

TULSA COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 437
Tuesday, October 18, 2016, 1:30 p.m.
Ray Jordan Tulsa County Administration Building
500 South Denver, Room 119
Tulsa, Oklahoma

MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT

Charney, Chair	Crall, Secretary	Miller
Dillard		Moye
Johnston		Sparger
Hutchinson, V.Chair		

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 13th day of October, 2016 at 9:20 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.

MINUTES

On **MOTION** of **DILLARD**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Crall "absent") to **APPROVE** the Minutes of September 20, 2016 (No. 436).

Mr. Charney explained to the applicants and interested parties that there were only four board members present at this meeting, and if an applicant or an interested party 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 three board members to constitute a majority and if two board members voted no today the application would fail. Mr. Charney asked the applicants and the interested parties if they understood and asked the applicants or interested parties what they would like to do. The audience nodded their understanding and no one requested a continuance.

UNFINISHED BUSINESS

None.

* * * * *

NEW APPLICATIONS

2598—Joseph Walker

Action Requested:

Variance of the frontage requirement on a public street from 30 feet to 0 feet (Section 207). **LOCATION:** 13824 North 71st Avenue East, Collinsville

Presentation:

Joseph Walker, 13057 East 133rd Street North, Collinsville, OK; stated the property is five acres. Mr. Walker stated that he has permanent rights to access the subject property. He did not purposely place himself in this hardship and to not grant the Variance request would be the hardship. The current subject property access is a permanent non-exclusive 30 foot easement. Documents were submitted at the time the application was made. Mr. Walker stated that he brought with him today a title certificate and a mortgage inspection plat. The subject easement is also called 71st East Avenue. It is a corridor that is an established gravel road with an emergency services lane and it runs along the east side of the subject property and grants permanent access to 136th Street which is a County maintained road. There is water and electric lines along the east side of the property, and there has been a water tap installed within the last eight weeks. The hardship would be that the strict enforcement of the Code would cause an undue hardship by restricting any potential residential use for the subject property. A Variance to Section 207 would not grant access but only permit residential building use on the subject property ensuring the property is utilized to its fullest potential. Mr. Walker stated that he did not know he would need this Variance when he purchased the subject property. An extensive research was performed by a land construction loan lenders and professional building consults, and their work was taken in good faith that the land would be suitable for residential use. Also, an interpretation of the Tulsa County Zoning Code was considered in the research process. Mr. Walker stated that he purchased the property in March 2016. During the permitting process he was informed that in order to obtain a building permit he needed access to a public right-of-way maintained by the County. Therefore, due to subject property's access he needs the Variance. The primary document used to analyze residential suitability was the mortgage inspection plat and title certificates. The mortgage inspection plat labels North 71st East Avenue a public right-of-way so there must be some confusion because there are access rights over the 71st East Avenue corridor. The subject property is in rural Tulsa County so a Variance would not affect any neighborhoods or a municipality. Due to the uniqueness of the subject property and access road he strongly believes the granting of the requested Variance will not cause any detriment to the public good nor will impair the spirit, purposes and intent of the Code.

Mr. Charney asked Mr. Walker if he is satisfied with the document he has for the non-exclusive access easement provides him legal access. Mr. Walker answered affirmatively.

Mr. Dillard asked Mr. Walker if he purchased title insurance. Mr. Walker answered affirmatively.

Interested Parties:

Vivian Toothman, P. O. Box 21, Collinsville, OK; stated she has lived on her property for over 30 years. The road from 136th Street back to her land is a private road and she has maintained it; the County has never maintained the road. Ms. Toothman stated she has a letter from the County dating to back to the time she moved onto the property. Ms. Toothman stated that Mr. Walker wants to take part of her road for his right-of-way when he has a right-of-way on the east side of her road that he has so he does not need to use her road. If the road were maintained by the County this would be a different deal. Ms. Toothman stated that if Mr. Walker wants to maintain the entire road from 136th back to her property that would be fine with her. Ms. Toothman stated the road was named as it is for the 911 system.

David Stevens, P. O. Box 21, Collinsville, OK; stated that North 71st East Avenue is actually his private drive and it dead ends in the north at his property line.

Mr. Charney stated that the Board is concerned whether there is a document of record that gives legal access to traverse the road to anyone that owns property on either side of the road, and that is what the Board is attempting to determine.

