

COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 243
Tuesday, August 15, 2000, 1:30 p.m.
County Commission Room
Room 119
County Administration Building

MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT

Alberty	Looney	Butler	West, Zoning
Tyndall		Fernandez	
Walker, Chair		Stump	
Dillard			

The notice and agenda of said meeting were posted in the Office of the County Clerk on, Friday, August 11, 2000 at 11:16 a.m., as well as in the Reception Area of the INCOG offices.

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

MINUTES:

On **MOTION** of **Alberty**, the Board voted 4-0-0 (Alberty, Dillard, Walker, Tyndall "aye"; no "nays", no "abstentions"; Looney "absent") to **APPROVE** the Minutes of July 18, 2000 (No. 242).

UNFINISHED BUSINESS

Case No. 1746

Action Requested:

Variance of 30' of frontage on a public street to 0'. SECTION 207. STREET FRONTAGE REQUIRED – Use Unit 6, located 4648 S. 60th W. Ave.

Board Action:

On **MOTION** of **Alberty**, the Board voted 4-0-0 (Alberty, Dillard, Walker, Tyndall "aye"; no "nays", no "abstentions"; Looney "absent") to Reconsider Case No. 1746.

Presentation:

Jeffrey Lower, 7666 E. 61st St., Ste. 240, was representing James Mills, the applicant. Mr. Mills presented his case last month. Mr. Lower stated that he represented the sellers when Mr. Mills bought 2 ½ acres. Mr. Mills plan was to place a mobile home on the property, and live there. Mr. Lower stated that his client came for a variance in July because he didn't have direct 30' access to a

Case No. 1746 (continued)

county maintained road. His application was denied because he was unable to show a means of legal ingress and egress. He pointed out that the General Warranty Deed granted November 3, 1950, book 2149, page 340 created a 40' perpetual roadway easement and utility easement of the west 40'. He stated that in addition to the 40' easement, the plat of Taneha Subdivision provides a 21' road called South 61st West Avenue, that is adjacent to the west of Mr. Mills property. The 21' road has never been developed but it is platted and dedicated as a roadway. Therefore, he has 61' of legal access for ingress and egress. There is also a 40' right-of-way for utilities that coexists with the roadway easement.

Comments and Questions:

Mr. Alberty asked if the deed identified who is responsible to build the road or maintain the roadway. Mr. Lower replied that the 1950 deed is silent as to who is to build the roadway. Mr. Alberty asked if the applicant has a proposal. Mr. Lower responded that Mr. Mills is prepared to build a gravel roadway along the west 40' of the property extending to the northern boundary of his property at his expense; and will be privately maintained.

Protestants:

Jerry Pickerel, 109 S. Broadway, Cleveland, Oklahoma stated he was an attorney and represented Juanita Barton. He requested a copy of the deed presented by the applicant. He submitted a deed (Exhibit E-1) showing that Mr. Mills deeded the property to Country Investments, Inc. on May 30, 2000. He stated that since the applicant has no title to the property the application should be denied on that basis.

Comments and Questions:

Mr. Alberty asked if this was true regarding the new deed. Mr. Lower replied that was the mortgage company for Mr. Mills, and they required the deed. Mr. Mills understood it to be a co-signing with the mortgage company. Mr. Alberty responded that it was not a co-signing according to the deed. Mr. Lower explained that Mr. Mills stated this is an arrangement with Country Investments, Inc., which after the mortgage is prepared they will deed the property back to him. Mr. Lower stated he was not aware of this, but it appears to create a constructive trust on behalf of Country Investments, Inc., but Mr. Mills is still legally the owner, based on the arrangement. Mr. Dillard asked if they could interpret that it is a constructive trust or would they need to go by what is on record. Mr. Lower replied that the Board goes strictly by the record, and then Country Investments, Inc. would be the record owner, based on the deed. Mr. Alberty stated that an applicant would need to be the owner or have approval to file an application of this type. Mr. Stump stated that is true for rezoning but it is silent for the Board of Adjustment (BOA). Mr. Lower suggested a continuation to return with a recorded deed in Mr. Mills name.

Case No. 1746 (continued)

Protestants:

Mr. Pickerel asked that the application be denied and then if Mr. Mills could re-apply within 30 days if he could obtain the information that he needs. He added that the protestant then would not need to schedule a return hearing.

