

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 631
Tuesday, April 27, 1993, 1:00 p.m.
Francis F. Campbell, City Council Room
Plaza Level of City Hall
Tulsa Civic Center

| MEMBERS PRESENT | MEMBERS ABSENT | STAFF PRESENT | OTHERS PRESENT |
|---|-----------------------|---------------------------|--|
| Bolzle, Chairman Chappelle Doverspike | S. White T. White | Gardner Jones Moore | Jackere, Legal Department Parnell, Code Enforcement |

The notice and agenda of said meeting were posted in the Office of the City Clerk on Friday, April 23, 1993, at 3:44 p.m., as well as in the Reception Area of the INCOG offices.

After declaring a quorum present, Chairman Bolzle called the meeting to order at 1:04 p.m.

MINUTES:

On **MOTION** of **CHAPPELLE**, the Board voted 2-0-1 (Chappelle, Doverspike, "aye"; no "nays"; Bolzle, "abstaining"; S. White, T. White, "absent") to **APPROVE** the Minutes of April 13, 1993 (No. 630).

UNFINISHED BUSINESS

Case No. 16300

Action Requested:

Special exception to permit automobile sales in a CS zoned district - **Section 701. PRINCIPAL USES PERMITTED IN THE COMMERCIAL DISTRICTS** - Use Unit 17, located northeast corner of South 85th East Avenue and East Admiral Place.

Presentation:

The applicant, **James Stephens, Inc.**, 502 South Main Mall, Suite 308, was represented by **Kevin Coutant**, 320 South Boston, who informed that the application is being amended to include additional property, and requested that Case No. 16300 be continued to May 11, 1993.

Protestants:

None.

Board Action:

On **MOTION** of **CHAPPELLE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **CONTINUE** Case No. 16300 to May 11, 1993.

Case No. 16310

Action Requested:

Variance of the maximum square footage permitted for a sign from 365.66 sq ft to 485.66 sq ft to permit a sign - **SECTION 1221.D.3 General Use Conditions for Signs in the CS District - Use Unit 21, located 7030 South Memorial Drive.**

Comments and Questions:

Mr. Jones informed that the application was previously continued to this date to permit further research and, as a result, it was determined that additional relief is required. He suggested that the case be continued to May 11, 1993.

Protestants:

None.

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **CONTINUE** Case No. 16310 to May 11, 1993.

NEW APPLICATIONS

Case No. 16312

Action Requested:

Variance of the required 30' of frontage on a dedicated right-of-way to 0' to permit a lot-split - **Section 206. STREET FRONTAGE REQUIRED** - Use Unit 6, located east of Maybelle and south of 81st Street.

Presentation:

The applicant, **Donny Beeler**, P.O. Box 553, Jenks, Oklahoma, submitted a survey (Exhibit AA-1) and explained that he purchased a 12-acre tract for the purpose of constructing three dwellings for family members. He informed that the property has 40' of frontage and property owners on either side are not amenable to selling additional land for a street (City requires 50').

Comments and Questions:

In response to Mr. Bolzle, the applicant stated that he owns Tracts E, F and D.

In regard to further splitting the lots, Mr. Jones pointed out that approval of the application could set a precedent for additional splits. He added that the proposal is not out of character for the area, but there was no hardship finding.

Case No. 16312 (continued)

Mr. Gardner advised that the total street frontage is 40', and it would be possible to attach 10' handles to each tract, which would provide some frontage for each of the three lots.

Protestants:

Larry Brown, 802 West 81st Street, stated that he was concerned that a business might begin operation on the tract. He pointed out that a nearby property owner, Mr. French, already has a business in the area, which has been a continuing problem. Mr. Brown stated that he is not opposed to the construction of homes on the property.

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **APPROVE** a **Variance** of the required 30' of frontage on a dedicated right-of-way to 13' to permit a lot-split - **Section 206. STREET FRONTAGE REQUIRED** - Use Unit 6; subject to a maximum of three residences on the tract, with each having 13' of frontage on Maybelle; finding that the request is consistent with the surrounding area; on the following described property:

A tract of land in the S/2 of the N 2/3 divided equally as to area, of the N/2, NE/4 of Section 14, T-18-N, R-12-E of the Indian Base and Meridian, Tulsa County, Oklahoma, according to the United States survey thereof, being more particularly described as follows, to-wit:

