

BOARD OF ADJUSTMENT
MINUTES (No. 226)
Thursday, December 16, 1976, 1:30 p.m.
Langenheim Auditorium, City Hall
Tulsa Civic Center

MEMBERS PRESENT

Blessing
Guerrero, Chairman
Jolly
Purser, Mrs.
Smith (in 1:42 p.m.)

STAFF PRESENT

Edwards
Gardner
Smith, Mrs.

OTHERS PRESENT

Jenkins, Building
Inspector
Linker, Legal Dept.

Chairman Guerrero called the meeting to order at 1:30 p.m. and declared a quorum present.

MINUTES:

On MOTION of JOLLY, the Board of Adjustment voted unanimously (4-0) to approve the Minutes for November 4, 1976 (No. 223) and November 18, 1976 (No. 224).

UNFINISHED BUSINESS:

8984

Action Requested:

Appeal (Section 1650 - Appeals from the Building Inspector) from a decision of the Building Inspector's order to construct a screening wall or fence along lot lines in common with an R District; and an Exception (Section 250.3 (c) - Modification of the Screening Wall or Fence Requirements) for a special exception to the screening requirement to permit the delay of installation of the screening fence along a part of the west and north boundaries until the installation of a required storm sewer and retaining wall along the north and west boundaries is completed; and a Variance (Section 1213.3 (b) - Convenience Goods and Services - Under the Provisions of Section 1670) for a variance of the screening requirements until the completion of a storm sewer and retaining wall along the north and west boundaries located north and west of 61st Street and Sheridan Road.

Presentation:

A letter (Exhibit "A-1") was read from Attorney Charles E. Norman requesting a 30-day continuance in order for a screening wall to be completed.

Protests: None.

Board Action:

On MOTION of BLESSING, the Board of Adjustment voted unanimously to continue Case No. 8984 until January 20, 1977, 1:30 p.m., Langenheim Auditorium, City Hall, Tulsa Civic Center.

NEW APPLICATIONS:

9314

Action Requested:

Exception (Section 410 - Principal Uses Permitted in Residential Districts - Section 1205 - Community Services, Cultural and Recreational Facilities) for permission to operate a children's day nursery in an RM-1 District located at 1252 North Cheyenne Ave.

Presentation:

As no applicant was present during the meeting, the decision was made at the end of the meeting to continue this application until the next Board meeting.

Protests: None.

Board Action:

On MOTION of JOLLY, the Board of Adjustment voted unanimously to continue Case No. 9314 until January 6, 1977, 1:30 p.m., Langenheim Auditorium, City Hall, Tulsa Civic Center.

9325

Action Requested:

Variance (Section 430 - Bulk and Area Requirements in Residential Districts - Under the Provisions of Section 1670 - Variances) for a variance of the side yard requirements from 10' to 6' in an RS-2 District located at 3727 East 44th Street.

Presentation:

Attorney R. L. Davidson, Jr., representing the applicant, stated the hardship is a ten-foot encroachment on the side yard in order to add a room on the existing structure so a waiver is needed to continue construction. He presented a plot plan (Exhibit "B-1") and 5 statements of consent (Exhibit "B-2") from neighboring property owners. Mr. Davidson stated he thought a building permit was secured and upon questioning by the Chair, Paul Jenkins, Building Inspectors Department, stated he was not familiar with this case. The Chair asked if the building had begun before the permit was issued since the construction had been halted; to which Mr. Davidson replied he was not certain but it was possible the construction was stopped when the building permit was not issued. Mr. Jenkins noted if a building permit was applied for before construction began, the applicant would have been told to appear before the Board of Adjustment for a variance.

Protests: None.

Board Action:

On MOTION of PURSER, the Board of Adjustment voted unanimously to grant per plot plan submitted a Variance (Section 430 - Bulk and Area Requirements in Residential Districts - Under the Provisions of Section 1670 - Variances) varying the side yard requirements from 10' to 6' in an RS-2 District on the following described tract:

9325 (continued)

Lot 19, Block 16, of the Resub of Blocks 13-23, Patrick Henry Addition to the City of Tulsa, Oklahoma.

