

TULSA COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 44
Friday, February 17, 1984, 9:00 a.m.
Room 119, Administration Building
500 South Denver Avenue, Plaza Level
Tulsa Civic Center

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Alberty, Chairman Tyndall Walker Wines	Martin	Gardner Jones Wiles	J. Edwards, Building Insp.

The notice and agenda of said meeting were posted in the Office of the County Clerk on Tuesday, February 14, 1984, at 11:46 a.m., as well as in the Reception Area of the INCOG offices.

After declaring a quorum present, Chairman Alberty called the meeting to order at 9:35 a.m.

MINUTES:

On MOTION of WALKER and SECOND by TYNDALL, the Board voted 4-0-0 (Alberty, Walker, Tyndall, Wines, "aye"; no "nays"; no "abstentions"; Martin, "absent") to approve the Minutes of January 20, 1984 (No. 43).

UNFINISHED BUSINESS:

Case No. 388

Action Requested:

Variance - Section 1420 (a) - Nonconforming Use of Buildings or Buildings and Land in Combination - Use Unit 1223 - Request for a variance to expand a nonconforming use in an RE District under the provisions of Section 1670, located south of the SW corner of 76th Street North and 117th East Avenue.

Presentation:

Water Products of Oklahoma, P. O. Box 349, requested by letter (Exhibit "A-1") that this be continued to March 16, 1984. The letter informed that the applicant has been trying to seek a second point of access to the property.

Protestants: None.

Board Action:

On MOTION of WALKER and SECOND by WINES, the Board voted 4-0-0 (Alberty, Tyndall, Walker, Wines, "aye"; no "nays"; no "abstentions"; Martin, "absent") to continue Case No. 388 to the March 16, 1984, meeting.

Action Requested:

Special Exception - Section 410 - Principal Uses Permitted in Residential Districts - Use Unit 1208 - Request for an exception to permit a mobile home in an RS District under the provisions of Section 1680, located east of the NE corner of 17th Street and East 136th Street North.

Presentation:

Shirley Drywater, 11521 East 136th Street North, would like to put a mobile home on her mother's land. She informed there is already a home and a mobile home on the property. There is a church with a mobile home next to it nearby. She informed they are on septic system, and her septic tank has already been approved by the Health Department. She informed she is aware that she needs to apply for a building permit to put the mobile home on the lot, and she has contacted the Building Inspector's office. She would like to have this approved for a permanent period of time.

Protestants: None.

Comments:

Mr. Alberty informed this has been continued at least three times and there have not been any protestants at any of the meetings.

Mr. Walker stated he wishes there was a hardship reason for granting this. He informed that there is not a request for more than one dwelling unit per tract of ground.

There was discussion about the actual size of the lot and whether or not there are actually other dwellings on the lot that is advertised.

Mr. Jones informed that when the applicant made her application, she put that the lots were vacant. He suggested that, although the property is all under one deed and abstract, the other dwellings could be on different lots.

Mr. Jones informed there is sewer near the subject property. Although the applicant stated she has a septic system, she probably has sewer because of the size of the lots.

Mr. Gardner informed since the applicant has not asked for any relief other than putting a mobile home on vacant property, that is all this Board can consider at this time. He informed that the mobile is on the lot, and the County allowed a temporary hookup. He suggested that the Board could approve this, subject to the fact that there are no other units on those lots and subject to the Health Department.

Mr. Alberty informed he suspects that the applicant is referring to the area when she is talking about her mother's home and her brother's mobile, not this specific lot. The case map shows that there is only an accessory building on the subject property.

Mr. Jones informed he contacted the Collinsville City Planner since this is within their referral area, and he had no referral or comment on the matter.

Case No. 400 (continued)

Board Action:

On MOTION of WALKER and SECOND by WINES, the Board voted 4-0-0 (Alberty, Tyndall, Walker, Wines, "aye"; no "nays"; no "abstentions"; Martin, "absent") to approve a Special Exception (Section 410 - Principal Uses Permitted in Residential Districts - under the provisions of Use Unit 1208) to permit a mobile home in an RS District under the provisions of Section 1680, subject to the Health Department's approval, Building Inspector's Department approval, and subject to there being only one dwelling unit on the subject tract, on the following described property:

Lots 3 and 4, Block 15, South Park Addition, Tulsa County, Okla.

Case No. 414

Action Requested:

Special Exception - Section 410 - Principal Uses Permitted in Residential Districts - Use Unit 1224 (a) - Request for an exception to permit oil extraction in an RS District under the provisions of Section 1680, located north of the NW corner of 61st Street and 85th West Avenue.

Presentation:

Dan Mordhorst, P. O. Box 4335, was represented by John Sublett, 1776 One Williams Center. Mr. Sublett informed this is not an unusual case insofar as the zoning law is concerned--there are probably at least 200 cases similar to this. He stated that it is also not novel that when the mineral rights have been severed, the surface owner buys the surface subject to the right of the mineral owners to develop and use as much of the property as is reasonably necessary to develop the property for oil and gas purposes. If the mineral owners did not have that right, the mineral ownership would be worthless. He informed there is a discount factor involved in buying the surface without the mineral rights. The rights of the people who use the surface and the rights of the mineral owners are not totally incompatible. He does not want the Board to feel that this is a nuisance situation and that oil wells ought to be outlawed. He feels that the applicants have done everything that the law requires them to do in the process of drilling the well. He informed that under Oklahoma Law, the mineral owner has the right to use and develop the property. He doesn't have to pay a premium up front for permission to move in on the property. His liability is limited to the amount of damage that he does to the surface owner by reason of the exercise of the rights that he already has. The applicants have not attempted to run over the rights of the surface owners. He feels that if this is a nuisance, the people moved to the nuisance. The production has been out there since 1905.