Commencing at the SW/c of said S/2, N 2/3; thence east on the south line of said S/2, N 2/3 a distance of 180' to the Point of Beginning; thence continuing east on the south line of said S/2, N 2/3 a distance of 1379.28'; thence north parallel to the west line of said S/2, N 2/3 a distance of 442.69' to a point on the north line of said S/2, N 2/3; thence west on the north line of said S/2, N 2/3 a distance of 912.58'; thence south parallel to the west line of said S/2, N 2/3 a distance of 202.07'; thence west parallel to the north line of said S/2, N 2/3, a distance of 646.70' to a point on the west line of said S/2, N 2/3; thence south on said west line a distance of 40.50'; thence east parallel to the south line of said S/2, N 2/3 a distance of 180'; thence south parallel to the west line of said S/2, N 2/3 a distance of 200' to the Point of Beginning, containing 12.02 acres, more or less, City of Tulsa, Tulsa County, Oklahoma.

Case No. 16313

Action Requested:

Special Exception to permit a 7' fence in a required front yard, and a Variance of the required 50' setback from the centerline of East 31st Street to 35' to permit a fence - **Section 210.B.3. Permitted Obstructions in Yards and Section 215. STRUCTURE SETBACK FROM ABUTTING STREETS** - Use Unit 6, located 2531 East 31st Street.

Presentation:

The applicant, **Stan Doyle**, 2531 East 31st Street, submitted a plat (Exhibit A-2), and explained that a fence is proposed to reduce the noise from 31st Street and for security purposes. Mr. Doyle pointed out that there are similar fences in the area. Photographs (Exhibit A-1) were submitted.

Comments and Questions:

In reply to Mr. Doverspike, the applicant informed that the front of the fence will be constructed of brick and concrete panels, with brick trim, and one side will be wrought iron to conform to the neighbor's existing fence. He informed that the fence next door is 7'3". Mr. Doyle stated that he is amenable to the execution of a removal contract.

Mr. Bolzle asked if the fence in question will align with the existing fence next door, and the applicant replied that the new fence will set back approximately 2', but a section of wrought iron will join them at the corner.

Protestants:

None.

Board Action:

On **MOTION** of **CHAPPELLE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **APPROVE** a **Special Exception** to permit a 7' fence in a required front yard, and a Variance of the required 50' setback from the centerline of East 31st Street to 35' to permit a fence - **Section 210.B.3. Permitted Obstructions in Yards and Section 215. STRUCTURE SETBACK FROM ABUTTING STREETS** - Use Unit 6; per survey submitted; subject to the execution of a removal contract; finding that there are similar fences in the area, and that approval of the request will not cause substantial detriment to the public good, or impair the spirit, purposes and intent of the Code; on the following described property:

· Lots 22 and 23, Block 5, South Lewis Park Addition,
City of Tulsa, Tulsa County, Oklahoma.

Case No. 16314

Action Requested:

Special Exception to permit a nursing home in an RS-3 District - **Section 401. PRINCIPAL USES PERMITTED IN THE RESIDENTIAL DISTRICTS** - Use Unit 5, located 2415 West Skelly Drive.

Presentation:

The applicant, **Sherwood Manor**, Box 565, Sallisaw, Oklahoma, was represented by **Jack Rogers**, 106 North McGee, Sallisaw, Oklahoma, who stated that the nursing home property is on the east and west sides of 25th West Avenue. He informed that the existing nursing home has been in operation since 1963, and additional construction is proposed to increase the number of beds from 102 to 112. A plot plan (Exhibit B-2) was submitted.

Comments and Questions:

In response to Mr. Doverspike, Mr. Rogers informed that required parking spaces will be added on the western tract.

Mr. Rogers noted that there is an open grassy area between the proposed parking area and the residential neighborhood to the west. He added that 25th West Avenue is currently used for parking, and a request is being made to vacate that street.

Protestants:

Ronald Patterson, 2516 West 51st Street, submitted a petition (Exhibit B-1) signed by concerned neighbors, and informed that he is the property owner to the west of the proposed construction. He voiced a concern that the nursing home will continue to build on the green area that serves as a buffer between the use and the residential development. He pointed out that the ambulance, shift change and other noise could be a problem if the use is moved closer to the residences.

Additional Comments:

There was discussion concerning additional landscaping for the grassy area between the nursing home and the residences.

Mr. Rogers stated that he is not opposed to reserving the grassy area as a buffer between the two uses.

Interested Parties:

Councilor Darla Hall suggested that additional trees be planted between the residential area and the nursing home, because the new parking area and driveway will be moved closer to the homes.

