

**TULSA COUNTY BOARD OF ADJUSTMENT**

· MINUTES of Meeting No. 376

Tuesday, September 20, 2011, 1:30 p.m.

County Commission Room, Room 119

County Administration Building

500 South Denver Avenue

**MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT**

Charney, Chair  
Walker, Vice Chair  
Osborne, Secretary  
Dillard  
Tyndall

Alberty  
Sansone  
Sparger

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 15<sup>th</sup> day, of September, 2011 at 9:33 a.m., as well as in the Office of INCOG, 2 West Second Street, Suite 800.

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

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

\*\*\*\*\*

**MINUTES**

On **MOTION** of **WALKER**, the Board voted 5-0-0 (Charney, Dillard, Osborne, Tyndall, Walker "aye"; no "nays"; no "abstentions") to **APPROVE** the Minutes of August 16, 2011 (No. 375).

\*\*\*\*\*

\*\*\*\*\*

**UNFINISHED BUSINESS**

\*\*\*\*\*

**Case No. 2402—Esther Harger**

**Action Requested:**

Special Exception to permit a fireworks stand (Use Unit 2) in a CS district (Section 710); and a Variance of the paving requirement for a temporary parking area (Section 1340.D). **LOCATION:** 21211 West 8<sup>th</sup> Street South

**Presentation:**

**Esther Harger**, 21211 West 8<sup>th</sup> Street South, Tulsa, OK; stated her church is going to use the proceeds from the fireworks stand to send the members children to camp. Ms. Harger owns the property and is the pastor of the church.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WALKER**, the Board voted 5-0-0 (Charney, Dillard, Osborne, Tyndall, Walker "aye"; no "nays"; no "abstentions") to **APPROVE** the request for a Special Exception to permit a fireworks stand (Use Unit 2) in a CS district (Section 710). The fireworks stand will start operation on June 25, 2012 through July 5, 2012. The hours of operation from June 25<sup>th</sup> through July 3<sup>rd</sup> will be from 10:00 A.M. to 10:00 P.M.; July 4<sup>th</sup> hours will be 10:00 A.M. to 12:00 midnight; July 5<sup>th</sup> hours will be 10:00 A.M. to 10:00 P.M.; and this special exception is granted for a time period of six years from today's date of September 20, 2011. This fireworks stand is subject to all local and state laws; finding that the fireworks stand would not be injurious or detrimental to the neighborhood.

On **MOTION** of **OSBORNE**, the Board voted 5-0-0 (Charney, Dillard, Osborne, Tyndall, Walker "aye"; no "nays"; no "abstentions") to **APPROVE** the request for a Variance of the paving requirement for a temporary parking area (Section 1340.D) for a period of six years from today's date of September 20, 2011 on site of the fireworks stand and the hardship is the nature of the temporary use; for the following property:

**N388.93 S438.93 W280 W/2 W/2 NE SE SEC 3 19 10 2.50ACS, OF TULSA COUNTY, OKLAHOMA**

## **Case No. 2403—Lisa Jenkins**

### **Action Requested:**

Special Exception to permit a fireworks stand (Use Unit 2) in the CS district (Section 710). **LOCATION:** 893 South 177<sup>th</sup> Avenue West

### **Presentation:**

**Lisa Jenkins**, P. O. Box 1084, Sand Springs, OK; stated she has a Daylight Donut Shop that she has operated for the past five years. She wants to place fireworks stands on the parking lot of the shop and sell the fireworks. Last year there were two fireworks stands on the lot and she would like to have four fireworks stands in the future. The donut shop hours are 5:00 to 11:00 and she wants to be able sell fireworks from the stands from 10:00 to midnight, starting June 15<sup>th</sup> and ending July 5<sup>th</sup> for a period of eight years. There would be people camping on the property to provide security for the fireworks stands.