(Smith in at 1:42 p.m.)

9327

Action Requested:

Variance (Section 430 - Bulk and Area Requirements in Residential Districts - Under the Provisions of Section 1670 - Variances) for a variance of the side yard requirements from 5' to 0' located at 2002 North Trenton Avenue.

Presentation:

Allen Pegues, 2159 East 20th Street North, representing Mr. and Mrs. Earnest Gray, the applicants, submitted a plot plan (Exhibit "C-1") and stated they wished to construct a new residence and needed to build on the property line next to an existing residence where they live presently. Mr. Pegues stated the applicants plan to remove the existing residence when the new home is completed and noted they own both lots in this application. Upon questioning by Board Member Purser, Mr. Pegues stated they would agree to sign a statement saying both Lots 8 and 9 would be sold as a unit when they decided to sell this property.

Protests: None.

Board Action:

On MOTION of SMITH, the Board of Adjustment voted unanimously to grant a Variance (Section 430 - Bulk and Area Requirements in Residential Districts - Under the Provisions of Section 1670 - Variances) varying the side yard requirements from 5' to 0' subject to a tie contract on Lots 8 and 9, subject to the plot plan submitted, and removal of the existing residence on the following described tract:

Lot 9, Block 1, Bullett Heights Second Addition to the City of Tulsa, Oklahoma.

9328

Action Requested:

Variance (Section 630 - Bulk and Area Requirements in the Office Districts - Under the Provisions of Section 1670 - Variances) for a variance of the front setback requirements from 100' to 50' from the centerline of Utica Avenue; and a variance of the setback on the south from 50' to 35' from the centerline of 17th Place located on the north-east corner of 17th Place and Utica Avenue.

Presentation:

Gary Van Fossen, the applicant, 5155 East 51st Street, presented a plot plan (Exhibit "D-1") and stated he is building a one-story single use office building and needs a variance of the 100' setback from Utica Avenue since it is designated as a 100' width major arterial street. This variance would not be needed if the building were set on the back of the lot and the parking located in the front but he does not feel

9328 (continued)

this would conform with the surrounding neighborhood. Mr. Van Fossen stated it would be more attractive to place the building toward the front of the subject property with landscaping and place the parking to the rear of the property. He stated there were other structures along Utica that set closer to the street than his proposal.

Protests: None.

Board Action:

On MOTION of JOLLY, the Board of Adjustment voted unanimously to grant a Variance (Section 630 - Bulk and Area Requirements in the Office Districts - Under the Provisions of Section 1670 - Variances) varying the front setback requirements from 100' to 50' from the centerline of Utica Avenue; and varying the setback on the south from 50' to 35' from the centerline of 17th Place subject to there being no further reduction in the setback and subject to the applicant returning to the Board of Adjustment with a final plot plan showing the building location and the detailed landscaping prior to any construction on the following described tract:

Lots 9, 10, 11, Block 17, Orcutt Addition to the City of Tulsa, Oklahoma.

9329

Action Requested:

Exception (Section 910 - Principal Uses Permitted in the Industrial Districts - Section 1212 - Eating Places Other Than Drive-Ins) for permission to locate a restaurant in an IL District; and a Variance (Section 930 - Bulk and Area Requirements in Industrial Districts - Under the Provisions of Section 1670 - Variances) for a variance of the setback requirements to permit building 100' from the centerline of streets located at the northwest corner of Admiral Place and 193rd East Avenue.

Presentation:

Attorney John Moody, 217 West 5th Street, representing the applicant, presented two plot plans (Exhibits "E-1 and E-2") and stated this request is for a Dairy Queen store and restaurant to operate in an IL District and the hardship is the size of the lot and the primary arterial street designation of 193rd Street.

