

TULSA COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 462
Tuesday, November 20, 2018, 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
Hutchinson, V.Chair
Crall, Secretary
Dillard
Johnston

Miller
Ulmer
Sparger

Tosh, County

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 15th day of November, 2018 at 10:28 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 **JOHNSTON**, the Board voted 4-0-1 (Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; Charney "abstaining"; none "absent") to **APPROVE** the Minutes of October 16, 2018 (No. 461).

UNFINISHED BUSINESS

None.

NEW APPLICATIONS

2721—Randy Herrington

Action Requested:

Special Exception to permit a church (Use Unit 5) in an AG District (Section 310).

LOCATION: 15198 South 193rd Avenue East

Presentation:

Randy Herrington, 13102 South 193rd East Avenue, Broken Arrow, OK; stated he placed a trailer on his eight acres not knowing that he had to go through a process. Everything has been done; the electric has been hooked up and all that is needed is to have the meter plugged in. Mr. Herrington stated he would like to have a southern Baptist church on the subject property. He currently is the pastor of a church in Tulsa and would like to set up another location in Broken Arrow, because that is where his residence is located.

Mr. Charney asked Mr. Herrington if the trailer that was moved onto the subject property is a temporary structure. Mr. Herrington stated that he is not sure; he would like to see how the church grows, but he does hope to build a structure in the future.

Mr. Hutchinson stated that the property is located in the 500-year flood plain, and he asked Mr. Herrington how far that line came up on his property. Mr. Herrington stated that he has never had a problem and he has owned the property for about 20 years. Mr. Herrington stated that he has been told that the property used to flood but he thinks when the dam was built the flooding stopped.

Mr. Charney asked Mr. Herrington to explain to the Board exactly what has been moved onto the subject property; is the trailer a single wide or double wide? Mr. Herrington stated the trailer is a 14 x 50 trailer. Mr. Charney asked if the trailer was configured for a dwelling use or is it configured for an assembly use? Mr. Herrington stated it is configured for assembly use. Mr. Charney asked if the trailer had bedrooms and bathrooms. Mr. Herrington stated the trailer was a former classroom, so it is open, and he has placed some pews and chairs inside for the church.

Mr. Charney asked Mr. Herrington if he planned on the trailer becoming a dwelling unit. Mr. Herrington stated that he has no plans to make it a dwelling unit. Mr. Charney asked Mr. Herrington if there would be any overnight stays in the trailer. Mr. Herrington answered no.

Mr. Johnston asked staff what the limitations are for building in a flood plain. Ms. Tosh stated that the 500-year flood plain does not have any issues.

Mr. Charney asked Mr. Herrington if he planned on having an aerobic system. Mr. Herrington answered affirmatively.

Mr. Charney asked Mr. Herrington to explain what the plans are for the parking area. Mr. Herrington stated that he had scrap asphalt that was scraped up off a highway laid down and hopes to place asphalt down in the future.

Mr. Charney asked Mr. Herrington if there was a water line in front of the subject property. Mr. Herrington stated that he does not think there is; he thinks he will have to drill a well in the future but in the meantime, he has been drinking bottled water. Mr. Herrington stated that he hopes to bring in another trailer that has a bathroom in the rear and then he will have to hook up to a water line.

Interested Parties:

Mike Sexton, 15180 South 193rd East Avenue, Broken Arrow, OK; stated he lives next door to the subject property. His concern is how this will affect him and the surrounding neighbors when the church moves in. Mr. Sexton stated that he is a gun owner and he target shoots in the area down by the river. Mr. Sexton stated that he moved to the country to get away from town and this will bring in more traffic.

Mr. Charney stated there are some rules and regulations about zoning classifications and land uses that are permitted. This is an agricultural district and the applicant wants to have a church in that district, and it will require a finding from the Board that the use would not be injurious to the neighborhood or detrimental to the public welfare. What is before the Board today is relatively modest use, but it does not automatically mean that a person cannot have the normal uses associated with the AG property next door. The granting of this zoning classification does not mean that zoning on the next-door property is being modified. Mr. Charney stated the legal standard is, is it injurious to the neighborhood or detrimental to the public welfare and that is what the Board analyzes. Mr. Sexton stated the drawing that was mailed shows two buildings, one tagged as the worship center and the other tagged as fellowship, so there are two separate buildings already.

Mr. Charney asked Mr. Sexton if he thought that was detrimental or injurious to his property, because that is a factor to the Board. Mr. Sexton stated that he is just trying to be reasonable.