Interested Party:

Mr. Erwin D. Phillips represented the Sand Springs Home, 2nd & Main, Sand Springs, one of the mineral owners of the subject property. He feels that Mr. Sublett's analysis of the law of oil and gas is accurate. They would like to see all the mining of minerals that can reasonably be done in the area. Part of the problem is that this is a rural area that is zoned residential. The laws of Oklahoma do have certain protections for the surface owners as to the nearness to structures and what is reasonable and what is not reasonable. There are only so many places that a mineral owner can reasonably produce the minerals

Case No. 414 (continued)

and not violate one of the restrictions. It is not a simple task to find a location to drill that conforms with the Oklahoma Laws. He feels the approval needs to be based on the reasonableness of the application--it cannot be just an arbitrary or unreasonable rejection of the application. He informed that oil and gas has been produced in the area for many years. The production was in the area when most of the surface owners acquired their title. The Sand Springs Home has owned the minerals for several years. There has been some production in the area over the years.

Protestant:

Richard Holmes, 1201 Fourth National Bank Building, represented the homeowners of the Homeowners Association of this area. They acknowledge that the surface owners have rights to receive surface damages and that there are procedures for taking care of that. The surface owner also has the right to have his property enjoyed without any pollution, and if there is going to be a well located on the property, to have it located at a legal well site. The mineral owners have rights as well--the right of ingress and egress onto well sites and the right to drill on a legal well site. The neighbors have the right to live in what has been designated as RS zoning by the zoning laws in this area. The neighborhood should be protected by the zoning laws. They have the right to have a safe place for their children to live and to play in. They also have the right to enjoy the light residential traffic that they have had in the past, and not the clogging of heavy equipment and the ruining of the blacktop roads in the area. He informed that RS zoning is intended for single-family residential development. Oil extraction is allowed in RS zoning by Special Exception. He pointed out the Board may grant a special exception after finding the special exception will be in harmony with the spirit and intent of the Zoning Code, will not be injurious to the neighborhood, or be otherwise detrimental to the public welfare. Mr. Holmes submitted that oil extraction in this particular neighborhood of one to five acre tracts with approximately 40 homes would not be harmonious with the spirit and intent of the RS zoning. There is only one other well drilled, and it is not in anybody's back yard--it is close to a creek and is surrounded by trees. This well goes back to 1905, prior to any zoning on the property. He submitted that this is injurious to the neighborhood because of the noise during drilling and the equipment on the residential streets. He informed that this area is being developed presently. He feels that this is detrimental to the public welfare because of the safety factor. There are 12 children that live on the block of the subject property. He does not feel that the heavy equipment used in drilling is intended for family neighborhoods. This equipment is dangerous and attractive nuisances for children. He informed the perforation of the well with explosives or chemicals could be dangerous not only to the children, but also to the septic tanks, water wells, and all 40 of the houses in the area. Leaking of oil or gas is a real possibility and could be dangerous. Well fires cannot be handled by regular fire-fighting equipment--the area would need to be protected from any type of well fires. He questioned the responsibility of the operator. They moved a rig on the site without checking the zoning, they failed to notify the surface owner in the manner provided in the statutes, and according to the Office of the Secretary of State in Oklahoma City, there has been no bond filed. The applicant stated that they would repair any

Case No. 414 (continued)

damage. He informed the property has not been repaired. The operator did not clean the road that their equipment messed up for over a month after the rig was removed. He pointed out that the access to this well site is only through residential streets. If there were some other way to access the property, the Board could take that into consideration. The subject tract is a five-acre tract and is entirely surrounded by RS zoning. There is some agricultural zoning to the northwest, but it does not adjoin this tract. He submitted that even if the special exception is granted, it still would not be a legal well site because a 2,500-foot well must be located not less than 330 feet from any property line or lease line. This tract of land is 330 feet wide. He cannot see how there would be any conceivable way that a well could be drilled within that 330-foot by 660-foot property and still be 330 feet from the property line. He does not think that the applicants have shown that this would be in harmony and spirit with this residential neighborhood and with the Zoning Code. He submitted that it would be injurious to the neighborhood and that it is detrimental to the public welfare under these circumstances. He does not feel that any appropriate conditions or safeguards have been established or submitted by the applicant to protect the people in the area.

Applicant's Rebuttal:

Steve Yates, 2627 East 15th Street, represented the developer of the property, the Seagull Operating Company. He pointed out that G.Y.M. and Seagull Operating Company have a \$25,000 bond filed as the law requires. It is filed with the Courthouse. The protestant did not check in the right place to see if a bond was filed. He never personally notified Mr. Robinson, the owner of the subject tract, but Dan Mordhorst did call him and the pumper for Seagull went to see him. These notifications took place long before the rigs moved in. There was notification that they were coming. The applicant was also notified by the District Court action. He informed the rule of the Corporation Commission says that they have to be 165' from the property or lease line. They are well within the lease line. He presented some pictures of homes in the area that are very run-down (Exhibit "B-1"). He informed that there are some real nice homes in the area, but they are not all real nice. The area is mixed. It may be zoned RS in name, but the property is not being handled RS in practice. Mr. Robinson, the owner of the subject tract, is about the only one in the area that complies with the RS zoning. The others want an agricultural situation, but want to keep everyone else out. He informed that the well will not be drilled in excess of 2,500 feet.

Comments:

Mr. Alberty informed this was continued to allow the Staff and the Staff of the District Attorney's office to report to the Board determining the legality and the rights of both the surface owners and the mineral rights owners.