Case No. 16314 (continued)

Board Action:

On MOTION of DOVERSPIKE, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **APPROVE A Special Exception** to permit a nursing home in an RS-3 District; and **CONTINUE** the remainder of the application to May 25, 1993 - **Section 401. PRINCIPAL USES PERMITTED IN THE RESIDENTIAL DISTRICTS** - Use Unit 5; per plan submitted; subject to the execution of a tie contract; subject to vacation of 25th Street between the two properties; subject to the west 80' of the subject tract being reserved as a landscaped buffer, and the applicant returning for approval of a landscape plan on May 25, 1993; finding the use, per conditions, to be compatible with the area and in harmony with the spirit and intent of the Code; on the following described property:

East 113.5' of that part of the NE/4, NW/4, lying north of the Skelly Drive (being U. S. Highway 66 Bypass) in Section 34, T-19-N, R-12-E of the IBM, City of Tulsa, Tulsa County, Oklahoma.

Case No. 16315

Action Requested:

Special Exception to permit an office (Use Unit 11 and/or Use Unit 5) - **Section 401. PRINCIPAL USES PERMITTED IN THE RESIDENTIAL DISTRICTS** - Use Unit 5/11, located 1432 South Troost.

Presentation:

The applicant, **Charlie Barrett**, 1432 South Troost, was not present.

Comments and Questions:

Mr. Jones informed that he was not successful in an attempt to contact the applicant, but the individual that answered his phone understood that Mr. Barrett thought the meeting would be conducted on Friday. He advised that the Board can strike the item from the agenda, hear the protestants and act on the issue, or continue the case to another date.

Candy Parnell, Code Enforcement, stated that she has been working the case since January. She informed that the applicant was reluctant to apply for Board relief until he was notified that he would be issued a ticket.

Mr. Doverspike asked if an INCOG staff person could have informed the applicant that the meeting was going to be held on Friday, and Mr. Jones replied that he was given a copy of the hearing date when he filed the application.

Case No. 16315 (continued)

Mr. Jackere pointed out that the Board has the power to strike the case if the applicant fails to appear at a scheduled hearing, and court judges follow a similar procedure. He added that Ms. Parnell can issue a ticket for each day the applicant is in violation of the Code.

Board Action:

On **MOTION** of **CHAPPELLE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **STRIKE** Case No. 16315, due to the fact that the applicant failed to appear and was not represented.

Case No. 16316

Action Requested:

Special Exception to permit a dwelling and business in a CH zoned district - **Section 701. PRINCIPAL USES PERMITTED IN THE COMMERCIAL DISTRICTS** - Use Unit 6, located 3015 East 15th Street.

Presentation:

The applicant, **Vien Van Vo**, 3848 North Columbia Avenue, was represented by **Diep Vo**, who requested permission to live in the same building that is used for the sale and servicing of typewriters. A plot plan (Exhibit D-1) was submitted.

Comments and Questions:

In response to Mr. Bolzle, Ms. Vo stated that the structure has previously been used as a residence and is equipped with a kitchen, bathroom and living area.

Mr. Doverspike inquired as to available parking, and Ms. Vo replied that there is a driveway on Florence Avenue that can accommodate three vehicles, and there are eight spaces on 15th Street.

Board Action:

On **MOTION** of **CHAPPELLE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **APPROVE** a **Special Exception** to permit a dwelling and business in a CH zoned district - **Section 701. PRINCIPAL USES PERMITTED IN THE COMMERCIAL DISTRICTS** - Use Unit 6; per plan submitted; finding that there are multiple zoning classifications in the area; and finding that the proposed use will not be detrimental to the neighborhood; on the following described property:

Lots 22, 23 and 24, Block 8, Rosemont Heights Addition to the City of Tulsa, Tulsa County, Oklahoma.

Case No. 16317

Action Requested:

Special Exception to allow a plumbing/heating/air conditioning shop, and auto restoration in a CS zoned district - **Section 701. PRINCIPAL USES PERMITTED IN THE COMMERCIAL DISTRICT** - Use Unit 15 and 17, located 1235 North Sheridan.

Presentation:

The applicant, **Vernon Hester**, PO Box 582544, Tulsa, Oklahoma, informed that he sold the building that previously housed his plumbing business and has relocated. He requested permission to continue his operation at the new location.

Comments and Questions:

Mr. Bolzle asked the applicant to explain his request for auto restoration, and he replied that he restores automobiles as a hobby.

