



City of Broken Arrow
Meeting Agenda
Board of Adjustment

City of Broken Arrow
Council Chambers
220 S 1st Street
Broken Arrow OK
74012

Chairperson Stanley Evetts
Vice Chair Randy Cherry
Member Steve Knight
Member Richard Carter
Member Robert Whitlock

Monday, January 13, 2020

5:00 PM

Council Chambers

1. Call to Order

2. Roll Call

3. Consideration of Consent Agenda

- A. [20-100](#) Approval of Board of Adjustment Meeting Minutes held, September 23, 2019
- B. [20-101](#) Approval of Board of Adjustment Meeting Minutes held, November 12, 2019

4. Public Hearings

5. General Board Business

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

7. Adjournment

NOTICE:

- 1. IF YOU HAVE A DISABILITY AND NEED ACCOMMODATION IN ORDER TO PARTICIPATE IN THE MEETING, PLEASE CONTACT COMMUNITY DEVELOPMENT AT 918 259 8412 TO MAKE ARRANGEMENTS.**
- 2. EXHIBITS, PETITIONS, PICTURES, ETC. PRESENTED TO THE BOARD OF ADJUSTMENT MAY BE RECEIVED AND DEPOSITED IN CASE FILES TO BE MAINTAINED AT BROKEN ARROW CITY HALL.**
- 3. RINGING/SOUND ON ALL CELL PHONES AND PAGERS MUST BE TURNED OFF DURING THE MEETING.**

Posted on _____ 2019, at _____ am/pm.

CITY CLERK



City of Broken Arrow

Request for Action

File #: 20-100, Version: 1

**Broken Arrow Board of Adjustment
01-13-2020**

To: Chairman and Board Members
From: Development Services Department
Title: Approval of Board of Adjustment Meeting Minutes held, September 23, 2019

Background: Minutes recorded for the Board of Adjustment Meeting of September 23, 2019.

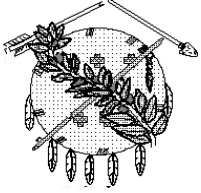
Attachments: Minutes from the September 23, 2019 Meeting

Recommendation: Approve minutes of Board of Adjustment Meeting, September 23, 2019, as presented.

Reviewed By: Jill Ferenc

Approved By: Larry R. Curtis

ALY



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, September 23, 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: 3 - Richard Carter, Randy Cherry, Stanley Evetts
Absent: 2 - Rob Whitlock, Steve Knight

3. Consideration of Consent Agenda

A. 19-1187 Approval of Board of Adjustment Minutes held, July 8, 2019

MOTION: A motion was made by Richard Carter, seconded by Randy Cherry.

Move to approve the Consent Agenda

The motion carried by the following vote:

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

4. Public Hearings

A. 19-1136 **Public hearing, consideration, and possible action regarding BOA (Board of Adjustment) 722, Farabough Homes Property, 0.23 acres, RS 2, request for a variance to allow a reduced rear setback, located one third mile west of Olive Avenue (129th E. Avenue), one quarter mile south of New Orleans Street (101st Street) at 3808 S. Willow Avenue**

Staff Planner Jane Wyrick reported the property associated with BOA 722 was within the Southern Trails Estates subdivision which was annexed into the City of Broken Arrow in 2005 and rezoned to R-2S later the same year. She explained with the 2008 Zoning Code update the R-2S zoning standards were converted to RS-2 which had the same dimensional standards. She stated the property at 3808 S. Willow met the minimum requirements for lot area, frontage, lot coverage, front setback and side setback. She stated the only setback it did not meet was the rear yard setback which, per zoning, was supposed to be 20 feet; as it stood the foundation was at 16 feet. She stated the Board of Adjustment may approve a variance only if it found the following six criteria (conditions) had been met.

