

COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 144
Tuesday, May 19, 1992, 1:30 p.m.
County Commission Room
Room 119
County Administration Building

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Alberty, Chairman Eller Looney Tyndall	Walker	Gardner Jones Moore	Glenn, Building Insp. Fields, Building Insp. Graham, District Attorney's Office

The notice and agenda of said meeting were posted in the Office of the County Clerk on Friday, May 15, 1992, at 2:29 p.m., as well as in the Reception Area of the INCOG offices.

After declaring a quorum present, Chairman Alberty called the meeting to order at 1:00 p.m.

MINUTES:

On **MOTION** of **TYNDALL**, the Board voted 4-0-0 (Alberty, Eller, Looney, Tyndall, "aye"; no "nays"; no "abstentions"; Walker, "absent") to **APPROVE** the **Minutes** of April 21, 1992 (No. 143).

Comments and Questions:

Mr. Jones informed that a timely request (Exhibit D-1) for a continuance has been received from a protestant to Case No. 1080.

Mr. Alberty asked the applicant, Ms. Willard Smith, if she was aware of the continuance request, and she replied that she has no knowledge of the request. Ms. Smith stated that she is opposed to a continuance, because of the building delay and the inconvenience of returning for another hearing date.

Mr. Alberty pointed out that the Board customarily grants one continuance to either the applicant or protestant if the request is received in a timely manner.

Board Action:

Mr. Eller's motion for a continuance of Case No. 1080 to June 16, 1992 died for lack of a second.

On **MOTION** of **TYNDALL**, the Board voted 4-0-0 (Alberty, Eller, Looney, Tyndall, "aye"; no "nays"; no "abstentions"; Walker, "absent") to hear Case No. 1080 as it appeared on the agenda.

UNFINISHED BUSINESS

Case No. 1067

Action Requested:

Variance of the required lot width from 200' to 132' to permit a lot split - **Section 330. BULK AND AREA REQUIREMENTS IN THE AGRICULTURE DISTRICTS** - Use Unit 6, located 23418 West Coyote Trail.

Presentation:

The applicant, **Jerry Carter**, 23418 West Coyote Trail, Sand Springs, Oklahoma, submitted a plat of survey (Exhibit A-1) and explained that he owns a 5-acre tract of land with two existing dwellings, which have been completely renovated. He pointed out that there is a limited market for a tract with two dwellings, and requested permission to reduce the lot width to 132' in order to obtain a lot split and sell the houses to different individuals. Mr. Carter advised that because of the curvature of the road at this point, there is a small portion of land between the front of his property and the road that prevents legal access to his tract. The applicant stated that he will purchase this small tract when one of the houses is sold.

Comments and Questions:

Mr. Alberty asked if there are other lots in the area that are less than 200', Mr. Carter informed that there is one smaller lot to the east of his property.

Protestants:

None.

Board Action:

On **MOTION** of **LOONEY**, the Board voted 4-0-0 (Alberty, Eller, Looney, Tyndall, "aye"; no "nays"; no "abstentions"; Walker, "absent") to **APPROVE** a **Variance** of the required lot width from 200' to 132' to permit a lot split - **Section 330. BULK AND AREA REQUIREMENTS IN THE AGRICULTURE DISTRICTS** - Use Unit 6; per plat of survey submitted; finding that there is a similar size lot to the east of the property; and finding that the approval of the request will not be detrimental to the area, or violate the spirit and intent of the Code: on the following described property:

W/2, NE/4, NE/4, NW/4, Section 33, T-19-N, R-10-E,
Tulsa County, Oklahoma.

NEW APPLICATIONS

Case No. 1077

Action Requested:

Special Exception to permit a mobile home in an RS zoned district - **Section 410. PRINCIPAL USES PERMITTED IN THE RESIDENTIAL DISTRICTS** - Use Unit 9, located 6734 West 3rd Street South.

