

BOARD OF ADJUSTMENT
Minutes of Meeting No. 1318
Regularly Scheduled Meeting
Tulsa City Council Chambers
175 East 2nd Street, 2nd Level, One Technology Center
Tuesday, July 25, 2023, 1:00 p.m.

Meeting No. 1320

<u>Members Present</u>	<u>Members Absent</u>	<u>Staff Present</u>	<u>Others</u>
Radney, Vice Chair Stauffer Barrientos	Bond, Chair Wallace	A. Chapman C. Rocha S. Wallace	A. Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on July 19, 2023, at 1:02 p.m.

Ms. Radney called the meeting to order at 1:00 p.m.

Mr. Wallace read the rules and procedures for the Board of Adjustment Public Hearing.

Approval of Minutes

On **MOTION** of **Barrientos**, the Board voted 3-0-0 (Stauffer, Barrientos, Radney "ayes", no "nays"; no "abstentions", Wallace, Bond "absent") to a **Continue** the approval of the **Minutes** of June 13, 2023 (Meeting No. 1318) until the August 8th meeting.

New Applications

23551 – Dustin Alphin

Action Requested:

Special Exception to increase the allowed fence height from 4 feet to 7 feet inside the street setback (Sec. 45.080-A) **Location:** 2122 S. 67th E. Ave. **(CD 5)**

Presentation

Dustin Alphin, 17697 S. 49th W. Ave., stated his client just recently purchased this abandoned building to use for his drywall and framing business. He stated that there is a fence currently there, but now he is wanting to build a seven-foot fence on the same property line. He said it needs to be replaced not only for the way that it looks, but because there are materials and vehicles that need to stay secure. He stated that he would like to align his fence with the church on the south, which also have a fence that is higher than the four-foot allowance. He stated that the City has asked that he move the fence 10 feet behind the street setback, but he is requesting to replace the fence with a seven-foot fence and put the fence back where the property line is.

Ms. Radney asked Mr. Alphin if they were going to put up a chain-link fence.

Mr. Alphin stated that he either wanted to put a chain-link fence or a nicer fence with art paneling.

Ms. Stauffer asked Mr. Alphin if he has spoken to the neighbors surrounding the property about putting up this fence up.

Mr. Alphin stated that he had not spoken to anyone.

Comments and Questions

Ms. Radney asked city staff if the issue was the fence or the height of the fence.

Mr. Chapman responded that the issue is the height of the fence, because per code they are limited to a four-foot fence allowance.

Mr. Chapman stated that there is a fence currently on the property that looks taller than four feet. He asked the applicant if the fence that is currently at the property is the one that he is trying to get permitted or if he is requesting a different fence.

Mr. Alphin stated that he is trying to build a fence shown by the drawings and is unsure of what Mr. Chapman referred to.

Mr. Chapman asked Mr. Wallace to bring up the slide showing a fence that is already constructed at the property. Mr. Chapman pointed out the fence that is currently at the property, and then asked if he was replacing it.

Mr. Alphin asked if the picture was recently taken, and if so, he had not seen the fence.

Mr. Chapman stated that it is a recent picture.

Mr. Alphin stated that the last time he was there the fence was not there, but maybe the client went ahead and built the fence.

Ms. Radney asked Mr. Alphin if the fence shown in the picture is where they were wanting to build it.

Mr. Alphin stated that the picture shows exactly what they were asking for.

Mr. Barrientos stated that it seemed as though the applicant is requesting for forgiveness, since the fence has already been built.

Ms. Radney stated that she is not opposed to the taller fence but would have preferred that permission was requested rather than forgiveness. She stated that it does not seem that it is intrusive on the neighborhood, and would be inclined to support it as built in the picture.

Board Action:

On **MOTION** of **Stauffer**, the Board voted 3-0-0 (Stauffer, Barrientos, Radney, “ayes”; “nays”; no “abstentions”; Wallace, Bond “absent”) to **APPROVE** a Special Exception to increase the allowed fence height from four feet to seven feet inside the street setback (Sec. 45.080-A) per the conceptual plans shown on pages 1.3 and 1.11 of the agenda packet.