She indicated the first criteria requirement was there must be 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. She stated in Staff's Analysis it was determined the property which was the subject of this variance request was platted as Lot 14 Block 5 of Southern Trails Estates. She stated as shown on the recorded plat, the property included 81 feet of lot frontage and was 125 feet deep. She noted there was a 10-foot-wide utility easement along the front of the property, a 15-foot-wide utility easement along the south side boundary, and an 11-foot-wide utility easement along the rear of the property. She reported the home was currently under construction and access to the property was through residential streets in the subdivision. She reported the subdivision (Southern Trails Estates) included 102 lots with lot frontage ranging from 79 feet to 95 feet in width; some of the larger lots tended to be corner lots which required a larger side setback. She noted lot depth in this subdivision ranged from 101.59 feet to 153.14 feet for cul-de-sac lots with the average interior lot depth ranging from 125 feet to 132 feet deep. She stated there was a slight change in grade across this subdivision, but the area topography was relatively flat with the exception of grading that was completed for drainage and detention basins. She stated the lot size and topography of this lot was not irregular when compared to other lots in this subdivision. She explained the existence of a 15-foot-wide utility easement on the south side of the lot may constrain the house width on this lot; however, the request for a variance was from the rear setback requirement of 20 feet. She stated no unique physical circumstances or conditions were found to be peculiar to the affected property.

She stated the second requirement was to find "unusual circumstances or conditions did not exist throughout the neighborhood or district in which the property was located." She reported Southern Trails Estates was approximately seventy (70) percent built out, and this was the only

residence that was identified that did not meet the setback requirements. She noted it was incumbent upon property owners to select a home that would fit on a lot given the zoning requirements. She indicated not only did the other homes meet the zoning requirements, approximately 13 properties had a swimming pool in the back yard as well. She indicated, as noted previously, the lot at 3808 S. Willow Avenue had 81 feet of lot frontage and was 125 feet deep. She stated a comparison of lot frontage and lot depth within Southern Trails Estates showed 11 lots had the same lot frontage and 16 lots had the same lot depth as the property at 3808 S. Willow Avenue; therefore, no unusual circumstances or conditions existed on the property or throughout the neighborhood in which the property was located.

She stated the third requirement was “such physical circumstances or conditions were not created by the applicant.” She indicated the RS-2 zoning required a rear setback of 20 feet. She reported the applicant submitted plans for a building permit with at 16-foot rear setback, and the residential plans examiner inadvertently approved the building permit in error; further, the application for the building permit indicated the total square footage for the ground floor (including garage) was 2,594 square feet. She indicated in researching the Tulsa County Assessor website for information on this property, the assessor’s sketch indicated the square footage for the first floor was 2,771 square feet, and the garage was 828 square feet for a total ground floor square footage of 3,599 square feet. She noted with the second floor living space of 1,205 square feet, the total livable space of this residence was 3,976 square feet and total area with garage was 4,804 square feet. She stated of the homes built in Southern Trails Estates, 27.3 percent were similar in size, approximately 56 percent of homes were smaller, and 16.6 percent of homes were larger. She noted, when considering lot sizes for those built, 47.0 percent of lots were similar in size to Lot 14 Block 5 (10,125 square feet in area), approximately 4.5 percent of lots were smaller, and 48.4 percent were larger than 10,125 square feet in area. She noted, based on these statistics, staff concluded a larger home was planned for a smaller lot in comparison to others in the subdivision. She indicated the condition which existed was created by the applicant in that he submitted plans for and built a home which did not meet the rear yard setback. She noted when the violation was discovered, the applicant was told to stop work on the property; however, Staff drove by the property on August 28, 2019 and discovered construction work was continuing on the property.

Ms. Wyrick stated the fourth requirement was “because of such physical circumstances or conditions, the property could not reasonably be developed in conformity with the provisions of this Ordinance.” She reported approximately fifty (50) homes were built in this subdivision on similar size lots, and they all met the setback requirements. She stated no physical circumstances or conditions of the property were identified which would preclude the property from being reasonably developed in conformity with the provisions of this Ordinance. She stated the request to allow a reduced rear setback exceeded what was permitted by this Ordinance.

