

STILLWATER BOARD OF ADJUSTMENT
Regular MEETING OF July 11, 2024
IN ACCORDANCE WITH THE OKLAHOMA OPEN MEETING
LAW, THE AGENDA WAS POSTED July 8, 2024
IN THE MUNICIPAL BUILDING AT 723 SOUTH LEWIS STREET

Members Present:

Jim Rice
Bryan Langford-Loftis
Micah Sexton

Members Absent:

John Houck

Staff Present:

Tammy Ewing, Assistance City Attorney
Jacquelyn Porter, City Planner
Diana Hood, Associate Planner
Cindy Gibson, Admin. Services Manager
Ally Maged, Admin. Assistant
Joshua Brown, Project Manager
Bill Millis, Deputy Director

Guests:

1. CALL MEETING TO ORDER.

Mr. Rice calls the meeting to order at 5:30 PM.

2. BUSINESS ITEMS FOR CONSIDERATION, DISCUSS AND POSSIBLE ACTION ON:

- a. Steuver Holding Company (Justin Steuver), VARIANCE (VAR24-04), requesting review and granting of a variance to Sec.23.138.c.2 for minimum lot width in the Two-Family Residential (RT) district for property addressed as 1205 S. Duck Street

Mr. Rice invites staff forward to present the item.

Jaquelyn Porter presents the item and asks if the board has any questions for staff.

Mr. Sexton clarifies that the city has granted the change in zoning and now the lot meets the minimum square footage and all the other requirements except the width now, and this is similar to quite a number of these we've done in the area. Ms. Porter responds yes because these lots are from the original plat and are really narrow also the footage required for RT zoning doesn't quite add up.

Mr. Langford-Loftis asks why the lot was rezoned to RT. Ms. Porter responds it's because the applicant wanted to build a duplex.

Mr. Langford-Loftis asked if the lot becoming non-compliant was brought up during council and if the lot originally compliant. Ms. Porter responds that it was originally zoned RSS so it was conforming, the applicant wanted to do a duplex for infill in this area, and so requested the rezoning to do two-family which triggered the need for a Variance.

Mr. Langford-Loftis asks if this was brought up during the Council meeting and was it recommended that the applicant file for a variance. Ms. Porter responds the staff told him he would need a variance before applying for the map amendment, City Council knew that the variance would be needed, but it was only triggered once they approved it.

Mr. Rice asks if they should have done the variance first. Ms. Porter explains that they could only get a variance for the current zoning of a lot.

Ms. Sexton clarifies that they didn't need a variance until they got the map amendment; Ms. Porter confirms.

Ms. Langford-Loftis responds that sounds peculiar. Ms. Tammy Ewing, Assistant City Attorney responds it is and believes she might have interpreted the code's text differently, the variance is under section 23-23 of the ordinances in the section titled variances, it states the variances terms, standards and criteria pertain to an allowed use category so it could be interrupted they would usually be asking the board to grant a variance to a use category but a lot size is not necessarily a use.

Ms. Porter responds that the whole section is variances but includes bulk standards as well. Ms. Ewing asks that it says use category within a zoning district. Ms. Porter clarifies that's just the title of the article.

Discussion is held regarding the chapter and article; that article is the uses and bulk standards which fall under variances being all in one.

Ms. Sexton comments its goofy to rezone it when you can't put something on it anyway without the variance and questions why you would do that. Ms. Porter explains that this variance is more of a formality because it would make the lot conforming, he would still build it all the standards as required and so this is clear title if needed in the future.

Mr. Sexton asks if staff understands that from the board's standpoint, they have to meet the legal requirements and it doesn't meet the legal requirements to be able to have a variance, as the owner created hardship is not a hardship that is recognized to allow a variance, and this is basically an owner created hardship. Mr. Rice says, respectfully, it's a City Council created hardship.

Ms. Porter responds yes, but our code doesn't allow for duplexes at all in RSS even with a specific use permit where most cities do, and that the other avenue would have mitigated this issue.

Mr. Langford-Loftis comments it seemed that the legal counsel has arrived at an understanding with the code after review just now; and asks if they could help the board to arrive at a similar understanding and explain what helped them understand the code here.

Ms. Ewing explains that initially looking at the code she did not think the board grant a variance to allow a lot that's not wide enough to be considered in compliance because it's not in use of that lot, but after discussion with Planning staff, the determination was made that the board could grant a variance.