Mr. Jones informed he surveyed several other cities in the southwest to find if they allow oil and gas extraction inside the city limits and if they do, under what conditions they allow it. Most of the other cities do allow drilling inside and outside the city limits. In all cases, each case is handled on an individual basis--there are no specific conditions listed in the Ordinances. Each city places restrictions

Case No. 414 (continued)

on the applicant depending on what the situation is. Each case is judged on its own individual merits. He submitted a report of these findings (Exhibit "B-2").

Mr. Alberty is mainly concerned with what the law says in regards to the actual rights of the various owners and if there are any precedent cases that would allow any right to supercede the right of the other.

Mr. Gardner informed he spoke to David Carpenter of the District Attorney's office. The applicant, even though he has mineral rights, must get the approval of this Board. Without the approval, he does not have the right to drill an oil well. He has certain rights within the land, but it does not supercede the Zoning Code. This is a matter of judgement and each case must be evaluated based on the provisions of the Zoning Code.

Mr. Alberty feels the Board is charged with the responsibility to consider the case under the guidelines of the Zoning Code to determine whether this special exception is a use that can be found compatible and harmonious with the neighborhood. He is concerned that there are rights by both the mineral owners and surface owners. He is influenced by the fact that the zoning must take precedence in this case and the provisions of the Zoning Code must be complied with in the Board's deliberation of this case.

Mr. Wines submitted some pictures of the area of the subject property. A protestant in the audience questioned whether Mr. Wines is a Board member or an oil man. Mr. Wines informed he is a Board member, and he wants to see that this is handled properly.

Mr. Walker informed he also went out to review the area. The Law of the State of Oklahoma is in favor of the mineral owner in virtually every situation except where there is zoning that would indicate that the land is intended for use other than agricultural. He believes this is the situation in this case. The area is in transition. There are some new homes in the area as well as some old, deteriorated homes. He described the surrounding area. One of the things that the Board is trying to do is not only follow the letter of the law but to follow the spirit and the intent of the law. It appears to him that this area is continuing to redevelop into a residential neighborhood. He believes that the mineral rights do not have to be in conflict with the surface rights. For the neighborhood to accept or to receive mineral extraction in the area, it would have to be in agreement with the people that live in the area. He does not believe that the Board is prepared to make an unreasonable or arbitrary decision.

Board Action:

On MOTION of WALKER and SECOND by TYNDALL, the Board voted 3-1-0 (Alberty, Tyndall, Walker, "aye"; Wines, "nay"; no "abstentions"; Martin, "absent") to DENY a Special Exception (Section 410 - Principal Uses Permitted in Residential Districts - under the provisions of Use Unit 1224 (a)) to permit oil extraction in an RS District under the provisions of Section 1680, on the following described property:

Case No. 414 (continued)

The North-Half of the NE/4 of the SW/4 of the SE/4 of Section 36, Township 19 North, Range 11 East of Tulsa County, State of Oklahoma.

NEW APPLICATIONS:

Case No. 419

Action Requested:

Special Exception - Section 410 - Principal Uses Permitted in Residential Districts - Use Unit 1208 - Request for an exception to permit a mobile home in an RS District under the provisions of Section 1670, located at the SE corner of North Madison Avenue and 60th Street North.

Presentation:

The applicant, Jay C. Swartz, Box 386, Sperry, was not present.

Protestants: None.

Comments:

Mr. Edwards informed the applicant does not have a temporary hookup.

Board Action:

On MOTION of WALKER and SECOND by TYNDALL, the Board voted 4-0-0 (Alberly, Tyndall, Walker, Wines, "aye"; no "nays"; no "abstentions"; Martin, "absent") to continue Case No. 419 to the March 16, 1984, meeting.

Case No. 420

Action Requested:

Special Exception - Section 410 - Principal Uses Permitted in Residential Districts - Use Unit 1204 - Request for an exception to permit a church use in an RS District under the provisions of Section 1680, located east of the NE corner of South 129th East Avenue and East 131st Street.

Presentation:

George H. Twyford, 821 Lynwood Lane, Broken Arrow, was represented by Steven Smith, 24300 East 98th Street, Broken Arrow, a deacon of the church. He informed they were at the meeting in Broken Arrow and are in compliance with the conditions imposed by the Broken Arrow Planning Commission. He submitted a copy of the plans. They had been concerned about what the attitude of the neighborhood would be in this case, so they contacted all the people within half a mile of the subject property. All of the neighbors were in total agreement to having a church located at the site. They had only positive response from all the people that would be directly affected by them turning the present structure on the property into a church building. Their intention is to renovate the existing structure on the property to accommodate the church. The structure is about 1,500 square feet in size. They have approximately 40 members in their congregation, so they feel that a building this size is more than adequate and leaves room for growth within the present structure. The property fronts onto 131st Street, and the access will be totally off of 131st Street. They would not have any affect on any type of residential traffic. He was aware

Case No. 420 (continued)

that the street right-of-way would be 50 feet. The man immediately to the west of the subject property has assured the applicants that if he should decide to sell his property, he would give the church the first right of refusal on it. The tract consists of 1.35 acres.

Protestants: None.

Comments:

Mr. Jones informed that Broken Arrow heard this in referral and voted unanimously to approve the request subject to these three conditions: (a) That the subject property be platted in order to allow for dedication of additional right-of-way; (2) that sewer services be approved by the Health Department; and (3) that all off-street parking be covered with a dust-free, all-weather surface. He submitted a letter from the Broken Arrow Assistant City Planner (Exhibit "C-1").

