

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1094
Tuesday, May 28, 2013, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Henke, Chair Snyder Van De Wiele White, Vice Chair	Tidwell, Secretary	Miller Back Sparger Walker	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Wednesday, May 23, 2013, at 9:37 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

Ms. Back read the rules and procedures for the Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **APPROVE** the **Minutes** of the May 14, 2013 Board of Adjustment meeting (No. 1093).

Mr. Henke explained to the applicants that there were only four 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 three board members to constitute a majority and if two board members voted no today the

application would be denied. Mr. Henke asked the applicants if they understood and asked the applicants if there was anyone wanting to continue their case. Applicants nodded that they understood and no one requested a continuance.

UNFINISHED BUSINESS

21562—Barron & McClary

Action Requested:

Variance to increase the allowable coverage in the required rear yard from 694 square feet to 1,088 square feet for a detached garage and carport in the RS-2 District (Section 210.B.5.a); Variance to increase the maximum allowable floor space for detached accessory buildings in an RS-2 District from 1,100 square feet (based on the rule of 40%) to 1,140 square feet (Section 402.B.1.d). **LOCATION:** 2250 South St. Louis Avenue East (CD 4)

Presentation:

Bert Pohl, Barron & McClary Contractors, 1424 South Harvard, Tulsa, OK; stated that his firm is attempting to add a carport to a garage.

Mr. Van De Wiele asked if the proposed garage was to replace an old garage. Mr. Pohl stated that it was not; the garage is existing and the carport will be new.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White “aye”; no “nays”; no “abstentions”; Tidwell absent) to **APPROVE** the request for a Variance to increase the allowable coverage in the required rear yard from 694 square feet to 1,088 square feet for a detached garage and carport in the RS-2 District (Section 210.B.5.a); Variance to increase the maximum allowable floor space for detached accessory buildings in an RS-2 District from 1,100 square feet (based on the rule of 40%) to 1,140 square feet (Section 402.B.1.d), subject to conceptual plan on page 2.7 Finding that the lot in question is in an area where there are several lots in the neighborhood that have detached garages and carports. This proposal will be in keeping with the nature and detail of the area. The size of the lot will allow for the carport without major concern. In granting the variances the Board has found that by reason of extraordinary or exceptional conditions or circumstances, which are peculiar

to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variances to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

N.18 LT 17 ALL LT 18 S.39.2 LT 19 BK 4, TERWILLEGGER HGTS, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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NEW BUSINESS

21568—Barron & McClary

Action Requested:

Variance to reduce the required side yard from 10 feet to 5 feet to permit an addition to the house (Section 403). **LOCATION:** 1366 East 25th Street South **(CD 4)**

Presentation:

Bert Pohl, Barron & McClary Contractors, 1424 South Harvard, Tulsa, OK; stated this particular property has ten feet on one side and five feet on the opposite side. His firm has used five feet on the west side to add a driveway and carport. The house is being remodeled extensively and the owner would like to add a 10'-0" x 10'-0" closet and storage structure on the east side of the house. This two-story addition will require the addition to come out ten feet from the existing structure while still staying behind the five foot easement on the east side.

Mr. Van De Wiele asked Mr. Pohl if the west side of the house had the five foot or the ten foot easement. Mr. Pohl stated that the west side was the five foot easment.

Mr. White asked Mr. Pohl to tell the Board what his hardship is to be. Mr. Pohl stated that the owner needs that land to properly use the addition to the house and there is no other place to place the proposed closet. There will be no windows in the addition that will be looking out on the neighbors.

Mr. White asked Mr. Pohl if he had spoken to the neighbors to the east. Mr. Pohl stated that the neighbors have spoken but he does not know if they are in agreement with the proposed addition. The proposed addition will only overlook into the side of the neighbors garage.

Mr. White asked Mr. Pohl if the corner of the house, where the proposed addition is to be placed, has any other windows on the east side. Mr. Pohl stated that toward the back of the house there are no other windows.

Mr. Van De Wiele asked staff if there was a reason that the ten foot side of the house could not be the driveway side. Mr. White stated it is the carport. Ms. Snyder stated that it is the garage.

Ms. Snyder asked Mr. Pohl what was along the driveway. Mr. Pohl stated there is a wooden fence along the driveway.