### **Interested Parties:**

**Jennie Warlick**, 7 Kings Creek, Kingwood, TX; stated she is the second generation owner of the property that is immediately west of the proposed four fireworks stands, and the largest property owner in the area across from the stands. The land is zoned agriculturally and is used for a hay operation. The site of the proposed four fireworks stand is alarming because of the drought conditions the area has had, and has had in the past. Legally a person can only discharge fireworks for two days after obtaining a permit for \$20.00. In the past, Ms. Warlick would spend her July 4<sup>th</sup> evening standing in a bucket brigade line to put out fires that had been started by fireworks. In this area there several nesting sites of defenseless bald eagles. These magnificent birds are unable to take care of themselves and their homes are on Wekiwa Road. These nesting sites have been documented by the Sutton Aviary Institute in Bartlesville, Oklahoma. The discharging of fireworks will be disruptive to the eagle's lifestyle. The Bald and Golden Eagle Protection Act passed in 1940 is to protect these eagles, which says "to disturb, agitate or bother a bald or golden eagle ... to the degree that is likely to cause a decrease in production by substantially interfering its normal breeding, feeding and sheltering behavior ... nest abandonment by substantially interfering with normal breeding, feeding, and sheltering behavior". There is also the Cherokee Indian Cherokee Nation Legislative Act of 1010, signed by the Principal Chief Smith on March 22, 2010. The purpose of this act is to protect the species that has cultural significance to the Cherokee Nation and its people. The Tulsa Audubon Society wrote a letter stating that eagles hold a special place of significance for Native American cultures especially in Oklahoma and their respect for eagles must be honored. The Tulsa Audubon Society stated that the Wekiwa eagles have been nesting in this area for many years and they want to see the eagles to continue to thrive. Ms. Warlick stated the nesting season for the eagle is from November to July, which is the same time period the fireworks stand is requesting to be open and she would requests the Board deny this request.

**Nicole Aquino**, Assistant Attorney General of the Muscogee Creek Nation, P. O. Box 580, Okmulgee, OK; stated that it was brought to her attention there are three eagle nesting sites on the property of a Creek citizen whose land was received in an allotment several generations ago, and there is a cultural issue regarding the importance of the eagles. The Muscogee Creek Nation has an interest in scientific research to determine if there would be a possible affect on the eagles if fireworks are allowed to be discharged. There are federal laws the applicant should also look into in regards to obtaining a permit, because if someone is on the property and discharges a Class B firework and it harms an eagle, the applicant could be subject to criminal penalties up to a year and also a fine up to \$200,000.00. There could also be ramifications to the applicant under the Migratory Bird Act and the Bald Eagle Protection Act. Ms. Aquino stated that she understands that by just putting a stand up does not mean that the applicant or the purchaser is going to be shooting the fireworks in the area, but there is a valid point in saying if there are four fireworks stands set up in a rural area, that is outside city limits, it would be very tempting for a person to walk to the edge of the river and shoot off the fireworks.

Mr. Charney asked Ms. Aquino if there is a law prohibiting the discharge of a firework within so many feet of an eagle's nest. Ms. Aquino stated the Bald Eagle Protection Act and the Migratory Bird Act do impose criminal penalties for fireworks that are discharged within 650 feet of an eagles nest with a buffer zone, but neither government entity can do anything until there has been harmed caused to the eagle or the eagle's nesting site.

Mr. Osborne asked Ms. Aquino if there were restrictions listed in regards to the use, or limitation of use, of farming equipment because this is a hay field that requires harvesting by the use of machinery. Ms. Aquino stated she was not aware of any limitations on farming machinery.

Ms. Warlick came forward and stated that she is 66 years of age and her family has farmed hay from that field and area for two generations and the eagles are used to it. The National Eagle Management guidelines require a buffer at least one-half mile from Class B fireworks being discharged.

**Rebuttal:**

Lisa Jenkins stated that the eagles and their nests are approximately one and one-half miles away from the donut shop parking lot where the firework stands would be placed. There are four housing additions, two trailer parks and 500 to 600 people living in the area that could potentially be discharging fireworks. Ms. Jenkins states she does not allow the discharging of fireworks in the parking lot or the grass, and her shop is too close to the highway. There is a building directly across Highway 412 from her shop, a 30 x 40 building that was just completed, and it is a wholesale fireworks building where fireworks can be purchased in December, January, June and July. Ms. Jenkins stated the permit the Board had just approved today, the case just before hers, is a fireworks stand that is closer to the eagles nesting site than her proposed two to four fireworks

stands. Ms. Jenkins stated all she is requesting today is to have two fireworks stands now with the ability to open a total of four firework stands in the future.

**Comments and Questions:**

Mr. Charney stated the Board was to consider only the subject of what is being requested today. What is important to remember, especially when people have strong concerns, is that what is before the Board today is an application for an appropriate use of land to sell a firework.