Stephen Walker, 15525 South 193rd East Avenue, Broken Arrow, OK; stated that a random church does come with implications to future uses of the land. He feels this is a poorly planned and executed process, and he is opposed to this request. Mr. Walker stated he spoke to several of his neighbors and collectively everyone is opposed to this request. The applicant has already moved in and has power ran to the building. The property has sat there idle for many years except for storage of junk lawn mowers, broken equipment and a travel trailer that has sat for ten years. The property is an eyesore. The residents live there because they have a desire for a peaceful quiet area. The road is in poor condition and does not receive much attention from the County or the City of Broken Arrow. The area is a very flood prone area; it floods regularly and is anywhere from two inches deep to two feet deep. There are too many unknowns.

Mr. Crall asked Mr. Walker if he said that where the building is located that it floods every year. Mr. Walker answered affirmatively and presented pictures. Mr. Crall asked if the houses around the subject property flooded every year. Mr. Walker answered affirmatively and stated that it is not every year. Mr. Walker stated that if there was any additional hard surface added it would definitely add to the flooding problem. Mr. Walker stated the property has not been well maintained over the years; the property has been used as a storage area. There have been broken lawn mowers and equipment that has littered the property.

Mr. Charney asked Mr. Walker if the junk were cleaned up and assuming that the applicant had not put the cart before the horse, would he think it would be a better use than today? Mr. Walker stated that it is an agricultural area and these areas are becoming hard to find and should be cherished and used for the purpose they were intended for.

Doreen Egan, 15104 South 193rd East Avenue, Broken Arrow, OK; stated that her issue is that she knows this isn't the first thing the applicant has done with the property. Ms. Egan stated the applicant has had a sod farm on the property, he has installed a golf course, and at one point he wanted to place a mobile home park on the property. He has the land for sale and the price he was asking was priced as if it were commercial property.

Mr. Charney asked Ms. Egan if she lived near the subject property. Ms. Egan stated she lives north two spaces down.

Ms. Egan stated she wants the property left as it is and wants to live in the country. A church will bring more people to the area, and there are already semi-trucks that haul wheat and they travel very rapidly.

Mr. Hutchinson asked Ms. Egan if she was on rural water or well water. Ms. Egan stated that she is on well water.

Kay Crocker, 19502 South 151st Street, Broken Arrow, OK; stated she is part of the AG in the AG District. She owns the land across the street from the subject property, and she farms, and she has cattle. There is a lot of AG left in the area and there are large acreage houses. She was happy to hear that a small church could be permitted, but once things get started, she thinks a small church and assembly gets in then a school would be attached to the church. It changes the area.

Mr. Charney asked Ms. Crocker if she knew whether 193rd has a water line running north and south along the road. Ms. Crocker answered affirmatively. Ms. Crocker stated she is on the rural water. Ms. Crocker stated there is flooding in the area because it is river bottom; some years she has to leave her house on a tractor and other years there is nothing.

Mr. Johnston asked Ms. Crocker if the flooding came from the river. Ms. Crocker answered affirmatively. Ms. Crocker stated there are irrigation channels through the land and when the river gets high the water backs into the channels and then floods areas that normally don't flood. Mr. Johnston asked Ms. Crocker if the flood waters come all the way up to 193rd. Ms. Crocker stated that it does not come all the way to 193rd but it does come close.

Jared Mann, 15102 South 193rd East Avenue, Broken Arrow, OK; stated that as a community the residents are not looking at the next three to five years but are looking at the next 30 or 40 years. The land has been in families for years and the residents would like to keep it that way. The subject property was formerly his aunt's property and he has been thinking about purchasing it.

Mr. Charney stated that as a matter of right the applicant can build a single-family home on the subject property, it is only the church use that triggers this application. It is only the land use that is the Board's focus.

Mr. Mann stated that if the applicant were to build a house and live there, he would not oppose that because it would not bring added traffic like a church.

Mr. Crall asked Mr. Mann if he was waiting to hear the Board's decision on this property as to whether he tries to purchase the subject property. Mr. Mann stated that the Board's decision may affect it, and he is also waiting to hear from a lender to see if it is even feasible.

Rebuttal:

Randy Herrington came forward and stated he finds it amazing that the neighbors have singled him out, because just to the north is all kinds of junk like old trailers, and all he has is some old lawnmowers that he can clean up fairly easily. Mr. Herrington stated he keeps his property mowed.

