

TULSA COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 393
Tuesday, February 19, 2013, 1:35 p.m.
Williams Tower II
Conference Room, 2nd Floor
2 West 2nd Street

MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT

Charney, Chair	Draper	Miller	West, Co. Inspector
Dillard	Osborne, Secretary	Bates	
Walker, Vice Chair		Sparger	

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 14th day of February, 2013 at 8:56 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 1:35 p.m.

MINUTES

On **MOTION** of **DILLARD**, the Board voted 3-0-0 (Charney, Dillard, Walker "aye"; no "nays"; no "abstentions"; Draper, Osborne "absent") to **APPROVE** the Minutes of January 15, 2013 (No. 392).

Mr. Charney explained to the applicants that there were only three board members present at this meeting, and if an applicant would like to postpone his or her hearing until the next meeting he or she could do so. If the applicant wanted to proceed with the hearing today it would be necessary for him to receive an affirmative vote from all three board members to constitute a majority and if one board member voted no today the application would be denied. Mr. Charney asked the applicants if they understood and asked the applicants what they would like to do. The applicants nodded affirmatively that they understood Mr. Charney, and no one asked to be continued to the next meeting.

Mr. Bates explained the rules and procedures for the County Board of Adjustment Public Hearing. Mr. Bates informed the Board that there is one case that would like to possibly request to withdraw the application.

* * * * *

UNFINISHED BUSINESS

None.

* * * * *

NEW APPLICATIONS

Case No. 2456—Cynthia Lee Kondos

Action Requested:

Variance to increase total square footage of detached accessory structures in an RS district from 750 square feet to 2,800 square feet (Section 240.2.E). **Location:** 7207 West 26th Street South

Presentation:

Cynthia Kondos, 7207 West 26th Street, Tulsa, OK; stated she was recently married and she would like to build a building to store their combined belongings. She does not have an attached garage on her home and the garage is not large enough to store everything.

Mr. Charney stated that in the past, when the Board has granted this type of variance, it is important that there is an understanding that there will be no commercial use associated with the new building. If the Board were to approve this variance request it would be with the understanding that it would be for personal or household use only. Ms. Kondos stated the proposed building is for her and her husband's own personal use and nothing else.

Mr. Charney asked Ms. Kondos if she had spoke to her neighbors to find out if there was any concerns or opposition to the proposed building. Ms. Kondos stated she is a friend to all her neighbors, and the neighborhood is like a big family and no one has expressed any concern with her.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 3-0-0 (Charney, Dillard, Walker “aye”; no “nays”; no “abstentions”; Draper, Osborne “absent”) to **APPROVE** the request for a **Variance** to increase total square footage of detached accessory structures in an RS district from 750 square feet to 2,800 square feet (Section 240.2.E). This approval is with the condition that the building is used for personal, family and/or household use with no commercial or business uses. The size of the lot is so much greater than a 6,000 square foot lot that would otherwise be permissible in this zoning category, it would be a hardship to constrain the applicant to the same restrictions of a small lot; for the following property:

A tract of land in the NW/4 of the NW/4 of the SE/4 of Section 18, T-19-N, R-12-E of the I. B. & M., Tulsa County, State of Oklahoma, according to the U.S. Government Survey thereof, described as: The South 271.52 feet of said NW/4 of the NW/4 of the SE/4, LESS AND EXCEPT the East 210 feet and LESS AND EXCEPT the West 210 feet thereof, OF TULSA COUNTY, STATE OF OKLAHOMA

Case No. 2457—John and Julie Miller

Action Requested:

~~Variance from a maximum of 7 children to 12 children in a family day care home (Section 402.2.D.c).~~ **Special Exception** to allow a Family Day Care Home with a maximum of 12 children instead of the permitted 7 children (Section 420.2.D.c).

Location: 15400 West 18th Street South

Mr. Bates explained that the original request that was applied for was a Variance from a maximum of 7 children to 12 children in a family day care home, Section 402.2.D.c. However, after reviewing the application it was brought to staff's attention that in the City of Tulsa this same request is required as a Variance. In the County of Tulsa it is required as a Special Exception. Also, there was an error in the section of the code quoted. Section 402 does not exist in the County Code, it should be Section 420. That is the reason there is a strike through on the agenda.

Mr. Charney stated that the amended agenda sent out recites the correct section and the correct nature of what is being sought. Mr. Bates stated the nature is the same it is just a matter of how it is worded. The actual request is a Special Exception to allow a family day care home with a maximum of 12 children instead of the permitted 7 children, Section 420.2.D.c, located at 15400 West 18th Street South.

Mr. Charney stated that the standard of review for the Board is for a Special Exception and not a Variance request.

Presentation:

Julie Miller, 15400 West 18th Street South, Sand Springs, OK; stated she currently operates a two-star in home day care for seven children. She has been pre-approved by DHS for up to 12 children with the Board of Adjustment's approval of the Special Exception request before them today. Currently she and her husband operate the day care together.

