

**STILLWATER BOARD OF ADJUSTMENT
REGULAR MEETING OF AUGUST 6, 2015
IN ACCORDANCE WITH THE OKLAHOMA OPEN MEETING
LAW, THE AGENDA WAS POSTED August 3, 2015
IN THE MUNICIPAL BUILDING AT 723 SOUTH LEWIS STREET**

Members Present:

Ron Walker
Robert Williams
Josh Marler
Terri Ventress
Trey Lester

Staff Present:

Dennis McGrath, Assistant City Attorney
Aaron Baggarly, Planning Manager
Tom Coots, Planning Assistant
Cindy Gibson, Administrative Coordinator

Members Absent:

Guests:

Mr. Brendan Semrad
Mr. John Whitson
Mr. Bron Cliensmet
Mrs. Mary Ellen Epplin
Mr. Rick Houck
Mr. Josh Tietsort
Mr. Francis Epplin

1. **CALL MEETING TO ORDER.**

Chair Walker calls the meeting to order at 5:30 PM. Chair Walker introduces the board and explains the proceedings for the evening.

Cindy Gibson, Clerk swears in the following:

Mr. Brendan Semrad Mr. Rick Houck Mr. John Whitson Mr. Josh Tietsort
Mr. Bron Cliensmet Mr. Francis Epplin Mrs. Mary Ellen Epplin

2. **BUSINESS ITEMS FOR DISCUSSION AND CONSIDER POSSIBLE ACTION ON:**

- a. Ricky C. and Vickie L. Houck, **SPECIAL EXCEPTION (PZ-15-1992)**, requesting review and approval to extend RSS, Residential Small-lot Single-family zoning where such property is divided by a zoning district line at property addressed as 1711 W. Lakeview Rd., zoned RSS, Residential Small-lot Single-family and CS, Commercial Shopping. **Baggarly**

Tom Coots, Planner I presents staff's report.

Chair Walker asks if there are any questions for staff. Chair Walker asks for confirmation that since this is a special exception then the Board only has to find that the two (2) items have been met; Tom responds yes.

Chair Walker asks if there is any one that wishes to speak in favor of this item.

Mr. Rick Houck, 1711 W. Lakeview comes to speak on the following:

- Approximately a year ago, rezoned the front 1 1/2 acres to commercial for children to build on.
- It was determined that it was financially infeasible.

- Just wants to take all of the property back to original zoning.
- Will answer any questions

Chair Walker asks if there are any questions for the applicant; none respond. Chair Walker asks if there is any one else that wishes to speak in favor of this item; none respond. Chair Walker asks if there is any one that wishes to speak in in opposition of this item; none respond.

Chair Walker asks for staff's recommendation. Tom states that staff finds that this request meets all of the criteria.

Chair Walker asks for Board discussion; none respond.

Mr. Williams moved, Mr. Lester seconded to approve the special exception to extend the RSS, small lot single family residential designation, to the portion of the property, 1.5 acres on the north, due meeting both criteria 1 and 2.

Roll Call:	Walker	Williams	Ventress	Lester	Marler
	Yes	Yes	Yes	Yes	Yes

Time: 8 Minutes

- b. Brendan Semrad, **VARIANCE (PZ-15-1994)**, requesting review and approval of a variance to Section 23.411 (d)(4) of the City Code to allow reduced setbacks for a structure from an active oil well for property addressed as 1115 S Richfield Ct, zoned RSS, Residential Small-lot Single-family. **Coots**

Tom Coots, Planner I presents staff's report.

Chair Walker asks if there are questions for staff.

Chair Walker asks for confirmation that even if the house was moved 20 feet, they would still have to have a variance; Tom acknowledges.

Mr. Lester asks about it reducing the back yard to nothing; Tom responds that it mainly would be reducing the south side.

Mr. Williams ask why the code changed; Tom responds that he does not recall but it was a part of the 2008 Land Development Code adoption.

