

TULSA COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 464
Tuesday, January 15, 2019, 1:30 p.m.
Ray Jordan Tulsa County Administration Building
500 South Denver, Room 119
Tulsa, Oklahoma

MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT

Charney, Chair	Crall, Secretary	Miller	Tosh, County
Hutchinson, V.Chair		R. Jones	
Dillard		Sparger	
Johnston			

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 10th day of January, 2019 at 10:19 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
None.

Mr. Charney announced that certain people may have been noticed for certain cases and there are a few cases that may not be heard today. The one matter that will be heard today is the request by Randy Herrington for a Special Exception to permit a church use in an AG District. If anyone is here for any other matter other than Mr. Herrington's case those cases have been continued to the next regularly scheduled meeting in February. Due to some irregularities in the notice procedure the new applications will be continued to the next regularly scheduled meeting in February.

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

UNFINISHED BUSINESS

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:

Rev. Randy Herrington, 13102 South 194th East Avenue, Broken Arrow, OK; stated he would like to start a little mission church as a branch from his regular church located in Tulsa. He has been a pastor of the Tulsa church for about ten years and there are ten members, so people do not need to worry about this becoming a mega church. He has a mobile classroom on the subject property, and he does not see that changing, and he would assume that if that were to change, he would need to come back before the Board of Adjustment.

Mr. Charney stated that would depend on what the Special Exception permits. Since the application is seeking permission for a church use, it is the use that has restrictions placed on it by the Board that would potentially require a reappearance before the Board if the nature of the site plan were changed.

Mr. Charney asked Rev. Herrington if he had had any dialogue with the surrounding neighbors or others. Rev. Herrington stated there has not been a lot of dialog because no one is talking to him; everybody seems to be opposed to what he is requesting.

Rev. Herrington stated that currently the subject property is zoned for agriculture, if his Special Exception is approved does that mean the zoning will change? Mr. Charney stated what has been applied for is to seek an Exception to the existing zoning for a specific use. Mr. Charney stated the underlying zoning is not being changed, but a Special Exception is being requested to permit a use that would not be allowed. Rev. Herrington stated that he has no intentions of changing the zoning, agriculture is fine with him because he has no intention of using the property for anything other than a small church.

Mr. Charney asked Rev. Herrington if the property had been cleaned up and in good condition? Rev. Herrington presented pictures of the subject property to the Board for review. Rev. Herrington stated that everything has been cleaned up.

Ms. Miller stated that Ms. Tosh and Daniel, from County Inspections, have visited the subject property within the last hour and have taken photos as well.

Mr. Charney asked Rev. Herrington if he had done any activity on the subject property since the last meeting. Rev. Herrington answered affirmatively. Rev. Herrington stated that he has cleaned up the property. Mr. Charney asked Rev. Herrington if the pictures

he presented to the Board today are since the clean-up of the property. Rev. Herrington answered affirmatively.

Rev. Herrington stated the only thing he has on the property is a skid-steer loader that he is repairing, and as soon as it is repaired it will be moved. Rev. Herrington stated that he would like to submit photos of the surrounding properties so the Board can make comparisons.

Mr. Charney asked Rev. Herrington if it is his intent to have church services in the manufactured house. Rev. Herrington answered affirmatively. Mr. Charney asked Rev. Herrington how many times a week would there be a church service. Rev. Herrington stated that it will probably be just once a week, Sunday morning. Mr. Charney asked if there is an area for hard-surface parking? Rev. Herrington stated there is asphalt milling for a drive, and it is better than concrete or asphalt because it allows the rain water to leach through rather than runoff.

Mr. Charney stated that if the Board does allow the church use in the AG District it does not mean that they are authorizing a particular structure. If there are issues regarding a septic system or sanitary system they are outside the purview of this Board, so to receive occupancy permits for the requested use those will be separate matters. Rev. Herrington affirmed his understanding.

