



City of Broken Arrow

Minutes Board of Adjustment

City Hall
220 S 1st Street
Broken Arrow OK
74012

Chairman Stan Evetts
Vice Chair Randy Cherry
Member Richard Carter
Member Rob Whitlock
Member Steve Knight

Monday, May 13, 2019

Time 5:00 p.m.

Council Chambers

1. Call to Order

Meeting was called to order by Chairman Stan Evetts at 5:00 p.m.

2. Roll Call

Present: 3 - Richard Carter, Randy Cherry, Stan Evetts

Absent: 2 - Steve Knight, Rob Whitlock

3. Consideration of Consent Agenda

Stan Evetts presented this item.

A. 19-564 Approval of Board of Adjustment Meeting Minutes held April 8, 2019

MOTION made by Randy Cherry to approve Agenda Item 3A, 19-524, per Staff recommendations. The motion was seconded by Richard Carter. The motion carried the following vote:

Aye: 3 - Richard Carter, Randy Cherry, Stan Evetts

Absent: 2 - Steve Knight, Rob Whitlock

4. Public Hearings

Jane Wyrick, Planner II, presented Agenda Item 4A.

A. 19-563 Public hearing, consideration, and possible action regarding BOA-721, Lois McCleary Property, 0.30 acres, R-2, request to allow a recreational vehicle to be parked in front of the building line of a single-family residence, located one-third mile east of Elm Place (161st East Avenue), north of Jasper Street (131st Street) at 8202 South Ash Avenue

Jane Wyrick presented the six conditions for variance approval by the Board:

1. There are unique physical circumstances or conditions, such as irregularity, narrowness, or shallowness of lot, or exceptional topographical or other physical conditions peculiar to the affected property;
2. The unusual circumstances or conditions do not exist throughout the neighborhood or district in which the property is located;
3. Such physical circumstances or conditions were not created by the applicant;
4. Because of such physical circumstances or conditions, the property cannot reasonably be developed in conformity with the provisions of this ordinance;
5. The variance, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property; and
6. The variance, if granted, is the minimum variance that will afford relief and is the least modification possible of the provisions of this ordinance that are in question.

Ms. Wyrick demonstrated in the analysis that the six conditions were not met by the applicant and recommended that BOA-721 be denied.

Applicant Lois McCleary, 8202 S Ash Avenue, stated when she had the pre-hearing with Brent Murphy in the Development Services Department last November, he assured her that the Board of Adjustment is a group comprised of friends and neighbors who listen to all the information provided and then decide based on the law. She stated she has a compelling case to present and it will allow the Board to decide in her favor based on the variance policy conditions needed for

approval.

She commented the process has been difficult and is important because she needs to be able to use her mini-motorhome for her work as a professional photographer, and that she would like the Board's assistance to protect her from the bullying she has endured from her neighbor for over a year and a half.

She presented a PowerPoint slideshow (distributed to the Board) demonstrating her reasons for requesting a variance, her unique situation that requires her to use her RV and demonstrated that the variance meets the six criteria for approval.

Ms. McCleary stated that when she purchased her home in Broken Arrow, she relied on the expertise of her real estate agent, who never mentioned anything about potential problems with her RV. She indicated she chose a relaxed neighborhood without a homeowner's association because she did not want that kind of environment, and there was nothing visible in the neighborhood that caused her to question whether she could park her RV in the driveway as she did at her previous home. She requested the variance so that she could park her RV in her driveway.

Applicant's Attorney Deborah Reed, 3101 N Hemlock Circle Suite 112, Broken Arrow, mentioned she practiced in the areas of real property, business, and Indian law. She stated she is currently the secretary of the Real Property Section for the Oklahoma Bar Association, and president of the Cherokee Nation Bar Association. She commented that Ms. McCleary covered the six conditions very well in her presentation and has given the Board valid reasons to grant her request, reasons she thinks adhere to the law.

She stated that the main disagreement between the Development Department and her take on the matter is the physical circumstances or conditions peculiar to the affected property. She indicated that her client has proven that that does not exist everywhere in her neighborhood. She commented that Ms. McCleary was represented by a reputable realtor to ensure that she was buying the property that would be suitable to her purposes, and that the variance will enable her to enjoy the property.

She mentioned that one thing worth pointing out is under Condition #5, where trucks with tonnage are not permitted to park on the streets or the driveways. She explained that her client is requesting a variance for a mini-motorhome and not a truck, and it should not be evaluated as a truck. She commented that she believes that was directed at people who were probably earning their living driving their truck so they did not park their semi on the street in the neighborhood.

She indicated her client presented sufficient reasons that adhere to the law and that the variance can be granted and asked that the Board grant the variance.

The floor was opened for a public hearing.

Mitch McClain, 8104 S Ash Avenue, Broken Arrow stated he lives next door to the applicant.

