

TULSA COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 408
Tuesday, May 20, 2014, 1:30 p.m.
Ray Jordan Tulsa County Administration Building
500 South Denver, Room 338

MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT

| | | | |
|--------------------|--------------------|---------|-----------------|
| Charney, Chair | Osborne, Secretary | Miller | West, Inspector |
| Dillard | | Sparger | |
| Hutchinson | | Hoyt | |
| Walker, Vice Chair | | Foster | |

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 15th day of May, 2014 at 10:16 a.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.

MINUTES

On **MOTION** of **WALKER**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Walker "aye"; no "nays"; no "abstentions"; Osborne "absent") to **APPROVE** the Minutes of April 15, 2014 (No. 407).

Ms. Miller read the rules and procedures for the County Board of Adjustment Public Hearing.

Mr. Charney explained to the applicants that there were only four 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 three board members to constitute a majority and if two board members voted no today the

application would be denied. Mr. Charney 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.

NEW APPLICATIONS

2498—Eller and Detrich – Lou Reynolds

Action Requested:

Special Exception to permit asphalt refining and manufacturing, concrete repurposing and recycling, and oil, asphalt, and polymer storage (Use Unit 27) in an IM District (Section 910, Table 1). **LOCATION:** 1900 South 81st Avenue West

Presentation:

Andrew Shank, 2727 East 21st Street, Suite 200, Tulsa, OK; Mr. Andrews presented photographs to the Board of the subject property. When the legislation instituted Use Unit 27 into the permitted use table for an IM District as an use by Special Exception the property is in harmony with the code. The crux of the case is the requested use compatible with the neighborhood. The business has been active since 2007 which was the first permit issued to locate the portable asphalt plant on the western edge of the subject property. Over time the business has grown and there is a collaboration with Anchor Stone where they will break down and recycle stone product and concrete that is partly used in the subject business's asphalt production. On the northern edge of the subject property there is an existing building that is under permit to expand the building and add tank pads for storage. The subject property is approximately 13 acres in the middle of 172 acres of industrial use property in Sand Springs. The subject property represents about 8% of the surrounding industrial property. Most properties are either dirt or gravel drives, with some properties that have paving around buildings for parking. The applicant is proposing to mitigate any dust plumes with a regular spraying of water either via an irrigation system to be installed on site or by a water truck. The subject business is regulated by the Department of Environmental Quality, the State and the EPA. The company has licenses with both groups and the company is in good standing with both groups. The proprietor, Mr. Dunham, is authorized to inspect emission stacks pursuant to EPA standards.

Mr. Walker asked Mr. Shank about the drainage and if the property had been platted. Mr. Shank stated that he does not think the property has been platted.

Mr. Walker stated that when he visited the site he noticed metal pipe and he asked Mr. Shank if that was asbestos wrapped pipe laying on the ground. Mr. Shank stated that the pipe are pieces of the storage tank apparatus and he is not aware of any asbestos.

Mr. Walker asked if the pipe was going to be used or stored. Mr. Shank stated the pipe is part of the active storage tank development on the northeast corner of the subject property.

Mr. Walker asked Mr. Shank how the concrete crushing was performed and what type of noise factor there is with the process. Mr. Shank stated he has not seen that process, and he went to the site several times. It is Mr. Shank's understanding that Anchor Stone is performing the crushing, and he did not hear any excessive noise when visiting the site.

Mr. Walker asked Mr. Shank about the railroad spur. Mr. Shank stated the railroad spur is being redone. The line is actually going to be extended.

Mr. Walker asked Mr. Shank what type of vapors or chemicals are emitted, if any. Mr. Shank stated that the majority of the plumes seen is steam, but it is regulated by the DEQ and the EPA.

Mr. Charney asked if the City of Sand Springs had received notice of this meeting, and if there had been any comment or conduct. Mr. Shank stated that he had received no comment from the City of Sand Springs, and he does not know about a notice being sent. Mr. Shank stated he did contact the County Commissioners Office and to INCOG, and to his knowledge nothing was received. Mr. Jay Hoyt checked the mailing list and stated that there was no notice mailed to the City of Sand Springs.

Interested Parties:

Edward Dunham, 6213 South 103rd West Avenue, Sapulpa, OK; stated he was available for questions from the Board.