The Board finds that the requested Special Exception 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:

BEG 210S & 14W NEC NE NE NW NW TH W168 S120 E168 N120 POB SEC 14 19 13 .463AC, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

23552 – Jason Goltry

Action Requested:

Variance to reduce the 15-foot side street building setback and 20-foot side street setback for a street-facing garage door on a corner lot in an RS-3 District (Sec. 5.030-A, Table 5-3, Table Note [3]); Variance to reduce the 20-foot rear setback in an RS-3 District (Sec. Sec. 5.030-A, Table 5-3) **Location:** 1117 S. Norfolk Ave. **(CD 4)**

Presentation

Jason Goltry, 1117 S. Norfolk Ave., stated that they are in the process of rebuilding their home, and have run into an issue with the garage doors facing west, and rotating the garage to the north. He stated that the garage is currently detached, but now they are wanting to attach it to their home. He stated that they have met the variance to reduce the 15-foot side street building setback and 20-foot side street setback. He stated that he is unsure why the request is being brought before the board.

Mr. Chapman stated that he spoke with the permit department, and they mentioned to him that a variance is still required, because the measurement is taken from the property line and not the fence line.

Mr. Goltry stated that he is requesting for the house and the garage to be on the same footprint, but just changing the driveway to come off 11th Pl.

Ms. Radney asked if the side street setback is on 11th Pl.

Mr. Goltry stated that it would be, and the driveway will come next to the garage.

Ms. Radney asked what the measurements would be reduced to, in order to meet the zoning code.

Mr. Goltry stated that with a detached garage, a five-foot setback is the requirement from his garage to his neighbor's home on the east. He stated that since they are attaching the garage to their home, a 20-foot setback is now required. Mr. Goltry stated that he believes that the neighbor to the east of their home sent an email in conjunction with this project.

Mr. Chapman clarified that the applicant is requesting relief for a 12-foot and 9.8-foot setback, because per code it is required to be a 15-foot and a 20-foot setback. He stated that the applicant is also requesting relief to reduce the setback for the garage doors being at 18.5 feet rather than a 20-foot setback per code.

Ms. Radney asked the applicant if the home is now in a historic overlay.

Mr. Goltry stated that in January it was classified as a historic overlay.

Ms. Radney asked if all the garages that run south of the property were built before the preexisting code.

Mr. Goltry stated that most of the garages are detached from their homes and built before the code.

Mr. Barrientos asked if the project would meet code if the property was pushed towards the neighbors. He stated that he is trying to find the hardship for the variance.

Mr. Goltry stated that his wife would be able to answer Mr. Barrientos's question.

Carmen Warden, 1117 S. Norfolk Ave., stated that the code requires a 20-foot setback from the adjacent property because it will be attached to their home. She stated that the neighbor has sent an email to Mr. Chapman in support of the project because the garage will not be any closer to his property than it was before. She stated the only thing that they are doing is shifting the entrance to the side street instead of the front of the house. She stated that they will continue to have the same footprint, and what they are requesting is consistent with all the other corner lots in their neighborhood.

Ms. Radney stated that Mr. Barrientos asked the question because with a variance the board must know what the hardship is, being that it is an amendment to the law, and stated that a hardship cannot be self-imposed.

Ms. Warden stated that she does not feel as though a variance is required because their site plan does not accurately reflect the measurements. She stated that she had taken measurements from the back of the sidewalk to the garage, and it was 20 feet. She stated that the only variance in her opinion is the distance between the garage and the adjacent neighbor's garage. She reiterated that their garage will not be any closer to their neighbor's garage as it has been for 100 years.

Mr. Barrientos asked if there are easements on the property.

Ms. Warden stated that there are no easements on the property.

Comments and Questions

Ms. Radney stated that the hardship is notwithstanding, but she is inclined to support the request as it relates to the driveway setback and the 11th Pl. setback.