Tammy Ewing, Assistant City Attorney, interjected that, for the record, she did not allow the applicant to address any issues between Mr. McClain and the applicant, and did not allow the applicant to speak about the conditions of his property, so she was not allowing him to address either of those things either.

Mr. McClain stated that all he is requesting is a copy of the meeting minutes and the attachments that were presented on the screen. He commented that when he purchased his property, he determined that he could build a shop in the rear of the house to store his boats. He noted that he reviewed the easements, built his shop in the rear, and pays taxes on that addition. He asked that the Board makes the right decision.

Debbie Tool, 8102 S Ash Avenue, Broken Arrow, stated that she was unaware that parking a recreational vehicle on a residential property was against the law in Broken Arrow and in Oklahoma as a whole. She explained that the real estate company she spoke with, Coldwell Real Estate, did not know about this law. She wondered how many other real estate professionals in the state were also unaware and remarked that potential buyers should be made aware of this issue. She added that the applicant is a nice neighbor who has a nice house, and it is a shame that Ms. McCleary did not know that this was against state law. She indicated that new homes are built too close together and not far back enough to allow for efficient parking of vehicles.

Stan Evetts closed the public comments.

Richard Carter commented that when he reviewed the subject, he envisioned a house with an RV parked in the driveway and determined that no neighbor would want that. He stated that looking at that the conditions that were explained very ably by the applicant and her attorney,

however, he has had a change of mind and could allow an adjustment on this particular situation.

MOTION made by Richard Carter to approve Agenda Item 4A, 19-563, BOA-721, failed for lack of a second.

Stan Evetts indicated the Board cannot approve the item because he does not believe that the applicant met all six requirements. He agreed with the City that Condition #6, the minimum variance, was met, but that the other five conditions were not met.

MOTION made by Randy Cherry to deny Agenda Item 4A, 19-563, BOA-721. The motion was seconded by Stan Evetts. The motion carried the following vote:

- Aye:** 2 - **Randy Cherry, Stan Evetts**
- Nay:** 1 - **Richard Carter**
- Absent:** 2 - **Steve Knight, Rob Whitlock**

Tammy Ewing clarified that there is a quorum but an action to approve a variance requires a vote of 3 affirmatives; therefore, the variance was not approved by the Board after motion vote and public hearing. She furthered that a variance requires that the Board issue a resolution stating the reasons why the conditions were or were not met. She requested facts to put into the resolution because that would be the document itself that would be filed and subject to appeal.

Randy Cherry stated he does not believe that the unique physical circumstances or conditions are unique to this address, and that there are approximately 38 other lots that Staff reported on that are the same size. He indicated that he believes that the same conditions potentially exist through the neighborhood (Condition #2). He noted the applicant did not create Condition #3 because she did not build the house and does not believe that the condition applies one way or the other. He indicated that there are no physical circumstances or conditions (Condition #4) that are stopping the property from being used with the intent that the property was designed to be used. For Condition #5, he believed that the ordinance is written for the motorhome with a setback past the building line for a reason and if you override that or change that, it would affect the character of the neighborhood. He agreed that granting the variance would be the minimum (Condition #6) that can be done.

Stan Evetts stated that he believes the Staff recommendations are correct, and the item does not meet the criteria for variance approval.

Tammy Ewing stated that this is unusual in the sense that typically there would be a motion to approve and it would be seconded and the Board would be voting on whether or not to approve. She believes the language of the ordinance assumes that, so there was a little bit of a difference because the actual motion that was passed was a motion to deny. She remarked that that does not change in her legal opinion the way that the ordinance reads, especially under Zoning Ordinance Section 6.8, Variances, Subsection B, Procedure, Step 7A-III, which states, “A concurring vote of at least three members of the Board shall be required to grant a variance.” She stated that she has what she needs to draft the resolution. She explained to Ms. Reed, who returned to the floor, that the ordinance on the time to appeal is “goofy,” and what she would like to do is agree that the time for appeal would run from the date the resolution is signed by the chairperson.

Ms. Reed asked if she could receive the resolution on that date and Ms. Ewing agreed. Ms. Ewing clarified it would be 15 days from the date that she sends it to Ms. Reed by e-mail and Ms. Reed stated it is acceptable.

Ms. Reed wanted to clarify that until the applicant’s appeals have been exhausted, the RV stays where it is because she has nowhere to store it.

Ms. Ewing clarified that the Board is not stayed from enforcement until the appeal is perfected and stated the Board would have to review the ordinance to confirm. She further clarified that the stay would have to come from the district court. The Board allowed for 30 calendar days from the date the resolution is sent by e-mail for appeal.

5. General Board Business

None.

6. Remarks, Inquiries, and/or Comments by the Board and/or Staff (No Action)

None.

7. Adjournment

MOTION: by Richard Carter to adjourn at approximately 6:20 p.m. The motion was seconded by Randy Cherry.

Aye: 3 - Richard Carter, Randy Cherry, Stan Evetts

Absent: 2 - Steve Knight, Rob Whitlock

Move to adjourn