

COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 331
Tuesday, December 18, 2007, 1:30 p.m.
County Commission Room
Room 119
County Administration Building

MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT

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

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, Wednesday, December 12, 2007 at 11:32 a.m., as well as in the Office of INCOG, 201 W. 5th St., Suite 600.

After declaring a quorum present, Chair Charney called the meeting to order at 1:34 p.m.

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

MINUTES

On **MOTION** of **Tyndall**, the Board voted 3-0-0 (Walker, Charney, Tyndall, "aye"; no "nays"; no "abstentions"; Hutson, Dillard "absent") to **APPROVE** the Minutes of September 18, 2007(No. 328) and October 16, 2007.

UNFINISHED BUSINESS

Case No. 2282

Action Requested:

Special Exception to permit a Residential Treatment Center and Transitional Living Center in an AG District, located: 3110 South 65th Avenue West.

Mr. Charney stated the Board received a letter from the applicant to continue this case again.

Presentation:

Sanine Holt, 212 North Main, Suite 212, Sand Springs, Oklahoma 74063, stated that at the time of the last hearing she did not have a contract to purchase the property. She has encountered difficulty in purchasing the property.

Comments and Questions:

Mr. Alberty raised an issue, stating the applicant is required to have the consent of the landowner before making application.

Interested Parties:

Jerry Thames, 2202 South 65th West Avenue, Tulsa, Oklahoma 74127, stated he is a member of the church and a trustee. He informed the Board that the church has not consented to this application.

Board Action:

On **Motion of Walker**, the Board voted 3-0-0 (Walker, Tyndall, Charney "aye"; no "nays"; no "abstentions"; Dillard, Hutson "absent") to **DENY** a Special Exception to permit a Residential Treatment Center and Transitional Living Center in an AG District, finding the applicant has not obtained the consent of the landowner, on the following described property:

BEG 74 S NE COR TH S 375 W 210N 375 E 210 TO BG SEC 19 19 12 BERRY HILL ACRES, Tulsa County, State of Oklahoma

NEW APPLICATIONS

Case No. 2285

Action Requested:

Special Exception to permit a church and accessory uses (Use Unit 5) in an AG district. (Section 310), located: 3621 South 61st West Avenue.

Presentation:

Jerry Thames, 2202 South 65th West Avenue, informed the Board he represented the applicant. The applicant sought a special exception for church and accessory use.

Comments and Questions:

Mr. Charney noted residential structures to the south of the property and inquired of their support or opposition. Mr. Thames replied he had not received any negative comments. Mr. Thames added that this is the oldest church in the community and the intent is to use the property for the benefit of the community. He indicated the vacant property is more of a nuisance than to have it occupied and maintained. Mr. Walker thought the access from West 61st and West 36th Streets was appropriate for the location. Mr. Walker noted the need for more

detailed site plan, including lighting. Mr. West stated that he needed more detail regarding crossing the creek and suggested a hydrology study. Mr. Charney advised the applicant that they needed a more detailed site plan regarding the access, drainage, lighting and parking. Mr. Alberty suggested to the Board that the applicant check with the County Engineer regarding a street dedication and street improvement.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Tyndall**, the Board voted 3-0-0 (Walker, Tyndall, Charney "aye"; no "nays"; no "abstentions"; Dillard, Hutson "absent") to **APPROVE** a Special Exception to permit a church and accessory uses (Use Unit 5) in an AG district. (Section 310), contingent upon a review by this Board of the proposed site plan addressing the issues of lighting, parking, drainage and access, and any other items the engineer would deem important for the Board to consider,

Discussion on the motion:

Mr. Cuthbertson suggested the applicant get in touch with him later in the week to discuss the details of what they need to present to the Board.

Motion carried, on the following described property:

N/2 NE SW LESS E40 THEREOF FOR ST SEC 20 19 12 20.00ACS, Tulsa County, State of Oklahoma

Case No. 2286

Action Requested:

A Use Variance to permit warehousing and processing of metal in an existing metal salvage yard in an AG district (Section 310), located: 17846 South Beeline Expressway.

Presentation:

Tim Terrill, 6737 South 85th East Avenue, Tulsa, Oklahoma 74133, addressed the legal non-conforming use issue. He stated the current existing use was in existence before 1980. He showed copies of service established in 1976 with ONG and Creek Rural Water District. They proposed construction of an 8,000 sq. ft. warehouse to shelter current inventory. This would not actually expand the capacity of the use, it would instead store and screen the existing inventory. He mentioned a legal description issue.

Comments and Questions:

Mr. Charney commented there was a technical error in the publication of the legal description, but it did not change the list of landowners' that received notice, therefore the public hearing could proceed.

Interested Parties:

Jeff Lamoreaux, 2333 West 181st Street, stated his land abuts the subject property to the west and south. He did not have the maps or details. He understood they planned to construct a building.

Mr. Charney suggested the applicant and interested party discuss the application and come back before the Board later in this meeting.

