

TULSA COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 470
Tuesday, June 18, 2019, 1:30 p.m.
Ray Jordan Tulsa County Administration Building
500 South Denver, Room 119
Tulsa, Oklahoma

MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT

Charney, Chair
Hutchinson, V.Chair
Crall, Secretary
Dillard
Johnston

Miller
R. Jones
Sparger

Tosh, County

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 13th day of June, 2019 at 11:12 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 **HUTCHINSON**, the Board voted 4-0-1 (Charney, Dillard, Hutchinson, Johnston "aye"; no "nays"; Crall "abstaining"; "absent") to **APPROVE** the Minutes of May 21, 2019 (No. 469).

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

UNFINISHED BUSINESS

None.

NEW APPLICATIONS

2756—Jeremy Jones

Action Requested:

Use Variance to permit an Agricultural Use (Use Unit 3) in a RS District.

LOCATION: 3033 South 54th West Avenue

Presentation:

Kayla Jones, 3033 South 54th West Avenue, Tulsa, OK; stated she would like to have a little homestead for her family. She would like to have some chickens and a couple of sheep or a goat for fresh milk, and she currently grows a large garden. The reason she would like to have this is because she thinks it is good for the children to have contact with growing their own food and having the chores that comes along with the garden and animals. She and her husband chose the subject property so they could be close to their church in order to be within walking distance to the church. Ms. Jones stated that she does not think this would be overly intrusive to the neighborhood.

Mr. Charney asked Ms. Jones if the property was over one acre in size. Ms. Jones answered affirmatively, and stated the property is deep and thin in size and it goes up a hill.

Mr. Charney asked Ms. Jones if the livestock would be kept on the rear of the property. Ms. Jones answered affirmatively, and stated the property has a pasture that is not being used.

Mr. Crall asked Ms. Jones if she had discussed this proposal with her neighbors. Ms. Jones stated that she has not because she knew there would be notices mailed out. She has had heard from one of the neighbors that did not have a problem with what she is asking.

Mr. Hutchinson asked Ms. Jones if she was wanting to have two sheep and six hens. Ms. Jones stated that she is not sure about the sheep, she may only want one because she would have to see that her children are being responsible in taking care of the chickens.

Interested Parties:

Jim Rusher, Attorney, Albright, Rusher & Hardcastle, 15 West 6th Street, Suite 2600, Tulsa, OK; stated he represents Ms. Ruth Jane Hurst; the property immediately south of the subject property. His client does not have any objection to the chickens as long as they are contained, though she does have objections to goats and/or sheep being on the property due to the location of the area where they will be kept and the condition of the fence and gate. Mr. Rusher stated his client's house would be closer to where the sheep and/or goats would be kept than the applicant's house; she has concerns about the livestock coming onto her property. Mr. Rusher stated the subject property is zoned residential though there is agricultural across the street. As stated in the staff report, the keeping of and raising of sheep is not permitted because of the potential adverse

effect on neighboring properties. The Berryhill Land Use Plan has the subject area as an existing neighborhood, which means it is intended to preserve and enhance existing single-family neighborhoods. Mr. Rusher stated his client has no problem with the chickens if they are contained, but she is concerned about the proposed sheep and/or goat; his client would like to have a cap placed on the number of chickens allowed.

Rebuttal:

The applicant stated she had no rebuttal.

Comments and Questions:

None.

Board Action:

On **MOTION** of **JOHNSTON**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; none “absent”) to **APPROVE** the request for a Use Variance to permit an Agricultural Use (Use Unit 3) in a RS District on 1.1 acre, subject to the conceptual plan submitted on page 2.7 of the agenda packet. There is to be no more than 15 chickens at any given time and no more than two total livestock; two sheep, or two goats, or one sheep and one goat. The Board finds the hardship to be the site appears to be mostly rural in nature and the long rectangular shape of the property. The applicant is to repair and maintain the fence to keep the animals on the subject property. The approval is for a time limit of five years, June 2024. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the Variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

BEG 344.24 N SECR SW SE TH W 479.38 NLY 100.06 E 475.42 S 100 TO POB SEC 17 19 12, OF TULSA COUNTY, STATE OF OKLAHOMA

2757—Matthew Gregory

Action Requested:

Variance of the required 30 foot of frontage to support a single-family dwelling in an AG District (Section 207). **LOCATION:** North and West of the NW/c of East 166th Street North & North Mingo Road

Presentation:

Matthew Gregory, United-Bilt Homes, 15815 East Skelly Drive, Tulsa, OK; stated he represents Andrew Evans, the subject property owner. Mr. Gregory stated that Mr. Evans received the deeded property from his family, and the family had the understanding that they could install an easement in order to access the property. Mr.