Mr. Doverspike asked Mr. Hester if he is proposing to paint cars and store paint supplies on the property, and he stated that he does most of the body work, but has a friend to do the painting. The applicant added that he might occasionally prime a fender or other parts at this location.

In response to Mr. Doverspike, the applicant stated that he does not intend to sell cars at this location, and will not have outside storage.

Mr. Jones inquired as to the total number of cars that will be on the lot at any given time, and the applicant replied that there will be no more than seven. Mr. Jones pointed out that, if the cars are not sold, a large number could soon accumulate.

Ms. Parnell requested that any approval by the Board require that all automobiles on the property be street operable.

Protestants:

None.

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **APPROVE** a **Special Exception** to allow a plumbing/heating/air conditioning shop, and auto restoration in a CS zoned district - **Section 701. PRINCIPAL USES PERMITTED IN THE COMMERCIAL DISTRICT** - Use Unit 15 and 17; subject to a maximum of 7 vehicles on the property at any given time;

Case No. 16317 (continued)

subject to no automobile storage for third parties; subject to no automobiles being advertised for sale on the property; subject to Health Department approval for any type of painting on the premises; subject to all work being completed inside the building; subject to hours of operation being from 6 a.m. to midnight only; subject to no outside storage of parts or material; and subject to all vehicles stored on the property being street operable; finding that the use, with conditions, will not be detrimental to the area; on the following described property:

W 150' of S 66' of Lot 1, and the W 150' of the N 66' of Lot 2, Block 1, Aviation View Subdivision, City of Tulsa, Tulsa County, Oklahoma.

Case No. 16318

Action Requested:

Variance of the required setback from the centerline of East 21st Street from 110' to 78' to permit the enclosure of an existing playground - **Section 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS** - Use Unit 12, located 11316 East 21st Street.

Presentation:

The applicant, **Kenney Russell**, 10305 South 76th East Avenue, was represented by **Steve Bisogno**, 9812 South Irvington, who submitted a plot plan (Exhibit E-1), and requested permission to enclose an existing playground. He explained that the restaurant previously installed the children's play area, and the existing structure has a roof with open sides, which will be enclosed.

Comments and Questions:

Mr. Doverspike asked if signage is proposed on the playground, and Mr. Bisogno replied that there will be no signs in this area.

Mr. Jones advised that the existing canopy is permitted; however, when the walls are added, the structure becomes a part of the principal building, and the setback variance is required.

Mr. Jackere noted that approval of the variance will permit abutting structures to encroach into the required setback by right.

Mr. Gardner advised that, if inclined to approve the request, the Board must find something unique about the property that would warrant approval of the variance.

Case No. 16318 (continued)

Mr. Doverspike asked if the playground can be relocated to another part of the lot, and Mr. Bisogno replied that this is not possible, due to the location of the existing restaurant and parking lot.

Protestants:

None.

Board Action:

On **MOTION** of **CHAPPELLE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **APPROVE** a **Variance** of the required setback from the centerline of East 21st Street from 110' to 78' to permit the enclosure of an existing playground - **Section 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS** - Use Unit 12; per plan submitted; finding a hardship demonstrated by the fact that a canopy is already in existence, and that relocation of the playground is not possible, because of the existing building and parking lot; on the following described property:

Lot 1, Block 1, Richard Henry, City of Tulsa, Tulsa County, Oklahoma.

Case No. 16319

Action Requested:

Special Exception to permit an 8' fence in a required front yard, and a special exception to permit an accessory building on a lot other than the lot containing the principal use.

Presentation:

The applicant, **Gary Collins**, 1559 South Gillette, informed by letter (Exhibit F-1) that he is no longer in need of the relief requested, and asked that Case No. 16319 be withdrawn.

Board Action:

On **MOTION** of **CHAPPELLE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **WITHDRAW** Case No. 16319, as requested by the applicant.

Case No. 16320

Action Requested:

Special Exception to permit a home occupation beauty shop in an RS-3 zoned district - **Section 402.B.6.b Home Occupations** - Use Unit 13, located 1325 West 39th Street.

Presentation:

The applicant, **Shirley Gilliland**, 1325 West 39th Street, stated that she is proposing to begin operation of a beauty shop in the southeast corner of an existing dwelling.

Comments and Questions:

Mr. Bolzle inquired as to the number of chairs to be installed in the shop, and the applicant stated that there will be one chair.