Mr. Walker asked about the exhaust or venting of chemical vapors. Mr. Dunham stated the plant was installed in 2007, and he had to go through DEQ to construct. Once the permit was issued there were tests performed by an independent lab. There DEQ technicians on the site testing emissions and from the emissions they determined how much the plant would be able to produce. Once that was completed he received a permit to operate. With the issuance of the permit the DEQ requested an employee of the company be state certified to read the opacity. Every six months the company must have the employee re-certified. The company has switched to natural gas because it burns cleaner and it is even better than what the company originally started with. Mr. Dunham stated that a lot of the concrete and asphalt that is being crushed by Anchor Stone is from the innerdispersal loop or the highways, and it is providing a base material for other products. The steel from the highways is also recycled.

Mr. Walker asked Mr. Dunham about the noise level of the crushing operation. Mr. Dunham stated that Anchor Stone also has a permit issued by the DEQ and that the DEQ checks them. As for the noise it is not loud, and Anchor Stone only operates from approximately 7:00 A.M. to 4:00 P.M., and that is not everyday. Mr. Dunham stated the company has a stormwater prevention plan in place.

Mr. Charney asked Mr. Dunham that many times when the Board grants a Special Exception there are conditions placed on the approval. What he has heard mentioned by Mr. Dunham and Council is keeping the dust down, so it could be that the Board would be inclined to grant the Special Exception as long as there was a dust control program in place. That could be an important factor given there are residential neighbors to the north and east. Mr. Charney asked Mr. Dunham if he would be comfortable making sure the dust control apparatus is in place. Mr. Dunham answered affirmatively.

Mr. Hutchinson asked Mr. Dunham how much traffic his business generates. Mr. Dunham stated that it varies from day to day, and it depends on the weather and the season. The business is a satellite plant but it is possible to have 100 to 150 trucks a day.

Comments and Questions:

Mr. Dillard stated that the home owners in the area are not in attendance at today's meeting, and the businesses in the area are not in attendance either so he can support the applicant's request.

Mr. Walker stated that this looks like a good business and the applicant has satisfactorily answered all the questions so he can support the application as presented.

Board Action:

On **MOTION of WALKER**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Walker "aye"; no "nays"; no "abstentions"; Osborne "absent") to **APPROVE** the request for a **Special Exception** to permit asphalt refining and manufacturing, concrete repurposing and recycling, and oil, asphalt, and polymer storage (Use Unit 27) in an IM District (Section 910, Table 1). Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

E 972.8' S 647' OF E 1/2 SE SEC. 12-19-11, OF TULSA COUNTY, STATE OF OKLAHOMA

2499—Josh Johnston

Action Requested:

Variance of the minimum required frontage on a public right of way from 30 feet to 0 feet to permit a new residence (Section 207). **LOCATION:** 18500 South 133rd East Avenue

Presentation:

Josh Johnston, 25716 East 107th Street, Broken Arrow, OK; stated that he and his wife are in the process of purchasing 9.1 acres from a large parcel that was split up and sold

at auction in the early 1990s. There is only one property that he is aware of that has public frontage, and his future property will diagonal from that. There is a public easement for 60 feet on the north end of that to get to a private easement that comes with the deed of the property, which is a private easement through Mr. Allen Locke. He wants to build a two-story single family residence on the subject property. The hardship is that this land was sold at auction and there was apparently no thought into the division of the land thus making a lot of useless land. There is no agricultural value to the land. It is on a hill and well out of the flood plain.

Mr. Charney asked Mr. Johnston if the nearest dedicated public roadway that the subject property would be accessing is South 132nd East Avenue. Mr. Johnston answered affirmatively.

Mr. Johnston stated that when the land was divided there were 60 foot easements put here and there, and they are all 60 foot easements for a county road to come through but they do not connect. They go in all different directions. When the land was split up there doesn't seem to be much of a thought process as to why. There is a 60 foot easement on the north side that connects to the west side and goes south for ten or twenty acres then cuts back to east. There is a public 60 foot easement on the north end that was graveled, and the intention was to build a road all the way going across the Allen's land but they ran out of money.

Interested Parties:

Charles Johnson, Jr., P. O. Box 531, Bixby, OK; Mr. Johnson presented a picture of his house to the Board.

Mr. Charney asked Mr. Johnson where his property was located from the subject property. Mr. Johnson stated he is due north.

Mr. Johnson stated he is not against anyone building a house on the subject property, but he wants the person to comply with a rule that has been in existence for many years. When Mr. Locke went to the Board and applied to build the addition. He was denied because it was stated that he was supposed to have roadways paved or built to County specifications. Later Mr. Locke laid the gravel as a driveway into the property. If there is a county standard that states the roads are to be paved he wants the County to enforce that ruling. His house will be right next to the road and he has asthma and COPD, and the dust from an unpaved road will be too much for his condition.

