**

**Jim Coleman**, P. O. Box 351, Mannford, OK; stated the topography is the hardship in this case, because it is extremely steep. An effort has been made to remedy the steep pitch of the land, however, the radius of the cul-de-sac building line encroaches into the front of the lot that the necessary footage cannot be obtained.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **DRAPER**, the Board voted 3-0-0 (Dillard, Draper, Walker “aye”; no “nays”; no “abstentions”; Charney, Osborne “absent”) to **APPROVE** the request for a **Variance** of the required front yard from 35 feet to 20 feet (Section 430.1), with the hardship being the topography of the land; for the following property:

**LT 23, BLK 1, The Bluffs, OF TULSA COUNTY, STATE OF OKLAHOMA**

**Case No. 2438—David Woods**

**Action Requested:**

**Variance** from the requirement that a lot have a minimum of 30 feet of frontage on a public street or dedicated right-of-way (Section 207). **Location:** 5875 South 157<sup>th</sup> West Avenue

**Presentation:**

**David Woods**, 6023 South 161<sup>st</sup> West Avenue, Sand Springs, OK; stated he purchased the property in good faith, which involved the services of a realtor, and the only the thing the seller could not provide was a perc test for the land. After the purchase process was complete he applied for a building permit and that was when he was told he did not have the required 30 foot easement. That was also when he found out that 157<sup>th</sup> West Avenue is not a real street, but only a private drive. Therefore, he is before the Board today to request a variance from the 30 foot easement requirement.

Mr. Walker asked if anyone on that parcel of land had a dedicated easement, and Mr. Woods stated that he did not know of anyone that had a dedicated easement but everyone uses the private drive as their ingress and egress.

Mr. Dillard asked Mr. Woods if he was going to have a mortgage on the property in question. Mr. Woods stated that the owner, his son, was using an inheritance to build a house on the property. Mr. Dillard informed Mr. Woods that if his son was going to obtain a mortgage of any type it would be necessary for him to have a recorded dedicated right-of-way to the property. The owner will also be required to have a recorded dedicated right-of-way if he should choose to sell the property in the future.

Mr. Walker stated there may be a recorded right-of-way already in existence, especially since there are several houses on the private drive. The critical thing for this Board is to be presented with a dedicated right-of-way or permission to use the private driveway to obtain ingress or egress to the property. Mr. Walker informed Mr. Woods that there should be a clause in his abstract referencing the dedicated right-of-way, and if there is not such a clause then Mr. Woods can go to the Court House with his legal description to find out if there is a recorded easement.

Mr. Dillard suggested Mr. Woods take his abstract to his attorney and obtain his legal advice on whether the right-of-way exists, or what it will take to obtain a dedicated right-of-way. Mr. Woods stated that he thought the realtor was there to advise him of these things because she was using her attorney to complete the sale. Mr. Dillard stated that a realtor is only a commissioned salesperson, and her only goal is to get a sale to earn a commission. The purchaser has the absolute responsibility to obtain legal advice, or obtain title insurance, to know what he is purchasing or the outstanding requirements before the purchase. If an attorney issues an opinion and it is wrong it is then the attorney's responsibility to fix it. If the purchaser does obtain legal advice or title insurance and only obtains an abstract, it is then the responsibility of the purchaser to fix any of the wrong doing.

Mr. Walker advised Mr. Woods to go to the realtor and ask the realtor to provide proof of the recorded dedicated right-of-way so he can legally continue with the purchahse and permitting process.

Mr. Dillard stated that if Mr. Woods would be willing to take this step the Board would entertain continuing this case to next month allowing Mr. Woods time to obtain his proof of the recorded dedicated right-of-way.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **DILLARD**, the Board voted 3-0-0 (Dillard, Draper, Walker "aye"; no "nays"; no "abstentions"; Charney, Osborne "absent") to **CONTINUE** the request for a **Variance** from the requirement that a lot have a minimum of 30 feet of frontage on a public street or dedicated right-of-way (Section 207) to the meeting of September 18, 2012; for the following property:

**N220 E495 NE SW SW SEC 32 19 11 2.50ACS, OF TULSA COUNTY, STATE OF OKLAHOMA**



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**NEW BUSINESS**

None.

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**OTHER BUSINESS**

None.

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**BOARD COMMENTS**

None.

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There being no further business, the meeting adjourned at 2:38 p.m.

Date approved: Sept 18, 2012

Richard Z. Wecker  
Chair