Mr. Charney asked Mr. Herrington what he has to say about the neighbor's comments about increased traffic that a church could bring to the area. Mr. Herrington stated the traffic that is there now is dump trucks, so they should be concerned about those, because they run constantly throughout the week.

Mr. Charney asked Mr. Herrington if he would have assembly once a week or two times a week. Mr. Herrington stated that he would have service once a week.

Mr. Dillard asked Mr. Herrington how many parishioners there would be coming to the church. Mr. Herrington stated there would be about ten, so he does not expect to grow very much in the coming years.

Mr. Charney asked Mr. Herrington if it were important to the Board for him to clean up all the junk on the property, to keep it mowed, and if there were no more structures than what is shown on the provided site plan could he live with those restrictions. Mr.

Herrington answered affirmatively; the only thing he expects is to have another trailer for a fellowship hall which would be a second building.

Carolyn Sue Herrington, 13102 South 193rd East Avenue, Broken Arrow, OK; stated when the neighbors speak about all the trash on the property, it is not true. There is a cutter on the property because they use it for sod work. There is a tractor there because it too is used for the sod work. The lawn mowers are getting ready to leave. Ms. Herrington stated that she and her husband keep the property mowed because they don't want a fire; all around her property there is trash and high weeds.

Comments and Questions:

Mr. Dillard stated the applicant has been at his current church for 30 years and he has a congregation of ten, so he has no concern about an explosion in the congregation's growth. He does have a concern about the property; he knows the applicant does not think it looks trashy, but it does look trashy to him, so he could not support this request unless there were contingencies placed on the request; clean up the property, take care of the sewer situation and other things. He cannot support this because he does not think it has been thought out fully. If the applicant provided a more comprehensive plan, he might.

Mr. Hutchinson stated he feels the same way Mr. Dillard does. He can support the request if all the requirements were met. He does not think it would be injurious to the neighborhood.

Mr. Johnston stated that he has a hard time separating zoning from buildings. He can see things coming up that will be required at the time of permitting but that is a different issue. He can support the request if certain requirements were met.

Mr. Charney informed the applicant that he is hearing that there is hesitancy from the Board without a more detailed plan; he suggested that it may wise to check into the cost of fire suppression, hard surface parking and other things that are required with an assembly sort of use. It may alter the decision whether the applicant wants to move forward with the request.

Board Action:

On **MOTION** of **DILLARD**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; none "absent") to **CONTINUE** the request for a **Special Exception** to permit a church (Use Unit 5) in an AG District (Section 310) to the January 15, 2019 Board of Adjustment meeting; for the following property:

S266.87 N800.61 GOV LT 1 SEC 24 17 14 8.07ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

2722—Family Fellowship Church, Inc.

Action Requested:

Special Exception to permit an accessory building at a church (Use Unit 5) in an RS District (Section 410). **LOCATION:** 6105 West 36th Street South

Presentation:

The applicant was not present.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; none “absent”) to **CONTINUE** the request for a Special Exception to permit an accessory building at a church (Use Unit 5) in an RS District (Section 410) to the December 18, 2018 Board of Adjustment meeting; for the following property:

E227.07 LT 11 BLK 3, BERRY HILL ACRES, OF TULSA COUNTY, STATE OF OKLAHOMA

2723—Old Sod Associate

Action Requested:

Variance of the minimum lot area and land area per dwelling unit requirement in the AG District (Section 310) to permit a lot split. **LOCATION:** 14505 North Lewis Avenue East

Presentation:

Kevin Froman, 21940 East 430 Road, Claremore, OK; stated he purchased property on the corner of Lewis and Highway 20, contingent on obtaining a lot split which has been received. Mr. Froman stated that he had a survey brought up to date showing the new property lines.

Mr. Hutchinson asked Mr. Froman if he was planning on erecting a propane tank station on the corner. Mr. Froman answered affirmatively and stated that it will be a refill station. There are no structures planned for the site.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; none “absent”) to **APPROVE** the request for **Variance** of the minimum lot area and land area per dwelling unit requirement in the AG District (Section 310) to permit a lot split, subject to conceptual plan 4.11 of the agenda packet. The Board finds the hardship to be the unique nature of the land with adequate frontage for both on North Lewis Avenue which provides substantial ingress/egress possibilities for both tracts; for the following property:

**PRT E/2 NE BEG 60S & 50W NEC NE TH S390 W281 N390 E281 POB SEC 30 22 13
2.516ACS, OF TULSA COUNTY, STATE OF OKLAHOMA**

2724—Shawn and Rachel Orth

Action Requested:

Variance of the minimum front yard and any yard abutting a public street setback requirement in an AG-R District (Section 330). **LOCATION:** 11707 South Tacoma Avenue West

Presentation:

Shawn Orth, 735 West 99th Street, Jenks, OK; stated he recently purchased subject property and it currently has a burned out house on it which sits in a flood zone. He intends to build a house on the subject property and would like to place it as far back as possible. However, FEMA placed flood zoning on the property in 2012 and Mr. Orth presented a map of the FEMA flood line placed on the property.