The board allowed Mr. Jonathan Belzley, 1220 S. Owasso Ave., a neighbor to Ms. Warden, to state his support for the variance. He stated that Mr. and Mrs. Warden have been great stewards of the neighborhood and that the home they are building adheres to the character of the neighborhood.

Ms. Stauffer stated that they are back in discussion.

Ms. Stauffer stated that the hardship is that the footprint of the home was built before the zoning code was established. She stated that doing something that is in character with the neighborhood as well as the same footprint is very reasonable to her. She stated that the applicants having support from their neighbors is compelling. She concluded by stating that most of the corner lots do have the driveway on the other side, which has now set a precedent for the neighborhood. She stated that for all the reasons she described she would be inclined to support it.

Mr. Barrientos stated that he is inclined to support it, he just needed to hear a statement of a hardship, which he feels as though Ms. Warden has convinced him of the hardship.

Board Action:

On **MOTION** of **Stauffer**, the Board voted 3-0-0 (Stauffer, Barrientos, Radney, "ayes"; no "nays"; no "abstentions"; Wallace, Bond "absent") to **APPROVE** a **Variance** to reduce the 15-foot side street building setback and 20-foot side street setback for a street-facing garage door on a corner lot in an RS-3 District (Sec. 5.030-A, Table 5-3, Table Note [3]); **Variance** to reduce the 20-foot rear setback in an RS-3 District (Sec. Sec. 5.030-A, Table 5-3), per the conceptual plans shown on 2.10-2.17 of the agenda packet, finding the hardship to be that the footprint was established before the current zoning code.

In granting the **Variance** the Board finds that the following facts, favorable to the property owner, have been established:

- a. *That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;*
- b. *That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;*
- c. *That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;*

- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;*
- e. That the variance to be granted is the minimum variance that will afford relief;*
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and*
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan.”*

For the following property:

**LT 16 BLK 2, RIDGEWOOD ADDN OF TRACY PARK ADDN CITY OF TULSA, TULSA COUNTY,
STATE OF OKLAHOMA**

23553 – Joe Kesterson

Action Requested:

Variance to allow a roof sign to exceed 500 square feet in area (Sec. 60.080B.5b) **Location:** 505 E. 2nd St. **(CD 1)**

Board Action:

On **MOTION** of **Barrientos**, the Board voted 3-0-0 (Barrientos, Stauffer, Radney, “ayes”; no “nays”; no “abstentions”; Wallace, Bond “absent”) to **Continue** the request for a Variance to allow a roof sign to exceed 500 square feet in area (Sec. 60.080B.5b) to the August 8th meeting, for the following property:

**ALL BLKS 84 & 85 & ALL VAC ALLEYS THEREIN & ALL ST ROW OF FRANKLIN AVE THEREIN
LESS LTS 6 & 7 & N20 LT 5 & LESS W80 LT 1 & W80 N70 LT 2 BLK 85 & LESS ALL LTS 1 -3 & 8 &
VAC ALLEY THEREIN & PRT LTS 4 - 7 BEG NEC LT 1 TH SE300 SW211.39 NW29.34 NE5.80 N,
TULSA ORIGINAL TOWN CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

23555 – Tanner Consulting, LLC

Action Requested:

Variance to reduce the minimum open space requirement from 4,000 square feet to 3,250 square feet in an RS-3 District (Sec. 5.030-A, Table 5-3) **Location:** 12654,12658,12662,12668, and 12702 S. Irvington Ave. (CD 8)

Presentation

Eric Enyart, 5323 S. Lewis Ave., stated that the lots are on the west side of Addison Creek. He stated that they had intentionally planned that all these lots were going on the west line of the subdivision, but there is now a 30-foot-wide ONEOK gas transportation easement that takes up that area. He stated that for the interest of better design, they ended up using the easement as a reserve area, but it ended up shortening the lots. Mr. Enyart stated that the typical lot size in the villa section of the multiple neighborhood development is typically 60x130, but the lots in question are 60x120, which put them at a competitive disadvantage to the other lots. He stated that the hardship is that the lots are at a competitive disadvantage.