Discussion is held about the adoption of the oil and gas regulations having changed to be 400 feet from residential structures; the new code allowing the permits to be issued with only a letter from the well operation and distance being 125 feet; has not been operated in many years and probably not a viable well, however, it has not been abandoned; state regulations; and safety issues being located this close to and within a residential neighborhood.

Chair Walker asks if there are any more questions for staff; none respond. Chair Walker asks if there is any one that wishes to speak in favor of this item.

Mr. Brendan Semrad comes to speak on the following:

- Property owner.
- Has received a letter from Heritage Petroleum, who is the current well operator.
- Staff pretty well summed it up.
- Believes that he has met the state requirement.
- Will answer any questions.

Mr. Lester asks if consideration was given to reconfigure the foot print or change house plans to make something else work; Mr. Semrad responds that he believes that this was the best plan for the lot but doesn't think there is much room and there are some home owners' association requirements as well.

Discussion is held regarding the driveway; choosing to face the house to 12th for esthetics; needing to meet HOA requirements; very shallow lot; the small foot print and lot doesn't allow much reconfiguration; moving the driveway to being off of Richfield Court would change the back yard setback; and this will be Mr. Semrad's personal residence.

Chair Walker asks if there is any one that wishes to speak in opposition.

Mrs. Mary Ellen Eplin asks how much space will there be between their south wall and this house's north wall; Mr. Williams responds that it is approximately 30 feet from the back property line and if the variance is approved.

Mr. Williams states that if the variance is not approved then it will be close; Mrs. Eplin states that if this is the case, she is in favor of granting the variance.

Chair Walker closes the public hearing and asks for staff's recommendation. Tom states that the applicant has met criteria 1, 2 and 3 and Board should further review criteria #4.

Mr. Williams states he is in agreement with staff regarding having met 1 thru 3 and #4 believes that the minimum relief necessary is that they can't get outside of the 200 feet to even get five feet; and believes that the variance request of 130 feet is a reasonable request.

Mrs. Ventress expresses agreement.

Mr. Lester moved, Mr. Marler seconded to grant the variance based upon #1 as it would be impossible to build on the land without an adjustment, #2 that it is rare for oil wells to be in city limits of that nature, #3 there are no safety hazards and #4 this is the minimum relief necessary to alleviate this hardship.

Roll Call:	Walker	Williams	Ventress	Lester	Marler
	Yes	Yes	Yes	Yes	YEs

Time: 18 Minutes

- c. OK Stillwater Perkins, LLC, **VARIANCE (PZ-15-1995)**, requesting review and approval of a variance to Sections 23.211; 23.230 (d)(1); and 23.151 (c)(2)(b) of the City Code to allow reduced parking setbacks; reduced landscape and area requirements; and reduced side yard setbacks for property addressed as 2315, 2409, and 2417 N Perkins Rd, zoned CS, Commercial Shopping. **Coots**

Tom Coots, Planner I presents staff's report. Tom advises the board that this request was for five different variances, however, just before the meeting a request was received from the applicant to withdraw request #4 regarding landscape distance requirement. Tom also states that a minor subdivision was received so the layout is a bit different than what is reflected in the packet.

The board and staff discuss the development being subdivided and the percentage of landscaping, on the whole development, meets code requirements but it's the subdividing that code doesn't anticipate.

Chair Walker states that his main concern is the landscaping but wants to hear from the applicant.

Chair Walker asks if there are any questions for staff; none respond. Chair Walker asks if there is any one that wishes to speak in favor of this item.

The following come to speak:

- Mr. Josh Tietsort, Eller-Detrick Law Firm 2727 E. 21st Street-Suite 200, Tulsa, OK.
- Mr. John Whitson, Reality Link Development 1401 Providence Park-Suite 200 Birmingham, AL

The following comments are discussed:

- Assisting with this case and also works for Wal-Mart.
- Believes that staff has addressed a lot of the big picture items.
- Without this variance, the subdivision would not be able to occur.
- Find it is necessary to subdivide, however, shared access easements as well as shared responsibility for tenants and land owners will be in place.
- The subdivision will allow definitive lines of responsibility to be established.
- In regards to the public detriment criteria, the site has been reviewed and approved by staff and there will be no physical change to the site as a result of this variance.
- Willing to commit to whatever is necessary to assure the Board that they will be able to get on the site and take care of any issues.
- The peculiar aspect of this project is that various tracts and assignment of these lots.
- In order to achieve the 9% landscaping requirements for the Wal-Mart sites, some parking would have to be removed.
- Parking is okay in regards to the overall site plan.
- The overall site meets the landscaping requirements.
- The landscaping issue arose solely out of the way it is being subdivided.
- Wal-Mart will have 4.4 acres leased area, roughly, believes its 5 to 6 percent.
- The 3 to 4 percent shortage would work out to approximately 28 parking spaces or ~17,000 square feet.
- The Academy site is actually over the 9 percent just based upon the way the lots are subdivided.
- Discusses the layout of the six lots, detention and outlots.
- When outlots are sold, there will be responsibility that goes along with that lot to maintain certain items, such as landscaping.

- There being one lot that is only for parking and that one is being associated with the Wal-Mart portion of the development.
- Removal of the parking could impact the Academy portion of the development.
- Academy over landscapes and under parks while Wal-Mart over parks and under landscapes, however, the overall site works all because of the lines on the site plan.
- Cross landscaping easement does not exist.
- Reality is that land will be developed and sold.
- The City wanting development that meets their requirements and code.

The Board states that they would need to know what the impact will be if landscaping is reduced; ECR – Easement Code and Restrictions; self-help provisions for not maintaining their landscaping.

Discussion is held regarding how the landscaping is determined based upon area and a point system for certain landscaping items; not maintaining the landscaping then the City can get involved; if the tenant is no longer there then the landscaping responsibility reverts to the land owner; detention cannot count towards fulfillment of landscaping requirements; removal of the ~28 parking spaces will not impact the Wal-Mart parking requirements but it would bring them close to the minimal but brings them short of their internal requirements; future landscaping requirements for the outlots when they potentially sell; creating a requirement that when the outlots are redeveloped, they could be required to meet 9 percent landscaping.

Board recessed at 6:47 for five minutes.

Discussion continues regarding the design of the overall shopping center and the intent of the landscaping and parking to be included as a whole.

Discussion is held regarding ECR (Easements, Covenants & Restrictions) being attached to the tracts as a recorded document; ECRs not expiring but designed to run in perpetuity or if they are legally abandoned; Board expresses concern regarding the two front out parcels, especially the north property; concern about approving the variance and then there being no landscaping on the two front out parcels; Board does not want the out parcels to be completely concrete; applying the variance to this specific site plan; staff states that the property as a whole barely went over the 9% landscaping requirement without the two outlots; the two remaining outlots will be required to meet the landscaping requirements; staff will look at but not review the ECRs to ensure that they exist and contain certain cross access easements.

Board discusses the fact that before the minor subdivision can occur that the variances need to be reviewed and granted; once granted, then staff will review the ECRs to be sure that the cross access easements are included before the minor subdivision can be approved; staff only getting involved with covenants when absolutely necessary to assure that the code is being adhered to; and Board is concerned that if the variance is approved then a property line is changed in the future; making the approval of the variance specific to the point wherein any change in the site plan, which is contained herein specifically referred to as Exhibit “B”, will have to be reviewed by staff again and a potentially another variance would have to be sought.

Chair Walker asks for Board discussion.

Mr. Williams states that he believes that the other variances are acceptable, however, the landscaping is still of concern especially for the out parcels; could support this as long as Board makes sure that the 9% is met as long as the total sum meets for these four out parcels; the Academy and Wal-Mart lots meet their 9%;

out parcels 5 and 6 would have to meet the 9% independently of the other four parcels as presented on the site plan referenced as Exhibit "B" in staff's report.

Chair Walker states that the majority of the questions and concern are in regards to landscaping; believes that the Board has done their due diligence in making sure that everyone understands what is going on and are not lessening the requirement; and does not want to be setting an unacceptable precedent by allowing a reduction in landscaping when subdividing these types of developments.