Board Action:

On **MOTION** of **Alberty**, the Board voted 4-0-0 (Alberty, Dillard, Walker, Tyndall "aye"; no "nays", no "abstentions"; Looney "absent") to allow previous decision of Case No 1746, on July 18, 2000 to stand as recorded, on the following described property:

Beg. at a point 382' S of the NW/c of the NE/4 SW/4, Section 29, T-19-N, R-12-E of the IBM, Tulsa County, State of Oklahoma, thence S and parallel to the E line of said SW/4 a distance of 332.5' to a point, thence E and parallel to the N line of said SW/4 a distance of 329' to a point, thence N and parallel to the E line of said SW/4 a distance 332.5' to a point, thence W and parallel to the N line of said SW/4 a distance of 329' to a point or POB, containing 2.514 acres.

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Case No. 1755

Action Requested:

Special Exception to allow Use Unit 5 Residential Treatment Center in an AG district. SECTION 310. PRINCIPAL USES PERMITTED IN THE AGRICULTURE DISTRICT – Use Unit 5, located South of SE/c E. 131st St. S. & Lewis.

Presentation:

Diane Fernandez, stated that there is a request to withdraw this case. She added that there are many concerns regarding this case, including a letter before the Board from Mr. John Kaiser against the case. She stated it was her understanding that Mr. Harold Shiew has a petition against the case also. The request was for a three-quarter house for a residential treatment center in an AG district. The action would need to accept the withdrawal and at your pleasure accept the petition.

Harold Shiew, 13901 S. Lewis, Bixby, Oklahoma, stated he received notice that HOW Foundation had requested the Special Exception. He stated at that time they called a neighborhood meeting and invited Commissioner Bob Dick, the Vice-President of the HOW Foundation, Scott McGiness, and the owner of the 16 acres so everyone would have an opportunity to speak. Commissioner Dick, and Mr. McGiness came but the property owner did not attend, and 51 neighbors attended. The neighbors did not have anything bad to say about the HOW Foundation, they just did not feel it was appropriate in the neighborhood. Mr. Shiew gave the Board a petition (Exhibit A-2), for the record, against the case.

Case No. 1755 (continued)

Board Action:

On **MOTION** of **Tyndall**, the Board voted 4-0-0 (Alberty, Dillard, Walker, Tyndall "aye"; no "nays", no "abstentions"; Looney "absent") to accept the Withdrawal of application for Case No. 1755.

Case No. 1756

Action Requested:

Use Variance to allow the storage and parking of heavy equipment in an AG zoned district. SECTION 310. PRINCIPAL USES PERMITTED IN THE AGRICULTURE DISTRICT – Use Unit 23; and a Variance of the required all-weather material to allow rock surface. SECTION 1340.D. DESIGN STANDARDS FOR OFF-STREET PARKING AREAS, located E of 81st W. Ave. between Skyline Dr. & W. 51st St. S.

Presentation:

Chair Walker read a letter from Sand Springs BOA recommending approval of this application.

Roger Wright, 21205 W. Bayshore Drive stated he would represent the applicant, **Johnny and Anna England**. He submitted photos (Exhibit B-3) of businesses, and large commercial equipment/trucks at residences in the neighborhood. He informed the Board that the applicant is already taking care of the subject property by mowing and upkeep. He submitted a site plan and reviewed the specifics for the driveway access regarding stopping distance, speed limit, and gravel surface. He described the size of the trucks the applicant wishes to park on the property and the trees that would screen view from Skyline Dr.

Protestants:

Stevana Winningham and Paul Winningham, 7917 W. Skyline Dr., came before the Board in protest of the application. She stated that they live directly north of the site for the proposed barn and parking area. She informed the Board that they are building a \$250,000 to \$300,000 home and they would be able to see any building or dump trucks that he proposes to put there. She stated that they do not run a business from their home. Mr. Winningham does park his wrecker truck at home occasionally because he is on 24-hour call, but they plan to build a carport that will screen the wrecker from the neighbors. Paul Winningham stated that the applicant talked with him recently and indicated he might build a building for the trucks.

Comments and Questions:

Mr. Alberty asked if the applicant mentioned that he was going to build a building on this property. Mr. Winningham replied that the applicant had not mentioned it until a week ago and he told him he did not want to be able to see any of it from his property.