Ms. Wyrick indicated the fifth requirement was “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.” She reported the variance, if granted, would not alter the character of the neighborhood, as a whole; however, it may alter the essential character for property owners who immediately abutted the rear yard of this lot.

She noted the sixth requirement was “the variance, if granted, would be the minimum variance which afforded relief and was the least modification possible of the provisions of this Ordinance that were in question.” She reported granting a variance to allow a reduced rear setback for 3808 S. Willow Avenue (Lot 14 Block 5) in Southern Trails Estates was the minimum variance required.

She stated by State Law and by the City of Broken Arrow Zoning Ordinance for a variance to be granted, all six conditions listed above must be met. She reported in Staff’s opinion, the request for a variance to allow a reduced rear setback for a single-family residence at 3808 S. Willow Avenue did not meet the six conditions for the Board to grant a variance. She stated conditions 1 through 4 had not been met, but Conditions 5 and 6 had been met; therefore, Staff recommended BOA 722 be denied.

The applicant, Ryan Farabough, the builder for Farabough Homes, stated his address was 10543 S. 68th E. Place, Tulsa, 74133. He reported this was the first time in his career this had happened. He indicated he took issue with Staff’s finding as he felt granting the variance in this case would be appropriate. He stated his plans were drawn up and presented for approval, were approved, and construction began. He reported the house was designed to fit in a narrow profile as the lot was one of two in the neighborhood which contained substantial easements on both sides. He stated the plat for Southern Trails listed an 11-foot rear easement, 15-foot side easements, and the 10-foot front easement; therefore, the house was designed to fit these specifications. He noted he felt the fact the lot was one of the two most narrow lots in the subdivision it was unique and irregular. He indicated while there were other lots which were 81 feet in width, the buildable size on these lots was 71 feet due to 5-foot side easements. He

noted he believed this satisfied condition 2 as well. He stated another unique circumstance was he submitted these plans to the City Plan Examiner with a clearly labeled 16-foot rear setback. He indicated there was no intent to mislead and the plans were approved; therefore, construction began. He reported the City Officials inspected the footings, plumbing, the in-slab electric, and the slab and all were approved. He noted it was not until the frame inspection, at which point the house was framed, roofed, dried in, and over \$200,000 dollars had been spent on construction, was he informed a 20-foot rear setback was required. He noted he was surprised to hear this. He stated the circumstances were not of his doing; he did not build the house larger or further into the setback than had been approved by the City. He noted he felt condition 3 was met due to these circumstances. He stated as for condition 4, when this discrepancy was brought to his attention, over \$200,000 dollars had been invested in the project, believing everything was in compliance with every regulation, every setback, and every easement. He indicated at this point it would cost well over \$50,000 dollars to reconfigure the house in a way to shave off the last bit of the setback. He displayed a portion of the plans approved by the City which showed only a portion of the master bedroom encroached into the 20-foot setback. He stated if he was forced to cut off this portion of the master bedroom the master bedroom would become extremely narrow, which would decrease the value of the home, and the home would become difficult to sell in the future; therefore, the house would be required to be redesigned in its entirety and all the plumbing, electric, and the slab would require reconfiguration which was cost prohibitive. He displayed a photo of the house and the neighboring home which illustrated while the home extended slightly further out than its neighbor, the home kept with the character of the neighborhood. He displayed a photo of the front of the home. He stated Ms. Wyrick indicated construction continued after the builder was instructed to stop; however, he wished to clarify. He explained he spoke with the inspectors and asked if construction could continue; he was told construction could not continue on the inside and no additional construction was done on the interior of the home; construction only continued on the exterior with installation of the driveway, yard cleanup and painting of the soffit only. He stated he was not ignoring the City's request to stop construction; construction stopped on the interior. He noted he had been waiting close to 60 days, incurring extra time and extra interest costs, waiting to bring this case before the Board of Adjustment. He indicated there was only one property owner who could be negatively affected by approval of this variance: the homeowner to the rear of the property who was present and would speak.