Mr. Charney asked Rev. Herrington how many cars would his parking accommodate? Rev. Herrington stated that he will probably have six to eight cars, but in due time it may increase but not much more than ten or fifteen cars. At that time, he would increase the parking area if needed.

Mr. Hutchinson asked Rev. Herrington if he has spoken to staff about what needs to be done to have the assembly on the subject property because he does not think asphalt millings is correct; the parking area has to be asphalt or concrete. Ms. Tosh stated that all the requirements will be reviewed and addressed, because this is a commercial building with life safety issues involving assembly use which is one of the most stringent areas.

Mr. Hutchinson asked Rev. Herrington if he had visited with staff about all the requirements associated with this request. Rev. Herrington stated that he has not.

Mr. Charney stated those requirements could impair the feasibility of the proposed plan. There is a hard surface requirement for the parking, and often it is not permitted to even have loose gravel or loose millings. It is a hard surface of either asphalt or concrete. Mr. Charney stated he does not know all the fire code requirements for assembly use, but it can be burdensome at times.

Mr. Johnston asked if this property is outside of the 100-year flood plain? Ms. Tosh stated the property is located within the 500-year flood plain.

Interested Parties:

Stan Nelson, 7801 South Dogwood Avenue, Broken Arrow, OK; stated he is in favor of this rural church. He knows rural living because his mother raised him on a farm with no water and no electricity when his father passed away just before he was seven. The subject property is located in an agricultural area near the Arkansas River; the drainage system which was widened by Wagoner and Tulsa Counties took several years to correct the flooding. Mr. Nelson stated that since he has been there, he has not noticed any severe flooding. Mr. Nelson stated that he has known Rev. Herrington for over 20 years, and he has worked with him for about ten years. Within a mile, on either side of the property, there are only 16 houses; nine to the south and seven to the north, two of which are mobile homes with a double wide mobile home near the subject property. Mr. Nelson stated he has assisted Rev. Herrington with the care of the subject property by way of maintaining it as close to a golf course as possible, because it is set up as par three golf site. Compared to each side of the property there are fields and they are fields. To the north of the subject property there are a couple of unoccupied mobile homes; to the south of the subject property there is a semi-trailer that was in the trees and is now in a side yard next to the property. Along with the daily noise of speeding trucks and the sounds of the gun range that is nearby, it is hard to imagine how a few cars with a few people seeking to worship the Creator for a few moments would not be an asset to the community. Mr. Nelson stated that not only does Pastor Herrington and his wife direct the congregation in spiritual growth but also, they are a comforting presence during the times of physical or emotional or sorrowful stress of loss. Mr. Nelson asked the Board to please consider that caring for the eternal lives of people in a small congregation setting far exceeds the concerns, weeds, rust, smells, selfishness and greed.

Billy Wagner, 4848 South 35th West Avenue, Tulsa, OK; stated that Rev. Herrington has been his pastor for about 20 years, and he assures the neighbors that the church wants to be a good neighbor. The church just wants a place to worship. If any of the neighbors have a problem or a concern the church would do everything possible to help them.

Carolyn Sue Herrington, 13102 South 194th East Avenue, Broken Arrow, OK; stated she has helped her husband clean up the subject property. All the old mowers have been hauled off, pallets have been set in the back so they can be used in the future, and the property has been thoroughly cleaned up. Ms. Herrington stated the property does not have rural water because everyone on the road has a well; it is all well water though the property does have rural water which comes from Coweta. Ms. Herrington stated that if there is a fire it is the Broken Arrow Fire Department that responds, not Coweta. Ms. Herrington said the grass all around the property has grown up and if there is a fire there will be trouble. Ms. Herrington stated that she and her husband have no intent to do harm to anyone in the area.

