

**MINUTES
REGULAR MEETING OF THE OWOSSO ZONING BOARD OF APPEALS
CITY OF OWOSSO
MAY 16, 2017 AT 9:30 A.M.
CITY COUNCIL CHAMBERS**

CALL TO ORDER: The meeting was called to order by Chairman Randy Horton at 9:30 a.m.

ROLL CALL: Was taken by Tanya Buckelew.

MEMBERS PRESENT: Chairman Randy Horton, Vice-Chairman Christopher Eveleth, Board Members Thomas Taylor and Kent Telesz and Alternate Matt Grubb.

MEMBERS ABSENT: Secretary Daniel Jozwiak, Alternate John Horvath.

OTHERS PRESENT: Ms. Susan Montenegro, Assistant City Manager and Director of Community Development; Julie Wright and Scott Perrin of Perrin Construction, Kay Reynolds of 439 E. Exchange St., Brett Ruess and Lisa Cantu representing RWI.

AGENDA: IT WAS MOVED BY VICE-CHAIRMAN EVELETH AND SUPPORTED BY ALTERNATE MATT GRUBB TO APPROVE THE AGENDA FOR THE MAY 16, 2017 REGULAR MEETING AS PRESENTED.

YEAS: ALL. MOTION CARRIED.

MINUTES: IT WAS MOVED BY VICE-CHAIRMAN EVELETH AND SUPPORTED BY BOARD MEMBER TAYLOR TO APPROVE THE MINUTES OF JANUARY 11, 2017 AS PRESENTED.

YEAS: ALL. MOTION CARRIED.

COMMUNICATIONS:

1. Staff memorandum
2. ZBA minutes from January 11, 2017
3. Variance request application packet – 439 E. Exchange St.
4. Variance request application packet – 705 McMillan
5. Public notice – 439 E. Exchange St.
6. Public notice – 705 McMillan

COMMISSIONER/PUBLIC COMMENTS: None.

PUBLIC HEARINGS:

1. **439 E. EXCHANGE – VARIANCE – (RESOLUTION)**

Board Member Kent Telesz revealed to the commission that he has a conflict of interest and needs to recuse himself from discussion and voting.

MOTION BY VICE-CHAIR EVELETH AND SUPPORTED BY ALTERNATE MATT GRUBB TO ALLOW BOARD MEMBER KENT TELESZ TO RECUSE HIMSELF FROM THE PUBLIC HEARING REGARDING ANY DISCUSSION AND VOTING REGARDING THE VARIANCE REQUEST FOR 439 E. EXCHANGE ST.

YEAS: ALL. MOTION CARRIED.

Ms. Montenegro stated no comments, letters of concern, phone calls, or emails were received regarding the variance request for 439 E. Exchange St.

1. **VARIANCE REQUEST – 439 E. EXCHANGE ST.**

Ms. Montenegro explained the variance request received from the Reynolds who owns 439 E. Exchange St and the 2 additional lots to the east, 213 N. Oak St. and 443 E. Exchange St. The lot at 213 N. Oak St. is small and nonconforming. The Reynolds are seeking to split 439 E. Exchange St. so that 213 N. Oak St. will have additional backyard space. Ms. Montenegro displayed various pictures of the properties,

Approved *minutes 05-16-17*

showing markers of before and after the variance/lot split. This variance request is related both to topography and nonconforming in nature.

The applicants have submitted a variance request from the following section(s) of the Zoning Ordinance: Applicant is seeking to reduce the required rear yard setback from 35' to 26'. Section 38-351 – Schedule limiting height, bulk, density and area by zoning district: R-2 zoning designation states the rear yard setback for this zoning designation is 35'.

Mrs. Kay Reynolds read the following request letter:

We are at a point where we need to sell 439 and 443 E. Exchange Street in Owosso, which have belonged to the family for 42 years and 97 years respectively. They are not occupied.

We are requesting that 213 N. Oak St. where we have lived for 42 years, be able to keep a space 32' x 39' in the northwest part of the back yard and that 439 E. Exchange keep the remaining 26'2" x 39' of space. Each yard will have enough space for a storage shed because there are no garages.

The front yard at 439 E. Exchange is 24' from the house to the sidewalk, plus 20' from the sidewalk to the curb, for a total of 44'. The front yard at 213 N. Oak is 7 ½' from the house to the sidewalk, plus 15' from the sidewalk to the curb, for a total of 22 ½'. Thus, the front yard at 439 E. Exchange is about twice the size of the front yard at 213 N. Oak St.

We would appreciate this variance because our yard at 213 N. Oak is very small on all sides: 8' on the north, 7 ½' on the east, 15' on the south, and 16' on the west. The house is 42' long and 22' wide. Our rear yard setback of 16' is nonconforming.