Mr. Charney asked Mr. Orth if he was proposing to build the house outside of the flood plain. Mr. Orth answered affirmatively.

Mr. Orth stated that if he was given the correct information, that if he can stay out of the 100-year flood zone his insurance would be cheaper than if he had to go into the flood zone. He plans to have the house built with a crawl space as opposed to a slab so he can push the house a bit into the 500 year zone, but he has not finalized the house plans because he wants to receive the Variance approval first. Mr. Orth stated that there are four houses out of nine that are not within the County guidelines of 55 feet from the centerline, so he does not feel he is too far off from the current conditions in that regard.

Mr. Charney asked Mr. Orth if the front door would face 117th Street or face Tacoma. Mr. Orth stated the intent is to have the front of the house would face 117th Street, and the garage would face Tacoma.

Ms. Miller left the meeting at 2:37 P.M.

Interested Parties:

David Tyler, 3005 West 117th Street South, Tulsa, OK; stated his property is directly north of the subject property. Mr. Tyler asked what the Code states for the requirements of a Variance.

Mr. Charney stated that he believes that the setback lines for a front yard in this district would be 55 feet from the centerline of the road. The applicant is asking for a Variance of approximately 15 feet from both arterial streets.

Ms. Miller re-entered the meeting at 2:40 P.M.

Mr. Tyler stated he has concerns because he is building a house right across the street. The reason he purchased his property and built a house on it is because of the room. The applicant has 2 ½ acres and he doesn't understand why he didn't check into the property before he made the purchase, because he has a problem with where the applicant wants to build the house. Mr. Tyler stated that if the applicant is allowed to build his house where he wants it will take away his view and devalue his house. It affects his view and if affects pulling up to the stop sign at the corner. When he leaves his house he will have to pull way forward to be able to see down the street if he builds. There is a lot of traffic that comes from the Jenks subdivision which is to the north because everyone cuts through the area to go to Walmart at 121st Street and Highway 75. He knows the request is only 15 feet but that is a lot when a person is sitting at his house looking at the front door.

Will Roy, 2914 West 117th Street, Jenks, OK; stated his property is immediately to the east of the subject property. Mr. Roy presented some handouts to the Board. Mr. Roy stated he is in opposition to this request. If the house is located at the position that it is indicated on the site plan it will be a traffic hazard. Mr. Roy stated that he called the Board of Adjustment office last week and was told the setback is 35 feet. Mr. Roy stated that he has made a drawing of the proposed house with a 35 foot setback placing the house would be six inches into the flood plain on the extreme southeast corner of the subject property, and he thinks that is something the applicant could live with. Mr. Roy stated the map that was submitted is incorrect, because the surveyor's plat shows that Tacoma is 25 feet away and it actually measures 20 feet; it shows 117th Street is 25 feet away and it measures 19'-6". The right-of-way for both the streets is 25 feet wide but the streets that are built there are smaller. If this area is ever taken into the City of Jenks the streets will have to be widened to 25 feet, meaning the proposed 15 foot setback would be reduced to 12'-6" on Tacoma and 13 feet on 117th Street. The proposed house needs to be moved to the east as much as possible. Mr. Roy does not understand why a Variance is needed if the applicant builds the house in a legal

location. Mr. Roy stated that the existing house on the property burned down 11 months ago and Mr. Orth has owned the property for six months, the County was forced to erect a chainlink fence around the property to keep spectators away, why does it take six months to demolish an unsalvageable residence? Mr. Roy asked if the Board would require the old house be demolished before construction on the new house begins?

Mr. Charney stated that there will be a series of building permit requirements before construction can begin, but that would not be germane to the Board in the setback issue today but the point is well taken. Mr. Roy stated that he does not understand why Mr. Orth has not contacted his neighbors to inform them what he intends to do with the property.