Chairman Evetts opened the public hearing and asked if any wished to speak.

Citizen Mark Romine stated his address was 7778 S. 129th E. Avenue. He stated he was building a house behind this property. He noted he was not opposed to the variance. He indicated the builder would install a privacy fence along the back of the property which satisfied his concerns. He stated he was in favor of the variance.

Citizen Kyle Richeson stated his address was 4111 W. Orlando Place. He stated the neighborhood Homeowner's Association was unopposed to the variance request. He indicated there was no one within the community who was opposed to the variance. He noted he lived on the pond and 95% of the pond lots had very little usable yard space and he did not feel with approval of the variance the home would greatly differ from what was seen throughout the community.

Chairman Evetts asked if the plans were approved by the City and the home passed the first inspections. Community Development Director Larry Curtis responded in the affirmative. He explained when site plans were submitted, the Site Plan Reviewer reviewed the site plan location to determine if it was in conformance with the building setback lines. He reported the Site Plan Reviewer indicated he missed this discrepancy; it was a mistake on the Site Plan Reviewer's side.

Assistant City Attorney Tammy Ewing stated it was important to understand the six conditions (factors) set forth in City Ordinance were different from the conditions set forth in State Statute. She reviewed the differences between State and City factors and encouraged the Board to allow the applicant to address a couple of terms included in State Statute. She reported the Statute was Title 11, Section 44-107, which stated a variance could be granted upon findings by the Board of Adjustment for which: 1) The application of the ordinance to a particular piece of property would create an unnecessary hardship (keyword: unnecessary). She noted the applicant could address what the hardship would be for compliance at this point. 2) Such conditions were peculiar to the particular piece of property involved (the applicant addressed this). 3) Relief if granted would not cause substantial detriment to the public good or impair the purposes and intent of the Ordinance or the Comprehensive Plan. She noted testimony could be given for this. 4) The variance if granted would be the minimum necessary to alleviate the unnecessary hardship. She noted City Staff conceded the variance would be the minimum necessary requirement. She suggested a record should be made as to condition 1, the issue of unnecessary hardship, and condition 3, granting the request would not cause substantial detriment to the public good.

Board Member Randy Cherry asked if when the building plans were approved the approval

indicated the drawing met all codes and the City shared in the liability. Assistant City Attorney Ewing responded in the negative; the City took on no liability for mistakes such as this. Discussion ensued regarding the builder being responsible to understand approval requirements, City inspections most often being the time during which discrepancies were discovered, governmental agencies being immune to many types of lawsuits unless the State Legislature indicated otherwise, and the difference between City Ordinance and State Statute.

Mr. Curtis indicated he could see both sides of this issue, but it was ultimately up to the Board of Adjustment to make a final decision. He agreed the problem was unique to the property, however, whether the problem was created by the applicant or was due to a uniqueness of the site was for the Board of Adjustment to determine. Assistant City Attorney Ewing stated as the attorney it was her responsibility to bring to the attention of the Board the terminology “unnecessary hardship;” however, it was the Board’s responsibility to analyze and consider this term.

Mr. Farabough explained the surrounding neighbors did not feel this variance would create any problems for the neighborhood. He stated the hardship to himself and his company would be overwhelming. He explained if Farabough Homes became liable for a whole house which was halfway constructed and needed to be completely reworked or moved it would be devastating. He noted if an inspector came out to inspect the HVAC and the HVAC did not meet code, most often it was a simple routine fix and the HVAC could easily be brought up to code; however, in this situation the cost associated would be astronomical. He stated the house could not be simply lifted and moved. He indicated the hardship would be devastating to himself and the homeowners and he felt the hardship was unnecessary and undue as the neighbors were not opposed to the variance and it would not change the character of the development. He noted the effect on the community of approving the variance would be a positive effect. He stated if approved he would be able to continue contributing to the growth of the Broken Arrow Community by building more homes. He noted the one individual who could have been negatively affected by the variance was present and in support of the variance.