Presentation:

The applicant, **Ted Creekmore**, 8708 South Atlanta, Tulsa, Oklahoma, requested permission to install a mobile home on the subject property.

Comments and Questions:

Mr. Alberty asked the applicant if there are improvements on the lot, and he replied that the lot is vacant.

In response to Mr. Alberty, Mr. Creekmore stated that the mobile home is 12' by 65'.

Ron Fields, Building Inspection, stated that the east boundary line is on the edge of a regulatory floodway, and the mobile would require an elevation at or above 659'.

Alberty asked the applicant if the mobile unit will be skirted and tied down, and he answered in the affirmative.

Protestants:

None.

Board Action:

On **MOTION** of **TYNDALL**, the Board voted 4-0-0 (Alberty, Eller, Looney, Tyndall, "aye"; no "nays"; no "abstentions"; Walker, "absent") to **APPROVE** a **Special Exception** to permit a mobile home in an RS zoned district - **Section 410. PRINCIPAL USES PERMITTED IN THE RESIDENTIAL DISTRICTS** - Use Unit 9; subject to the mobile home being elevated to 659' or above; subject to Health Department approval and a building permit; and subject to the mobile home being skirted and tied down; finding that the mobile home will not be detrimental to the area; on the following described property:

West 40' of the east 80' of Lot 7, Block 4, Twin Cities Addition, Tulsa County, Oklahoma.

Case No. 1078

Action Requested:

Special Exception to permit a mobile home in an RE zoned district - **Section 410. PRINCIPAL USES PERMITTED IN THE RESIDENTIAL DISTRICTS** - Use Unit 9.

Variance to permit two dwelling units per one lot of record - **Section 208. ONE SINGLE FAMILY DWELLING PER LOT OF RECORD** - Use Unit 9, located 8940 East 100th Street North.

Presentation:

The applicant, **Edna Hagan**, 8940 East 100th Street North, Owasso, Oklahoma, requested permission to install a 12' by 62' mobile home on her property. She stated that her husband is disabled and the mobile would be used as a residence for someone to help with maintenance. Ms. Hagan informed that a mobile home was previously on the property and all hookups are in place.

Comments and Questions:

Mr. Alberty asked Ms. Hagan if her husband was the applicant in a request for mobile home use on the property in 1988, and she answered in the affirmative.

In response to Mr. Alberty, the applicant stated that the mobile approved in 1988 has been removed; however, there are 25 or 30 mobile homes in the area.

Protestants:

Jack Thompson, 10133 North 88th East Avenue, Owasso, Oklahoma, questioned the statement that Mr. Hagan is not able to work, since he operates a backhoe and uses a tiller in the garden. He submitted a petition of opposition (Exhibit B-1) to the request. Mr. Thompson pointed out that there are no mobile homes in the immediate area. Photographs of the area (Exhibit B-2) were submitted.

Kenneth Stewart, 8907 East 100th Street North, Owasso, Oklahoma, and **Paul Williams**, 10020 North 88th East Avenue, Owasso, Oklahoma, stated that they were opposed to the mobile home application in 1988 and oppose the mobile home in question. They pointed out that this is a nice area and asked the Board to preserve the integrity of the neighborhood.

Thomas Haddock, 8501 East 100th Street North, Owasso, Oklahoma, stated that he is opposed to the mobile home being located in the residential area.

Case No. 1078 (continued)

Applicant's Rebuttal:

Ms. Hagan stated that the septic system has been approved by the Health Department. She reiterated that the mobile home is needed to house someone to help her take care of the property.

Mr. Alberty asked Ms. Hagan if she is requesting permanent location of the mobile home on her land, and she answered in the affirmative.

Mr. Gardner stated that the Hill N Dale subdivision is zoned RE, and there are no mobile homes in that subdivision; however, mobiles are permitted by right in the surrounding Agriculture District. He advised that the applicant is required to present a hardship for the variance to permit two dwellings on one lot of record.