Mr. Charney asked Mr. Stevens if he was in the opinion that the current mutual access easement, the access easement of record, only runs in favor of him and only his tract. Mr. Stevens stated that his understanding was that when he purchased the property in 1979 the landowner set aside 30 feet for him to go across her property to have access to rear. The landowner also set aside 30 feet of the line section to the west for access to that property and the five acres to the south. This was done with the understanding that when three households were established, the County was take ownership of the easement and maintain what is now called North 71st East Avenue.

Mr. Charney asked Mr. Stevens if would be willing to accept help in maintaining the road or does he not want anyone else to use the road. Mr. Stevens stated that he does not mind having help.

Ms. Toothman stated that they have lived there for 30 years and maintained the road. Ms. Toothman stated that other people had tried to purchase the subject property and could not get anything done.

Mr. Charney stated that the Board acknowledges this is not a publicly dedicated roadway. Generally when it is not a County publicly dedicated right-of-way it is often

still a private easement of record that gives anyone abutting the easement the right to use it. The Board is trying to determine if there is something of record that gives the applicant legal access off of the subject 30 feet or is it a parallel 30 feet. Ms. Toothman stated the 30 feet is on her deed.

Mr. Charney stated the Board may need to have a legal opinion regarding the document in question and the 30 foot strip of land.

Rebuttal:

Mr. Walker came forward and stated that he would be willing to go into a fair agreement with Ms. Toothman and Mr. Stevens for maintenance of the gravel road. Mr. Walker stated that regarding the legal side of the actual access he has a survey mortgage inspection plat that shows the private property that is adjacent to his property has a 30 foot easement called North 71st East Avenue and directly abuts his property. The certificate calls the right-of-way easements, which gives the west 30 feet of the adjacent property to the east, non-exclusive public access. Mr. Walker stated that he is a GIS mapper so before he purchased the property he mapped out the legal descriptions for the easements and the property boundaries.

Mr. Charney stated there is still the question whether the easement allows it to be used by one particular tract of property or by all or if there is a blanket use. Mr. Charney stated that he is not sure the Board can give an opinion on that.

Mr. Walker read from his Warranty Deed, "owner one does hereby dedicate, create, establish and declare a private permanent non-exclusive easement over through, upon and across all the west 30 feet of Tract 1". Mr. Walker stated that Tract 1 is the adjacent property to the east. "As means of access and way of ingress and egress to and from Tract 2 for the use and benefit of the present owners and future owners of Tract 2 and their leases and invitees." Mr. Walker stated that Tract 2 is the subject 5 acre property.

Mr. Dillard stated that he can support this request because the document states "perpetual" and "mutual" and "non-exclusive". Also, the applicant has title insurance and a mortgage. All of the concerned parties have a vested interest in making sure there is ingress and egress on the subject property.

Mr. Charney agreed with Mr. Dillard. Mr. Charney stated that it is also important to him that the applicant enter into good faith negotiations with the neighbors regarding the sharing maintenance responsibilities of the subject road. Mr. Charney asked Mr. Walker if he would be willing to enter into such an agreement. Mr. Walker stated that he would agree with helping with the maintenance of the entire length of the road.

Mr. Stevens stated that with the paperwork Mr. Walker has, the road situation had been changed in 1994 which he was not aware of. Mr. Stevens stated that he and Ms. Toothman would be willing to enter into an agreement for road maintenance with Mr. Walker.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; Crall “absent”) to **APPROVE** the request for a Variance of the frontage requirement on a public street from 30 feet to 0 feet (Section 207), given the recessed nature of the subject tract and it’s unique long configuration. The hardship is that there would be no other access to the tract absent the community road. There is to be good faith negotiations between the applicant and Mr. Stevens and Ms. Toothman to make sure there is an agreeable mutual maintenance agreement for the easement known as North 71st East Avenue; for the following property:

N/2 NW SE SW SEC 26 22 13 5ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

2599—Ogden Resources of Oklahoma, LLC

Action Requested:

Special Exception to allow RV/Boat storage (Use Unit 17) on a CS zoned lot (Section 701); Variance to permit a gravel parking area (Section 1340).
LOCATION: 4612 East 106th Street North, Sperry

Presentation:

Joe Ogden, P. O. Box 2505, Claremore, OK; stated he has owned the property for several years and would like to erect a RV and boat storage facility but would like to keep the corner vacant for future use. He would like to have gravel on the driving and parking area because the facility will basically be covered parking. The main building in the middle will have concrete on the inside. Most of the land owners along the corridor are eager to get some development activity and this could get that development started.