Board Member Carter asked about the portion of the home which was located within the setback and would need to be reconfigured. Mr. Farabough explained the square footage which was affected was approximately 20 feet by 4 feet (80 sq. feet); however, the trouble was the home was already laid out. He noted if this had been discovered prior to the concrete being poured or prior to the house being built up, the home could have been framed differently and the problem could have been averted. He stated per the neighborhood covenant 3,000 sq. feet were required on the first floor; in order to meet this requirement with the narrow lot the house was required to be longer. He indicated a full redesign of the layout would be required to fix this discrepancy which was impossible at this stage without great expense.

Board Member Cherry displayed an illustration of the floor plan and asked if this was what had been approved by the City. Mr. Farabough responded in the affirmative. Board Member Cherry noted the original floor plan approved called for 2,771 sq. feet, but the home now had 3,599 sq. feet. He asked about the extra 800 sq. feet. Mr. Farabough noted there were many ways to measure square footage: net of interior wall space or gross of the exterior wall space, for example. He stated he believed these numbers were different due to a difference in measuring techniques or possibly the numbers were with and without the garage measurements. Discussion ensued regarding the measurements, the plans which were submitted, and this being a rare case.

Chairman Evetts asked if any others wished to speak.

Citizen Jillian Kelly stated her address was 3812 S. Willow Avenue (next door to this property). She stated this home would be beautiful once completed. She indicated if the variance was not approved it would negatively affect her family due to the prolonged construction. She asked for the variance to be approved so the home could be completed.

Chairman Evetts asked if any others wished to speak; hearing none, he closed the public hearing.

MOTION: A motion was made by Richard Carter, seconded by Stan Evetts.

Move to approve the BOA-722

The motion carried by the following vote:

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

Assistant City Attorney Ewing reviewed the condition factors for this case for the record: She asked if the Board found there were unique physical circumstances or conditions. Chairman Evetts responded in the affirmative; based on the neighborhood covenant in contrast with Ordinance. He stated he believed trying to keep with the neighborhood covenant as well as the City Ordinance created a unique circumstance.

Assistant City Attorney Ewing asked if it was found the unusual circumstances did not exist

throughout the neighborhood. Chairman Evetts responded in the affirmative. He stated meeting the standard of the Ordinance and the neighborhood covenant, as well as the deeper than normal side easements created an unusual circumstance.

Assistant City Attorney Ewing asked if it was found such physical circumstances or conditions were not created by the applicant. Chairman Evetts responded in the affirmative; as the plans were filed and approved, and the plans were designed to meet both Ordinance and covenant, the circumstances were not created by the applicant.

Assistant City Attorney Ewing asked if it was found due to such physical circumstances the property could not be reasonably developed in conformity with the provisions of the Ordinance. Chairman Evetts responded in the affirmative.

Assistant City Attorney Ewing stated conditions 5 and 6 were previously agreed to have been met.

Mr. Curtis asked the applicant to call the City in the morning and the permit would be updated and reopened. Chairman Evetts congratulated the applicant.

Assistant City Attorney Ewing noted City Ordinance did not designate a specific time period allowed to appeal a Board decision; therefore, she was designating a 14-day time limit for appeal. She asked the applicant to be aware of this time period and not continue with unchangeable construction until the 14-day time period was completed. She noted she did not believe there would be an appeal; however, it was important to understand it was a possibility. Mr. Farabough asked if he would be able to get inspections completed during the next 14 days. Mr. Curtis responded in the affirmative; however, it would be at the risk of the builder.

5. General Board Business

A. 19-1254 Consideration, discussion, and possible ratification of 2020 Board of Adjustment meeting schedule

Chairman Evetts noted next on the Agenda was possible approval of the 2020 Board of Adjustment meeting schedule.

MOTION: A motion was made by Randy Cherry, seconded by Richard Carter.