Board Action:

On MOTION of LOONEY, the Board voted 4-0-0 (Alberty, Eller, Looney, Tyndall, "aye"; no "nays"; no "abstentions"; Walker, "absent") to **DENY** a **Special Exception** to permit a mobile home in an RE zoned district - **Section 410. PRINCIPAL USES PERMITTED IN THE RESIDENTIAL DISTRICTS** - Use Unit 9; and to **DENY** a **Variance** to permit two dwelling units per one lot of record - **Section 208. ONE SINGLE FAMILY DWELLING PER LOT OF RECORD** - Use Unit 9; finding that mobile home use is not appropriate for the neighborhood, and a hardship was not demonstrated that would warrant the granting of the request; on the following described property:

Lot 1, Block 2, Hill N Dale Addition, Tulsa County, Oklahoma.

Case No. 1079

Action Requested:

Special Exception to permit a mobile home in an RS zoned district - **Section 410. PRINCIPAL USES PERMITTED IN THE RESIDENTIAL DISTRICTS** - Use Unit 9, located 3712 South 55th West Avenue.

Presentation:

The applicant, **Otis Williams**, 3712 South 55th West Avenue, Tulsa, Oklahoma, requested permission to install a permanent double wide mobile home behind the existing house. He informed that the house will be removed from the lot.

Case No. 1079 (continued)

Comments and Questions:

Mr. Jones informed that a double wide mobile is considered to be a house, and is permitted by right.

Mr. Fields advised that a double wide is permitted by right if it is set on a permanent foundation.

Mr. Eller inquired as to the dimensions of the unit, and Mr. Williams stated that he has looked at several, and is not sure of the dimensions.

Mr. Gardner pointed out that, if approved, the applicant will be required to have a variance to allow two dwelling units on one lot of record unless the Board requires removal of the house when the mobile is installed.

Protestants:

None.

Board Action:

On **MOTION** of **ELLER**, the Board voted 4-0-0 (Alberty, Eller, Looney, Tyndall, "aye"; no "nays"; no "abstentions"; Walker, "absent") to **APPROVE** a **Special Exception** to permit a mobile home in an RS zoned district - **Section 410. PRINCIPAL USES PERMITTED IN THE RESIDENTIAL DISTRICTS** - Use Unit 9; subject to the removal of the existing house; and subject to a building permit and Health Department approval; finding that the proposed use, per conditions, will not be detrimental to the area, or violate the spirit and intent of the Code; on the following described property:

Lot 1 and the north 10' of Lot 2, Walker Heights Addition, Tulsa County, Oklahoma.

Case No. 1080

Action Requested:

Variance of the maximum square footage allowed for a detached accessory building from 750 sq ft to 1500 sq ft - **Section 240.2.E. Permitted Yard Obstructions** - Use Unit 6, located 13297 East 131st St. South.

Case No. 1080 (continued)

Presentation:

The applicant, **Willard Smith**, was represented by **Edith Smith**, 13297 East 131st Street South, Broken Arrow, Oklahoma, who submitted a letter (Exhibit D-4) explaining her request, stated that the building in question was two-thirds complete before she knew it was not in compliance with the Code. Ms. Smith informed that the structure is located in the northwest corner of the rear portion of the lot. Photographs (Exhibit D-3) were submitted.

Comments and Questions:

Mr. Albery inquired as to the size of the accessory building, and Ms. Smith replied that it is 30' by 50', and will be used for storage of a classic car, exercise equipment, lawn and garden equipment and lawn furniture. She informed that fencing will be installed along the west side and the front of the property.

Protestants:

Delbert Freese, 121 East College, Broken Arrow, Oklahoma, stated that he is representing **Hugh and Sally Bright**, property owners immediately to the west of the applicant's tract. Mr. Freese noted that there is existing storage on the property, and the applicant is requesting that she be allowed approximately three times the permitted amount. He pointed out that there is nothing unique about the property that would constitute a hardship for the variance request.