**Board Action:**

On **MOTION** of **OSBORNE**, the Board voted 5-0-0 (Charney, Dillard, Osborne, Tyndall, Walker “aye”; no “nays”; no “abstentions”) to **APPROVE** the request for a **Special Exception** to permit a fireworks stand (Use Unit 2) in the CS district (Section 710). This approval will be limited to two fireworks stands located in the parking lot of the donut shop. The days of operation will be from June 15<sup>th</sup> through July 5<sup>th</sup>. The hours of operation will be 10:00 A.M. to 10:00 P.M. starting June 15<sup>th</sup> through July 3<sup>rd</sup>; 10:00 A.M. to 12:00 Midnight on July 4<sup>th</sup>; and 10:00 A.M. to 10:00 P.M. on July 5<sup>th</sup> for a period of six years from today’s date of September 20, 2011. The Board also suggests, though not a requirement, the applicant provide signage making the public aware of the nesting eagles; for the following property:

**BEG 1408.30S NWC SW TH E24.75 TO SLY R/W HWY 64 TH ALG R/W NE279.10 NE0.00 TH NELY CRV LF 223.40 NE290.62 S437.39 TO S R/W ABANDONED RR TH WLY ALG R/W 702.29 N117.83 POB SEC 6 19 11 5ACS, OF TULSA COUNTY, OKLAHOMA**

**Case No. 2406—Sherri Barrett**

**Action Requested:**

Variance of the minimum land area required per dwelling unit in an AG district (Section 330) from 2.1 acres to 1.1 acres. **LOCATION:** 16870 West Wekiwa Road South

**Presentation:**

**Sherri Barrett**, P. O. Box 1921, Sand Springs, OK; stated is requesting a variance to allow a second dwelling on the property so she can move her mother onto the property. A request for a variance has been made in the past and it was approved, and that request was to be able to move her mother-in-law onto the property but she passed before anything could be done. The property has a significant drop off in the rear which limits the use of the land, because the land owned actually goes to the river.

**Interested Parties:**

**Shonna Underwood**, 16910 Wekiwa Road, Sand Springs, OK; stated she is opposed to allowing a second dwelling placed on the property. She owns the property two lots

west of the subject property and has lived there for 24 years. If she wanted neighbors close to her she would have chosen to live in town. The applicant purchased the land as a single dwelling property.

**Rebuttal:**

Sherri Barrett came forward to inform the Board that there were three vacant mobile homes in the area, and the mobile home located on the east side of Ms. Underwood's property is to be removed, with a time frame for the removal. When the variance was approved in the past Ms. Underwood was not present at the meeting to voice her objections, and there was no one else present at the past meeting stating any objections.

Ms. Underwood came forward stated the reason she did not object to the previous variance request because she was unable to attend the meeting due to her husband being in the hospital. Ms. Underwood also stated that if this request had been heard last month as previously scheduled, she would not have been able to attend because her husband was in the hospital. Ms. Underwood again stated she is opposed to this variance request.

**Comments and Questions:**

Mr. Osborne asked Mr. Alberty if the applicant could file for a lot-split without coming before this Board. Mr. Alberty stated that it is a possibility based on the motion of the Board today. If the Board permits the lot to be split, that is a separate action. What is being asked of the Board today, to allow two dwelling units on one lot, and it is understood by staff that the applicant does not want to split the lot but keep it as one lot. Regarding the time limitation, all variances or special exceptions, if not acted upon have three years, but the Board does have the ability to condition the length of time of the second mobile home. Mr. Osborne asked Mr. Alberty if the Board chose to deny the variance the applicant could seek to have the lot split, then having two lots, place one dwelling on each lot without coming before the Board. Mr. Alberty stated not with the existing zoning and not without Board action.

**Board Action:**

On **MOTION** of **OSBORNE**, the Board voted 4-1-0 (Charney, Dillard, Osborne, Tyndall "aye"; Walker "nay"; no "abstentions") to **APPROVE** the request for a Variance of the minimum land area required per dwelling unit in an AG district (Section 330) from 2.1 acres to 1.1 acres, finding that where the river joins the property causes a hardship. The Board will require paved parking, skirting, tie-downs, and all other standard requirements as required by the Department of Environmental Quality; finding this will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code; for the following property:

**ALL E310 W610 NW SE LYING SLY CL WEKIWA RD & ALL E310 W610 GOV LT 10 LYING N MEANDER LN SEC 6 19 11 2.306ACS, OF TULSA COUNTY, OKLAHOMA**

\*\*\*\*\*

**NEW BUSINESS**

\*\*\*\*\*

**Case No. 2407—James & Stephanie Layman**

**Action Requested:**

Special Exception to allow a Manufactured home (Use Unit 9) in a RM-2 district.