Doris DeArmon, 2904 South 121st East Place, Tulsa, OK; presented a document to the Board. She owns approximately 50 acres north and east of the subject property. Her concern is if the easement is reduced how will that affect the installation of a county road or would it be a private road? Mr. Charney stated that there are generally private easements that are in favor of certain parcels or individuals, or there are publicly dedicated roads where the County has agreed to the method of construction and agreed to maintain those roads. That is not what is being sought today. There is a

private easement being sought. Mr. Dillard stated that property owners do not need to relinquish a private easement. Mr. Charney agreed.

Ms. DeArmon asked if the private easement being sought affected her acreage. Mr. Charney stated that the easement stipulated on the site plan does not appear to be on her tract at all.

Ms. DeArmon asked if the easement was to go down to zero can a county road still be laid down? Mr. Charney stated that the width of the proposed easement does not prevent the later dedication but it might make less likely a later dedication. What is being sought to day is in lieu of a county road. It is normally not the County that constructs county roads, it is the private developer that installs them to County specifications and the Count agrees to maintain the road. Apparently that was not done historically the way people thought.

Dwayne Corven, 18342 South 132nd East Avenue, Bixby, OK; stated that the main road deadends into his property. The 60 foot easement is not a public easement but is a private easement. When he purchased his land he knew the easement was in place, and he never thought there would be a road constructed. He does not want a gravel road that is not maintained. There is only 15 feet on the east side of his land and Mr. Johnston is going to try to run utilities plus a road in that 15 feet. At this point Mr. Corven presented pictures of his four-wheel truck to the Board. There is not enough easement for a house to be erected with the installation of utilities or road. He never thought there would be a road in front of his house. So unless the County installs a road he is opposed to the request.

Mr. Charney asked Mr. Corven if he was aware of an existing private utility easement running on the north boundary of his property. Mr. Corven answered affirmatively. Mr. Charney asked Mr. Corven if he purchased his land subject to that. Mr. Corven answered affirmatively.

Mr. Corven stated that these cases are built on hardship and Mr. Johnston voluntarily entered into a hardship because he does not own the land, he is attempting to acquire the land. He is not in a hardship unless he places himself in the hardship. Mr. Charney stated that he understands Mr. Corven's viewpoint. Mr. Charney stated the Board views the hardship a bit differently, a hardship is usually unique and peculiar to the circumstances of the land itself.

Scott Galbrath, 14323 South 50th East Avenue, Bixby, OK; stated he owns the 10 acres behind Mr. Corven and it is next to the subject property. He plans to build a home on the 10 acres. If a gravel road is permitted he feels that it will only add value to the property and the surrounding properties. Escalating property values can only be good for the County, and he would ask the Board to consider the fact that there will not be anything else going on there. Watching these properties sit year after year and be of no benefit to the County or anyone else and stagnating the growth does not make sense anymore.

Rebuttal:

Josh Johnston came forward to address issues that were presented. He stated that he is not placing himself in a hardship, the hardship is on the land. He is not trying to buy a piece of property, the contract is signed and closing is scheduled for June 30th, and it is contingent on four things happening. One of them being this Variance request. Water was another and he has been before the Bixby City Council and there is now water. Electricity was another. O G & E has the rights from East Central Electric and now there is guaranteed electricity, and he has the paperwork that proves that. He is currently working on widening the subject easement. He and Mr. Locke have spoken to a home builder about the 15 foot easement, and Mr. Locke has made him an offer and he could have already purchased that portion. He has already sunk quite a bit of money in this endeavor, and he is attempting to get as much completed as possible. Mr. Johnston he has an e-mail proving the offer for a 40 foot easement, the offer is there and he could have already purchased it. He keeps hearing people mention country standards. This is going to be a well maintained driveway, it is not a county road. There will be two families using the driveway or road so it is not just one person. But at this point the discussion is not about a lot of traffic, but discussing a little country lane. Mr. Johnston stated he grew up in the country and to this day all of the county roads are gravel. So he does not know what "county standards" means but the county roads are not paved in much of this state. Lastly, with a due respect to Mr. Corven, there is an easement on the subject property for a road. Everyone would like to purchase a piece of property that abutts the last piece of county road.

Mr. Hutchinson asked Mr. Johnston if he had checked with his mortgage company to see if they are okay with this situation. Mr. Johnston stated that he now has a loan from a bank. Mr. Dillard stated the loan is a "subject to", because it has to have some qualifications on it. If he does not have right-of-way easement to have a road built they are not going to go through with the loan. Mr. Johnston stated the Title Company will have to complete their paperwork. There is a loan without the roads being built, because the loan is already approved and done for the subject property. Mr. Johnston stated that he made the loan subject today's hearing. If today's request passes he will go to closing and if it does not pass the loan will not be completed. He has had construction people and a road builder to the subject property. The building contractor stated the land is sand stone and no big deal to build a house on, though the aerobic system can be a bit of a problem.