Mr. Alberty informed the Ordinance will require 37 parking spaces, and they have shown 46 parking spaces on their plans.

Board Action:

On MOTION of TYNDALL and SECOND by WALKER, the Board voted 4-0-0 (Alberty, Tyndall, Walker, Wines, "aye"; no "nays"; no "abstentions"; Martin, "absent") to approve a Special Exception (Section 410 - Principal Uses Permitted in Residential Districts - under the provisions of Use Unit 1204) to permit a church use in an RS District under the provisions of Section 1680, subject to the recommendations of the Broken Arrow Planning Commission as follows: (a) That the subject property be platted in order to allow for dedication of additional right-of-way; (2) that sewer services be approved by the Health Department; and (3) that all off-street parking be covered with a dust-free, all-weather surface, on the following described property:

The East 195 feet of the West 550 feet of the South 299.5 feet of the SE/4 of the SW/4 of Section 4, Township 17 North, Range 14 East, Tulsa County, State of Oklahoma.

Case No. 421

Action Requested:

Special Exception - Section 410 - Principal Uses Permitted in Residential Districts - Use Unit 1209 - Request for an exception to permit a mobile home in an RS District under the provisions of Section 1680, located at the NE corner of Garrison Avenue and 63rd Street North.

Presentation:

Lois Mae Steinke, 6311 North Garrison Avenue, informed she would like to place a mobile home on the 1 1/2 acre tract. A garage has been moved in on the property, and there is a chicken house on the property. There was a house, but it burned. The septic tank from the house is already installed on the property. The neighbors think this mobile home will be an improvement over what has been on the property in the past. There are other mobile homes in the area, but she does not know if the owners had a permit to put them in.

Protestants: None.

Case No. 421 (continued)

Comments:

Mr. Alberty asked the applicant if she has sought Health Department approval on the septic tank and informed her that that would probably be necessary prior to the Building Inspector issuing a permit to locate a mobile home there. He advised her to check with the Building Inspector about what the requirements would be.

Mr. Gardner informed the Health Department requires that all approvals for mobile homes by the Board be subject to their approval.

Board Action:

On MOTION of TYNDALL and SECOND by WINES, the Board voted 4-0-0 (Alberty, Tyndall, Walker, Wines, "aye"; no "nays"; no "abstentions"; Martin, "absent") to approve a Special Exception (Section 410 - Principal Uses Permitted in Residential Districts - under the provisions of Use Unit 1209) to permit a mobile home in an RS District under the provisions of Section 1680, subject to the issuance of a Building Permit and the approval of the City-County Health Department, on the following described property:

Lot 12, Block 3, Turley Second Addition, Tulsa County, State of Oklahoma.

Case No. 423

Action Requested:

Special Exception - Section 410 - Principal Uses Permitted in Residential Districts - Use Unit 1209 - Request for an exception to permit a mobile home in an RS District under the provisions of Section 1680, located north of the NE corner of Brady Street and North 53rd West Ave.

Presentation:

Danny Ward, 307 North 53rd West Avenue, informed he would like to put a mobile home on the subject property. There was a house on the property that burned down a little over a year ago. He has owned the property for seven years. There is a 24' x 24' garage already on the property. There is already a septic tank on the lot. He went through the Building Inspector's office to obtain a Building Permit so he could have a temporary hookup for gas and electricity. Most of the neighbors are glad that he is moving back on the property. There are about 7 or 8 other mobile homes in the area.

Protestants: None.

Board Action:

On MOTION of WALKER and SECOND by TYNDALL, the Board voted 4-0-0 (Alberty, Tyndall, Walker, Wines, "aye"; no "nays"; no "abstentions"; Martin, "absent") to approve a Special Exception (Section 410 - Principal Uses Permitted in Residential Districts - under the provisions of Use Unit 1209) to permit a mobile home in an RS District under the provisions of Section 1680, subject to the issuance of a Building Permit and the approval of the City-County Health Department, on the following described property:

Case No. 423 (continued)

Part of the SE/4 of the NE/4 of Section 5, Township 19 North, Range 12 East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, being more particularly described as follows, to wit: Beginning at a point 325 feet South and 50 feet East of the Northwest corner of the SE/4 of the NE/4 of Section 5; thence East and parallel with the North line of the SE/4 of the NE/4 of Section 5 a distance of 140.22 feet; thence South a distance of 100 feet; thence West a distance of 120.21 feet; thence North a distance of 100 feet to the point of beginning; EXCEPT all the oil, gas and other minerals in, under and that may be produced from the above described tract; EXCEPT easements, including pipeline rights-of-way appearing of record. All in Tulsa County, State of Oklahoma.

Case No. 424

Action Requested:

Variance - Section 930 - Bulk and Area Requirements in the Industrial Districts - Use Unit 1217 - Request for a variance of the setback from abutting AG District (side yard) from 75' to 3' to permit a mini-storage in an IL District under the provisions of Section 1670, located 1/4 mile north of the NE corner of 116th Street North and Highway #169.

Presentation:

June Taylor, Route 1, Box 233X, Skiatook, informed due to the shape of the subject property, they would like to put two buildings on the tract. The buildings will be 120' by 20'. One will be set back 25 feet from one edge and about 22 feet on each side of the piece of property. If they were forced to comply with the 75-foot requirement, they would have to have a shoestring of a building right down the middle of the property. This would be an undue hardship. They will not be putting a building within three feet of the property line, but they would like the 75-foot requirement changed. She submitted a plot plan of her proposal (Exhibit "D-1"). This will be a mini-storage with bays on each side. She informed there would also be a 50' by 120' metal building on the property. They would like to turn another part of the property into a church. She realizes that she would have to come back before the Board again to do this. They plan to put shrubs in to separate the two proposed uses. This will be fenced and lighted and will be operated as a business. She informed this will be a very attractively planned building. They are willing to move the building to the Board's specifications. They will do what they can to comply with the Board.