Leo needs to use a ramp, which some men from Grace Bible Church graciously built for us. The ramp takes 8' from the back yard on the west and leaves 8' of grass. Since we cannot get out of the house much, it would be nice to have more of the back yard for a view of nature from our dining and kitchen windows. The house at 439 E. Exchange does not have a view of the back yard. It would also allow us enough space to continue hosting family picnics occasionally. We will have a survey done so that a privacy fence can be installed.

The underlying issue is control. How would you feel about being too close to lifestyle problems? These would include such things as seeing a neighbor's junk, or smelling smoke, or hearing screaming children, barking dogs, loud music, and vulgar language. It would be nice to put more than 16' of distance between yourself and these types of things. By giving each house a fair amount of space to control their environment, it creates a more peaceful neighborhood.

We respectfully request your approval of this variance request. Thank you for your consideration of this unique situation.

AT THIS TIME, CHAIRMAN HORTON OPENED THE PUBLIC HEARING. NO ONE SPOKE.

UPON MOTION OF VICE-CHAIRMAN EVELETH, SECONDED BY ALTERNATE GRUBB, THE PETITION FOR VARIANCE AS APPLIED FOR IS APPROVED AS ALL OF THE FACTS OF FINDING WERE MET AS WELL AS ALL THREE SPECIAL CONDITIONS AS LISTED BELOW.

- A. This is a request for a use variance subject to Section 38-504(3) of the Zoning Ordinance. The applicant must show that a variance meets ALL of the factors expressed in Section 38-504(3) a. 1-9. in order for the variance to be granted.

Factor 1: (Section 38-504(3) a.1.) "Will not be contrary to the public interest or to the intent and purpose of this chapter."

The Board finds that Section 38-504(3) a.1. has been met.

Factor 2: (Section 38-504(3) a.2.) "Shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a conditional use permit or a temporary use permit is required."

Approved *minutes 05-16-17*

The Board finds that Section 38-504(3) a.2. has been met.

Factor 3: (Section 38-504(3) a.3.) “Is one that is unique and not shared with other property owners.”

The Board finds that Section 38-504(3) a.3. has been met.

Factor 4: (Section 38-504(3) a.4.) “Will relate only to property that is under control of the applicant.”

The Board finds that Section 38-504(3) a.4. has been met.

Factor 5: (Section 38-504(3) a.5.) “Is applicable whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.”

The Board finds that Section 38-504(3) a.5. has been met.

Factor 6: (Section 38-504(3) a.6.) “Was not created by action of the applicant (i.e., that it was not self-created.)

The Board finds that Section 38-504(3) a.6. has been met.

Factor 7: (Section 38-504(3) a.7.) “Will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion of public streets or increase the danger of fire or endanger the public safety.”

The Board finds that Section 38-504(3) a.7. has been met.

Factor 8: (Section 38-504(3) a.8.) “Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.”

The Board finds that Section 38-504(3) a.8. has been met.

Factor 9: (Section 38-504(3) a.9.) “Is applicable whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the area, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.”

The Board finds that Section 38-504(3) a.9. has been met.

B. Special Conditions. When all of the foregoing basic conditions can be satisfied, a variance may be granted when any one (1) of the following special conditions can be clearly demonstrated:

1. “Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this chapter. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.”
2. “Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district.”
3. “Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.”

The Board finds that Section 38-504(3) b.1. has been met.
The Board finds that Section 38-504(3) b.2. has been met.
The Board finds that Section 38-504(3) b.3. has been met.

ROLL CALL VOTE WAS TAKEN:

AYES: VICE-CHAIRMAN EVELETH, ALTERNATE GRUBB, BOARD MEMBER
TAYLOR, CHAIRMAN HORTON.
NAYS: NONE.
RECUSED: BOARD MEMBER TELESZ
ABSENT: BOARD MEMBER JOZWIAK, ALTERNATE HORVATH.

2. 705 MCMILLAN – VARIANCE (RESOLUTION)

Ms. Montenegro stated no comments, letters of concern, phone calls, or emails were received regarding the variance request for 705 McMillan St.

1. VARIANCE REQUEST – 705 MCMILLIAN ST.

Ms. Montenegro explained the variance request received from RWI Manufacturing. The variance request is to allow for an addition to the current existing industrial facility.

Scott Perrin, Perrin Construction, reviewed the site plan with the board members. The proposed addition would double the size of the existing building and add 2 crane bays. Additional parking needs and the re-grade of the retention pond were discussed.

It was also discussed and noted that RWI and Tri Mer have the same owners and own the property to the north and south of 705 McMillan.