Mr. Dillard asked Mr. Ogden to explain the difference of the 12.6 acres versus the 1.6 acres on the exhibit in the Board’s agenda packet. Mr. Ogden stated that he only wants to change the use on 1.6 acres, but the facility may end up covering 1.8 acres.

Ms. Miller stated the legal description covers the entire 12.6 acres but the Board is being asked to rule only on a portion of the acreage. Mr. Ogden stated that he does not intend to build a storage facility over the entire 12 acres. Mr. Dillard stated that if the Board approves the request today they are giving approval for the entire 12.6 acres. Ms. Miller stated the Board could specify the 1.6 acres.

Mr. Charney asked staff if there is a separate matter regarding no access. Mr. West stated the State does have a limited no access at the south end of the property near Highway 75. Mr. Ogden stated that when he laid the driveway he received approval from the state.

Mr. Hutchinson asked Mr. Ogden if he planned on having wainscoting or stucco on the buildings that face the highway. Mr. Ogden stated there won't be any because they are all facing the interior, but he does hope to have full metal walls to protect things from the street. Mr. Ogden stated that he does plan on removing the existing fence and erecting a new fence so that the buildings will be inside a good fence. Mr. Ogden stated that his plan has five buildings and asked Mr. Hutchinson if he was only speaking about the building walls that face the road to be finished with either stucco or masonry. Mr. Hutchinson answered affirmatively.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Crall "absent") to **APPROVE** the request for a Special Exception to allow RV/Boat storage (Use Unit 17) on the southerly 2/3 of the subject 12.6 acre tract of a CS zoned lot (Section 701); Variance to permit a gravel parking area (Section 1340). This approval has the condition that there be a masonry or stucco face on the buildings that face west and are visible from the highway so there is a more sightly appearance. The hardship being the nature of the use and the stormwater runoff from the use would be less significant with the gravel to rather than a hard surface lot. Finding the Special Exception 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; for the following property:

LT 1 BLK 1, SPRINGER PARK, OF TULSA COUNTY, STATE OF OKLAHOMA

2600—David White

Action Requested:

Use Variance to allow a gun smith business as a home occupation in the AG District (Section 330). **LOCATION:** 4615 East 191st Street South, Bixby

Presentation:

David White, 4615 East 191st Street South, Bixby, OK; stated he has no intention of buying or selling guns, this is only for repairing the firearms for people in and out of state. He has been a gunsmith since 1983.

Mr. Charney asked Mr. White if gunsmithing was the repair and refurbishing of firearms. Mr. White answered affirmatively.

Mr. Charney asked Mr. White if there would be test firing performed on the subject property, because test firing could disturb a neighborhood. Mr. White stated that if test firing does occur he has a steel pipe in the ground that is 12" in diameter and 3'-0" deep that he can shoot into so he does not need to worry about a stray bullet. He will also build a baffle around the pipe to keep the noise level down and to keep from disturbing anyone. Mr. Charney asked Mr. White if he test fired all the guns he worked on. Mr. White answered affirmatively. Mr. Charney asked Mr. White what the average test firing is in a week. Mr. White stated that it depends on how many barrels come through but it could be as low as one a week or up to three a week. Mr. Charney asked Mr. White if it was one firing per barrel or if it was several firings per barrel. Mr. White stated that it is one firing per barrel. Mr. Charney asked Mr. White if there would be any night time firing. Mr. White stated there would not.

Mr. Charney asked Mr. White if there would be any issues regarding clientele parking for his business. Mr. White stated there would not because 99% of his business is out of state. Mr. Charney asked if the business was done through the mail. Mr. White answered affirmatively. Mr. White stated that any local business would most likely be law enforcement. Mr. Charney asked Mr. White if he had plenty of off street parking should a local client come to his house. Mr. White answered affirmatively.