**LOCATION:** 7912 West 17<sup>th</sup> Street South

**Presentation:**

**James Layman**, 1270 North Darlington Place, Tulsa, OK; stated has purchased the land and would like to install a single wide mobile onto the lot. He has a disabled 16-month old son and wants to be able to plan for his future by not going into debt because the single wide mobile home will be paid for in January. There are double wide mobile homes in the area and a single wide mobile home further down the road from the subject property with older homes throughout the area.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **DILLARD**, the Board voted 5-0-0 (Charney, Dillard, Osborne, Tyndall, Walker “aye”; no “nays”; no “abstentions”) to **APPROVE** the Special Exception to allow a Manufactured home (Use Unit 9) in a RM-2 district, finding that it will not be injurious to the neighborhood or otherwise detrimental to the public welfare. The Board will require paved parking, skirting, tie downs, and all other standard requirements as required by the Department of Environmental Quality; for the following property:

**W/2 TR 40 LT 7, BILLINGTON'S ACRE TRACTS, OF TULSA COUNTY, OKLAHOMA**

**Case No. 2408—Dale Slone**

**Action Requested:**

Special Exception to allow Wedding Chapel (Use Unit 5) in an AG district.

**LOCATION:** 5019 South 73<sup>rd</sup> Avenue West

**Presentation:**

**Dale Slone**, 5019 South 73<sup>rd</sup> West Avenue, Tulsa, OK; stated he purchased the property approximately 12 years ago and it has been paid off for six years. Mr. Slone stated he is a licensed and ordained minister. Mr. Slone proposes to build and operate a wedding chapel with a hall for wedding receptions and does not desire for the wedding chapel to become a church in the future. Mr. Slone lives on the property and will place the wedding chapel away from the residence. Mr. Slone stated he has discussed his proposal with all the neighbors except for the one neighbor who is directly across the street and that is because he lives in Texas; none of the other neighbors objected to the wedding chapel. The property is a corner lot and has access from 50<sup>th</sup> Street.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WALKER**, the Board voted 5-0-0 (Charney, Dillard, Osborne, Tyndall, Walker "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to allow Wedding Chapel (Use Unit 5) in an AG district, finding it will not be injurious to the neighborhood or otherwise detrimental to the public welfare and recognizing there may be future setback requirements; for the following property:

**W 1/2 SW SW SE LESS N 25 FOR RD SEC 30-19-12, OF TULSA COUNTY, OKLAHOMA**

**2409—Michael Goodman**

**Action Requested:**

Special Exception to allow a manufactured home (Use Unit 9) in a RS district.

**LOCATION:** 815 West 10<sup>th</sup> Street North

**Presentation:**

**Michael Goodman**, 813 West 10<sup>th</sup> Street North, Sand Springs, OK; stated he has lived on the subject property for 22 years, and he wants to replace his old manufactured home with a new manufactured home.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.



**Board Action:**

On **MOTION** of **DILLARD**, the Board voted 5-0-0 (Charney, Dillard, Osborne, Tyndall, Walker "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to allow a manufactured home (Use Unit 9) in a RS district. The Board will require the applicant to have paved parking, skirting, tie downs, and meet all the Department of Environmental Quality standard requirements; for the following property:

**W189.1 LT 22 BLK 25, CHARLES PAGE HOME ACRES NO 4, OF TULSA COUNTY, OKLAHOMA**

**2410—Robert Bell**

**Action Requested:**

Special Exception to allow Amusement Activities - NEC within Use Unit 20 as a permitted use in an IL District for children's amusement rides. **LOCATION:** 5802 West 51<sup>st</sup> Street

**Presentation:**

**Robert Bell**, 1943 South Florence Avenue, Tulsa, OK; stated he wants to install several small children's amusement rides at the Saturday Market located in west Tulsa at the owner's request.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **TYNDALL**, the Board voted 5-0-0 (Charney, Dillard, Osborne, Tyndall, Walker "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to allow Amusement Activities - NEC within Use Unit 20 as a permitted use in an IL District for children's amusement rides; for the following property:

**PRT NE NW BEG NEC NE NW TH S1322.49 W497.61 N1322.69 E497.93 POB LESS N24.75 THEREOF FOR RD SEC 32 19 12 14.831ACS, OF TULSA COUNTY, OKLAHOMA**

\*\*\*\*\*  
\*\*\*\*\*

**NEW BUSINESS:**

None.

\*\*\*\*\*  
\*\*\*\*\*

**OTHER BUSINESS:**

None.

\*\*\*\*\*  
\*\*\*\*\*

**BOARD COMMENTS:**

None.

\*\*\*\*\*  
\*\*\*\*\*

There being no further business, the meeting adjourned at 3:25 p.m.

Date approved:

10/18/  
\_\_\_\_\_  
David E. Cheney  
\_\_\_\_\_  
Chair