Mr. Hutchinson asked Mr. Johnston to explain the 15 foot easement, the 60 foot easement and the 40 foot easement that has been mentioned today. Mr. Johnston stated that the east/west road along the north boundary of the subject property is the 15 foot easement and is actually on Mr. Locke's property which is in the process of being widened.

Mr. Charney asked Mr. Johnston if Mr. Galbrath had legal access to the property. Mr. Johnston stated that he does have legal access to the his property. Mr. Charney asked

Mr. Johnston to come forward and to point out on the site plan what he understood that to be, which he did for the Board.

Mr. Johnston stated there are some hefty deed restrictions with the property. One of them being only one residence, nothing smaller than 1,800 square feet, etc. As best as he understands, the deed restrictions follow the property. Mr. Dillard stated that deed restrictions are only as good as the enforcement agency. Mr. Johnston stated that Mr. Allen Locke is the one who wrote the deed restrictions and he is the one who sold the land initially.

Comments and Questions:

Mr. Walker stated that unscrupulous people would dedicate a piece of land and manage to sell off some property, and when people would start traveling the roads and start complaining to the County Commissioner about the road conditions. So what Tulsa County did is to instill the requirement that an easement cannot just be dedicated, but the road must be brought up to standards, that is where the "county standards" came from. In order to dedicate a road to Tulsa County the road must be brought up to the County requirements or standards, then it will be a public easement that everyone can drive on. The reason there is such concerns over easements is the Wildcat Subdivisions.

Mr. Dillard stated that a 15 foot easement would not be wise, because more than 15 feet is needed to pass on a driveway. He is jaundiced as a mortgage lender because he knows there are some might hurdles to covered. His company's standard is 30 feet so he could not support this request unless it is tabled for 30 days allowing Mr. Johnston time to make sure he has the 40 foot easement that was mentioned.

Mr. Charney stated the very issues that have been heard today are the exact reasons why the Board wants platting, utility planning, stormwater, all the issues that go into the platting of a piece of property. That is why platting is done. If this Board is supposed to be the guardians of the public interest, that is not the best way to divide up pieces of property. There is supposed to be a master plan and it is to be made certain that access, utility easements, roadway easements are all done in a thoughtful and well planned manner. Today's case is unusual and it is not the norm. This case looks like it only benefits Mr. Johnston. There are several concerns in this case.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Walker "aye"; no "nays"; no "abstentions"; Osborne "absent") to **CONTINUE** the request for a Variance of the minimum required frontage on a public right of way from 30 feet to 0 feet to permit a new residence (Section 207) to the June 17, 2014 Board of Adjustment meeting; for the following property:

SE SE NW LESS S60 FOR RD SEC 4 16 14 9.091ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

2500—Melissa Torkelson

Action Requested:

Special Exception to permit a fireworks stand (Use Unit 2) in an AG District (Section 310) for a time period from June 15th to July 5th and December 15th to January 1st. **LOCATION:** 6035 West 40th Street South

Presentation:

Melissa Torkelson, 1120 South 221st West Avenue, Sand Springs, OK; stated there is a slight alteration to the site plan that was presented to the Board. After speaking to the Pastor of the church, the parking will be located on the north/south service road to the east of the tent location. At this point the road is three lanes wide and it is actually a side road for the church, and there will be parking on the church grounds which is located north of the proposed location. This location has had firework stands in the past. This is a fund raising effort for the Berryhill Baptist Church Youth Department. The actual time the fireworks stand will be operational is about nine days versus the two and a half weeks that is requested. The fireworks operation will be under a tent with 24-hour surveillance required, and a semi-trailer for storing the product.

Mr. Dillard asked Ms. Torkelson if the church had given permission for the parking. Ms. Torkelson answered affirmatively.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **DILLARD**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Walker "aye"; no "nays"; no "abstentions"; Osborne "absent") to **APPROVE** the request for a Special Exception to permit a fireworks stand (Use Unit 2) in an AG District (Section 310) for a time period from June 15th to July 5th and December 15th to January 1st. The hours of operation is to be from 10:00 A.M. to 10:00 P.M. from June 15th through July 2nd, and the hours of operation will be 10:00 A.M. to 12:00 midnight on July 3rd and July 4th. This approval will be for a period of five years from today's date of May 20, 2014; for the following property:

SW SE SW LESS W30 & S50 E630 FOR STS SEC 20 19 12 8.822ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

2501—Stewart Collins

Action Requested:

Variance of the minimum required frontage on a public right of way from 30 feet to 0 feet to permit a lot-split (Section 207). **LOCATION:** 224 East 151st Street

Presentation:

Stewart Collins, P. O. Box 250, Kiefer, OK; Mr. Collins presented exhibits to the Board. He is the owner of Collins Land Survey and he is representing the owners. The subject property is all family owned and is across the street from the Glenpool High School football field. There is an existing gravel drive leading into the property. There is a 30 foot ingress/egress easement coming 151st Street going all the way across the property.