Sally Bright submitted photographs (Exhibit D-2) which evidenced the fact that the barn has been constructed beside her front yard, and is clearly visible from her front door. She stated that, although a fence is constructed on the lot line, the top of the building will still be visible. Ms. Bright pointed out that there are several barns in the area, but they are located to the rear of the dwellings and not in the front yards. She stated that she is objecting to the location of the building.

Applicant's Rebuttal:

Ms. Smith stated that there have been no objections from other residents of the area, and a smaller structure could be built at this location. She informed that the new barn will be painted to match the house, and it is needed for storage, because the other storage building is used for the operation of her husband's business.

Mr. Albery asked if the pole barn is the third accessory building on the property, and the applicant stated that the small storage building will be removed.

Case No. 1080 (continued)

In response to Mr. Alberty, Ms. Smith stated that the shop is comprised of two rooms with a barn opening in the front.

Mr. Gardner advised that the only thing that is customary and accessory is a detached building used for residential purposes and not any type of business.

The applicant stated that her husband is planning to retire from his painting business in approximately one year.

Mr. Gardner inquired as to the size of the house, and the applicant stated that the existing dwelling contains 1300 sq ft of floor space. It was noted by Mr. Gardner that the City Code contains a provision that permits an accessory building that is 40% of the square footage of the principal structure; however, this would not be an advantage to the applicant in this case, due to the size of the house. He added that the location of the building to the rear of the lot would require a hard surface driveway for access if used for a garage.

Mr. Alberty pointed out that the applicant is asking the Board to triple the amount of storage permitted on the property.

Mr. Alberty and Mr. Tyndall agreed that the building is not appropriate at this location, and that the applicant failed to present a hardship that would justify granting the request.

Board Action:

Mr. Tyndall's motion for denial of the application died for lack of a second.

On **MOTION** of **LOONEY**, the Board voted 2-2-0 (Eller, Looney, "aye"; Alberty, Tyndall, "nay"; no "abstentions"; Walker, "absent") to **APPROVE*** a **Variance** of the maximum square footage allowed for a detached accessory building from 750 sq ft to 1500 sq ft - **Section 240.2.E. Permitted Yard Obstructions** - Use Unit 6; subject to the existing 6' by 12' shed being removed; subject to the new building being painted in earth tone colors, and being used for residential use storage only, with no business use; and subject to an 8' wood screening fence being installed along the west property line, between the barn and the residence.

Case No. 1080 (continued)

*The application was **denied** due to the lack of three affirmative votes.

Additional Comments:

Mr. Gardner pointed out that the application is denied with a 2-2 vote; however, the Board should make an attempt to determine if there is a hardship presented that meets the test of law, and either deny the application, if there is no hardship, or approve the application, setting forth the specific hardship in the minutes for the record.

After further discussion, it was the consensus of the Board that a hardship was not demonstrated by the applicant, and that 1500 sq ft of storage is excessive for residential use.

Board Action:

On **MOTION** of **TYNDALL**, the Board voted 4-0-0 (Alberty, Eller, Looney, Tyndall, "aye"; no "nays"; no "abstentions"; Walker, "absent") to **DENY a Variance** of the maximum square footage allowed for a detached accessory building from 750 sq ft to 1500 sq ft - **Section 240.2.E. Permitted Yard Obstructions** - Use Unit 6; finding that the applicant failed to demonstrate a hardship for the variance request; and finding that the existing accessory building is used for business storage, which otherwise could be utilized for household storage; on the following described property:

East 220' south 250' E/2, SW/4, SW/4, less south 50' for RD, Section 4, T-17-N, R-14-E, Tulsa County, Oklahoma.

Case No. 1081

Action Requested:

Special Exception to permit used auto sales (Use Unit 17) in a CS zoned district - **Section 710. PRINCIPAL USES PERMITTED IN THE COMMERCIAL DISTRICTS** - Use Unit 17, located 7908 Charles Page Boulevard.