Mr. Williams asks if their landscaping plan included the area of the two driveways; Tom responds it is included in the development area but cannot confirm if the area is included in their landscaping requirements.

Mr. Lester states he is in agreement as needing more information regarding what lots are or are not included in their landscaping calculations; and interested to see what the lots calculate out to be independently.

Chair Walker comments about being able to make separate motions for each variance request.

Mrs. Ventress states that staff has confirmed that the project, as a whole, meets the requirement of 9%; and is comfortable with making a motion regarding the landscaping as well.

Discussion is continued regarding potential requirement for out parcels 5 and 6 to have to meet the 9% landscaping requirement independent of the other lots; this would assure that the site, overall, would be over 9%; and clarification for the record shows that the undeveloped out parcels are actually Lots 2 and 3.

Chair Walker asks if there is any one that wishes to speak in opposition of this item; none respond. Chair Walker closes the public hearing. Chair Walker asks for staff's recommendation.

Tom presents staff's recommendation which is that the Board review criteria #2 for all of the variance requests as staff finds criteria 1, 3 and 4 have been met for all of the variance requests.

Mr. Williams moved to approve variance requests #1, #2 and #5 based upon staff recommendation as they have met criteria #1, #3 and #4 and criteria #2 being met based upon the sequence of events on the development of this property, Mrs. Ventress seconded.

Roll Call:	Walker	Williams	Ventress	Lester	Marler
	Yes	Yes	Yes	Yes	Yes

Mr. Williams states that he could move to approve lots 1, 2, 5 and 6 are developed as shown and proposed on Exhibit "B" Development Agreement and lots 3 and 4 would have to meet the 9% landscaping requirements independently. Mr. Lester states that lots 1, 2, 5 and 6 should be included in the calculation of the 9% required landscaping currently in City code.

Mr. Dennis McGrath, Assistance City Attorney, states that the Board should think about 60 days or 6 months from now – about whether or not someone down the road could understand what the Board's intent is.

Discussion is held regarding the Board's further concern to assure that the landscaping requirement is met for the lots currently being developed as well as the future development; clarifying that detention is not

included in landscaping calculation but area around the detention could; needing to be specific in their motion; when lots 3 and 4 are developed they will have to meet City code; approving the variance in order to allow the minor subdivision; and if a future development does not match Exhibit "B", they will have to come back before the Board for a variance.

Mr. Lester moved to grant variance request #4 based on criteria 1 being met as this is creating a hardship based upon staff's recommendation, criteria 2 being met based upon the site and timing, criteria 3 being met as it will not cause detriment to the public good based upon staff's recommendation and criteria 4 being met as this is the minimum necessary requirements needed to meet the requirements, this is based on that fact that the site plan included in the packets and referenced as Exhibit "B" showing lots 1,2, 5 and 6 having a total of 9% landscape area, Mrs. Ventress seconded.

Mr. Williams moved to modify the motion stating that criteria 1 being met as this is not creating a hardship based upon staff's recommendation, Mrs. Ventress seconds the amendment.

Chair Walker reads from the report for Criteria 1: The application of the ordinance to this particular piece of property would create an unnecessary hardship. Chair Walker asks for staff's assistance. Tom returns to the podium and reads from the report criteria #1.

Mr. Williams moved to withdrawal the motion to modify, Mrs. Ventress withdrawals the second to modify.

The original motion stands as is not withdrawn.

Roll Call:	Walker	Williams	Ventress	Lester	Marler
	Yes	Yes	Yes	Yes	Yes

Time: 129 Minutes

3. MISCELLANEOUS ITEMS FROM STAFF FOR DISCUSSION AND POSSIBLE ACTION:

- a. Next regular meeting is scheduled for September 10, 2015.

4. ADJOURNMENT

This regular meeting of the Board of Adjustment adjourned with all members in attendance in agreement at approximately 7:47 p.m.

Prepared by – Cindy Gibson, Admin. Coordinator

Approved by: _____

Stillwater Board of Adjustment