Protestants:

Claud Lamb, Route 3, Box 692, Collinsville, informed he owns the property to the north of the subject property. He informed he objects to a building being built close to his property because he has a water problem and all the runoff will go across his property. He informed they protested against IL zoning, and they did not know that the property had been zoned IL. He questioned whether the septic tank and septic system would accommodate a church. He wanted to know what kind of fence the applicant was planning to put in. He informed that his 2 1/2 acres runs all across the north edge of the subject property.

John Bullard, Route 3, Box 691, Collinsville, informed his property abuts the subject property on the south. They have lived on the

Case No. 424 (continued)

property for 20 years. They feel that their right of privacy will be violated by a public related affair like this. They feel that it would violate their established residences because they are so close to each other. He understands the property is now zoned IL, but he was not informed of this situation. He informed that about two years ago they were in a County Commission meeting and they asked that the zoning be denied. Within three months of that meeting, the IL zoning was passed without their knowledge.

Applicant's Rebuttal:

Mrs. Taylor informed the property was rezoned by a previous owner of the property. They do plan on fencing the property. She informed she has a contractual agreement that has to be complied with prior to 30 days.

Comments and Questions:

Mr. Jones submitted a letter from Owasso--this is in their referral area (Exhibit "D-2"). They could not get a quorum together, so they said they would support this Board's decision.

Mr. Alberty informed that a mini-storage is permitted by the zoning.

Mr. Walker asked the applicant why she is wanting to change from 75' to 3'--her plans do not show any dimensions within three feet of the property line. She informed they want to be able to drive on each side of the building. They are not asking to be able to build up to three feet from the property line--they are staying back over 22 feet on each side of the building to allow a car to drive around the building.

Mr. Alberty informed that all she is really asking for is 22.5 feet. She is absically asking for a little over a 50-foot variance.

Mr. Alberty informed Mr. Lamb that the Ordinance will require a solid surface screening fence. She will have to install a privacy fence a minimum of six feet high.

Mr. Alberty informed the application to rezone the subject property was recommended for denial by the Planning Commission. The County Commission, which has the authority to zone in the County, approved the application. He informed that the zoning is an issue that the protestants need to take up with their County Commissioners.

Mr. Alberty informed the setback requirement would be 75 feet from any adjoining property which would mean that this property would actually be rendered almost undevelopable. There would be only 15 feet of development in the center of the property because she would have to set back 75 feet from the north and the south.

Mr. Wines asked Mr. Gardner if this should be referred back to the Planning Commission or the County Commission since the people were evidently not notified. Mr. Gardner informed that the law requires that there be a public hearing and that notice be given. The Planning Commission holds a public hearing and notice is given. That part of the process went correctly in this case. There were protestants at the Planning Commission meeting when this was heard. The Staff and the Planning Commission recommended denial of the rezoning. This had

to have been appealed to the County Commission for a hearing; otherwise, it would have just died. The procedure that is used in the City is that the City Commission secretary notifies anybody listed in the Planning Commission minutes that there is going to be a hearing and they are to come to that hearing if they are interested. Mr. Gardner informed he does not know if the people were notified or not when it came to the Board of County Commissioners. The protestants should check into what happened and if proper notice was given. There are two hearings in the process, both of which usually have notice given to the interested parties. As it relates to the application before this Board, assuming the property is zoned IL, and properly so, there is a 75' setback. If there was not some relief granted, there is no way to build anything on this piece of property that would be usable. He thinks some relief needs to be granted, but how much is a matter of judgement. This street is not designated to go industrial on the Comprehensive Plan. There is a reason for having a 75-foot setback from residential property--it is to insure compatibility. Even though it is spot-zoning, it is there, and if the Board does not grant some relief, there is no way they can use the property. Sometimes the use itself is very important in making a decision--the type of use they are proposing might require a smaller setback than some more intense industrial operation.

Mr. Alberty informed the Board should consider the fact that all the applicant is asking for is one building. The setback could be specific to this one proposed use and building. He pointed out that the setback requirement is there to protect adjoining uses from a use that may not be compatible.

Mr. Wines suggested that, since there is a drainage problem and a question as to whether notice was given at previous hearings, this might be continued to the next meeting.

Mr. Jones informed he had a message from Tom Raines, the County Engineer, stating that he has a concern with this case in that on his map only 16 1/2 feet is dedicated on Garnett (Exhibit "D-3"). The total dedication is not there. He realizes that the Board cannot require additional dedication, but he asked that when the Board reviewed the plans, they should make sure that the building is setting back far enough because their plans do show this being expanded and widened.

Mr. Alberty informed that this is subject to a plat under Section 260, so they will have to plat the property before they can get a Building Permit. The dedication will be complied with at the time of platting.

Mr. Alberty informed his concern would be whether or not a continuance would satisfy the issue. He does not just want to continue it for the fact of it being continued. As far as the zoning is concerned, there is nothing that this Board is doing that is pertinent with regard to how the zoning was approved or not approved. The fact of the legality of whether or not the ordinance was published under the legal requirements and stipulations of the Zoning Ordinance is up to the aggrieved parties to take up with the District Attorney. The Board is looking at the fact that the property is zoned IL and is being asked to look at the reasonableness of a variance to permit the development of this property.

There was discussion about what the applicant was actually requesting.

Case No. 424 (continued)

Mr. Walker made a motion that this application be denied.