Comments and Questions:

Mr. Alberty informed that the Board has received a letter (Exhibit E-1) from the Sands Springs Board of Adjustment recommending approval of the application, subject to no salvage or repair uses, and hours of operation being from daylight to dusk.

Case No. 1081 (continued)

Presentation:

The applicant, **Lois Smith**, 3004 Scrub Oak Road, Sand Springs, Oklahoma, stated that the property has previously been used for a car sales business, except for the last 18 months, and requested permission to continue the use.

Comments and Questions:

In response to Mr. Alberty, the applicant stated that the lot will have a maximum inventory of 10 cars and there will be no repair work done on the property.

Mr. Alberty asked if there is a used car lot to the east of the subject property, and Ms. Smith answered in the affirmative.

Mr. Alberty pointed out that the use would be permitted by right across the street in the IM District, and there are other car lots in the area.

In response to Mr. Alberty, the applicant stated that the business will not have lights and will not operate after dark.

Protestants:

None.

Board Action:

On **MOTION** of **LOONEY**, the Board voted 4-0-0 (Alberty, Eller, Looney, Tyndall, "aye"; no "nays"; no "abstentions"; Walker, "absent") to **APPROVE** a **Special Exception** to permit used auto sales (Use Unit 17) in a CS zoned district - **Section 710. PRINCIPAL USES PERMITTED IN THE COMMERCIAL DISTRICTS** - Use Unit 17; subject to no salvage or repair uses, hours of operation being from daylight to dusk and a maximum of 10 vehicles on the lot at any given time; finding that there are other similar uses in the general vicinity, and approval of the request will not be detrimental to the area or violate the spirit and intent of the Code; on the following described property:

Lot 2, Block 2, Second Lake Subdivision, Tulsa County, Oklahoma.

Case No. 1082

Action Requested:

Appeal of the decision of the Building Inspector that dismantled and inoperative cars are being stored on the property - **Section 1605. APPEALS FROM THE COUNTY INSPECTOR** - Use Unit 3, located 8106 East 191st Street South.

Presentation:

Gayle Capstick, 8106 East 191st Street South, Bixby, Oklahoma, stated that he purchased 10 acres at the above stated location, and moved a mobile home on the property for storage use while constructing a dwelling. He explained that he decided to sell the land and the mobile home, and construction plans were discontinued. Mr. Capstick stated that he has six automobiles parked on the property, some of which are operable. The applicant stated that the east 100' of the property has been sold to his son.

Comments and Questions:

Mr. Alberty stated that an aerial photograph depicts numerous vehicles on the property, and the applicant stated that the vehicles are on his son's property.

Mr. Alberty pointed out to Mr. Capstick that the property deeded to his son does not comply with the frontage requirement and is not a legally approved lot.

Larry Glenn, Building Inspection, stated that Mr. Capstick was cited on April 16, 1992 for storage of dismantled automobiles and illegal mobile homes on the property. He stated that the applicant did not respond to the citation. Photographs (Exhibit F-2) were submitted.

Interested Parties:

Harvey Capstick, son of the applicant, stated that he has property abutting his father's tract of land, and pointed out that there are several lots in the general area that also have inoperable automobiles.

Mr. Alberty advised Mr. Harvey Capstick that the issue before the Board at this time is to determine if the Building Inspector was correct in determining that dismantled and inoperative cars are being stored on the subject property.

Mr. Harvey Capstick stated that the same law that applies to his father should apply to others in the area that are storing vehicles on their property.

Case No. 1082 (continued)

Protestants:

Protestants in the audience were as follows:

Mr. and Mrs Frank Sweetin, 4176 Southeast Meadowridge Drive, Claremore, Oklahoma.

Don Henderson, 17815 S. Mingo Road, Bixby, Oklahoma.