Case No. 1756 (continued)

Protestants:

Chuck Sitler, 7272 W. 51st, stated he is in partnership with Paul Wunningham, and he drives his wrecker truck home, though they work out of their office at a separate location. He stated that he works for the Water Department and when he checked on the two water benefits on the subject property he found that only one tap was being used and he thought that they wanted to build a shop and park their trucks there. He submitted photos, and a yellow page ad (Exhibit B-3) and explained his concern regarding potential traffic problems from dump trucks pulling in and out at that location. The advertisement is from a business that is run from a nearby neighbor's residence that got a Variance through this Board. He reminded the Board that there is not a sewage system, and that everyone is on lateral lines. He indicated that there is already dumping on the property. He also mentioned that the subject property is outside of the Sand Springs fence line. He asked that the Board deny the application.

Janet Strubble, 8961 E. 57th St., stated she owns 37 acres of farmland west of Mr. England's property. Her property is in probate and she is unable to clean it up, but as soon as she can, she will restore it to pasture land. She asked that the Board deny the application.

Applicant's Rebuttal:

Mr. Wright reviewed the site plan to the Board and stated that no one would be able to see the parking area. He asked what the difference in wreckers and dump trucks would be.

Chair Walker asked the County Inspector to look into the many violations in this area that seemed to be growing out of control.

Board Action:

On **MOTION** of **Tyndall**, the Board voted 4-0-0 (Alberty, Dillard, Walker, Tyndall "aye"; no "nays", no "abstentions"; Looney "absent") to **DENY** Case No. 1756, finding no hardship, and use does not meet ordinance.

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Case No. 1757

Action Requested:

Variance to allow two dwelling units on one lot of record for placement of another mobile home on the lot. SECTION 208. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD – Use Unit 6, located 25731 W. 54th St.

Case No. 1758 (continued)

responded that he plans to live there. Mr. Alberty asked about sewage system. Mr. Griffin replied there is existing septic.

Protestants:

None.

Board Action:

On **MOTION** of **Dillard**, the Board voted 4-0-0 (Alberty, Dillard, Walker, Tyndall "aye"; no "nays", no "abstentions"; Looney "absent") to **APPROVE** a Special Exception to allow a mobile home dwelling in an RM zoned district, finding that it 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, on the following described property:

Lots 1-6, Block 1, Lake Subdivision, Tulsa County, State of Oklahoma.

Case No. 1759

Action Requested:

Variance of Section 208 to permit two dwelling units per lot of record. SECTION 208. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD – Use Unit 9, located 6005 South 161st West Avenue.

Presentation:

Andrea Cantonwine, 6005 S. 161st W. Ave., Sand Springs, requested a Variance to move a second dwelling unit on one lot per record. She stated that their home is not big enough and she needs to move her mother near to take care of her mother.

Comments and Questions:

Mr. Walker asked if there are other lots that have more than one dwelling unit on them. She replied that there are quite a few on the Creek County side of the property but on the Tulsa County side it was very wooded and not open to view. Mr. Walker reviewed the submitted drawings of the subject property, and identified a new house, the mother's house and an original house. Ms. Cantonwine explained that two houses were joined together to make one, and she had a permit for it. The new house will be totally separate and on the opposite side of the property. She further explained that the original home only has storage space, bedroom space and a sink in the former kitchen area.

Protestants:

None.

Case No. 1759 (continued)

Board Action:

On **MOTION** of **Alberty**, the Board voted (Alberty, Tyndall, Walker, Dillard “aye”; no “nays”; no “abstentions”; Looney “absent”) to **APPROVE** a **Variance** of Section 208 to permit two dwelling units per lot of record, finding two joined houses are functioning as one dwelling unit with a mother-in-law suite, and that it will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan, on the following described property:

Part of the SW/4 SW/4 described as follows: Beg. 660' E of the SW/c of the SW/4; thence E 66'; thence N 660'; thence W 396'; thence S 200'; thence E 9.5'; thence S 97'; thence E 320.5'; thence S 363' to the POB, all in Section 32, T-19-N, R-11-E, containing 3.23 acres, more or less, Tulsa County, State of Oklahoma.

Case No. 1760

Action Requested:

Use Variance for a motorcycle parts and repair shop in an RS district. SECTION 410. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS – Use Unit 17, located 5938 N. Lewis.

