

COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 314
Tuesday, July 18, 2006, 1:30 p.m.
County Commission Room
Room 119
County Administration Building

MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT

| | | | |
|---------------------|---------------|-------------|---------------------|
| Charney, Vice Chair | Hutson, Chair | Alberty | West, Co. Inspector |
| Dillard, Secretary | Walker | Butler | Iski, Assist. D.A. |
| Tyndall | | Cuthbertson | |

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, Thursday, July 13, 2006 at 10: 31 a.m., as well as in the Office of INCOG, 201 W. 5th St., Suite 600.

After declaring a quorum present, Vice Chair Charney called the meeting to order at 1:37 p.m.

Mr. Cuthbertson read the rules and procedures for the County Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **Dillard**, the Board voted 3-0-0 (Charney, Tyndall, Dillard "aye"; no "nays"; no "abstentions"; Walker, Hutson "absent") to **APPROVE** the Minutes of June 20, 2006 (No. 313).

UNFINISHED BUSINESS

Case No. 2212

Action Requested:

Special Exception to permit Use Unit 20 (Commercial Recreation), a Holiday Attraction in an AG district; and a Variance of the requirement of an all-weather paving surface for required parking (Section 1340.D), located: 1517 East 106th Street North.

Presentation:

Lou Reynolds, 2727 East 21st Street, requested an extension of the time permitted for this relief, as it will expire at the end of September. He submitted a poster with photographs of the activities they have at this location (Exhibit A-4). It

is a high school drama type presentation for entertainment. They employed around 40 students during the last season for actors and other support positions. There is no sale of beer or alcoholic beverages; and no live bands or loud music. He also submitted a site plan, aerial map and a petition of support (Exhibits A-1, A-2 and A-3). They allowed the 4-H Club to run the concession stands and to keep the proceeds last season. They had a canned food drive for the community food bank, for a discount on their entrance ticket. They are open Thursday nights from 5:00 p.m. to 11:00 p.m. and Friday and Saturday nights from 5:00 p.m. to 12:00 p.m. The season of operation would be from the last weekend in September to January 1st. They would be closed on holidays. They found the majority of the neighbors were in support. The applicants have shown they are good neighbors. They purchased the adjacent twenty acres to the west of what was previously approved and have extended the trail path.

Comments and Questions:

Nancy Robison, 3745 South Lynn Lane East Avenue, asked if the gentleman in the audience that was recording the hearing is permitted to do so. Mr. Charney directed the question to Mr. Iski, Assistant D.A. Mr. Iski replied that he would present a short memorandum to the Board after the meeting and for now he stated the Board has the authority to set rules of decorum, which would include issues of audio and visual recording. Mr. Reynolds stated he was not aware of the unofficial recording and had asked that they not do so. The gentleman left the room. Mr. Charney issued the ruling that all audio/visual recorders be turned off. He added there is a formal means for recording and keeping minutes of the proceedings and that is sufficient. Mr. Charney stated that anyone continuing such recordings would be deemed in violation of the rules and regulations.

Interested Parties:

Ms. Robison stated she does not live in this area but she and her husband own property there. She understands the concern of the neighbors regarding the noise in this rural setting. She has heard the noise from the subject property and it was very loud and traveled quite a distance. She noted there are few neighbors in this area and the ones she knows are not in support. Ms. Robison expected the noise would be disturbing to the cattle on nearby properties. She did not consider this an appropriate use in this area. She asked for a denial, and if it was approved, she asked that they would have to comply with the code regarding parking.

Richard Paul Burt, 10702 North Peoria, Sperry, Oklahoma, P.O. Box 703, stated he owns the property to the west across from Peoria. He expressed concern that all three roads to the subject property have a single lane bridge and that it is in a flood plain. He complained that the noise was too loud. He did not want a commercial use there and he indicated it would probably grow.

William Sisk, 10316 North Quincy, stated he is just south of the subject property. He noted that dirt was being hauled to the property, which is illegal in a flood plain. He questioned that they obtained an electric meter but he and another neighbor

could not. He expressed concern that people hunt in the area and it could be dangerous for people on the subject property.

Annette Brouse, 9996 South 4190 Road, Claremore, Oklahoma, stated support for the application. She added that they allowed her 4-H Club to run the concessions for free as a fund raiser. Then her club helps others, such as the abused children's center in Rogers County. She informed the Board that she worked all of last season and she did not recognize any cause for the complaints made at this hearing. She thought they must be referring to a different activity. She stated activities don't start until dark and they close at 10:00 p.m. so there is no music or noise before or after those hours. She commented that her cattle are not frightened off by the shooting on her own property and did not think that was a valid complaint. She remarked that it was a safe place for kids to go and have fun. She reminded the Board there are sheriffs on the parking lot and the road all of the time.