The applicants have submitted a variance request from the following section(s) of the Zoning Ordinance: Applicant is seeking to reduce the required rear yard setback from 35' to 15' to allow for the expansion of the current manufacturing facility. Section 38-351 – Schedule limiting height, bulk, density and area by zoning district: I-2 zoning designation states the side yard setback for this zoning designation is 35'.

AT THIS TIME, CHAIRMAN HORTON OPENED THE PUBLIC HEARING.

Board Member Telesz spoke of setting precedent with this variance for other industrial areas within the City. As pertaining to Factor 6 “Was not created by action of the applicant” as Board Member Telesz feels this was created by action of the applicant. As more requests could come forth and this board would potentially have to approve such requests.

Discussion on allowing this exception due to the uniqueness of this situation, as the properties are owned by the same owners.

UPON MOTION OF VICE-CHAIRMAN EVELETH, SECONDED BY BOARD MEMBER TAYLOR, THE PETITION FOR VARIANCE AS APPLIED FOR IS APPROVED AS ALL OF THE FACTS OF FINDING WERE MET AS WELL AS ONE OF THE THREE SPECIAL CONDITIONS AS LISTED BELOW.

- B. This is a request for a use variance subject to Section 38-504(3) of the Zoning Ordinance. The applicant must show that a variance meets ALL of the factors expressed in Section 38-504(3) a. 1-9. in order for the variance to be granted.

Factor 1: (Section 38-504(3) a.1.) “Will not be contrary to the public interest or to the intent and purpose of this chapter.”

The Board finds that Section 38-504(3) a.1. has been met.

Factor 2: (Section 38-504(3) a.2.) “Shall not permit the establishment within a district of any use which is not permitted by right within that zone district, or any use or dimensional variance for which a conditional use permit or a temporary use permit is required.”

The Board finds that Section 38-504(3) a.2. has been met.

Factor 3: (Section 38-504(3) a.3.) “Is one that is unique and not shared with other property owners.”

The Board finds that Section 38-504(3) a.3. has been met.

Factor 4: (Section 38-504(3) a.4.) “Will relate only to property that is under control of the applicant.”

The Board finds that Section 38-504(3) a.4. has been met.

Factor 5: (Section 38-504(3) a.5.) “Is applicable whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.”

The Board finds that Section 38-504(3) a.5. has been met.

Factor 6: (Section 38-504(3) a.6.) “Was not created by action of the applicant (i.e., that it was not self-created.)

The Board finds that Section 38-504(3) a.6. has been met for the following reasons:

Due to the uniqueness of this variance as 705 McMillan and adjacent properties to the north and to the south are mutually owned.

Factor 7: (Section 38-504(3) a.7.) “Will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion of public streets or increase the danger of fire or endanger the public safety.”

The Board finds that Section 38-504(3) a.7. has been met.

Factor 8: (Section 38-504(3) a.8.) “Will not cause a substantial adverse effect upon property values in the immediate vicinity or in the district in which the property of the applicant is located.”

The Board finds that Section 38-504(3) a.8. has been met.

Factor 9: (Section 38-504(3) a.9.) “Is applicable whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the area, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.”

The Board finds that Section 38-504(3) a.9. has been met.

B. Special Conditions. When all of the foregoing basic conditions can be satisfied, a variance may be granted when any one (1) of the following special conditions can be clearly demonstrated:

1. “Where there are practical difficulties or unnecessary hardships which prevent carrying out the strict letter of this chapter. These hardships or difficulties shall not be deemed economic, but shall be evaluated in terms of the use of a particular parcel of land.”
2. “Where there are exceptional or extraordinary circumstances or physical conditions such as narrowness, shallowness, shape, or topography of the

property involved, or to the intended use of the property, that do not generally apply to other property or uses in the same zoning district.”

3. “Where such variation is necessary for the preservation of a substantial property right possessed by other properties in the same zoning district.”

The Board finds that Section 38-504(3) b.2. has been met.

ROLL CALL VOTE WAS TAKEN:

AYES: ALTERNATE GRUBB, BOARD MEMBER TAYLOR, BOARD MEMBER TELESZ, VICE-CHAIRMAN EVELETH, CHAIRMAN HORTON.

NAYS: NONE.

ABSENT: BOARD MEMBER JOZWIAK, ALTERNATE HORVATH.

BUSINESS ITEMS: None

COMMISSIONER/PUBLIC COMMENTS: None.

ADJOURNMENT:

MOTION BY BOARD MEMBER TELESZ AND SUPPORTED BY ALTERNATE GRUBB TO ADJOURN AT 10:20 A.M. UNTIL THE NEXT REGULARLY SCHEDULED MEETING ON TUESDAY, JUNE 20, 2017, IF ANY REQUESTS ARE RECEIVED.

YEAS: ALL. MOTION CARRIED.

Dan Jozwiak, Secretary