Move to approve the 2020 Board of Adjustment meeting schedule

The motion carried by the following vote:

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

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

Mr. Curtis reported the City Council approved the Comprehensive Plan (Broken Arrow NEXT Plan). He stated the Board would be provided links to digital copies of this Plan. He indicated the new foldout was being created and would be distributed upon completion.

7. Executive Session

Executive Session for the purpose of confidential communications between the Board of Adjustment, the Director of Community Development, the Assistant City Attorney and any other pertinent staff members discussing and conferring on matters pertaining to:

1. Litigation, including potential resolution, of a matter involving the litigation case of In the Matter of the Appeal from the City of Broken Arrow Board of Adjustment, Case BOA 721 by Lois McCleary, Tulsa County District Court Case Number CV 2019 774, under 25 O.S. §307(B)(4).

In the opinion of the City Attorney, the Board of Adjustment is advised that the Executive Session is necessary to process the litigation and that disclosure will seriously impair the ability of the public body to process the litigation in the public interest. After the conclusion of the confidential portion of executive session, the Board will reconvene in open meeting, and the final decision, if any, will be put to a vote.

MOTION: A motion was made by Stan Evetts, seconded by Randy Cherry.

Move to recess and move into Executive Session

The motion carried by the following vote:

Aye: 4 - Rob Whitlock, Richard Carter, Randy Cherry, Stanley Evetts

MOTION: A motion was made by Stan Evetts, seconded by Randy Cherry.

Move to exit Executive Session and enter the regular meeting

The motion carried by the following vote:

Aye: 4 - Rob Whitlock, Richard Carter, Randy Cherry, Stanley Evetts

8. Adjournment

The meeting adjourned following the Executive Session.

MOTION: A motion was made by Stan Evetts, seconded by Randy Cherry.

Move to adjourn

The motion carried by the following vote:

Aye: **4 -** Rob Whitlock, Richard Carter, Randy Cherry, Stanley Evetts



City of Broken Arrow

Request for Action

File #: 20-101, **Version:** 1

**Broken Arrow Board of Adjustment
01-13-2020**

To: Chairman and Board Members
From: Development Services Department
Title: Approval of Board of Adjustment Meeting Minutes held, November 12, 2019

Background: Minutes recorded for the Board of Adjustment Meeting of November 12, 2019.

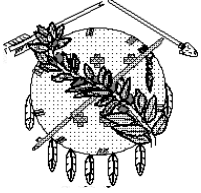
Attachments: Minutes from the November 12, 2019 Meeting

Recommendation: Approve minutes of Board of Adjustment Meeting, November 12, 2019, as presented.

Reviewed By: Jill Ferenc

Approved By: Larry R. Curtis

ALY



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

Tuesday, November 12, 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, Randy Cherry, Stanley Evetts

Absent: 1 - Steve Knight

3. Consideration of Consent Agenda

There was no Consent Agenda.

4. Public Hearings

There were no Public Hearings.

5. General Board Business

A. 19-1254 Consideration, discussion, and possible ratification of 2020 Board of Adjustment meeting schedule

Staff Planner Amanda Yamaguchi explained the previously approved 2020 Board of Adjustment meeting schedule contained the incorrect year of 2019. She stated the new 2020 Board of Adjustment meeting schedule included the correct year (2020) and needed approval.

MOTION: A motion was made by Randy Cherry, seconded by Rob Whitlock.

Move to approve the 2020 Board of Adjustment meeting schedule

The motion carried by the following vote:

Aye: 4 - Rob Whitlock, Richard Carter, Randy Cherry, Stanley Evetts

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

There were no Remarks, Inquiries and/or Comments by the Board and/or Staff.

7. Adjournment

The meeting adjourned at approximately 5:02 p.m.

MOTION: A motion was made by Randy Cherry, seconded by Rob Whitlock.

Move to adjourn

The motion carried by the following vote:

Aye: 4 - Rob Whitlock, Richard Carter, Randy Cherry, Stanley Evetts

Mayor

City Clerk