Burnadette Marquez, 10710 North Sheridan, Sperry, Oklahoma, stated she is a niece of the applicant. She expressed support of the application. She added that she was present every night of the season and did not see or hear any of the complaints made by the interested parties. She explained that they would not want to hear the sounds from one drama scene to another as it would spoil the affect, therefore it could not be heard from a greater distance from the property.

Martha Wright, 11248 North Peoria, Skiatook, Oklahoma, stated she hears the noise ½ mile away inside her house. She expressed concern for the number of people and cars; possible fire hazards and the burn ban; and the roads with one lane bridges. She also was concerned for flooding.

Margaret Sisk, 10216 North Quincy Avenue, stated she probably lives closer to the subject property than the other neighbors and she is not bothered by noise. She could hear the sounds from the attraction some in her yard but it was not objectionable. She added that the noise from the Tulsa Speedway and planes from the airport make a lot more noise. There was not a lot of traffic.

Jeff Howard, 1528 East 75th Place, noted that farm equipment, mowers, three-wheelers and other items make a lot of noise also.

Blake Sisk, 10216 North Quincy, stated her gratitude for a fun, safe place for young people to go. She indicated the community was not replacing things, such as the grocery store that burned down and that fear of the unknown was the reason for the complaints.

Applicant's Rebuttal:

Mr. Reynolds informed the Board that the hayrides are on electric golf carts so that the participants can hear the dramas. They do not run the attraction all night and they comply with the guidelines they were given. He informed the Board that the

applicant self-imposed the closing times. They have not received any complaints of criminal activity nor have they encroached on the neighborhood. He maintained that sound does not penetrate the heavily wooded property.

Board Action:

On **Motion of Dillard**, the Board voted 3-0-0 (Tyndall, Dillard, Charney "aye"; no "nays"; no "abstentions"; Walker, Hutson "absent") to **APPROVE** a Special Exception to permit Use Unit 20 (Commercial Recreation), a Holiday Attraction in an AG district, with conditions for: a five-year limitation on the special exception for the use; days and hours of operation from 5:00 p.m. to 11:00 p.m. Thursdays, Fridays and Saturdays from the last weekend in September to January 1st ; with traffic control as needed, finding 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 **Motion of Dillard**, the Board voted 3-0-0 (Tyndall, Dillard, Charney "aye"; no "nays"; no "abstentions"; Walker, Hutson "absent") to **APPROVE** a Variance of the requirement of an all-weather paving surface for required parking, finding the physical, geographical location in the flood plain, and the temporary nature of the use (Section 1340.D), on the following described property:

E 1/2 SW SW SEC 7-21-13; W 1/2 SW SW SEC 7-21-13 Tulsa County, State of Oklahoma

NEW APPLICATIONS

Case No. 2220

Action Requested:

Variance of the required 30 ft. of frontage on a public street to 0 ft. (Section 207) to permit a dwelling on the southern AG zoned lot; and a Variance of the land area per dwelling unit from 2.1 acres to .75 acres to permit two dwellings on the northern AG zoned lot (Section 330), located: 3104 East 141st Street.

Presentation:

L. Darrell Inbody, 507 East Cherokee, Wagoner, Oklahoma, stated he is the owner of the subject property. He indicated that enforcement of the code would cause unnecessary hardship, as some of the surrounding properties were not in compliance with the zoning code. He submitted letters of support (Exhibit B-1).

Comments and Questions:

Mr. Charney surmised there is no frontage and it has a private easement on the west. The Board members and the applicant reviewed the site plan at the bench to clarify some details. Mr. Cuthbertson informed the Board that the property owner to the east owns the private road easement. This easement is the one he wanted

approved as his access. Mr. Charney suggested to the applicant that such access may not be satisfactory for a lender to approve construction of a new dwelling.

Mr. Charney questioned the nature of the second variance request. Mr. Cuthbertson responded that the second variance related to the northern half of the subject property. It would allow the applicant to construct two dwellings on the northern property. Mr. Inbody stated there is not a structure on either piece of property yet.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Charney**, the Board voted 3-0-0 (Tyndall, Dillard, Charney "aye"; no "nays"; no "abstentions"; Walker and Hutson "absent") to **APPROVE** a Variance of the required 30 ft. of frontage on a public street to 0 ft. (Section 207) to permit a dwelling on the southern AG zoned lot, finding the existence of an easement shown to provide access to the 3102 side of the property; and finding the peculiar nature of the land and the lack of frontage, it would be an unnecessary hardship to require the full frontage on a publicly dedicated road.