Ms. Porter explains that variances are usually for setback and uses but this does fall under this category in the text. Ms. Ewing says this is more of an academic argument of the structure of the code.

Mr. Langford-Loftis asks if he can be walked through how procedurally they decided to adjust the zoning from RT to RSS knowing that it would create a conflict and was the applicant advised with that understanding that once this is complete, the necessary next step would be to appeal for a variance. Mr. Porter explains that in previous cases City Council has made it a condition of the approval of a map amendment that they would need to get a variance in this case they did not make a variance a condition of approval, but the applicant was advised he would need to do so, therefore, he submitted the rezoning and the variance request at the same time.

Ms. Ewing advises that conversation with City Attorney Carnley, the question was asked whether they could make the variance of condition of the rezoning, and was advised no, as that would be making an amendment to the zoning map so it wouldn't be a condition; and everyone understood that there would need to be a variance.

Ms. Porter responds there have been past cases where they made getting a variance a condition of the map amendment. Ms. Ewing said but either way it sounded like everyone understood a variance would be needed if they approved the map amendment.

Mr. Rice summarizes that the Council considered it, decided that they wanted to do it, duly deliberated and passed it, but they couldn't pass the variance, so they left that down to this board. Ms. Porter said yes, they don't have the power to grant the variance.

Ms. Ewing explains, for council to allow them to build a duplex on this lot they would have to either grant a map amendment or amend the city's zoning code.

Mr. Langford-Loftis clarified if they amended the zoning code that would sweepingly apply. Ms. Ewing said yes, which is not what council chose to do.

Ms. Porter says it was determined by council that this was an appropriate zoning for the projected high density and would help with infill.

Mr. Langford-Loftis asks staff to clarify if the variance is needed because the applicant wishes to build a duplex and that is triggering the variance OR is it because since it is zoned RT and the lot must be a certain dimension. Ms. Ewing confirmed that it is the latter.

Mr. Langford-Loftis asked if that makes it difficult because this is a City Council made issue because now the applicant can't even build a popsicle stand because the lot itself is non-conforming.

Mr. Rice asks if the applicant can still build a single-family house on it. Ms. Porter responds yes; they could do that with a specific use permit.

Mr. Langford-Loftis points out that the lot would still be non-conforming though because the lot itself is non-compliant

Mr. Sexton asks if we denied the variance is he going to have to go back and do a special use permit or ask for zoning back to an RSS. Ms. Porter responds with a specific use permit in RT you can do a duplex for a single-family structure.

Ms. Ewing points out that the lot itself would still not be wide enough. Ms. Porter confirms.

Mr. Langford-Loftis says so the fundamental problem of the lot size remains, and the lot will just sit there with a red flag on it. Ms. Porter shares since the Map Amendment didn't have any conditions, if the variance doesn't go through, the project dies and leaves a non-conforming lot.

Ms. Ewing says but they can still build on it if the building meets the City's standards.

Mr. Langford-Loftis asks what the consequences are then. Ms. Ewing says If somebody really looked at it, and even a title attorney might not catch this, but it could possibly affect the sale of the property down the road; however, she's not certain of this. Ms. Porter responds since it's also close to the original downtown, they're just going to assume its legally non-conforming and not just non-conforming. Mr. Sexton says that the title attorney wouldn't check for it, at the firm he works at, they put a disclaimer that it is up to the purchaser to check zoning and related items.

Ms. Ewing asks if council has approved the map amendment how would this not be a legal non-conforming lot. Ms. Porter responds a lot can only be legally non-conforming prior to the adoption of the current code or by annexation

Mr. Langford Loftis says that this puts them in a tough position. Ms. Ewing asks if there are no consequences, how is there an undue hardship.

Mr. Langford-Loftis says surely there must be consequences that have not foreseen. Ms. Porter states technically, because staff knows about it, they would have to write them up.

Ms. Ewing asks if they could get a building permit if they must write them up. Mr. Porter responds yes, the building permit process does not require they check if the

lot is legal non-conforming or just non-conforming, if this hadn't been brought to current staff's attention anyone reviewing it would think it was legal non-conforming because everything the applicant is proposing in the building aspect is conforming.

Ms. Ewing asks if he wanted to build on the lot in the future to expand or add accessory structures would that be allowed. Ms. Porter responds it would be allowed as long as the structure met the zoning requirements.