Protests: None.

Board Action:

On MOTION of SMITH, the Board of Adjustment voted unanimously to grant per plot plans submitted an Exception (Section 910 - Principal Uses Permitted in the Industrial Districts - Section 1212 - Eating Places Other Than Drive-Ins) for permission to locate a restaurant in an IL District; and a Variance (Section 930 - Bulk and Area Requirements in Industrial Districts - Under the Provisions of Section 1670 - Variances) varying the setback requirements to permit building 100' from the centerline of Admiral Place and 193rd East Avenue on the following described tract:

The East 105' of Lots 2 and 3, Block 1, Harrison Addition to the City of Tulsa, Oklahoma.

12.16.76:226(4)

9330

Action Requested:

Variance (Section 430 - Bulk and Area Requirements in Residential Districts - Under the Provisions of Section 1670 - Variances) for a variance of the setback requirements for a house that is already built in an RS-2 District located at 5715 South Evanston Place.

Presentation:

Attorney Tom Tannehill, 525 South Main Street, representing the applicants, presented a plat of survey (Exhibit "F-1") and 6 pictures (Exhibit "F-2") of the subject tract. He noted a title opinion by another attorney stated this house did not meet zoning restrictions, and the applicants are trying to sell their home and need to satisfy this title requirement. Mr. Tannehill is asking the Board to approve a waiver of the existing home per the plat of survey presented to satisfy this requirement.

Protests: None.

Board Action:

On MOTION of SMITH, the Board of Adjustment voted unanimously to grant in accordance with the plat of survey submitted a Variance (Section 430 - Bulk and Area Requirements in Residential Districts - Under the Provisions of Section 1670 - Variances) varying the setback requirements for a house that is already built in an RS-2 District on the following described tract:

Lot 20, Block 2, Fairway Estates Second Addition to the City of Tulsa, Oklahoma.

9331

Action Requested:

Exception (Section 410 - Principal Uses Permitted in Residential Districts - Section 440.6 - Mobile Homes) for permission to locate a mobile home in an RS-1 District located at 9300 Block South of 193rd East Avenue. (Bond required.)

Presentation:

Gary Watson, the applicant, Rt. 2, Box 696, Broken Arrow, stated he put in a mobile home on his property for his ailing in-laws and had checked with the City of Broken Arrow and with most of the neighbors before installing the mobile home. After the home was in place, there was a complaint. Upon questioning by the Chair, Mr. Watson stated there were some mobile homes in the area 1/4 mile to the north and some others a farther distance to the south. He also stated he was aware it was necessary for him to return to the Board each year to renew this application if it is approved.

Protests:

Bob Cowan, Rt. 2, Box 692, Broken Arrow, stated his property adjoins Mr. Watson's on the south and the nearest mobile homes are 2 miles away. He noted the homes in this area are of masonry construction and located on 2½ acre tracts and stated Mr. Watson told him he wanted a small mobile home to be located at the rear of his house for his in-laws. But in fact, the mobile home is 64' long and on

12.16.76:226(5)

9331 (continued)

the front of the property in alignment with the other homes on the street. Upon questioning, Mr. Cowan stated this is the only mobile home west of the Wagoner County line; it has been in place approximately 2 months; and the homes are serviced by septic tanks. Upon questioning by Board Member Smith, Mr. Cowan stated the mobile home would not be as objectionable if it was placed behind the existing residence.

Applicant's Comments:

Mr. Watson stated he does not recall telling anyone the mobile home would be placed behind the residence and feels it would be used for 18 to 24 months at the most.