On **Motion** of **Tyndall**, the Board voted 3-0-0 (Tyndall, Dillard, Charney "aye"; no "nays"; no "abstentions"; Walker and Hutson "absent") to **APPROVE** a Variance of the land area per dwelling unit from 2.1 acres to .75 acres to permit two dwellings on the northern AG zoned lot (Section 330), finding the unique configuration of the land and changes in the area that it is not downsizing the neighborhood, on the following described property:

PRT NE NE BEG 772.59W & 288.79S & 168.92W NEC NE TH SW137.27
S134.67 NW198.03 N95.11 E150 N223 E166.93 S238.78 POB SEC 17 17 13
1.50AC, BEG 1258.44W & 389.89S NEC NE TH S274.21 E82 S428.91 E100
N623.3 E NW198.04 POB SEC 17 17 13 1.96AC, Tulsa County, State of
Oklahoma

Case No. 2221

Action Requested:

Special Exception to permit (Use Unit 15) a fencing company in a CS district; and a Variance of the screening requirement abutting an R district (Section 1215.3), located: 11425 East 116th Street North.

Presentation:

Darin Akerman, 6111 East 32nd Place, represented A-1 Fence Company. This company leased and occupied the subject property since June 2004. The previous tenant was a fence company also. A complaint was made against the applicant for

non-compliance with the zoning code. The company began efforts to comply with the code and have agreed to remove the storage building and a temporary storage sign. They have agreed to pave the parking as on the site plan. They proposed to build an eight foot wood screening fence abutting the R district. He stated the hours of operation would be 7:00 a.m. to 6:00 p.m. most of the year. The variance was withdrawn by the applicant.

Comments and Questions:

Mr. Charney asked if the use was in existence prior to the platting of Brookfield to the north, which Mr. Akerman replied affirmatively. Mr. Charney asked about the plan to build an eight foot wood privacy fence to the northern boundary between the subject property and Brookfield Subdivision. Mr. Akerman responded they agreed to build the fence along the CS portion of the property. He also asked Mr. Akerman about the area on the site plan that appeared to remain graveled. Mr. Akerman replied that it would all be paved. Mr. Charney questioned if there would be any outside storage visible from Brookfield. Mr. Akerman stated outside storage would not be visible from the R district. He indicated that the business owner would be agreeable to replacing the six foot chain link fencing to the northern boundary between the commercial and AG-zoned property and cease activity in that area. He stated they would need to clear all outside storage, providing the Board approves the application. He suggested limiting approval for outside storage and business activity to the west 200 ft. He added there should be no fencing activity in the AG district, per Section 1213.3.a.

Interested Parties:

Kevin Heavner, 11702 North 115th East Avenue, submitted photographs (Exhibit C-2) and stated opposition to the application. He objected to the visual clutter of trucks and outside storage. He submitted a petition that was not identified as to the nature of the petition, listing signatures only and a copy of the Owasso Master Plan (Exhibits C-1 and C-3). Mr. Heavner identified issues regarding safety and difficulty selling homes near the subject property.

Troy Zimmerman, 11733 North 115th East Avenue, expressed concerns regarding plans to widen 116th, proposed soccer complex and other new facilities. He noted that if the screening fence goes only the length of the CS district the business would still be visible to the R district.

Applicant's Rebuttal:

Mr. Akerman responded that the photographs shown by the interested party were of the previous business. He assured the Board that the applicant was agreeable to follow conditions determined by the Board. They intended to come into compliance with the zoning code, given the needed time to do so. **Andy Anderson**, 723 South Jamestown, the owner of the business was present and corroborated Mr. Akerman's rebuttal statements.

Board Action:

On **Motion** of **Tyndall**, to **DENY** a Special Exception to permit (Use Unit 15) a fencing company in a CS district, discussion ensued.

Mr. Charney recognized Mr. Heavner to speak again briefly. He informed the Board that the signatures on the petition were from members of the homeowner's association. He stated that one homeowner took a substantial loss in the sale of his home after it had been on the market for a long period of time. He attributed this directly to the presence of the fencing company.

The **Motion Failed** for lack of a second.

Shirley D. Pointer, owner of the subject property was recognized to speak also. She stated she was never notified of the petition. She added that the association members were not given all of the information regarding the issues. She assured the Board she would comply with all conditions and the zoning code.

On **Motion** of **Tyndall**, the Board voted 3-0-0 (Tyndall, Dillard, Charney "aye"; no "nays"; no "abstentions"; Walker, Hutson "absent") to **DENY** a Special Exception to permit (Use Unit 15) a fencing company in a CS district, finding it would not be in harmony with the spirit and intent of the code and would be injurious to the neighborhood, or otherwise detrimental to the public welfare, on the following described property:

There being no further business, the meeting adjourned at 4:13 p.m.

Date approved: 8-15-06


Chair