Mr. Van De Wiele asked Mr. Pohl if there was anything in the ten foot setback other than the garage. Mr. Pohl stated there is a garage with a drive-thru carport to get into the backyard on the west side of the property.

Mr. Henke asked Mr. Pohl if he had a stated hardship that is not self-imposed. Mr. Van De Wiele asked why the proposed storage could not be installed on the south side of the house. Mr. Pohl deferred to the architect of the project.

Interested Parties:

Stan Espinosa, 1643 South Evanston, Tulsa, OK; stated that in this neighborhood there are several homes that have had similar construction remodels. Currently the house next to the subject property has a garage that is five feet from the property line. Currently the only way to access the backyard is by using the driveway so to add a structure to the south side of the house will lessen the current backyard. Currently, on the second floor, there is an addition that is a sunroom that overlooks the backyard. That sunroom will be all closed off so there will not be any windows on the east side of the proposed addition that will overlook the neighbors. The only windows that will be on the second floor will be facing south.

Mr. Henke asked Mr. Espinosa when the house was built. Mr. Espinosa stated that he thought the house was to have been built in the 1920s.

Ms. Snyder asked Ms. Back if the house addressed as 1376 was the house next door to the subject property. Ms. Back stated there is not a way for her to know that.

Mr. Van De Wiele asked Ms. Back if the property was undersized for a RS-2 lot. Ms. Back that a RS-2 lot has a minimum square footage of 9,000 square feet, and the subject property is 10,500 square feet.

Mr. Van De Wiele stated that the Board's difficulty is finding a hardship that is not self-imposed. Mr. Pohl stated that in order to conform to the ten foot setback the concept of the second floor bedroom and access to the southside of the house would be destroyed. The second story bedroom will face the southside of the house and have one large window to view the backyard, and the proposed addition is the closet for that bedroom. The proposed addition will be a closet for the second story bedroom with

storage for yard equipment on the first floor. Mr. Espinosa stated that to place the proposed addition on the south side of the house would take about 10 or twelve feet from the back yard, and cut off access to the backyard from the kitchen area of the home. It would also limit the viability of remodeling the existing garage.

Mr. White stated that all of that is on the west side of the property not on the east side of the property. Mr. Espinosa stated that the garage is on the west side, but if the existing garage were to be added onto the current proposed project would cut off an entire corner of the subject property. If the current proposed addition were to be pushed to the south and the garage were to be added onto in the future there would be a dead space created in the back yard.

Mr. Swiney asked Mr. Espinosa to state what the topography of the subject property is currently, because he sees a lot of drainage sloping in the diagram presented to the Board. Mr. Espinosa stated that the drainage is designed to go around the house. Mr. Swiney asked Mr. Espinosa if it was unusual to have the house built so high from the street. Mr. Espinosa stated that the house is elevated approximately three feet from the street.

Mr. Van De Wiele suggested to Mr. Pohl and Mr. Espinosa that this case be continued to the next Board of Adjustment meeting to allow them time to format a valid hardship that is not self-imposed or purely monetary.

Mr. Swiney made a point of order, stating that the hardship would be a result of the literal enforcement of the code in light of some extraordinary feature of the land.

Mr. Espinosa stated that most of the lots in the neighborhood are a lot and a half, and most of the houses are pushing the limits of the lot line. The subject property is a narrow lot. To place the proposed addition to the rear of the house the back yard would be limited. The owners would like to have a garage that is commensurate with the size of the house, and in this neighborhood it would be a three-car garage. If the future garage comes to fruition and the current proposed addition is placed on the south side of the house there would be an entire corner of the back yard cut off from use.

Mr. Van De Wiele asked Ms. Back for the minimum lot size of a RS-2 lot. Ms. Back stated that the minimum lot width in RS-2 is 75 feet. Mr. White stated that the minimum lot depth is 120 feet which is 9,000 square feet, and this lot is 140 feet deep. Mr. Van De Wiele stated that this lot is the minimum width but deeper than minimum. Mr. Espinosa stated that there are many lots in the neighborhood that have only five foot setbacks.

Mr. Van De Wiele asked Ms. Back if there was a way to tell how many lots in the area had only five feet on each side of the property. Ms. Back stated there is not a way to tell that at the meeting because there is no access to a computer. However, in looking at the aerial photo it does appear there are a few lots that have pushed the limits of the RS-2. Also, in the agenda packet on page 3.12 the research has a few cases listed

stating that. Ms. Miller stated that there could be houses in the neighborhood that were built pushing the five foot setback which would predate the 1970s.