Ruby Henderson, Route 1, Bixby, Oklahoma.

Lloyd Abbott, 8098 E. 191st Street S. Bixby, Oklahoma.

Robert Henderson, 18502 South Mingo, Bixby, Oklahoma.

Bob and Kay Anderson, 13606 South 124th East Avenue, Broken Arrow, Oklahoma.

Board Action:

On MOTION of LOONEY, the Board voted 4-0-0 (Alberty, Eller, Looney, Tyndall, "aye"; no "nays"; no "abstentions"; Walker, "absent") to **DENY** the appeal, and **UPHOLD** the decision of the Building Inspector that dismantled and inoperative cars are being stored on the property - **Section 1605. APPEALS FROM THE COUNTY INSPECTOR** - Use Unit 3; finding that sufficient evidence (photographs and aerials) was submitted to confirm the findings of the Building Inspector; on the following described property:

North 660' west 660' NW/4 Section 12, T-16-E, R-13-E, Tulsa County, Oklahoma.

OTHER BUSINESS

Executive Session

Case No. 1070 - Gilbert Ogles, 2601 West 101st Street South.

Comments and Questions:

Mr. Jones informed that the case in question concerns a dirt moving operation which was previously denied due to the lack of three affirmative votes. He explained that the applicant has appealed that decision and retained counsel, **Roy Johnsen**, who is out of town and requested a continuance of this matter. Mr. Jones stated that **Denise Graham**, a representative of the District Attorney's office, advised that it is not necessary that Mr. Johnsen be present for the executive session. Mr. Jones stated that Jenks is not amenable to further negotiations, and prefers the issue be settled in court. He noted that the applicant has filed a notice of appeal. He informed that Ms. Graham will present the merits of the case in the executive session.

Executive Session - Case No. 1070 (continued)

Mr. Gardner stated that the Jenks Board of Adjustment voted unanimously to deny the application and made this recommendation of denial to the Board.

Bob Richards stated that he is present at the direction of the city manager, **Randy Ewing**, who is unable to attend the meeting. He informed that it was determined by the Jenks Board of Adjustment that the use is not compatible with the Comprehensive Plan, due to the fact that the property is located in a low intensity development sensitive area. He further noted that the Board was concerned with the amount of truck traffic generated by this type of mining operation. Mr. Richards stated that a Jenks representative was not present at the previous hearing before the County Board, and suggested that the full range of facts may not have been presented.

Mr. Alberty asked Mr. Richards if the City of Jenks is still opposed to the application, and he replied that Mr. Ewing is adamantly opposed to the approval of the case.

Mr. Looney stated that some of the items listed in the letter recommending denial of the case did not appear to be things the County Board could support; however, he voted for approval because the State Mining Commission had approved the operation, and the Board could impose conditions that would control the operation.

Mr. Alberty stated that approval of the State Mining Commission had little to do with his previous vote, because they base their decision on the ability to mine a commodity, and not how the operation will impact a neighborhood or community. He pointed out that the Board makes determinations based on land use.

Board Action:

On **MOTION** of **LOONEY**, the Board voted 4-0-0 (Alberty, Eller, Looney, Tyndall, "aye"; no "nays"; no "abstentions"; Walker, "absent") to enter into executive session.

Board Action:

On **MOTION** of **LOONEY**, the Board voted 4-0-0 (Alberty, Eller, Looney, Tyndall, "aye"; no "nays"; no "abstentions"; Walker, "absent") to close the executive session.

Executive Session - Case No. 1070 (continued)

After the close of the executive session with Ms. Graham, Mr. Alberty informed that it is the Board's determination to attempt to resolve the issue regarding Case No. 1070 before it is filed in District Court. He stated that the application fee will be waived if the applicant refiles the case for another hearing before the Jenks and the County Boards of Adjustment.

There being no further business the meeting was adjourned at 4:08 p.m.

Date Approved June 16, 1992

Wayne Alberty
Chairman