Calvin Mefford, 2802 West 117th Street, Jenks, OK; stated he does not understand why the applicant needs the Variance because he has a large piece of property; he could make his house to fit that. His assumption is that the applicant will want to split the lot later. Mr. Mefford stated he has lived in the addition since June 1974, and was one of the very first people that moved in. He moved there because he had children and they could ride their horses. Mr. Mefford stated that he understood that for the area to be zoned agricultural everyone had to have at least 2 acres, and when he moved in there were covenants and the lots were not to be split. The house could be moved down and it doesn't have to be so wide which would take care of the six inches that was previously mentioned.

Mr. Charney stated this is an unplatted piece of property before the Board today and the zoning is AG-R, which is residential zoning within the AG District. There are certain minimum lot sizes in the AG-R District that are different than an AG District; they could be smaller. Mr. Charney asked Mr. Mefford for his comments regarding the setback request.

Mr. Mefford stated there has been one stop sign removed so the cars move there pretty fast. He is like Mr. Roy, being able to see at the corner is an issue. The house could be moved to the east and that would give a better sight line and there wouldn't be any problem. Mr. Mefford stated the applicant needs to check for any small pipelines running through the property, because when Mr. Sellers was having dirt work done and a dozer hit an oil line. Mr. Charney stated that a part of the building permitting process requires a survey that shows all existing easements, all existing pipeline facilities, and it is a thorough process. A setback request and a building permit is two separate and different things, and that is something any consumer will have to address when building.

Mr. Mefford asked if the existing covenants now mean nothing. Mr. Charney stated that generally when covenants are placed on property it is done in a plat, in a platted subdivision. The Board is trying to make good land use planning with what is here today, and he understands the resident's concerns.

Rebuttal:

Shawn Orth came forward.

Mr. Charney asked Mr. Orth if he could refigure his house and not need the requested Variance. Mr. Orth stated that his intent is to request a Variance that would give him exactly what he will need to build a house that is approximately 70'-0" x 50'-0". His intent is to receive this Variance and sit with a builder and look at the property with a topography study. He wants to build the house as far as back possible. One inch or six inches makes no difference, if you are even 1/4" in the 100-year flood area then the property is subject to the full penalty of insurance. His intent is to be out of the 100-year flood area and to build within inches of that. Mr. Orth appreciates the neighbor's comments and his interest is what is best for everyone involved, and he will do his best to build back on the property. His intent was to buy the property and build a home for his family and not to split the lot. He does not want to harm anyone's site line or to affect anything other than the fact that he does not want to build his house in the flood zone. Mr. Orth stated that from the edge of the pavement to the edge of the house at the proposed Variance there would actually be 30 feet not 15 feet.

Mr. Charney stated that generally the Board sees a precise site plan so he is trying to hear and feel what the situation is on the corner and in the area. Mr. Charney asked Mr. Orth if the house would be pushed farther to the east, that is potentially doable with the maximum footprint that is being sought. Mr. Orth stated the difficulty in pushing the house to the east is that the flood plain pushes up a little bit, and he could shrink the house to a minimum of 40 feet wide two-story house.

Will Roy came forward and asked if the Board grants the Variance, what is to keep the applicant from not pulling the house back? Why can't he get his plans to show the Board what is actually going to be placed on the property?

Comments and Questions:

Mr. Johnston stated that he would like to see an architect study the proposal and come up with a plan that will fit the site. Mr. Johnston stated that he cannot support the request being on the corner as it is. He thinks there is a way to increase the sight line from the corner.

Mr. Hutchinson stated he can support the request the way it is.

Mr. Crall agreed with Mr. Hutchinson. This is what the applicant needs for what he wants to build. The only change will be if the Board says no, but he can support the request. He does not think the sight line will be as damaging as people think.

Board Action:

On **MOTION** of **HUTCHINSON**, the Board voted 4-1-0 (Charney, Crall, Dillard, Hutchinson "aye"; Johnston "nay"; no "abstentions"; none "absent") to **APPROVE** the request for Variance of the minimum front yard and any yard abutting a public street setback requirement in an AG-R District (Section 330) as applied for. The Board finds the hardship to be the flood zone; for the following property:

W304 E914 S370 N740 W/2 SW LESS N25 & LESS W25 THEREOF FOR RD SEC 35
18 12 2.22AC, OF TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

None.

NEW BUSINESS


None.

BOARD COMMENTS

None.

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

Date approved: 12-18-18


Chair