



City of Broken Arrow

Minutes Board of Adjustment

City Hall
220 S 1st Street
Broken Arrow OK
74012

Chairman Stanley Evetts
Vice Chairman Randy Cherry
Board Member Steve Knight
Board Member Richard Carter
Board Member Rob Whitlock

Monday, July 8, 2019

Time 5:00 p.m.

Council Chambers

1. Call to Order

Chairman Stanley Evetts called the meeting to order at approximately 5:00 p.m.

2. Roll Call

Present: 4 - Rob Whitlock, Richard Carter, Steve Knight, Stanley Evetts

Absent: 1 - Randy Cherry

3. Consideration of Consent Agenda

A. 19-858 Approval of Board of Adjustment Meeting Minutes held, May 13, 2019

Discussion ensued regarding whether the Board of Adjustment Meeting Minutes from May 13, 2019 could be approved as the majority of current Board Members were not present at the May 13, 2019 BOA Meeting. Assistant City Attorney Tammy Ewing indicated the current Board Members could approve the May 13, 2019 BOA Meeting Minutes as the purpose of the motion to approve the minutes was to accept the minutes into the record.

MOTION: A motion was made by Rob Whitlock, seconded by Steve Knight.

Move to approve the Consent Agenda

The motion carried by the following vote:

Aye: 4 - Rob Whitlock, Richard Carter, Steve Knight, Stanley Evetts

4. Public Hearings

There were no Public Hearings.

5. General Board Business

A. 19-834 Training regarding meeting procedures, authority, roles and responsibilities of Board of Adjustment members, and applicable history, law and procedures

Assistant City Planner Brent Murphy reported the Board of Adjustment was required by State Statute as a part of Zoning Ordinance. He reviewed a law suit, Ambler Realty vs. Euclid, which gave birth to zoning ordinance regulations in 1922. He reported the State of Oklahoma in 1923 adopted regulations which dealt with planning: Oklahoma Statute Title 11 for cities and towns. He noted the Statute indicated a Board of Adjustment consisting of five members who served for three years was required. He noted the Board of Adjustment was subject to the open meeting laws of the State of Oklahoma; all meetings and voting of the Board was required to be open to the public. He reported the Board heard and decided appeals if it was alleged there was error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance, and the Board had the right to grant variances. He explained the variance process was intended to provide limited relief from the requirements of Zoning Ordinance in cases where strict application of a particular requirement would create a practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under the Zoning Ordinance.

Mr. Murphy explained the BOA process which included a pre-development meeting with Staff in which Staff explained the process for submitting an application and the six conditions which must be proven to the Board, as well as provided an indication as to whether or not Staff would be supportive of the request. He reported a request for a variance could only be initiated by the property owner or an authorized representative. He noted the application must state with particularity the relief sought and must specify the facts or circumstances that were alleged to show that the application met the criteria (six conditions) for the Board of Adjustment to grant a variance, following which Staff determined if the application was complete. He indicated after the application was complete, notice was required to be sent and the applicant was required to obtain a list of property owners within 300 feet of the property associated with the application from a title company or an abstract company to be submitted with the application. He stated notice was mailed by Staff to all property owners on the list and published in the newspaper. He displayed an example of Notice.

Mr. Murphy discussed ex parte communications. He explained Board members could not talk about a case outside open public meetings and Board members could not talk about a case prior to the meeting start. He noted Staff did not provide any contact information regarding Board members other than the City email addresses. He stated any outside contact regarding a pending case should be conveyed to Staff prior to the meeting. He indicated Board Members were permitted to visit a site individually; however, should not trespass onto private property or discuss the case with others. Board Member Rob Whitlock stated he understood he could have a conversation with one Board Member; however, that Board Member could not discuss the conversation with another Board Member. Assistant City Attorney Ewing stated this was correct; Board Members could discuss a matter with a single member of the Board. Acting Community Development Director Larry Curtis explained three Members of the Board created a quorum; therefore, it was risky to hold ex parte communications. He recommended the Board err on the side of caution and not discuss matters with Board Members outside of Meetings. Mr. Murphy agreed; it was better for the Board to simply not discuss matters with others outside of the Board Meetings as outside discussions could cause serious difficulties legally. Assistant City Attorney Ewing explained if a Board Member received a communication, such as an email, regarding an issue this did not create a conflict of interest; however, it was best to forward the communication to her and Mr. Curtis. She explained she in turn would share the information with the entire Board to ensure the Board was well informed. She noted it was impossible not to hear about things when you lived in the Community; this did not, in and of itself, cause a conflict of interest. Board Member Steve Knight asked what he should do if an applicant attempted to contact him outside of the legal parameters of an email, such as with a visit to his home. Mr. Curtis responded if this happened the applicant should politely be sent away explaining the matter could not be discussed outside of the public meeting forum with a recommendation for the applicant to contact City Staff with any questions. Assistant City Attorney Ewing recommended Board Members report any such incidents to her and Mr. Curtis.