Board Action:

On MOTION of JOLLY, the Board of Adjustment voted unanimously to grant an Exception (Section 410 - Principal Uses Permitted in Residential Districts - Section 440.6 - Mobile Homes) for permission to locate a mobile home in an RS-1 District subject to the following conditions: (1) Approval is for one (1) year only; (2) applicant must present a doctor's certificate to the Board by January 6, 1977 citing the condition of the applicant's father-in-law; (3) submit to the Board by January 6, 1977 a plot plan showing where the mobile home will be placed behind the existing residence; and (4) a removal bond required on the following described tract:

That part of the NE/4 of the NE/4 of Section 24, Township 18 North, Range 14 East of the IBM, Tulsa County, State of Okla., according to the U. S. Government Survey thereof, more particularly described as follows: Beginning at a point on the Easterly line thereof, said point being 1,045.37' Southerly of the Northeast corner of the said NE/4 of the NE/4, and said point also being 273' Northerly of the Southeast corner of said NE/4 of the NE/4; thence Westerly and parallel to the Southerly line thereof for 543'; thence Southerly for 204' to a point that is 69' Northerly of the Southerly line thereof; thence Easterly for 543' to the Easterly line thereof; thence Northerly for 204' to the point of beginning.

9332

Action Requested:

Exception (Section 910 - Principal Uses Permitted in Industrial Districts - Section 1224 - Mining and Mineral Processing) for permission to conduct a limestone quarrying operation in an IH District located at 145th East Avenue at Apache Street; and at 46th Street North and 145th East Avenue.

Presentation:

William Scheurich, 54 Oklahoma Natural Gas Building, attorney representing the Martin-Marietta Corp., showed an aerial photograph of the subject tracts describing the mining operations.

Walt Neely, 145 East Avenue and Apache Street, with the Martin-Marietta Corporation, stated the formation was the Oolagah outcrop and described the manufacturing of cement and the general quarry operation. Upon questioning, Mr. Neely stated there are some homes within 300' of this operation and the operation did generate some

dust and noise. Mr. Neely stated however, this was a safe clean plant and it is regularly inspected by the State Bureau of Mines. Upon questioning by the Chair, Mr. Neely said this type of operation would be compatible with the homes in the area. Upon questioning by Russell Linker, City Legal Department, Mr. Scheurich stated this location is within the City Limits of Tulsa. Mr. Linker then said there is an ordinance prohibiting mining within the City Limits and Title 27, Section 651 which is not part of the Zoning Code, cannot be waived by the Board of Adjustment. The Board can grant an exception of the Zoning Code but Section 651 he feels would still apply and govern.

Board Member Jolly asked Mr. Linker if the Board is considering a principal use variance and counsel is stating not to grant a use variance; to which Mr. Linker said no, that a section of the Penal Code prohibits mining within the Tulsa City Limits. Upon questioning by Board Member Smith, Mr. Neely stated the Martin-Marietta Corporation had realigned 145th East Avenue at their own expense and Tulsa County approved this realignment.

Mr. Linker stated this property is within the City Limits and as far as zoning is concerned, the Board can grant an exception permitting this use but he wanted to advise the applicant that the Board's granting of an exception of the Zoning Code does not permit mining within the City Limits. Mr. Gardner stated that prior to the changes in the Zoning Code in 1970, mining would have been permitted by right in the U-4B zoning district.

Protests:

J. D. Metcalf, 36th Street North and 129th East Avenue, President of Standard Industries, stated the Company operates a commercial aggregate business in this area. He is not protesting but wants some information and wants to ask some questions of the applicant. The application states the land is vacant and he feels that the Tulsa Rock Company uses this land and their plant and equipment are located on this section. Mr. Metcalf is concerned about the description of the land being used and wondered if the Martin-Marietta Corporation intends to quarry next to the right-of-way of Bird Creek. His concern is also with Section 28, the south tract, which is the location of a large pond of water which the Corporation uses in their cement manufacturing. If quarrying is carried out in Section 28, would Mr. Metcalf's railroad spur be affected?