Ms. Radney asked if the previous zoning environment placed the lots under the PUD.

Mr. Enyart stated that the lots that were done within a PUD were those done in the first phase of the enclave at Addison Creek. He stated that they used the PUD tool to allow the common open space to be distributed to the lots on an individual basis giving them more flexibility and buildability for the homes.

Ms. Radney asked if the lots are part of the reserve according to page 4.17 of the agenda packet.

Mr. Enyart stated that the lots are part of the reserve, and they are in the villa section.

Mr. Barrientos asked if the other properties on the west lot are facing the same issue.

Mr. Enyart stated that the other properties in the west are not facing this issue, and neither are those on the south of the villa section.

Ms. Stauffer asked Mr. Enyart if he could please restate what the hardship was.

Mr. Enyart stated that because they made the decision to use the 30-foot ONEOK easement as a reserve area for common open space, instead of projecting those lot lines through to the west boundary. It ended up shortening the lots and putting them at a competitive disadvantage with the other lots in the neighborhood. He stated in other words, the other lots are allowed to be built bigger with less open space, and these ones are not.

Comments and Questions

Ms. Stauffer stated that to her knowledge a hardship cannot be financial. She stated that she does not agree with the competitive hardship, but she does understand the easement being a hardship.

Ms. Radney stated that it was self-imposed because the lots can always be built smaller.

Ms. Stauffer stated that she could be convinced that the easement is a hardship and realizes there is plenty of open space, but the competitive hardship does give her pause.

Ms. Radney stated that it is a benefit to the builder to build more space, but not to the homeowners who have a home with a smaller lot. She stated that she agrees that there is a hardship but is unclear whose hardship is in question.

Ms. Radney asked city staff if the purview of the board is to not look at the structure determining the uniqueness, but rather the lot itself. She stated that she wanted to clarify that she is looking at a lot that has nothing built on it, while deciding to allow a variance for something that does not yet exist.

Mr. Chapman stated that she is correct.

Ms. Radney stated that unless the board can agree that there is something structurally unique about the lots in question, the hardship is self-imposed.

Mr. Chapman stated that he met with Mr. Enyart, and the folks at Tanner Consulting had the idea to rezone the lots to RS-4 with a development plan to restrict that. He stated that staff guided them to come before the board to get a variance because staff would not support rezoning the five lots. He stated that the competitive market edge is something that he cannot speak on, but in the terms of the actual lot, it was staff's understanding that they were originally going to be larger. He stated that during the plating and development process, they were shut down because it became a preserve area instead of an easement.

Ms. Radney asked Mr. Chapman if the minimum relief would be given because of it being newly plated, and because of the high-pressure gas line.

Mr. Chapman stated that does seem to be a physical hardship, that is what is unique to the properties.

Board Action:

On **MOTION** of **Barrientos**, the Board voted 3-0-0 (Stauffer, Barrientos, Radney, "ayes"; no "nays"; no "abstentions"; Wallace, Bond "absent") to **APPROVE** a Variance to reduce the minimum open space requirement from 4,000 square feet to 3,250 square feet in the RS-3 District (Sec. 5.030-A, Table 5-3), per the conceptual plans shown on pages 4.12-4.17 of the agenda packet, finding the hardship to be high-pressure gas lines that are on the west side of the five lots.

In granting the **Variance**, the Board finds that the following facts, favorable to the property owner, have been established:

- a. *That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;*
- b. *That literal enforcement of the subject zoning code provision is not necessary to achieve the provision's intended purpose;*
- c. *That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;*
- d. *That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;*
- e. *That the variance to be granted is the minimum variance that will afford relief;*
- f. *That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and*
- g. *That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan."*

For the following property:

Lots 2-6 Block 15, Addison Creek Blocks 10-15, City of Tulsa, Tulsa County, State of Oklahoma

OTHER BUSINESS

NEW BUSINESS

BOARD MEMBER COMMENTS

None.

ADJOURNMENT

There being no further business, the meeting adjourned at 1:59 p.m.

Date approved: _____

Chair: _____