Mr. Charney asked Ms. Miller to tell the Board about the fencing that is around the yard. Ms. Miller stated that the entire back yard is fenced and they share a fence with their neighbor but everything is connected.

Mr. Charney asked Ms. Miller if she and her husband had spoke to any of the neighbors about the day care home expansion. Ms. Miller stated that she had received several calls when people started receiving the notice sent out in the mail, and all those neighbors telephone calls were in favor of the day care home expansion. Mr. Charney asked Ms. Miller if she had spoke to a Ms. Braswell. Ms. Miller stated that Ms. Braswell had operated an in home day care and Ms. Braswell understands and has no problems with the request.

Mr. Walker asked Ms. Miller if it required her and her husband to take care of the children in the day care. Ms. Miller stated that it will require both of them if there are 12 children permitted. Right now with seven children only one adult is required, but her husband only works on Tuesday.

Mr. Charney stated that the Board has received an e-mail from Ms. Braswell and has shared with the Board in this e-mail that she does have concerns in regards to the in home day care. It is part of the duty of the Board to examine those concerns with the applicant. One of the concerns is the 12 children in the back yard and having a privacy fence installed so that neighboring dogs cannot bite a child's hand that might reach through the chainlink fence. Ms. Miller stated that the children are not outside without her or her husband. Mr. Charney asked Ms. Miller if there were ever opportunities where the children were allowed to go outside to play without supervision. Ms. Miller stated that once there are 12 children they will not be allowed to go outside without adult supervision. Mr. Charney asked Ms. Miller if seven children could outside by themselves. Ms. Miller answered affirmatively.

Mr. Charney stated that there has been a concern expressed over safety of the children without a privacy fence.

John Miller, 15400 West 18th Street South, Sand Springs, OK; stated that he and his wife have quite extensively looked into having a privacy fence installed when they made the decision to expand the day care. Safety of the children is one of their primary concerns. When the children are outside it is very important for them have adult interaction so there are not times when the children are outside without one of them. Mr. Miller stated that privacy fence should not be an issue, because he or his wife or both of them are with the children when they are outside.

Mr. Charney wanted the Millers to know that the Board of Adjustment is not a court of law but it is their duty to examine what has been told to them, such as, the neighbors have seen the children outside for extended periods of time without any adult supervision. Mr. Miller wanted the record to reflect that the e-mail the Board received is a different e-mail than the one they had received.

Ms. Miller stated that if that neighbor is concerned about their dog, then maybe the neighbor should keep the dog away from the fence. Mr. Charney stated that was a fair comment, except that kids will be kids. Mr. Charney stated that he does not know where the duty lies to secure the dogs, but he knows that it is hard to keep a child from reaching through a fence to pet a dog let alone seven children.

Mr. Dillard suggested that the Board allow Mr. and Mrs. Miller to sit down, read the e-mail the Board has received, and then let them come back before the Board with their response. There are some pretty serious allegations to be responded to and the Board wants to do what is right for everyone. Mr. Charney stated that he would gladly pause the hearing of this case to allow the Millers to read the submitted e-mail and resume the hearing of this case at the end of the meeting with no objections from the other Board members. Mr. Charney stated that if the Millers thought it would be better to continue this case to the next docket the Board would not object to that either, because the Board wants the Millers to have every opportunity to speak with the concerned neighbor if they thought it necessary.

Mr. Charney stated that this case will be placed at the end of the docket and the Board shall continue with the next item on the agenda at this time. No Board action required at this time.

2458—Jeff Marquette

Action Requested:

Variance of size of detached accessory building in an RS District from 750 square feet to 1,200 square feet (Section 240.2.E). **Location:** 1642 East 73rd Street North

Presentation:

Jeff Marquette, 1642 East 73rd Street North, Tulsa, OK; stated his family has three cars and he would like to have a garage for them and to perform maintenance on them in the garage. He would also like the garage to be a little larger to be able to store lawn equipment, tools and use some exercise equipment. There used to be a house and a garage on the property, and the house has been removed. He would like to place the proposed building on the footprint of the old house.

Mr. Charney asked Mr. Marquette if there would be any other buildings on the property. Mr. Marquette stated the other out buildings that are the property are going to be removed.

Interested Parties:

Jeff Kirkham, 1727 East 73rd Street North, Tulsa, OK; stated he lives approximately one block east of the subject property. He has had the privilege to speak with Mr. Marquette and even though the proposed building is about the size of his house, he would like to have a stipulation made that the building is not to be used as a business. Mr. Kirkham stated he could support this application if that stipulation was placed on the application.