Applicant's Comments:

Mr. Scheurich feels the second question is not of importance to this hearing. Jim Benson, 145th East Avenue and Apache Street, with the Martin-Marietta Corporation, stated all of this area of land under application presently belongs to the Corporation and eventually all of this area will be quarried. Mr. Benson stated it would be several years before the Corporation would reach the Bird Creek area; and he stated the Tulsa Rock Company is operating from 36th Street North to 145th East Avenue. Upon questioning by Board Member Smith, Mr. Benson stated the limestone is blasted out of the ground and every once in a while between 5:30 and 6:30 p.m., there is a jolt but these blasts are strictly monitored by the Corporation and the reports are monitored by the State Bureau of Mines. Upon questioning by Board Member Purser, Mr. Benson said there are twice yearly inspections by the State Bureau. Mr. Benson stated, in response to Board Member

9332 (continued)

Jolly, that the Martin-Marietta Corporation would never mine to the edge of Bird Creek. Board Member Jolly questioned Mr. Linker as to the date of the Ordinance prohibiting mining in the City Limits and Mr. Linker stated it was published in 1972 but the Ordinance may go back further than that date. He also feels that if the Board approves this exception, a condition should be attached which would require the applicant to satisfy any obligation under the Penal Code. Board Member Jolly asked where the applicant would go to seek relief when conflicting ordinances are on the books, and Mr. Linker stated there may be no relief for the applicant because there may be a flat prohibition against mining. Board Member Jolly asked legal counsel if the Board did approve this application under Section 910 they would have to advise the applicant it is an illegal act and they would need to seek permission from the City Commission or the District Court. Mr. Linker stated the applicant must satisfy Title 27, Section 651 before the Board of Adjustment exception would be applicable in the City of Tulsa.

Board Action:

On MOTION of JOLLY, the Board of Adjustment voted unanimously to continue Case No. 9332 to January 20, 1977, 1:30 p.m., Langenheim Auditorium, City Hall, Tulsa Civic Center, in order to obtain a legal opinion on this matter from the City Attorney's Office.

9335

Action Requested:

Variance (Section 630 - Bulk and Area Requirements in the Office Districts - Under the Provisions of Section 1670 - Variances) for a variance of the setback requirements in an OM District located northeast of 68th Street and South Yale Avenue.

Presentation:

The applicant nor his representative Attorney Vaden Bales, were present and upon advice of counsel, it was determined the Board of Adjustment lacks the jurisdiction to act on this application due to the fact that the office building is constructed across a residential zoning line. The applicant will also file a rezoning application.

Protests: None.

Board Action:

On MOTION of JOLLY, the Board of Adjustment voted unanimously (with Smith out of the room) to continue Case No. 9335 to February 3, 1977, 1:30 p.m., Langenheim Auditorium, City Hall, Tulsa Civic Center.

9337

Action Requested:

Variance (Section 430 - Bulk and Area Requirements in Residential Districts - Under the Provisions of Section 1630 - Minor Variances) for a variance of the lot area requirements in an RS-2 District to permit a lot-split located at 715 South Rockford Avenue. (One lot will have 3,750 sq. ft. and one will have 3,250 sq. ft.)

9337 (continued)

Presentation:

Woodrow Barkett, the applicant, was not present and TMAPC Staff Member Jack Edwards stated this application was approved by the Planning Commission on December 15, 1976, subject to the Board of Adjustment approval.

Protests: None.

Board Action:

On MOTION of PURSER, the Board of Adjustment voted unanimously to grant a Variance (Section 430 - Bulk and Area Requirements in Residential Districts - Under the Provisions of Section 1630 - Minor Variances) varying the lot area requirements in an RS-2 District to permit a lot-split on the following described tract:

Lots 13 and 14, Block 4, Parkdale Addition to the City of Tulsa, Oklahoma.

8867

Action Requested:

Clarification of the Board of Adjustment intent in reference to Case No. 8867 in the form of a letter (Exhibit "G-1") from the Parks Department.