Mr. Van De Wiele asked Ms. Back if she could look at the neighborhood stats before the next meeting. Ms. Back asked for clarification of the request. Mr. Van De Wiele would like to know how many are permitted, or have just the five feet on each side either through a variance or precode construction. Ms. Back stated that staff had performed research of the immediate area which is reflected in the case report of the agenda packet. However, staff will more than willing to do more research on the neighborhood in relation to the subject property. Mr. Van De Wiele stated that if the five foot setback is a prevalent building pattern in the neighborhood then he could vote for approval on the proposed addition. Mr. Van De Wiele stated that he would like to have Ms. Back bring in the requested information and that could possibly give him an actionable hardship.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **CONTINUE** the request for a **Variance** to reduce the required side yard from 10 feet to 5 feet to permit an addition to the house (Section 403) to the meeting of June 11, 2013; for the following property:

LT 6, TRAVIS HGTS SECOND ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21569—Sandy LaMarr

Action Requested:

Special Exception to permit a manufactured home (Use Unit 9) in an RS-3 district (Section 401); **Special Exception** to extend the 1 year time limit to indefinitely (Section 404.E.1). **LOCATION:** S of SW/c of North Quebec Avenue & East Newton Street (CD 3)

Presentation:

Sandy LaMarr, 1204 North Quebec, Tulsa, OK; no presentation was made, but the applicant was available for any questions.

Ms. Back informed the Board that she had topographical information that includes a map from Kent Shroeder from the City of Tulsa on the subject property.

Interested Parties:

Rick Milliser, 1236 North Richmond, Tulsa, OK; stated that the application states a "manufactured home", which he takes it to be a trailer house. If it is a poured concrete

foundation, similar to the house across the street built within the last two years, he does not have a problem with a stick-built home. The subject property is right next to a creek placing it in a flood zone. The property has not been taken care of for the last three or four years, and the City has been out at least twice to clean it. The area is abundant with small wildlife, and to have a trailer house pulled onto the lot would disturb the habitat.

Ms. Snyder asked Mr. Milliser if his issue is whether the request is for a manufactured home or that the property is in a flood zone. Mr. Milliser stated it is both.

Mr. Van De Wiele stated that there are other mobile homes in the area. Mr. Milliser stated there are a total of four brought in over a 30 year period. Mr. Van De Wiele asked Mr. Milliser if he would still be opposed to the request if the Board were to limit the time period to three to five years or something other than permanent. Mr. Milliser stated that he would not have a problem with three years if the home were to be removed after the time limit expired, but if it is to be on the property for longer, or locked in, then he would still oppose the request. Mr. Van De Wiele stated that many times the Board will approve a request with a time limitation to see if the manufactured home fits into the neighborhood. At the end of the time period the owner must reapply and come before the Board to either extend the time limit or ask for a permanent approval. Mr. Milliser stated that there is no need to bring in a manufactured home for a test to see if it will fit into the neighborhood. Mr. Milliser does not want to see a manufactured home brought into the area as a test because it will destroy the area and ruin the wildlife habitat.

Rebuttal:

Sandy LaMarr came forward. Ms. LaMarr stated that she lived in the area for over 30 years. She purchased the subject property with a house on it, but the house burned down. In 1986 she had filed an application for a manufactured home to be installed on the subject property and it was approved. Two or three weeks later she lost her job so she did not pursue the project. The house she is currently living in is quite old and she would like to have a mobile home to live in on her property.

Mr. White informed Ms. LaMarr that City Development Services had sent an e-mail to the Board of Adjustment regarding the conditions that be necessary to enforce if something were placed on the subject property. The property is listed as being in the 100-year flood plain by FEMA and the Tulsa Regulatory Flood Plain. There are requirements for developing within a flood plain that have been instituted since 1986. One of the requirements is to have the finished floor of the structure must be at least one foot above the flood plain elevation, and depending on the location of the unit the finished floor may need to be developed as little as two feet or as much as five or six feet. Ms. LaMarr stated that when there is a heavy rain most of the water drains to the other end of the lot into a man-made creek located behind the property. Ms. LaMarr stated that she has been told that if she was given permission to place a mobile home on the subject property she would be required to have the mobile home at least four or five blocks high. Mr. White stated that would place the home a little over three feet high.