Rebuttal:

Mr. Charney asked Mr. Marquette to come forward, and Mr. Charney asked Mr. Marquette if the Board were to approve his request could he abide by a restriction of no commercial or business use of the building. Mr. Marquette stated that he would agree to that condition. Mr. Charney asked Mr. Marquette if he would agree to remove all the other accessory storage buildings and clean up the property. Mr. Marquette stated he would agree to that condition also.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WALKER**, the Board voted 3-0-0 (Charney, Dillard, Walker “aye”; no “nays”; no “abstentions”; Draper, Osborne “absent”) to **APPROVE** the request for a **Variance** of size of detached accessory building in an RS District from 750 square feet to 1,200 square feet (Section 240.2.E). Based upon the size of the lot and the size of the proposed storage building, it will give the applicant the opportunity to remove all the other accessory storage buildings on the subject property. This approval will have the condition placed on it that the proposed storage building will have no commercial or business use. This approval will not be injurious to the neighborhood; for the following property:

**E 50 W 135 LT 5 BLK 5, GOLDEN HILL ADDN, MIRECKI ADDN RESUB L8-9 B5
GOLDEN HILLS ADDN, OF TULSA COUNTY, STATE OF OKLAHOMA**

Case No. 2457—John and Julie Miller

Action Requested:

~~Variance from a maximum of 7 children to 12 children in a family day care home (Section 402.2.D.c).~~ **Special Exception** to allow a Family Day Care Home with a maximum of 12 children instead of the permitted 7 children (Section 420.2.D.c).

Location: 15400 West 18th Street South

This case, started earlier in the hearing, is now being continued after allowing Mr. and Mrs. Miller time to read an e-mail that had been represented to the Board.

Presentation:

Julie Miller, 15400 West 18th Street South, Sand Springs, OK; stated that DHS has regulations in place and they met all their regulations in regards to the fence. Her children are home schooled in the mornings and allowed to play the rest of the day. Ms. Miller stated that the majority of the time she, or her husband, are out in the yard with the children but she does not need to be. There are times she is inside feeding a baby or changing a diaper, but for the majority of the time she is in the yard with the children. She does not understand Ms. Braswell's comment about the children going behind the shed. If the children do go behind the shed Ms. Miller will have them come out from behind the shed because she cannot see them.

Mr. Miller came forward and stated that in regards to the allegations in Ms. Braswell's e-mail, he feels he was blind sided because none of them have been brought to their attention. The parents of the children under their care are very pleased with the care the children are given, because they have been with them for over two years.

Ms. Miller stated that she is stunned by the fact that Ms. Braswell states she has photographed and video taped them and the children.

Mr. Miller stated that it is not an uncommon occurrence for a day care to have 12 children, and they just want to go about getting permission the correct way. They have already been approved by DHS so they are pretty much ready to move forward. But they don't want to leave any loop holes open so they are before the Board today with a Special Exception request.

Mr. Charney stated that the Miller's are correct in that there is a governing body that addresses regulatory procedures for day cares. That is not the Board of Adjustment. That governing body is DHS. However, when there is a request in a residential area it is the Board's duty to make certain that the use is not injurious to the neighborhood or the surrounding area. The Board does not examine issues that DHS would examine.

Mr. Dillard asked the Millers, if the fence were truly an issue would they be willing to consider installing a privacy fence around part of the back yard? Mr. Miller stated that it would be something that they would consider, but it may be cost prohibitive to install immediately. Ms. Miller stated that they meet all the DHS requirements.

Mr. Charney stated that even though the Millers meet the DHS regulations, the Board has an additional layer of concern because they must listen to the expressed concerns of the neighbors. The neighbors concerns are not controlling on the Board but their concerns of interest to the Board when it comes to land usage. A privacy fence may give your unusual use in a neighborhood more credence regardless of the DHS regulations.

Mr. Miller asked if a privacy fence would be required around the entire yard, or could the privacy fence just be installed along the rear of the property? Mr. Charney stated the Board is entitled to seek restrictions on certain grants that are made, and that may be something that is important to the Board.

Mr. Dillard asked Mr. Miller how wide is the subject property? Mr. Miller stated that it is approximately 100 feet. Mr. Dillard stated that 100 feet of privacy fence would be 16 panels with 18 posts, and would cost approximately \$300.00 for the rear property line.

Mr. Charney stated that privacy fence along the rear property line to shield the children from the dog seems to be a reasonable condition to place on an approval.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 3-0-0 (Charney, Dillard, Walker "aye"; no "nays"; no "abstentions"; Draper, Osborne "absent") to **APPROVE** the request for a **Special Exception** to allow a Family Day Care Home with a maximum of 12 children instead of the permitted 7 children (Section 420.2.D.c). This approval is subject to a minimum 6'-0" tall privacy fence be installed along the rear property line prior to the expansion of the in home day care to 12 children. Finding that this will not be injurious to the neighborhood; for the following property:

LT 3 BLK 5, TOWN & COUNTRY ACRES NO 2 SUB, OF TULSA COUNTY, STATE OF OKLAHOMA

NEW BUSINESS

None.

OTHER BUSINESS

None.

BOARD COMMENTS

None.

There being no further business, the meeting adjourned at 2:20 p.m.

Date approved: 3-19-2013


Chair