Evans contacted United-Bilt to have a house built and upon trying to file for a building permit he discovered that there needed to be road frontage for the property. Mr. Evans' family owns the property that the easement would be on.

Mr. Charney asked Mr. Gregory if the subject property sits back off the road and has no true road frontage. Mr. Gregory answered affirmatively. Mr. Charney asked Mr. Gregory if the person who has true road frontage is Mr. Evans family. Mr. Gregory answered affirmatively.

Mr. Charney stated that the easement will need to be filed of record that provides legal access to the subject property, especially if there is mortgage financing. Mr. Gregory stated there would be financing involved.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; none "absent") to **APPROVE** the request for a Variance of the required 30 foot of frontage to support a single-family dwelling in an AG District (Section 207). The Board finds the hardship to be the setback of the particular tract to the dedicated road. The approval is contingent upon the existence of an access easement that actually services and abuts the subject property. There are to be no more lot splits. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

BEG 1323.07W & 1321.42N SECR SE TH N660.71 E330.80 S660.65 W330.79 POB SEC 12 21 13 5.017ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

2758—K. S. Collins

Action Requested:

Variance of the minimum lot area in the AG District (Section 330, Table 3); Variance of the minimum land area per dwelling unit (Section 330, Table 3) to permit a lot split; Variance to reduce the side, rear and front setback requirements (Section 330, Table 3); Variance from the all-weather parking surface requirement (Section 1340.D). **LOCATION:** 12848 East 122nd Street North

Presentation:

Stuart Collins, Collins Land Survey, P. O. Box 250, Kiefer, OK; stated he represents Mr. Choua Thao. Currently there are two residences on the subject property; one on the north end of the property and one located on the west side of the property and this is where Mr. Thao lives. He would like to split the lot to satisfy his lender's requirements so he can sell a small portion of the property. Mr. Collins stated the property will become 2.39 acres for the larger tract and .5 acres for the smaller tract.

Mr. Charney asked Mr. Collins if the subject property was accessed from East 122nd Street North. Mr. Collins answered affirmatively.

Mr. Charney asked Mr. Collins if the property, as it sits today, was 2.89 acres in size. Mr. Collins answered affirmatively.

Mr. Charney asked Mr. Collins how the property was served with waste systems. Mr. Thao stated each property has its own septic system, both share a water meter, and both have their own electrical service.

Mr. Hutchinson asked Mr. Thao if someone was living in the house that will be on the ½ acre portion. Mr. Thao stated that it is empty.

Mr. Charney asked Mr. Thao if there were separate drives servicing each tract currently. Mr. Thao answered affirmatively.

Mr. Charney asked Mr. Collins if he saw anything about this application that causes him concern. Mr. Collins stated that he does not.

Mr. Charney asked Mr. Thao if he heard any objections from any of his neighbors about this proposal. Mr. Thao stated that he has heard no objections.

Mr. Hutchinson asked Mr. Thao if both houses were going to remain on the property. Mr. Thao answered affirmatively.

Mr. Charney asked Mr. Thao how and where vehicles parked on the property currently. Mr. Collins stated there is an overhead canopy on the east side that Mr. Thao parks his car and the other vehicles park on concrete in the u-shaped drive.

Interested Parties:

Steven Williams, 12124 North 129th East Avenue, Collinsville, OK; stated he lives next door to the subject property, and he received his notice of today's request last week, but he has not been able to speak with the applicant. Mr. Stevens stated that he is opposed to this request.

Mr. Charney asked Mr. Williams if he lived on the east or west side of the subject property. Mr. Williams stated that he lives off the main street on 129th on the corner of

122nd and 129th. Mr. Charney asked Mr. Williams to come forward and point out his property on the map provided in the agenda packet. Mr. Charney stated that Mr. Williams pointed to the northeast corner of the intersection of North 129th East Avenue and East 122nd Street North.

Mr. Charney stated, to make sure everyone understood what is being asked by the applicant, that because there are two residential structures on one piece of property, the landowner (the applicant) is trying to sell one of the residential structures and keep the other residential structure. The smaller portion of the property is the piece of property that is near Mr. Williams' property is the portion that would be split off from the applicant's larger tract. Mr. Charney asked Mr. Williams if that is what he understood was being requested by the applicant. Mr. Williams answered affirmatively.