Mr. Wines asked Mr. Gardner what the CS zoning diagonally across from the subject property is. Mr. Gardner described the surrounding area.

Mr. Walker informed there are just so many things a person can do with a piece of land. He does not oppose the church or the mini-storage building. The question is whether or not the Board should consider the variance of a 75-foot setback, which is required by the zoning law, from the abutting AG District. The Commissioners knew by looking that it would be impossible to use this piece of property at all without the owner coming before this Board.

Mr. Walker's motion for denial died for the lack of a second.

Mr. Wines feels a mini-storage might be good in this vicinity. He asked what the building would be built of and was informed that it would be a metal building with a concrete floor.

Board Action:

On MOTION of TYNDALL and SECOND by WINES, the Board voted 4-0-0 (Alberty, Tyndall, Walker, Wines, "aye"; no "nays"; no "abstentions"; Martin, "absent") to approve a Variance (Section 930 - Bulk and Area Requirements in the Industrial Districts - under the provisions of Use Unit 1217) of the setback from abutting AG District (side yard) from 75 feet to 20 feet on the north and the south and from 75 feet to 25 feet on the east to permit one 20-foot by 120-foot mini-storage building as depicted on the plot plan in an IL District under the provisions of Section 1670, on the following described property:

The S/2 of S/2 of SW/4 of NW/4 of SW/4 of Section 5, Township 21 North, Range 14 East of Tulsa County, State of Oklahoma.

Discussion:

Mr. Edwards informed the application is subject to a plat, and Mr. Alberty informed it is also subject to a Building Permit.

Case No. 425

Action Requested:

Special Exception - Section 410 - Principal Uses Permitted in Residential Districts - Use Unit 1209 - Request for an exception to permit a mobile home in an RE District under the provisions of Section 1680, located 500' south of the SE corner of South 203 West Avenue and Coyote Trail.

Presentation:

Lynn B. Calton, 2227 South Garnett Road, informed this is a mobile home subdivision--there is a total of 9 lots. The subject lot is a little over one acre in size and is one of the six lots in the Second Addition. The area is developed as a mobile home subdivision. The Second Addition was given RE zoning instead of RMH. They have always had the intention of making this a mobile home subdivision. He is aware of the requirements for Health Department approval for the septic tank system and of the Building Permit. He informed this is a

Case No. 425 (continued)

platted addition and the approvals have been taken care of. He submitted a plat (Exhibit "E-1").

Protestants: None.

Board Action:

On MOTION of WALKER and SECOND by WINES, the Board voted 4-0-0 (Alberty, Tyndall, Walker, Wines, "aye"; no "nays"; no "abstentions"; Martin, "absent") to approve a Special Exception (Section 410 - Principal Uses Permitted in Residential Districts - under the provisions of Use Unit 1209) to permit a mobile home in an RE District under the provisions of Section 1680, per Health Department approval and the issuance of a Building Permit, on the following described property:

Lot 5, Block 1, C Bar C Ranch 2nd Addition to Tulsa County, State of Oklahoma.

Case No. 426

Action Requested:

Special Exception - Section 310 - Principal Uses Permitted in the Agriculture District - Use Unit 1205 and 1206 - Request for an exception to permit a child day care center in an existing residence in an AG District under the provisions of Section 1680, located south of the SW corner of Skyline Drive and South 69th West Avenue.

Presentation:

Joylyn Shackleford was represented by Lonnie Shackleford, P. O. Box 571041. He informed there is an existing two-story home on the property and they would like to use the bottom floor of it for a day care center while residing on the upper floor. The house has over 4,000 square feet. This area has no licensed day care center at the present. They have plenty of land and he does not think it would interfere with anybody. They have 10 acres on one side of them and five acres on the other side of the residence. The house sits on 20 acres. Mr. Shackleford's wife will operate the day care center. They will probably have about 36 children in the day care center, but they could be licensed for 46 children. He has already checked with the State Department of Licensing. All they lack is putting up the required 4-foot fence. The hours of operation will be five days a week from 6:00 a.m. until 6:00 p.m. They would like to have about a 3-foot by 4-foot sign. They do not plan to light the sign. He informed they will not be moving any inside walls. He submitted a drawing (Exhibit "F-1") and explained it. He informed he has to fence 36 square feet per child, so they will probably be fencing about a 150-foot by 200-foot area.

Protestants: None.

Comments and Questions:

Mr. Wines asked Mr. Gardner if there is a limitation on the size of a sign that would be permitted. Mr. Gardner informed that what the applicant is proposing would be within the amount of signage allowed.

Case No. 426 (continued)

Mr. Edwards informed if they do any wiring, they will be required to have an electrical inspection.

Board Action:

On MOTION of WALKER and SECOND by TYNDALL, the Board voted 4-0-0 (Alberty, Tyndall, Walker, Wines, "aye"; no "nays"; no "abstentions"; Martin, "absent") to approve a Special Exception (Section 310 - Principal Uses Permitted in the Agriculture District - under the provisions of Use Units 1205 and 1206) to permit a child day care center in an existing residence in an AG District under the provisions of Section 1680, per plot plan submitted, subject to Electrical and Building Inspections Department and Health Department requirements if necessary, subject to the information presented, and subject to a 12 square-foot sign maximum, on the following described property:

The West 400 feet of the NW/4 of the SE/4 of the NE/4 lying South of Skyline Drive, the West 400 feet of the SW/4 of the SE/4 of the NE/4, and the East 528 feet of the E/2 of the SW/4 of the NE/4 lying South of Skyline Drive. All located in Section 30, Township 19 North, Range 12 East, Tulsa County, State of Oklahoma.