Steven Walker, 15525 South 193rd East Avenue, Broken Arrow, OK; stated he attended the last meeting when this case was heard, and there was a lot of things discussed. Everyone that was at the meeting was unanimous in their opposition, and

he believes there were enough reasons stated at that time to deny the application. It is not the highest use of the property and it is tax exempt. The property is not suited for a church because it is in a neighborhood, and those people have lived in the neighborhood for quite some time. The lots are narrow but deep, so the neighbors are close to one another. Mr. Walker does not think if this application were made in another neighborhood that the church would be allowed to be placed between two residences. Mr. Walker stated that he thinks any kind of hard surface will add to the drainage problem. Mr. Walker stated that the subject property has been cleaned up slightly, but not completely cleaned up because there are still items on the property. Mr. Walker stated that he thinks the applicant is not prepared to do all the things necessary to care for the property, especially if the church is approved. He thinks this has been a very poorly thought through process of planning.

Mr. Charney asked Mr. Walker to explain again why he thought the church would be injurious to the surrounding properties. Mr. Walker stated that it would be no different if the properties were in mid-town in a neighborhood with a vacant lot in between two residences. It is not suited for the neighborhood. It is not a commercial area. It is not a corner lot.

Mr. Charney stated that the legal test for the Board is if the request is injurious to the neighborhood, so that is the focus of the Board. The Board might see this differently in an agricultural area than they would if it were on a 75' x 120' lot.

Mr. Walker stated that the people in the neighborhood love the country and the agricultural surroundings, and they are concerned about what the future holds if the church is allowed to be placed on the property. Even though the Board places restrictions on the approval it would probably be up to the residents and their lawyers to enforce the restrictions in the future. This Board does not have any kind of enforcement division to check to see if people are in compliance with their restrictions. Mr. Charney stated there is a County Inspections process that has a lot of responsibilities, but there is a mechanism by which the County enforces restrictions.

Debbie Brown, 15220 South 193rd East Avenue, Broken Arrow, OK; stated she is here on behalf of her mother, Christine Brown who is the immediate neighbor to the south of the subject property. Ms. Brown stated that her parents purchased their property in 1981 and they definitely believe in preserving the rural residential environment. Ms. Brown stated the church has already had a negative impact on her mother; she is under contract to sell the property, however, when the potential buyer found out about the church they wanted out because they want to live in the country and not live next door to a commercial venue. Ms. Brown stated if the church is approved her mother will not only lose this buyer but every potential buyer going forward, and it will substantially cut down the potential buyers. Ms. Brown stated that her mother is also concerned that it will drive the price of property down and make it more difficult to sell. The properties may be eight acres, but they are long and narrow, so they're not eight acres away from each other but only about one acre apart. She has concerns about the drinking water, because everyone has a water well. What will water runoff from the parking lot do to

the safety of their drinking water? Ms. Brown stated that Mr. Herrington lives in Wagoner County and is not a resident of Tulsa County, and all the residents in the area reside in Tulsa County. Ms. Brown stated the church would be required to have a large septic system and this could be very expensive. Ms. Brown stated that her mother finds this application to be very injurious to her. Ms. Brown requests that Mr. Herrington find a building located in a commercially zoned, or non-agriculturally zoned, area to start his church. The neighbors are not opposed to him starting a church, they don't want the church amongst their homes.

Mr. Hutchinson asked Ms. Brown if rural water was available to the residents. Ms. Brown stated that she is not aware of any.

Mr. Charney informed the audience that this is not, legally speaking, a commercial use. It is a church use, and the law treats them very differently. A church use is different than a commercial use. Secondly, he has been surprised throughout his career that a small church facility's septic needs are far less than a standard three-bedroom two-bath house that has a washing machine, shower and all the other things that are within a house. Mr. Charney stated the Board would not base their decision on water quality, the Board's focus is on the land use and whether the land use itself as church use is injurious to the overall neighborhood.

Robert Crawford, 19502 East 151st Street, Broken Arrow, OK; stated he lives ¼ mile due east of the subject property, and he farms the property across the road from the subject property. He thinks one issue is the granting of the Special Exception and what it means to the future; it opens up the property for a larger development because the Special Exception goes with the property.

Mr. Charney stated that if the Board were to approve this request the Board can tailor very specifically to this use and this site plan. That is not uncommon, and the Board has frequently done that so that it is not a forever blanket. The Board can place time restrictions and the nature of what the use is.