BEG SWC N/2 SE TH E829.4 N400 W829.4 S400 TO POB & BEG 829.4E SWC N/2 SE TH E460 CRV RT APROX137 ALG HWY 75 ROW TH W APROX460 S137 TO POB SEC 34 17 12 9.04ACS; Tulsa County, State of Oklahoma

Case No. 2287

Action Requested:

Variance to reduce the Lot Area from 22,500 sf. to 21,933.41 sf. on Lot 8; and a Variance of the side yard setback from 15 ft. to 1 ft. on Lot 9, to permit a lot-split in an RE district (Section 430.1), located: 8470 North 66th Avenue East, 8490 North 66th Avenue East.

Presentation:

Tom Haynes, 9936 East 55th Place, with White Surveying, represented the applicant, home builder. He stated a home was built inadvertently over the lot line on Lot 9. The RE zoning district and DEQ requirements permits minimal square footage per lot.

Comments and Questions:

Mr. Charney assessed there is a lot-split request to correct the problem with a side yard setback reduction. There is no front yard setback issue. He noted this is a larger lot subdivision.

Interested Parties:

Kyle Smaligo, 123 North 7th Street, Collinsville, Oklahoma, Smaligo Properties, stated that two surveyors made an error in the surveys of both properties. He sent out letters to the homeowners in the addition to explain the application. They received some responses and they were in support.

Connie Lutton, 5470 North 66th East Avenue, Collinsville, Oklahoma, stated she was the adjacent homeowner. She expressed support. She was only concerned

that her property retained enough footage to maintain the sewage system and County requirements.

Comments and Questions:

Mr. Charney asked Mr. Haynes if the resulting tract on Ms. Lutton's property will be in excess of the DEQ requirements. Mr. Haynes replied that it will.

Board Action:

On **Motion of Tyndall**, the Board voted 3-0-0 (Walker, Tyndall, Charney "aye"; no "nays"; no "abstentions"; Dillard, Hutson "absent") to **APPROVE** a Variance to reduce the Lot Area from 22,500 sf. to 21,933.41 sf. on Lot 8; and a Variance of the side yard setback from 15 ft. to 1 ft. on Lot 9, to permit a lot-split in an RE district (Section 430.1), finding the existence of a structure located per surveying errors, on the following described property:

LT 8 AND LT 9, BLK 1, CROSSING AT 86TH STREET PHASE ITulsa County,
State of Oklahoma

* * * * *

Case No. 2286

Action Requested:

A Use Variance to permit warehousing of metal in an existing metal salvage yard in an AG district (Section 310), located: 17846 South Beeline Expressway.

Interested Parties:

Jeff Lamoreaux, 17601 S 33rd West Avenue, Mounds, Oklahoma 74047 and **Steve Lamoreaux**, 17265 South 33rd West Avenue, introduced themselves to the Board. They are the co-landowners of the Cotton Creek Golf Course. They asked if the basic use will not change.

Mr. Alberty clarified to the Board that a non-conforming use, as stated by the Zoning Code, as it existed in September 1980 cannot expand. That use can continue as it was. He questioned what existed at that time. He indicated the proof may not have been accurately presented by the applicant to this Board. The applicant is asking for a use variance for construction of this building.

This satisfied both Jeff and Steve Lamoreaux.

Comments and Questions:

In response to questions from the Board, **Charles Cole**, 2212 East 13th Street, Tulsa, Oklahoma 74104, replied that the employee parking would be in front. He added that cranes and other service vehicles would be parked behind the eight-foot screening fence. Mr. Cole responded that approval per the general site plan would be agreeable. Mr. Cuthbertson noted that the site plan shows a six-foot

screening fence. Mr. Charney asked Mr. Terrill to tell the Board what the use has been at this site and for how long.

Mr. Terrill stated that Art and Roy Weaver started in the 1950's doing plant demolition and removing parts to process and sell. He added it has been going on at this site since 1976 or before then. Mr. Walker asked what would look different on an aerial photograph in two years. Mr. Terrill replied that they would place non-ferrous and other metals that cannot process with a cutting torch inside the building. Mr. Tyndall summarized they would be doing processing and warehousing. Mr. Charney asked if there would be a newer process operating there. Mr. Terrill stated the processing would be more refined and not louder or more obvious to the community. Mr. Cuthbertson noted that up to this time staff and the Board considered this building would just be used for warehousing. He suggested if it is going to be used for processing, this needs to be added to a new notice. Mr. Charney acknowledged this consideration and asked Mr. Alberty for input. Mr. Alberty agreed that staff should provide more information to the Board. He suggested that staff could provide a 1980 aerial photograph. He added that if anything has expanded beyond 1980 is illegal. The County Inspector would be concerned about that. There are many issues involved beyond just the building that need to be discussed. Mr. Charney asked for the hardship.

Mr. Terrill replied that modernization of the processing cannot be accomplished without the building. Mr. Tyndall asked if they plan to screen the east side only. Mr. Terrill responded by pointing out the boundaries and details to answer further Board questions. Mr. Tyndall stated he would like to see additional screening on the south, east and southwest corner. Mr. Cuthbertson suggested they provide dimensions on the site plan.