Interested Parties:

There was an interested party present and he did not want to speak.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Crall "absent") to **APPROVE** the request for a **Use Variance** to allow a gun smith business as a home occupation in the AG District (Section 330). Approval is subject to minimal test firing during the hours of 9:00 A.M. to 6:00 P.M. A sound barrier is to be placed or built around the test firing pit. The hardship is the nature of the tract of land being over five acres with the subject pit negating the negative effects of the business; for the following property:

BEG 889.89W SECR SE TH W100 N396 W330 N459 E430 S855 TO POB LESS S50 THEREOF FOR RD SEC 4 16 13 5.325ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

2601—J. R. Donelson

Action Requested:

Variance of the minimum lot width from 150 feet to 30 feet for proposed Tract D to permit a lot-split in the AG District (Section 330, Table 3). **LOCATION:** 17930 South Memorial Drive, Bixby

Presentation:

J. R. Donelson, 12820 South Memorial Drive, Bixby, OK; stated he represents the Greens. The ultimate goal is to have a lot-split on their ten acres. The lot-split would provide two building sites which each would have 2.5 acres for each one of their children. One of the access points needs a 30 foot wide access point to reach the property and that is the reason for the Variance request. If the request is approved today then the Greens can apply for a lot-split from TMAPC.

Interested Parties:

Wanda A. Greene, 7721 East 181st Street South, Bixby, OK; stated she just spoke with Mr. Donelson in regards to what the Greens want to do with the property. After the discussion she can see that does not hinder anything with her property because her property abuts the subject property.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Crall "absent") to **APPROVE** the request for a **Variance** of the minimum lot width from 150 feet to 30 feet for proposed Tract D to permit a lot-split in the AG District (Section 330, Table 3). The hardship is the amount of frontage on Memorial Drive and given the location of the existing house on the tract there would need to be a break in the tracts at some point leaving one with less than 150 feet, and the proposed used would be a hardship to impose the 150 foot requirement; for the following property:

The West 248.91 feet of the East 755 feet of the North 350 feet of the Southeast Quarter of the Southeast Quarter (SE/4 , SE/4), and the South 430 feet of the North 860 feet of the East 755 feet of the Southeast Quarter of the Southeast Quarter (SE/4, SE/4), and the South 80 feet of the North 430 feet of the East 755 feet of the Southeast Quarter of the Southeast Quarter (SE/4, SE/4), all in Section Thirty-five (35), Township Seventeen (17) North Range Thirteen (13) East, containing 10.839 acres more or less, OF TULSA COUNTY, STATE OF OKLAHOMA

2602—Michael Jones

Action Requested:

Variance to permit a detached accessory building in the front yard (Section 420.2.A.2); **Variance** of the allowable square footage for accessory buildings in the RS District from 750 square feet to 3,000 square feet (Section 240.2.E).

LOCATION: 4111 West 41st Street South

Presentation:

Michael Jones, 4734 South Delaware Avenue, Tulsa, OK; stated the subject property slopes from the existing building down to the street so it does not lend itself to building a house in front of the detached accessory building and that is the reason for the first Variance request. The subject building is the old Lyons Club which a 3,000 square foot building. The building would be used to store a personal car collection. Mr. Jones stated that this is his opportunity to build a new home and utilization of the existing building would be a benefit. There is a flat portion of land behind the existing building that will allow a modular home to be placed on the two acre lot. The existing building has been on the property for a long time and structurally is in good condition.

Mr. Charney asked Mr. Jones if the existing building was currently vacant. Mr. Jones answered affirmatively.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **JOHNSTON**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Crall "absent") to **APPROVE** the request for a Variance to permit a detached accessory building in the front yard (Section 420.2.A.2); Variance of the allowable square footage for accessory buildings in the RS District from 750 square feet to 3,000 square feet (Section 240.2.E). The hardship is that there is no way to place the building behind the proposed modular home due to the topography of the acreage; for the following property:

BEG 192.6W & 50N SECR SW TH N385 W238.4 S385 E238.4 POB SEC 21 19 12 2.107ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

2603—Jake Thurman

Action Requested:

Special Exception to permit surface mining for top soil and fill dirt (Use Unit 24) in the AG District (Section 310). **LOCATION:** East of the SE/c East 66th Street North & North Mingo Road East

Presentation:

Bill Smith, 28508 West 41st Street South,, Mannford, OK; stated he is the consulting engineer for the project and he is with Jet Trucking. Mr. Smith stated that Mr. Thurman purchased additional land on the south side Bird Creek and his current mining operation. This request is to permit similar surface mining on 49.65 acres for top soil and dirt filler. There are two mining areas that are separated by a railroad that runs

north and south. Similar to what Mr. Thurman has done on the north side it is being proposed to maintain a 50 foot buffer adjacent to Bird Creek, and a 100 foot buffer on each side of the railroad so there will be no impact on Bird Creek or the railroad bed. Once the mining is completed, approximately 20 years from today, Mr. Thurman will reclaim the land and restore the land back to the original grade. A hydraulic study has been performed and it shows there is no impact on Bird Creek or the flood plain by performing the mining operation. There are natural drainage ways that will be maintained coming out of the mining areas into Bird Creek, so if Bird Creek rises it will fill the mining areas and when Bird Creek recedes the land will dry out again.