Mr. Van De Wiele asked if the height would be achieved by bringing in fill dirt. Mr. Swiney stated that no one can fill in a flood plain so Ms. LaMarr will not be able to bring in fill dirt. The mobile home will need to be elevated at least a foot above the flood plain leaving an empty space underneath the mobile home. There are a number of regulations that must be met before building in a flood plain, and the regulations are imposed by Development Services.

Ms. Back stated that any propane tanks or mechanical equipment would also need to meet the elevation requirement.

Mr. Henke asked Ms. LaMarr if she was prepared to fulfill all the required regulations. Ms. LaMarr stated that she is willing to do whatever it takes because she would like to have her own home. A manufactured home is the least expensive way to obtain a home, and she will not bring in a piece of junk because she wants to live in it.

Mr. Van De Wiele asked Ms. LaMarr if she already had a mobile home that she would be placing on the property. Ms. LaMarr stated that she did not have because she wanted to come before the Board for approval, and if the request was not approved then there would not be any point in purchasing a mobile home.

Ms. Snyder asked Ms. LaMarr if she was aware that even if she were to receive approval from the Board today she would still need to acquire a building permit and a watershed permit, and meet those requirements. Ms. LaMarr stated that she had been told that she would need to have a survey performed to know where the mobile home could be placed.

Mr. White stated that the e-mail from City Development Services states that a full building permit would be required, and that Ms. LaMarr might want to research the expense and all the details before proceeding with the proposed project should the Board give approval today. Building in a flood plain is a major issue and the City has great concerns about it.

Ms. Back wanted to inform the applicant that when the elevation of a mobile home is performed an engineer may also need to be involved. Ms. LaMarr stated that she had been speaking with INCOG staff, and they have been very informative on what can be done and what cannot be done plus informing her of all the permits. Ms. LaMarr stated that whatever it takes to get a home she will do it.

Comments and Questions:

Mr. White stated that when the flood plain studies were performed those studies adversely affected a lot of the area's property. The man-made drainage ditch that was installed in the area was probably a big life-saver for the area because that creek used to be quite a problem. If he were inclined to give approval for the proposed project it would have to be for a very short period of time to see if it worked, and all the costs for that could be very prohibitive which those costs should not be a concern for the Board,

the project may not worthwhile. There are several homes in the area and the area is attempting to revitalize itself. There has always been a detrimental stigma about a mobile home being placed into a stick built neighborhood.

Mr. Van De Wiele agreed with everything Mr. White said. If he were looking at a plan that clearly showed where the mobile home were to be placed, how much it was to be raised, the age of the mobile home were known and everything were in alignment he would be inclined to approve the request for a short period of time.

Ms. Snyder stated that even if Ms. LaMarr is able to obtain all the required permits and meet all the restrictions she wonders if it would a safe home.

Mr. Henke does not think that the request is necessarily out of character for the neighborhood and he would support a three or five year time limitation.

A point of order made by Mr. Swiney. He stated that the Board seems to be very aware of of their jurisdiction or the limit of what can be or cannot be done. It also sounds like the Board wants Ms. LaMarr to know and be aware of what is she getting into and that this project not be worth her time and effort. She has a number of permits and obligations that she need to abide by, meet ADA requirements, the flood plain regulations, and if there is a time limit imposed of three or five years, he would encourage the Board to remember the limitations of what the Board's jurisdiction is.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Tidwell absent) to **APPROVE** the request for a **Special Exception** to permit a manufactured home (Use Unit 9) in an RS-3 district (Section 401); **Special Exception** to extend the time limit to 3 years from today's date of May 28, 2013 (Section 404.E.1). This will be in full recognition of the requirements of City of Tulsa Development Services and the Corp of Engineers in the developmental procedures of the subject property and ensuring the applicant is made of the procedural requirements. This approval will be subject to conceptual plan on page 4.13. All code requirements must be met. All parking surfaces and driveways must be concrete or asphalt. The unit must be securely anchored to the ground. All required permits will be sought by the applicant. Finding the Special Exceptions 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 10 BLK 1, LT 11 BLK 1, SECOND WESTROPE ACRES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

None.

NEW BUSINESS

None.

BOARD MEMBER COMMENTS

None.

There being no further business, the meeting adjourned at 2:00 p.m.

Date approved: 6/11/13

Frank X. ...

Chair