Mr. Crawford stated that the area is a residential agricultural community, and that is the only thing that he would add to everything else that has been said.

Kyle Loveland, 15353 South 193rd East Avenue, Broken Arrow, OK; stated this is an agricultural community. Sunday is the only day he has peace and quiet and privacy because of the large trucks that go through there during the week. Mr. Loveland stated that he feels that on his day of rest he would be disturbed, and he is opposed to the request.

Jerry Mann, 15102 South 193rd East Avenue, Broken Arrow, OK; presented pictures of the subject property, stating that he took the pictures about 10:00 A.M. today. Mr. Mann stated that he is opposed to this request. He is like everyone else, he is not concerned too much about what he is going to do today or tomorrow but everyone wants to keep their heritage there. Mr. Mann thinks the church will be a hindrance in the future.

Michael Egan, 15104 South 193rd East Avenue, Broken Arrow, OK; stated the subject property has been in his wife's family for many years, since the 1950s. His wife's father divided his property into five tracts, one for each of his children and Mr. Herrington owns the third tract. He purchased his property from his wife's father with the knowledge that they would be living in the country. He has horses and donkeys, and he keeps his grass mowed really well. Mr. Egan stated that Mr. Herrington does a good job of keeping his grass mowed because he watches him mow his acreage with a small 42" riding mower. Mr. Egan stated he lives in the country specifically because he wants to be by himself. Mr. Egan stated that he has a Christian background, and his knowledge is that a church is always in an outreach to bring in more people. If the church starts with five or six cars who says where it will stop? Mr. Egan stated that he wants the area to stay country and stay quiet. There are gravel and sand trucks that travel up and down the road, hundreds of them, everyday because of the sand quarry a mile down the road. The neighbors cherish their quiet time on the weekends and want the area to stay as quiet as possible.

Rebuttal:

Rev. Randy Herrington came forward and asked the Board if they were familiar with the Religious Land Use and Institutionalized Persons Act that was passed in the year 2000 and the Attorney General announced a place to worship initiative June 13, 2018. Mr. Charney stated that he personally is not familiar that act. Rev. Herrington stated that document guarantees that the Board cannot prejudice against a religious organization no matter who the group is, and the Federal Government issued that document. So, to be discriminated against solely on the fact that a church wants to go into a neighborhood requires the Board's attention, and the Board needs to be aware of that. Rev. Herrington also wanted the Board to know the neighbor to the south has no objection to the church. Rev. Herrington stated he can guarantee that the church property will be the best-looking property in the area, and the church will do whatever is necessary for the upkeep. He thinks a realtor having a contract cancel is purely subjective, and he feels just as positive that a church on the property will draw people. Rev. Herrington asked the Board to rule in his favor so he can have his little church on the subject property. Rev. Herrington stated that he or the church don't have any intentions of doing anything that is injurious to the neighbors, because he and the church want to get along with the neighbors.

Mr. Charney thanked Rev. Herrington for bringing the Religious Land Use and Institutionalized Persons Act to the Board's attention, but this Board in its deliberations would never make a decision based upon a particular denomination or faith. The Board would never want to place undue burdens on anyone simply because it has a faith-based use. The Board is strictly focused on a land use planning or whether a given use, regardless of whatever it may be, whether the Board believes that use might be injurious or not.

Mr. Hutchinson asked Rev. Herrington if has checked to see if rural water is accessible to the subject property, or does he plan to install a well. Rev. Herrington stated that he

did not know rural water was available, but his wife thinks it is available in Wagoner County so he assumes that he can.

Mr. Hutchinson asked staff if the applicant would be able to use a well if they could not get rural water. Ms. Tosh answered affirmatively and stated that is provided the application goes through proper channels. Mr. Hutchinson asked staff about the Religious Land Use and Institutionalized Persons Act. Ms. Miller stated that it has been awhile since she has read the details, but the intent was not to take away the ability for local governments to regulate where churches go, but not to discriminate against different denominations or single them out. This does not seem to be what this conversation is about, it is just about the use of a church in general which is absolutely under the jurisdictional rights of the City and the County.