Case No. 427

Action Requested:

Special Exception - Section 320 - Accessory Uses in Agriculture Districts - Use Unit 1214 - Request for an exception for a home occupation to permit selling farm related material in an AG District under the provisions of Section 1680, located north of the NW corner of 41st Street and South 137th West Avenue.

Presentation:

Curtis Fisher, attorney, 502 West 6th Street, represented W. P. Buckston, the owner of the subject property. He informed that they met with the Sand Springs Board of Adjustment and discussed the matter with them. There was discussion at that meeting about the nature of the business that would be conducted. Mr. Buckston has lived at the subject property for 18 years. There is scattered residential use in the area as well as pasture land. There is a church in the area. The uses are very mixed and the area is sparsely settled. He commented on the minutes of the meeting at Sand Springs (Exhibit "G-1"). Mr. Buckston feels that he really only needs this home occupation exception to do what he intends to do with his property. He has an accessory building which is an attractive building on a lot area close to where his residence is and where his barn exists. He would like to sell a small amount of feed and medicines for animals. He would also like to sell some small accessory items. He anticipates no problems with the type and the volume of business that he expects to do with the limitations imposed by the home occupation exception. Mr. Buckston has an outside area that is fenced off in which he might have some items for sale. He does not plan to sell a large number of water tanks. The fenced area is just to the north of the accessory building that will be used for the business. Mr. Buckston anticipates no outside storage of large amounts of materials-- this was a concern of Sand Springs. He feels that the Sand Springs Board was satisfied that the business will take place within the confines of the accessory building as is required by the home occupation exception. Ruth Murphy, an adjoining property owner, informed at the

Sand Springs meeting that she had no objections to this nor did other property owners in the area that she had talked to. Mr. Buckston made an earlier zoning change request. It is Mr. Fisher's understanding that the zoning laws at the time that he made the previous request did not allow for a home occupation exception. If it had been available, it would have suited his needs then. Some of the objections to the request for a zoning change were made by individuals who, at a later time, indicated that they had no objection to the home occupation exception. He informed that after some discussion, the Sand Springs Board of Adjustment voted unanimously to send a letter to this Board stating that they had no opposition to Mr. Buckston's application. He informed the total area of the subject property is 9.3 acres. The acreage involved for the home occupation exception could be limited to one acre of this property. He informed that at the Sand Springs meeting there was some concern expressed about the transfer of this property to other parties. In the event of his death he wanted his wife to have the option to continue the business. There was concern with the definition of family and how far this should go. He felt this part needed some legal clarification. They do not anticipate that to ever be an issue. Another issue that was addressed was that of signage. The Sand Springs Board stated that they had no opposition to an identification sign identifying the location of the home occupation business. He thinks that the home occupation exception does indicate that there are overlaps or gaps created in the provision which prohibits any signs. He believes that because of the nature of this property and its location, a limited sign to identify the location of this home occupation would not be out of order. A 20 square-foot sign was suggested by the Sand Springs Board and Mr. Buckston had no objection to that. He presented a drawing of what they are proposing. The feed will not be produced on the applicant's property--he will have to import it in. There is ample parking and access because of the nature of the location. There would be room for a semi-trailer truck, but he does not know that that would ever be called for.

W. P. Buckston, Route 2, Box 26, Sand Springs, informed the building is a 1,200 square-foot metal building on a cement slab. It was built in 1982. There was not a building permit approved on this property because it was an agriculture storage building when it was put up, and he was led to believe that no permit was necessary. He has electric service to the building, but no plumbing. He informed there are three mobile homes on the property which adjoins his to the north. To the south of him are two mobile homes on one lot. There is nothing to the east or west of his property. Mr. Buckston informed that during the time that they applied for commercial zoning, it was recommended during a commission hearing that a home occupation exception would be available in the future. He does not think it was available at that time.

Mr. Fisher informed that Mr. Buckston understands the limitations of the Code and realizes that the exception could be lost if it is not handled properly. He informed that Mr. Buckston would have asked for a home occupation exception instead of rezoning if it had been available previously.

Protestants: None.

Case No. 427 (continued)

Comments:

Mr. Jones submitted a letter from Sand Springs (Exhibit "G-2") who heard this in referral. Sand Springs voted not to oppose this request.

Mr. Alberty informed he feels that this does not comply with his understanding of what a home occupation might be.

Mr. Gardner informed a feed store, as such, requires commercial zoning. The Ordinance, however, is not specific as to what kind of commercial activity is considered a home occupation.

Mr. Edwards informed that anything on less than 20 acres requires a Building Permit. He informed that there is a horse barn on the property that he did not get a Building Permit for either.

Mr. Tyndall informed he cannot see this as a home occupation.

Mr. Alberty asked Mr. Gardner if it was Sand Spring's normal procedure to not actually recommend approval or denial of an application. This letter stated that they voted not to oppose--that seems to him to be a hedging position for them to take.

Mr. Gardner informed there was conversation at the Planning Commission meeting that there might be some other type of relief that might be able to be granted. They had problems with the spot zoning. No one ever stated as a matter of record that what he was requesting qualifies for a home occupation. That is the purpose of this hearing. He thinks that probably the Sand Springs Board is having similar problems that this Board is having. They may be saying that this is not a typical home occupation, but maybe it would not be that bad. They were struggling with it as a home occupation, so they made no recommendation on it. He thinks that if the Sand Springs Board felt very strongly that it should not be there, they would have voted for denial. This Board will have to judge the case on its merits and make the decision.