Presentation:

Randy Nicholson, representing the City Parks Department, noted the previous Board case in December 1975 where the Board granted approval for a use exception for the construction of a street maintenance facility at 56th Street and Garnett Road. This application was approved per plot plan submitted, and the plot plan was for the Street Department's building; so the question the Parks Department has is whether or not the Board intends for the Parks Department to readvertise and seek Board approval for their structure to be built on the same site or whether a review was necessary by the Board for the Parks Department proposed building. Mr. Nicholson presented the original plot plan (Exhibit "G-2") to the Board and during discussion it was determined it was not necessary for the Parks Department to readvertise but the Board wants to see the new proposal for the subject tract. Mr. Nicholson then presented a detailed plot plan (Exhibit "G-3") showing what is intended for the park maintenance facility including a 100' x 600' metal building; driveway and parking area; and fenced-in storage yard for maintenance equipment. The proposed building is 138' north of the south property line and the acreage is less than 3 total acres for Parks Department land. Board Member Smith stated if a private developer was making this application the City Engineering Department may require a detention pond and whatever is required of private industry should be a requirement for City and County agencies.

Board Member Jolly questioned Mr. Nicholson if he is requesting any waivers or exceptions; to which Mr. Nicholson stated they are not. Building Inspector Paul Jenkins asked if the other plot plan is subject to Engineering approval of the drainage and if any gas tanks or

8867 (continued)

or pumps are planned? Mr. Nicholson stated no gas tanks or pumps are planned. Mr. Gardner noted this subject tract has already been approved and any previous conditions still apply to the Parks Department proposed development.

Protests: None.

Board Action:

On MOTION of SMITH, the Board of Adjustment voted unanimously to grant an Exception (Section 310 - Principal Uses Permitted in the Agriculture District - Section 1202 - Area-Wide Special Exception Uses) for permission to operate a City garage, equipment storage, material storage, vehicle storage, and administrative offices in an AG District subject to the following conditions: (1) plot plan submitted; (2) written approval by the City Engineer of the drainage plans and such approval be in the file; and (3) this action does not remove any other previous restrictions on the following described tract:

The N/2, NW/4, SW/4, and the N/2, S/2, NW/4, SW/4, in Section 32, Township 19 North, Range 14 East, Tulsa County, Less the North 600 feet of the West 742 feet of the N/2, NW/4, SW/4.

9339

Action Requested:

Variance (Section 430 - Under the Provisions of Section 1630 - Minor Variances) for a variance to reduce the side yard setback from 10' to 8' to line up with the existing residence located at 3417 East 57th Street.

Presentation:

B. P. Maze, applicant, 3417 East 57th Street, presented a plot plan (Exhibit "H-1").

Protests: None.

Board Action:

On MOTION of PURSER, the Board of Adjustment voted unanimously to grant per plot plan submitted a Variance (Section 430 - Under the Provisions of Section 1630 - Minor Variances) varying the side yard setback from 10' to 8' to line up with the existing residence on the following described tract:

Lot 20, Block 2, Fairway Estates Second Addition, an addition in the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

9304

Mr. Edwards stated a letter (Exhibit "I-1") had been received from the Traffic Engineer complying with a Board of Adjustment request to make a traffic survey for the proposed day care center to be located at 2015 East Apache Street. During discussion, it was decided to send a letter to the applicant advising her of the Traffic Engineer's report and the Board requires compliance before her request is given approval.

9300

Presentation:


Mr. Edwards stated there is an error in the legal description in the Minutes of November 18, 1976, in Case No. 9300 which the Board heard and approved -- the legal description read "Section 19, Township 19 North, Range 13 East", and it should be Section 19, Township 19 North, Range 14 East.

Board Action:

On MOTION of JOLLY, the Board of Adjustment voted unanimously to direct the Staff to correct the Minutes of the November 18, 1976 meeting to read Section 19, Township 19 North, Range 14 East in Case No. 9300.

There being no further business, the Chair adjourned the meeting at 3:15 p.m.

Date Approved January 6, 1977


Chairman