Mr. Johnston asked staff about the screening requirements between the church and the residential area. Ms. Tosh stated that the church may be asked to place screening between the church and the residential area if the residents were concerned about lights, noise, car headlights, etc. Mr. Johnston asked staff what the parking requirements are for the church. Ms. Tosh stated that it is required the church is to have a hard surface of asphalt or concrete for parking, and at this time with the number of members there are it would be four to eight spaces required.

Mr. Charney stated that often times when the Board does grant Special Exceptions, they have placed restrictions on the Special Exceptions. Mr. Charney asked Rev. Herrington if the Board were to allow this Special Exception and were to place a restriction in the terms of size would he consent to the restriction? Rev. Herrington answered affirmatively and stated that if the church grows to be a mega church the church will move.

A man stood and asked the Board if the church building had to meet commercial building code? Mr. Dillard answered affirmatively. Mr. Dillard stated the Board is not dealing with that aspect. When the applicant looks at the cost to have 15 people attend church it is absolutely going to be prohibitive. Mr. Dillard stated that Rev. Herrington has already stated that his other church is 25 years old and only has 20 members so a mega church should not be a worry. When looking at the hard surface for the parking lot that is a big expense, the electric is another big expense, the church will need to be ADA compliant because of the assembly of people which means more than one bathroom with handrails, there must be ramps, etc. There is a ton of expense in order to accommodate 10 to 20 people.

Comments and Questions:

Mr. Dillard stated that he does not have a problem with the Special Exception for the land use because there would only be four or five cars on a Sunday. He does not think that is very much noise or a lot of traffic, but the cost is going to be absolutely prohibitive.

Mr. Hutchinson stated that he does not have a problem with the church, every rural area he goes to there are always churches. Mr. Hutchinson stated that he does not see a problem with a church next door, what better neighbor? The only issue he has is that when the applicant was before the Board previously, he was asked to get with staff to make sure he could fulfill the obligations of the hard surface and the ADA requirements and that part was not done. He is afraid that for such a small church it is not going to be feasible.

Mr. Johnston stated that he agrees with Mr. Dillard and with Mr. Hutchinson. He thinks there are a lot of churches in the city that are bound by residential on all sides, and with this being a Sunday use only with as few cars as being referred to, he does not think it could be injurious to the area.

Mr. Charney stated that he feels that the Board has been given a legal standard, and it is if this use will be injurious to the area? The Board has allowed more intense uses in much more dense areas since he has been on the Board, so he does not know if, by definition, this can be injurious for such a small use or the lack of intense use. Mr. Charney stated that he does have concerns about the structure, and he also feels that if anyone were to make a motion to allow the church, he thinks the motion should have restrictions that speak to the site plan submitted and restricting it to the current structure and the parking that would be attentive to the structure.

Ms. Miller left the meeting at 2:47 P.M.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Johnston "aye"; no "nays"; no "abstentions"; Crall "absent") to **APPROVE** the request for a Special Exception to permit a church (Use Unit 5) in an AG District (Section 310), subject to site plans 1.5 and 1.6 of the agenda packet. The approval will also require the appropriate hard surface parking. The mobile home structure is to have the appropriate tie downs and all requirements that come attached to a manufactured home structure. The items required by the Code be met. If there is an expansion beyond the existing site plan this Special Exception will not cover the expansion. All outdoor lighting must meet Code requirements and be pointed down and away from adjacent properties. All existing junk and dilapidated structures to be removed from the subject property, and the property is to be well maintained to be an asset to the neighborhood and not a detraction; for the following property:

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

NEW APPLICATIONS

None.

OTHER BUSINESS

None.

NEW BUSINESS

None.

BOARD COMMENTS

None.

There being no further business, the meeting adjourned at 2:54 p.m.

Date approved: 2-19-19


Chair