Presentation:

Victoria Lehman-Miles, 5920 N. Lewis, stated she lives directly south of the subject property. The applicant expressed a desire to put in a motorcycle repair shop with parts. They intend to construct the building to look compatible with the houses in the area. She stated that there are several houses in the area with businesses. She submitted photographs (Exhibit C-1) those homes with businesses.

Comments and Questions:

Mr. Alberty asked if the applicant is seeking to build a new shop. Ms. Miles replied in the affirmative. Mr. Tyndall asked about hours of operation. She indicated Tuesday through Saturday, 9:00 a.m. at 6:00 p.m.

The Board discussed that the property was zoned residential and commercial uses are not allowed. The fact that there was an industrial park zoned IL does not change the uses for the residential area.

Protestants:

None.

Case No. 1760 (continued)

Board Action:

On **MOTION** of **Alberty**, the Board voted 4-0-0 (Alberty, Tyndall, Walker, Dillard "aye"; no "nays"; no "abstentions"; Looney "absent") to **DENY** Case No. 1760, as it does not fit the ordinance of residential zoning.

Case No. 1761

Action Requested:

Variance of Section 208 to permit two dwelling units on one lot of record. SECTION 208. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD – Use Unit 9, located 2311 East 161st Street South.

Presentation:

John Crater, 2311 E. 161st St. S., Bixby, stated that he recently purchased the subject property of 17 acres. He sold his home to live on subject property. He stated he retired, and does some consulting work. He informed that Board that he moved a mobile home onto his property and was informed by a neighbor that he needed a permit to do that, and Mr. West instructed him to go before the BOA. He planned to use the mobile for office space and to house his grounds keeper. There was a mobile home in that spot previously. He mentioned that there is a commercial business about 300' on the north side of his neighbor He stated that the mobile home is about 108' from the property line and 160' from the centerline of 161st Street. He selected the proposed location because of the existing septic tank.

Comments and Questions:

Mr. Alberty asked about the type of activity at the business to the northwest of his property. Mr. Crater indicated it was some type of asphalt or concrete business, and he thought the owner worked for the state.

Ms. Fernandez stated that the staff understood the mobile was to be for residential use, not for home occupation, and it has not been advertised for anything but residential.

Protestants:

Bob Lowery, 2337 E. 161st St., stated that he did not want anything such as the mobile home to decrease the value of his property. He submitted a photo of the mobile (Exhibit D-2).

Linda Lowery, 2337 E. 161st St., stated that the mobile home is an eyesore and realtors told them that it would make a difference in the value of their property when they try to sell it.

Comments and Questions:

Mr. Alberty asked the protestants if they did not consider the business to the north of them to be an eyesore. Ms. Lowery stated that she considered it an eyesore and that there used to be a fence between them. She added that she would like to see it replaced.

Protestants:

Barbara O'Bannon, 15932 S. Lewis, Bixby, questioned what is allowed in an AG district. She stated that the business that was mentioned is noisy, had a lot of traffic, and she did not consider it light industry. She described a run-off from the business onto her property, containing an oily tint and an orange substance, and she does not know what it is. She stated that the mobile on Mr. Crater's property would not bother her if it were not so obvious from 161st Street.

Comments and Questions:

Mr. Alberty suggested that Ms. O'Bannon contact the Department of Environmental Quality regarding the run-off problem.

Applicant's Rebuttal:

Mr. Crater stated he does not have any type of industrial work on his property. He added that he is building a barn, which he has a permit to build.

Comments and Questions:

Mr. Dillard asked if Mr. Crater is keeping books at his home for a business. Mr. Crater replied that he is not. He reviews reports for other people. He consults for major banks and he takes phone calls. Mr. Dillard asked if he had any employees coming into their home. Mr. Crater stated that he only has his grounds keeper.

Board Action:

On **MOTION** of **Alberty**, the Board voted 4-0-0 (Alberty, Tyndall, Walker, Dillard "aye"; no "nays"; no "abstentions"; Looney "absent") to **APPROVE** a **Variance** of Section 208 to permit two dwelling units on one lot of record, finding the ordinance allows the mobile home on sufficient acreage, subject to complying with the County Inspector permit, and DEQ requirements for sanitary sewer, and any utilities that would go to this trailer, on the following described property:

S 880' W 594' E 1089' SE SE, Section 19, T-17-N, R-13-E, Tulsa County, State of Oklahoma.

There being no further business, the meeting was adjourned at 4:00 p.m.

Date approved: Oct 17, 2000

Alex Z. Walker
Chair