Ms. Ewing confirms that is because it's not the use and the structure that's not conforming, it's just the lot; Mr. Porter confirms.

Mr. Langford-Loftis asks if the building permit processes checks if the lot is conforming. Ms. Porter explains that they check but would assume it is legally non-conforming and certain circumstances would require a variance prior to obtaining a building permit.

Mr. Langford-Loftis states older parts of Blackwell experience similar issues; states that he was thinking the board would need to kick this back, but there are so many of these older non-conforming lots that, by denying this one, could create a whole ripple effect.

Mr. Rice asks if there is another duplex two houses down from this one. Ms. Porter responds yes there is actually a whole RT zoning district nearby.

Ms. Ewing says there's a letter in the packet from the applicant explaining that he did something similar close by. Mr. Porter confirms that the plans are attached, and he has some other duplexes in town.

Mr. Langford-Loftis asks if they had to go through a variance request for those. Mr. Porter responds they were done before she was at the city and isn't sure about a variance but the applicant did get another rezoning.

Ms. Ewing says a lot of these older lots are consolidating which is fixing the issue of lot size as they go, so they don't need a variance, they do in this case.

Mr. Rice asks if there are any other questions from the Board; none respond

Mr. Rice opens the public hearing and asks if anyone would like to speak in opposition to the item or anyone who would like to make additional comments; none respond.

Mr. Rise closes the public hearing and invite staff to present criteria and alternatives.

Ms. Porter states that criteria for approval, which are:

1. The application of the ordinance to the particular piece of property would create an unnecessary hardship.

2. Such conditions are peculiar to the particular piece of property involved;
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; and
4. The variance, if granted, would be the minimum necessary to alleviate the unnecessary hardship.

Ms. Porter continues, stating the alternatives:

1. Find that each of the criteria for approval of the request is met. The Board will explain how each criterion is met in order to approve the variance(s).
2. Find that each of the criteria for approval of the request is met by imposing modifications or conditions to ensure that the criteria are met. The Board will explain how the criteria are met to grant partial, conditional, or modified approval of the variance(s).
3. Find that one or more of the criteria for approval of the request is not met and deny the request.
4. Table the discussion to a certain date to allow for additional information to be presented.

Mr. Langford-Loftis asks if any alternatives were presented to the applicant other than these. Ms. Porter responds the criteria is presented to the applicant, but the applicant is responsible for arguing how that criterion is met.

Mr. Sexton asks if they deny this will the applicant go back to RSS and still build a single-family residence. Ms. Porter explains that the applicant would have to apply again to rezone it back to RSS since the variance was not a condition of the rezoning.

Mr. Langford-Loftis says the hardship is created by the way the code is worded. Mr. Rice says this definitely qualifies as a peculiar issue to a piece of property.

Mr. Langford-Loftis moves to approve the criteria as it is peculiar to the piece of property as otherwise the land becomes illegal just by existing which creates a hardship of the land being unusable as well as other possible unforeseen consequences; granting this variance doesn't cause any detriment as the lot could sit unused otherwise; granting this variance is the minimum necessary as opposed to rewriting the code or asking the applicant to re-apply back to another zoning. Mr. Rice seconds.

Mr. Sexton votes no; explaining he does not believe this meets the criteria as although it is the fault of the City Council that it is in front of them now, the applicant knew if he would create a non-conforming lot before he applied for the map amendment, so this hardship is created by the property owner and does not meet the criteria.

Roll Call:	Wiles	Rice	Houck	Langford-Loftis	Sexton
	Absent	Yes	Absent	Yes	No

Time: 39 minutes

The motion fails.

3. Reporters from Officers and Boards

- a. Next regular meeting is Thursday, August 1st, 2024.

4. ADJOURNMENT.

Mr. Langford Loftis moved and Mr. Rice seconds to adjourn the meeting.

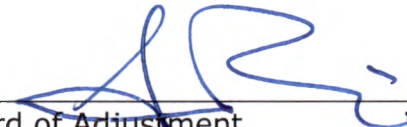
Roll Call:	Wiles	Rice	Houck	Langford-Loftis	Sexton
	Absent	yes	Absent	Yes	Yes

Time: 1 minute

This regular meeting of the Board of Adjustment adjourned at approximately 6:11 p.m.

Prepared by – Alexandria Maged, Administrative Assistant

Reviewed by – Cindy Gibson, Administrative Services Manager

Approved by: 
Stillwater Board of Adjustment