Mr. Charney asked Mr. Williams why he thinks it would not be a good idea to split the property. Mr. Williams stated that the house is in bad shape and he thinks it is a nuisance. Mr. Charney asked if there was anyone living in the house today. Mr. Williams stated that there is no one living in the house. Mr. Charney asked Mr. Williams if the house is vacant today. Mr. Williams answered affirmatively.

Mr. Hutchinson asked Mr. Williams if he knew how long the house has been vacant. Mr. Williams stated that he thinks it has been vacant for about three months.

Mr. Charney asked Mr. Williams if the house were to be sold and remodeled would he think it would be beneficial. Mr. Williams stated that at the moment he does not know.

Rebuttal:

Mr. Thao came forward and stated that the house on the smaller piece of property will be rehabbed and it will look a lot better than it does now. Mr. Charney asked Mr. Thao if he was selling the property to a person he knows. Mr. Thao answered affirmatively; it is a family member. Mr. Charney asked Mr. Thao if there was funding in place to do this. Mr. Thao answered affirmatively.

Mr. Crall asked Mr. Thao if the metal building on the smaller piece of land is on concrete. Mr. Thao answered affirmatively. Mr. Crall asked if the overhead canopy on the larger piece of land has gravel. Mr. Thao answered affirmatively.

Comments and Questions:

None.

Board Action:

On **MOTION of CHARNEY**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; none "absent") to **APPROVE** the request for a **Variance** of the minimum lot area in the AG District (Section 330, Table 3); **Variance** of the minimum land area per dwelling unit (Section 330, Table 3) to permit a lot split; **Variance** to reduce the side, rear and front setback requirements (Section 330, Table 3); **Variance** from the all-weather parking surface requirement (Section 1340.D),

subject to conceptual plan 4.15 of the agenda packet. The Board finds the hardship to be the existence of two structures on an unusually configured lot, with each currently having separate drives and separate septic fields. The renovation of the house on the future smaller lot be completed and maintained well. The existing carport on the larger lot will be allowed to have a gravel parking surface. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

E 198 W 462 SE SE NE SEC 5-21-14, OF TULSA COUNTY, STATE OF OKLAHOMA

2759—Eller & Detrich – Lou Reynolds

Action Requested:

Modification of a previously approved site plan to include a storm shelter (CBOA-2678). **LOCATION:** 6441 East 106th Street North

Tracy Pipkin, 7211 East 106th Street North, Owasso, OK; stood and stated that he has a procedural question before the case is heard. Mr. Charney allowed Mr. Pipkin to take the floor.

Mr. Pipkin stated that on June 19, 2018 Mr. Charney stated that “he was compelled to recuse himself from three items on the agenda, even though he did not have a financial or other interest in the decision being made that he or his business partners have holdings very nearby and he feels it is his duty to step aside. The standard is not that there be an actual conflict of interest or a monetary interest, sometimes even if there is a potential appearance of impropriety...”.

Mr. Charney asked if this case is the same intersection? Mr. Pipkin answered affirmatively. Mr. Pipkin stated that the case he is quoting is two lots over, the rodeo case.

Mr. Charney asked Mr. Pipkin to take a seat so he could make a comment. Mr. Charney stated there is only one case before the Board today and he knows the case before the Board today is the day care center. Mr. Charney stated he understands Mr. Pipkin’s problem with his being on the Board for this today. Mr. Pipkin stood and stated there is another one.

Mr. Pipkin stated that the Code of Ethics states, “any reasonable person believing to be unbiased or impartial”, that is the question. Mr. Pipkin stated that in that same meeting Mr. Dillard misrepresented the facts in that case; the materials that were presented to

the Board were overwhelming in favor of support for that request at the time of that meeting. Mr. Dillard stated that they were balanced between the for and against, and that is no where near the case of the actual facts of what was going on. It could be that the Board only had a limited supply of information, he does not know, but he thinks it was overwhelming that it was more like ten to two, and there was a generic letter that indicated the day care was good.

Mr. Charney asked Mr. Pipkin if he was requesting that he recuse himself from the matter Mr. Reynolds is going to present to the Board today? Mr. Pipkin answered affirmatively. Mr. Charney thanked Mr. Pipkin for the request and stated that he understands the nature of the request, and he refuses to grant Mr. Pipkin's request and will sit in judgement on this matter.

Mr. Charney asked Mr. Dillard if he wished to recuse himself from the matter before the Board today? Mr. Dillard stated that he has no bias and he has not seen the property. He does not know anyone involved in the property.

Mr. Charney stated that he has spoken to the party's request relating to this request and thanked Mr. Pipkin for his appearance.