Jake Thurman, 6841 North Mingo Road, Owasso, OK; no presentation was made but he was available for any questions.

Mr. Charney asked Mr. Smith if the reclamation plan is something of record or design or is it just a commitment to take the land back to the pre-existing topographical elevation. Mr. Smith stated it is a commitment that once the mining is completed the land will be restored back to existing grade.

Mr. Charney asked Mr. Thurman would be comfortable with the reclamation of the land being a condition in the granting of the Special Exception request. Mr. Thurman answered affirmatively and stated that it is fair.

Mr. West asked the Board to have the applicant supply the Tulsa County Permit Office with a copy of an Oklahoma Department of Mining permit for the project. Mr. Charney stated that could another condition placed on the approval if the Board chooses to approve today's request.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Crall "absent") to **APPROVE** the request for a Special Exception to permit surface mining for top soil and fill dirt (Use Unit 24) in the AG District (Section 310). The Board has found that there will be no adverse impact or detriment to the surrounding area. When mining ceases the applicant is responsible for restoring the land back to the original grade and condition. The applicant is to provide a copy of a mining certificate from the Oklahoma Department of Mines to the County Permit Office; for the following property:

PRT GOV LTS 3 & 4 BEG 1145.93S & 191.36E NWC NW TH NE476.80 TO PT ON APPROX SL BIRD CREEK NELY APPROX1970 TO PT ON NL NW E376.80 TO PT ON WL RR R/W SW1182.23 W2044.34 POB & ALL THAT PRT BIRD CREEK IN GOV

LT 3 & 4 LYING E HWY R/W & PRT GOV LTS 2 & 3 B, OF TULSA COUNTY, STATE OF OKLAHOMA

2604—BTC Broadband

Action Requested:

Variance to reduce the required lot frontage in the CS District to 33 feet to permit a lot split (Section 710). **LOCATION:** 4612 East 106th Street North, Sperry

Presentation:

Kim Hood, 6E Breckenridge Avenue, Bixby, OK; stated she represents BTC Broadband. The property is owned by Mr. Joe Ogden of Ogden Resources. BTC is an acronym for Bixby Telephone Company and they have been in business for over 100 years. With the changes from FCC and the OCC the company has been forced to step outside their footprint and offer deregulated services. BTC currently has an office in Bartlesville with services in Collinsville School System, Bartlesville Wesleyan College, City of Bartlesville, Okmulgee, Kellyville, and the company has expanded their services. The company has the same type of building presented in the packet at all locations as switching stations. The substation will be data broadband services only. The company knows after the fact of the purchase of the property in the abstract it is stated that there must be a lot split, and through the lot split the requirements are not met. The building is already in place with gravel all around it and a concrete driveway for access to the property. There is no office in the building and there may be maintenance done to the building about every three months. The building does not have water or sewer connections but it has electricity connected.

Mr. Hutchinson asked Ms. Hood if the company supplies service to homeowners. Ms. Hood stated currently the services are commercial but in the future if there is development along the corridor the company would entertain the idea of residential services.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; Crall “absent”) to **APPROVE** the request for a Variance to reduce the required lot frontage in the CS District to 33 feet to permit a lot split (Section 710). The hardship is the utility nature of the building and what is needed to serve the area is a tiny utility structure; for the following property:

LT 1 BLK 1, SPRINGER PARK, OF TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

Review and Approval of the **2017** County Board of Adjustment meeting calendar.

Mr. Charney asked staff about the November meeting date. Ms. Sparger stated the meeting day was changed for November to the second Tuesday to keep the meeting out of the Thanksgiving week.

Board Action:

On **MOTION** of **DILLARD**, the Board voted 4-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Osborne "absent") to **APPROVE** and **ACCEPT** the 2017 meeting calendar as presented.

NEW BUSINESS

None.

BOARD COMMENTS

None.

There being no further business, the meeting adjourned at 2:57 p.m.

Date approved: _____

11/15/16
David E. Charney
Chair