Board Action:

On **Motion of Walker**, the Board voted 3-0-0 (Walker, Tyndall, Charney "aye"; no "nays"; no "abstentions"; Dillard, Hutson "absent") to **CONTINUE** Case No. 2286 to the meeting on January 15, 2008, on the following described property:

BEG SWC N/2 SE TH E829.4 N400 W829.4 S400 TO POB & BEG 829.4E SWC N/2 SE TH E460 CRV RT APROX137 ALG HWY 75 ROW TH W APROX460 S137 TO POB SEC 34 17 12 9.04ACS; Tulsa County, State of Oklahoma

OTHER BUSINESS

TCBOA 2056

David Iski, Assistant District Attorney, Tulsa, Oklahoma, presented the remanding of this case to the Board by Judge Fransein. A discussion followed related to the process of complying with court direction.

Charles Norman, 2900 Mid-Continent Tower, stated he represented Anchor Stone in the application considered in 2003. It was subject to referral to the Broken Arrow Board of Adjustment, because the subject property is within the Broken Arrow annexation fence line. In their hearing they recommended approval of the application subject to certain conditions. Some of those conditions were the basis of the opinion by the Court of Appeals for failure of the Tulsa County Board of Adjustment to make the findings required by the Section 1680.3 of the County Zoning Code. The appeal was taken by the neighboring property owners, the Perryman's, to the Supreme Court, which was then assigned to the Court of Appeals. The Court of Appeals reversed the order of the District Court for approval and remanded it for the findings consistent with requirements of the Tulsa County Zoning Code. He suggested providing each Board member a full copy of the transcript and permit each side, protestants and applicant, to submit proposed findings of fact and an order or motion for the Board's consideration. He noted that Mr. Walker and Mr. Tyndall were not present for the hearing and Mr. Charney was not a Board member then. Mr. Dillard and Mr. Hutson are not present today. Mr. Norman commented that this would re-open the decision in 2003 after considering all of the evidence that was available at that time.

Mr. Charney asked if Mr. Norman thought that in addition to making findings that the Board is free to go back into the merits for a de novo review of it. Mr. Norman's response was that the order of the Court of Appeals was to make such findings as are necessary to support the approval of the exception. Mr. Charney asked him if it was likely that both counsels could agree on some proposed findings. Mr. Norman did not think so.

Jon Brightmire, 320 South Boston, represented Sam Perryman and Ray Bagwell, the neighboring property owners. He stated they believe that the only way the matter can be resolved is by a de novo hearing. He noted the changes in Board membership and the attendance of only one member of the present Board that was present at the 2003 hearing. He reminded the Board there is no transcript of the hearing, only items submitted and summary minutes. He held that since the Court stated there were no findings, then there is no special exception. He stated the case is back in the Board's hands. He added there is no record of discussion among the Board members to indicate what they were thinking. He did not think the Board could adequately render a decision unless they hear it de novo. He referred to a recent river study, stating circumstances have radically changed. Mr. Brightmire noted the proposed dam near Broken Arrow would change things. He stated the conditions of the two-lane County roads were an issue, indicating the current conditions are unknown.

David Iski, Assistant District Attorney, offered copies of the Court of Appeals order to the Board. Mr. Charney asked for further information on the options before the Board to respond to the case remanded to them. Mr. Iski replied there are no guidelines from the appellant court, as this issue has never been addressed in the

State of Oklahoma. The Board may have an Executive Session any time, under the Open Meetings Act, as long as they schedule it.

Mr. Tyndall mentioned the original problem was that the Board voted to approve the application subject to some limitations and suggestions from the Broken Arrow Board of Adjustment. He noted that Broken Arrow BOA gave clear conditions. Mr. Iski stated that the Tulsa County BOA then failed to make those conditions clear in the findings of the motion. He asked if this Board feels they can go back to the record and find it helpful.

Mr. Charney sought Mr. Norman and Mr. Brightmire, for their opinion of the Board going into Executive Session to meet with their Counsel. Mr. Norman considered that an appropriate action. Mr. Charney asked if he would have any objection to a delay of one month to the next meeting for posting on the agenda. Mr. Norman had no objection. Mr. Brightmire did not have an objection.

Mr. Charney contemplated the option that the Board could ask for more findings after they decide the process they will follow.

Mr. Norman asked the Board to review a copy of the record and court order. Mr. Charney stated the Board would be open to receiving data from Mr. Norman and Mr. Brightmire, including a summary of statements made at this meeting.

The Board was in agreement to have an Executive Session at the next meeting, January 15, 2008.

Board Action:

On **Motion of Tyndall**, the Board voted 3-0-0 (Walker, Tyndall, Charney "aye"; no "nays"; no "abstentions"; Dillard, Hutson "absent") to **APPROVE** the Tulsa County BOA 2008 Meeting Schedule.

There being no further business, the meeting adjourned at 3:18 p.m.

Date approved: _____

1/15/08


Chair