Mr. Charney stated there has been a request for two recusals, and he believes it was on matters that the Board has spoken to previously when the base case was before the Board. The Board is going to proceed to hear the case before them today, and he understands that it has to deal with the same precise property. Mr. Charney stated that he deems the Board to believe they are in full conformity with the Code of Ethics, and other Code requirement in the ability to make an impartial decision.

Presentation:

Lou Reynolds, Eller & Detrich, 2727 East 21st Street, Tulsa, OK; stated he represents the Washington County Child Care Foundation. This case is regarding an amendment to the previous site plan the Board approved a year ago to include a storm shelter. The client intends to build a 1,165 square foot storm shelter adjacent to the facility. The storm shelter will be one-story high with the same exterior and accent material as the main building.

Mr. Charney asked Mr. Reynolds if the storm shelter would conform to the same architectural style of the principal structure. Mr. Reynolds answered affirmatively. Mr. Charney asked if there would any modification to the footprint of the building. Mr. Reynolds stated there would be no modification to the original building, it is just the site plan for a storm shelter.

Mr. Reynolds stated the storm shelter will have the capacity to hold all the children attending the day care, and maybe any parent picking up children. The storm shelter has been designed for the worst-case scenario.

Mr. Johnston asked Mr. Reynolds if the storm shelter will contain any other day-to-day use other than being just a storm shelter. Mr. Reynolds stated that at the present time it will not, but it might have some kind of use in the future; they are trying to be efficient with the shelter.

Interested Parties:

Carl McCarty, 10535 North Sheridan, Sperry, OK; stated he lives diagonal to the subject property. Now he has to back into his driveway to be able to get out because of the traffic on Sheridan. He found out this is a 501c3 facility and it is for rich kids, it is not for poor native American children like was presented. He has found out from the City of Owasso that this will mean the destruction of his house, because nothing about this day care center came across the City Council desk. Mr. McCarty stated that there will need to be a three-point turning at the facility, and his house will be destroyed to ease the traffic. Mr. McCarty stated that is a problem because he is on a fixed income and his house is older than the State of Oklahoma. This facility has dropped the value of his house because no one wants to live next to that traffic. Mr. McCarty stated this facility should have been built in the Sheridan Crossing neighborhood not in his neighborhood. There will be traffic problems at that location because when there are 200 cars at the four-way it will be dangerous. A 501c3 should never be used to profit rich kids, it should only be used for poor children.

Mr. Charney stated that the Board is present today on a very limited matter; the expansion of a previously approved site plan by adding a storm shelter. He understands that Mr. McCarty does not like the use on the corner and he thanked Mr. McCarty for his comments. The Board's focus today is whether the Board wishes to amend a site plan to allow a storm shelter and that is the focus today.

Tracy Pipkin came forward and stated he does not think this expansion is a good idea because he believes the Board has overstepped the bounds of what could be allowed. This would continue to go against the Zoning Code that indicates, which is to encourage and protect agricultural land, this does not do that. This furthers the wasteful scavenger development in rural areas. These are two specific items that the Board has ignored. Mr. Pipkin stated that he would be interested in understanding what the criteria for trying those two items. Mr. Pipkin stated that in CBOA-2569 Mr. Dillard stated, "this would change the resident's world ... cannot support the request". Mr. Pipkin stated nothing has changed since that hearing. Mr. Pipkin thinks his statement about being biased has already been proven that it already is. Again, the infrastructure for this is not congruent to the type of road and infrastructure that is there. There is no way to properly support additional construction. The neighborhood is adversely impacted by the noise pollution, light pollution, because the noise can be heard for miles away. This reduces wildlife and the road is disintegrating. There is no reason for a commercial environment to be in this residential area.

Rebuttal:

Lou Reynolds came forward and stated this request will not increase any traffic. The entrance ramp is almost 60 feet from the intersection and the other entrance is 330 feet from the intersection.

Mr. Charney asked Mr. Reynolds if today's request does not increase the number of allowed children on the site, it is simply a storm shelter correct? Mr. Reynolds answered affirmatively.

Comments and Questions:

None.

Board Action:

On **MOTION** of **HUTCHINSON**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; none "absent") to **APPROVE** the request for a Modification of a previously approved site plan to include a storm shelter (CBOA-2678). Finding the proposed modification is compatible with and non-injurious to the surrounding area and meets the previously granted Board relief or meets the zoning requirements, per code; for the following property:

SE SE SE SEC 10 21 13 10ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

NEW BUSINESS

None.

BOARD COMMENTS

None.

There being no further business, the meeting adjourned at 2:44 p.m.

Date approved: _____

8/20/19
David E. King

Chair