Board Member Richard Carter asked if applications were forwarded to the Board of Adjustment even if Staff did not feel all six conditions for a variance were met. Mr. Murphy responded in the affirmative; it was the Board's responsibility to determine if an applicant met the conditions. He explained an applicant had the right to present a case regardless of Staff's opinion. He noted Staff expressed its opinion regarding the applicant's case prior to the applicant proceeding with the application process as the process cost approximately \$1,000 dollars in total. Board Member Whitlock asked if applicants often proceeded with the process when Staff expressed the unlikelihood of approval. Mr. Curtis responded Staff did not have the ability to deny an application submittal, only to make recommendations to the applicant and the Board.

Mr. Murphy reviewed the ten steps of the Public Hearing process: 1) The Chairman introduced the case. 2) Staff made a presentation and gave a recommendation. 3) The Applicant made a presentation. 4) Chairman opened the Public Hearing. 5) Interested citizens both in support and in opposition were given an opportunity to speak. He noted interested citizens were required to come to the podium and give a name and address. 6) The Chairman closed the public comment portion of hearing. 7) The Applicant was provided an opportunity to address any questions or to rebut. 8) The BOA reviewed the application materials, considered all testimony and evidence received at the public hearing, and discussed any relevant issues. 9) The Chairman called for a motion and a second (motion could be for approval, denial, or continuance and additional discussion regarding clarification of the motion could occur). 10) The vote was taken. He noted a variance must receive at least three votes in favor of the variance to be approved and Board Members should express reasons for the decision.

Mr. Murphy reviewed the six variance conditions which must be proven to the Board: 1) There were 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 did not exist throughout the neighborhood or district in which the property was located. 3) Such physical circumstances or conditions were not created by the applicant. 4) Because of such physical circumstances or conditions, the property could not reasonably be developed in conformity with the provisions of the Ordinance. 5) The variance, if granted, would not alter the essential character of the neighborhood or district in which the property was located, nor substantially or permanently impair the appropriate use or development of adjacent property. 6) The variance, if granted, was the minimum variance that would afford relief and was the least modification possible of the provisions of the Ordinance in question. Board Member Carter requested a copy of the presented material. Mr. Murphy agreed to forward the material to the Board Members. Discussion ensued regarding proof of variance conditions being subject to personal interpretation by the Board Members.

Assistant City Attorney Ewing reported the Chairman was required to issue a resolution stating the reasons, with supportive facts, why a variance was either approved or denied. She explained the purpose of this resolution and gave examples of reasons and supportive facts.

Mr. Murphy briefly reviewed the Comprehensive Plan. He noted the Comprehensive Plan was in the process of being updated. He displayed and reviewed the Comprehensive Plan map which indicated the zoning levels throughout the City. He explained the purpose of the Comprehensive Plan was to establish a road map for future development, create goals, objectives, and policies, guide development, clarify future land use expectations, and establish future road networks, as well as the utility plan. He noted implementation of the Comprehensive Plan was done through the Zoning Ordinance, Subdivision Regulations and Engineering Design Standards. He stated the Zoning Ordinance was classified in five categories: residential, agricultural, office, commercial, and industrial. He noted Zoning Ordinance identified permitted uses in each zoning classification and included building setback criteria regarding which the BOA was permitted to grant variances. He indicated Zoning Ordinance also contained regulations regarding parking, landscaping, parking lot lighting, sign regulations, access point controls, design requirements, and legal nonconforming uses. He displayed and reviewed a Zoning Map which indicated zoning classifications. He noted he would email the Board Members copies of the above information.

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

Assistant City Attorney Ewing reported, regarding the McCleary case, an appeal to the District Court was made and the City was in the process of appeal.

7. Adjournment

The meeting adjourned at approximately 5:38 p.m.

MOTION: A motion was made by Richard Carter, seconded by Steve Knight.

Move to adjourn

The motion carried by the following vote:

Aye: **4 -** Rob Whitlock, Richard Carter, Steve Knight, Stanley Evetts