Mr. Dillard asked if the easement had been filed. Mr. Collins stated the easement has not been filed as of yet, because the easement is contingent on the lot-split.

Mr. Charney asked if there was a sale contingent upon the granting of today's Variance for the two acre tract. Mr. Collins stated the son that wants this tract is looking for funding and he need the legal description for it to obtain a loan.

Mr. Charney asked Mr. Collins how many eventual pieces does he think the land will be split into. Mr. Collins stated this should be the last because the family members that are alive today are the ones. Theoretically, the family members have come to an agreement that no one can sell their piece of property unless they all sell.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Walker "aye"; no "nays"; no "abstentions"; Osborne "absent") to **APPROVE** the request for a Variance of the minimum required frontage on a public right of way from 30 feet to 0 feet to permit a lot-split (Section 207), given the unique configuration of the land that lies south and west of the creek channel. This is a peculiar characteristic that does create a hardship for the land lying south and west. This approval is with the caveat that there is to be no further division of tracts served by the subject easement; for the following property:

A tract of land being a part of the Northeast Quarter of the Northwest Quarter of Section Twenty-three (23), Township Seventeen (17) North, Range Twelve (12) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the U.S. Government Survey thereof, described by metes and bounds as follows; COMMENCING at the Southeast corner of said NE/4 NW/4;

thence S89°59'49"W along the South line of said NE/4 NW/4 a distance of 469.97 feet to the POINT OF BEGINNING; thence continuing along said South line S89°59'49"W a distance of 190.50 feet to a point being the Southeast corner of that tract of land deeded to Jerry Lee & Donna J. Price by General Warranty Deed in Document #2005100944 in the Office of County Clerk, Tulsa, County, Oklahoma; thence N00°05'36"W along the East line of said Jerry Lee & Donna J. Price tract a distance of 562.30 feet to a point on the Southwesterly line of Creek Channel Easement to the State of Oklahoma, granted in Book 5297, Page 1022 of said Office of County Clerk; thence S44°30'37"E along said Easement line a distance of 272.20 feet; thence S00°11'08"W a distance of 366.20 feet to the POINT OF BEGINNING, containing 2.0 acres of land, more or less, OF TULSA COUNTY, STATE OF OKLAHOMA

2502—Doug Oglesby

Action Requested:

Variance of the display surface area from 32 square feet to 378 square feet for an accessory identification sign in an AG District (Section 320.2.B.2); Variance for the sign height from 15 feet to 35 feet in an AG District (Section 320.2.B.2).

LOCATION: 7770 North Whirlpool Drive

Presentation:

Curtis Linton, 8050 North Whirlpool Drive, Sperry, OK; he is representing the church. The church property is about 400 feet away from Highway 75 and the vehicles on the highway average 71.3 miles per hour. There used to be a small sign advertising the church but a small sign cannot be read by the public at a speed of 71.3 miles per hour. The church purchased a used billboard. The church went to the State Department of Transportation and received a letter of approval from them. Mr. Linton stated that the church has spoke with the neighbors and none of the neighbors voiced any disagreement.

Mr. Hutchinson asked Mr. Linton if the sign was going to be erected north of the cross. Mr. Linton stated the cross will be removed and the sign be erected in it's place.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **DILLARD**, the Board voted 4-0-0 (Dillard, Hutchinson, Walker "aye"; no "nays"; no "abstentions"; Osborne "absent") to **APPROVE** the request for a Variance of the display surface area from 32 square feet to 378 square feet for an accessory identification sign in an AG District (Section 320.2.B.2); Variance for the sign height

from 15 feet to 35 feet in an AG District (Section 320.2.B.2), with the hardship being the fact that a 32 foot sign is posted next to a highway rendering it illegible by highway traffic; for the following property:

LT 2 BLK 1, CORNERSTONE BAPTIST CHURCH, OF TULSA COUNTY, STATE OF OKLAHOMA

NEW BUSINESS

None.

OTHER BUSINESS

None.

BOARD COMMENTS

None.

There being no further business, the meeting adjourned at 3:06 p.m.

Date approved: _____

6/17/14

David E. Chantry
Chair