Mr. Alberty informed it has been the policy of this Board always to consider the referral item--but they do not in all cases follow what is recommended. In cases where it is a toss up, they normally go with the referring community--they are the ones that will have to live with the situation. On the other hand, the Board is compelled to give a fair assessment of the way the members understand and read the Zoning Code.

Mr. Tyndall suggested that a time limit be placed on approval.

Mr. Wines felt like this should be confined to the applicant's immediate family.

There was discussion about how long the time limit, if imposed, should be.

Mr. Alberty read the conditions suggested by the Sand Springs Board of Adjustment.

Mr. Alberty informed the applicant that he needed to define the one acre around the existing building. Mr. Tyndall informed the applicant

Case No. 427 (continued)

could do that when he goes in for his Building Permit.

Mr. Gardner informed the applicant needs to have a plot plan when he applies for his Building Permit.

Mr. Edwards informed since the building is already built, he does not want a Building Permit. He offered to work out the legal description with the applicant. He informed this is the second building that the applicant has built without a Building Permit.

Board Action:

On MOTION of TYNDALL and SECOND by WINES, the Board voted 2-1-1 (Tyndall, Wines, "aye"; Alberty, "nay"; Walker, "abstaining"; Martin, "absent") to approve a Special Exception (Section 320 - Accessory Uses in Agriculture Districts - under the provisions of Use Unit 1214) for a home occupation to permit selling farm related materials in an AG District under the provisions of Section 1680, subject to the recommendations made by the Sand Springs Board of Adjustment for a period of three years, on the following described property:

The SE/4 of the NE/4 of the NW/4, LESS the South 100 feet of the East 280 feet of Section 21, Township 19 North, Range 11 East, of Tulsa County, State of Oklahoma.

This application is denied for failure to receive three affirmative votes.

Case No. 428

Action Requested:

Variance - Section 330 - Bulk and Area Requirements in the Agriculture District - Use Unit 1206 - Request for a variance of lot width from 200' to 100', a variance of lot area from 2 acres to 1.65 acres, and a variance of land area from 2.2 acres to 1.69 acres to permit a lot split in an AG District under the provisions of Section 1670, located 3/8ths mile south of the SE corner of 91st Street and South 33rd West Avenue.

Presentation:

The Bank of Oklahoma was represented by Mary Crutchfield, P. O. Box 2300, an officer of the bank. She informed that this is a property that the bank acquired in settlement of litigation. There is an existing house on the property. The bank has no use for residential property. In obtaining clear title so they could sell the property, they found that they needed the lot split approval and the variance. There are several 100-foot lots similar to this one. Most of these similar lots are on the Creek County side of the county line. She had a call from one of the neighbors who asked her what the situation was. All the bank acquired was the 1.69 acres. The rest of the property does not belong to the bank.

Protestants: None.

Comments:

Mr. Jones informed he had a handwritten letter from the Jenks Planner stating that when Jenks heard this on referral basis, they recommended denial of the lot split (Exhibit "H-1"). A formal letter is forthcoming. The Planning Commission approved the lot split, subject to

Case No. 428 (continued)

this Board's approval. The Planning Commission did not have the letter from Jenks when they approved the lot split.

Mr. Gardner informed that 20 feet on the south end of the 100 feet was added to the bigger tract of about 7 or 8 acres. It was tied to that. The 100-foot split was approved by the Planning Commission. The basis that the Staff looked at it was that there are several other 100-foot tracts in the area. That was the basis for the Planning Commission granting approval.

Mr. Alberty informed he cannot find any reason to find that the Planning Commission was in fault. The bank has it and has title to it. They would have to go through the process of acquiring additional property to clear up title if this application is not approved.

Mr. Jones informed the property never went through a formal lot split procedure before now.

There was discussion as to what exactly was being requested.

Mr. Tyndall asked why Jenks denied this and Mr. Alberty informed him that the note from Jenks said that there was no particular hardship-- extraordinary conditions pertaining to the property due to its shape, size, or topography. This is a classical reason for not granting approval.

Mr. Jones informed it has been a policy of Jenks in the past not to allow lot splits but rather to have the property rezoned. That way they could get platting done and get their additional right-of-way.

There was discussion about the precedent of 100-foot lots that is set in this area.

Mr. Gardner informed an alternative would be to seek a zoning change for RS.

Board Action:

On MOTION of WINES and SECOND by WALKER, the Board voted 4-0-0 (Alberty, Tyndall, Walker, Wines, "aye"; no "nays"; no "abstentions"; Martin, "absent") to approve a Variance (Section 330 - Bulk and Area Requirements in the Agriculture District - under the provisions of Use Unit 1206) of lot width from 200' to 100', a variance of lot area from 2 acres to 1.65 acres, and a variance of land area from 2.2 acres to 1.69 acres to permit an existing lot split (transfer of property) in an AG District under the provisions of Section 1670, on the following described property:

A tract of land beginning at a point 460 feet South and along the West line of the Southwest Quarter of the Northwest Quarter of Section 22, Township 18 North, Range 12 East and Extending 474.83 feet South 0⁰-2' East; thence 760 feet South 89⁰-59' East, to a point on the centerline of Nickel Creek; thence 362 feet Northeasterly along the centerline of Nickel Creek; thence 100 feet North 15⁰-30' West; thence 308.25 feet North 89⁰-59' West to a point on the centerline of Nickel Creek; thence Northerly 70.00' along the centerline of Nickel Creek to a point; thence

Case No. 428 (continued)

approximately 583' North 89⁰-59' West to the point of beginning.
Containing approximately 8.55 acres, more or less.

There being no further business the meeting was adjourned at 11:54 a.m.

Date Approved March 16, 1984

B. Wayne Albery
Chairman