In reply to Mr. Bolzle, Ms. Gilliland informed that she works at another job during the day, and will be working in the beauty shop during the evening hours, approximately 4 p.m. to 9 p.m., and from 9 a.m. to 6 p.m. on Saturday.

Mr. Doverspike inquired as to available parking, and the applicant stated that the driveway can accommodate four cars.

Protestants:

None.

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **APPROVE** a **Special Exception** to permit a home occupation beauty shop in an RS-3 zoned district - **Section 402.B.6.b Home Occupations** - Use Unit 13; subject to the beauty shop being conducted in the southeast corner of the residence; subject to no employees and one chair only; subject to hours of operation being Monday through Friday, 4 p.m. to 9 p.m., and from 9 a.m. to 6 p.m. on Saturday; subject to all customer parking being confined to the property belonging to the applicant; and subject to Home Occupation Guidelines; finding that the use, per conditions, will be compatible with the area and in harmony with the spirit and intent of the Code; on the following described property:

West 60' of Lot 20, Block 4, Interurban Addition, City of Tulsa, Tulsa County, Oklahoma.

Case No. 16321

Action Requested:

Variance of the lot width from 150' to 92.6', and a variance of lot area from 22,500 sq ft to 17,757 sq ft - **Section 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** - Use Unit 6, located north of NW/c of East 45th Place and South Lewis Avenue.

Presentation:

The applicant, **Douglas Birkbeck**, 1218 East 33rd Street, was represented by **Therese Birkbeck**, who submitted a plot plan (Exhibit G-3), and informed that she purchased the RS-1 lot in 1990, with the intent of splitting the property into two lots, each having approximately one-half acre. Ms. Birkbeck remarked that she has been awaiting the extension of the City sewer to her property, and the new RE zoning classification has imposed a hardship. She informed that it has been determined that the two dwellings will not be detrimental to the subdivision, or create a water run-off problem.

Comments and Questions:

Mr. Doverspike asked Ms. Birkbeck where she received her information concerning the water run-off, and she informed that the City Council made that determination. A letter of support (Exhibit G-1) from **Dwain Midget**, assistant to the Mayor, was submitted.

Mr. Doverspike asked if other homes in this area have direct access to Lewis Avenue, and Ms. Birkbeck answered in the affirmative.

Mr. Gardner advised that, if the Board is supportive of the application, approval would be subject to the availability of City sewer, because the lots would not comply with the half-acre minimum requirement for a septic system.

Interested Parties:

Councilor Darla Hall informed that the applicant has had the property for years, and the change to RE zoning has prevented them from completing their plans to split the lot. Councilor Hall stated that she is supportive of the application.

Mr. Bolzle inquired as to the reason the Birkbeck property was not removed from the RE designation, and Councilor Hall replied that the property was not omitted because spot zoning was not desirable.

Mr. Bolzle stated that variances can only be granted if there is a hardship finding.

Case No. 16321 (continued)

Councilor Hall informed that the change in the ordinance, and the fact that the applicant had been working on the lot-split before the change occurred, is the hardship in this case.

Mr. Gardner informed that the City Council and the TMAPC were concerned that the exclusion of the property from the RE zoning classification would create a small island (spot zoning) of RS-1 zoned property. He stated that they determined that it would be more appropriate to include the tract in the RE zoning and advise the applicant to seek Board of Adjustment relief regarding lot width and lot area.

Mr. Bolzle pointed out that the two proposed lots would not have complied with the minimum average width requirement under the previous RS-1 zoning.

Protestants:

Warren Sparks, 4440 South Lewis Avenue, stated that he owns the lot to the north of the Birkbeck property, and objects to the lot split. Mr. Sparks remarked that the RE zoning classification should prevent the splitting of the large lots, and protect property values in the neighborhood. He advised that a sewer easement across his property was requested by the Birkbecks to bring sewer service to their property.

Rusty Patton informed that he is representing the Edwards, who live to the west of the property in question. He pointed out that the Birkbeck lot and the lot belonging to the Edwards were originally one lot. Mr. Patton explained that, after the property was conveyed to the applicant, it was discovered that lateral lines extend across the boundary line. He informed that litigation ensued concerning this issue, and suggested that the case be continued until a decision is rendered concerning the lateral lines. Mr. Patton pointed out that a hardship has not been demonstrated in this case.

Mr. Jackere advised that the issue concerning the lateral lines has no bearing on the case before the Board at this time.

Case No. 16321 (continued)

Tawny Phillips, 4457 South Zunis, informed that she owns two lots abutting the Birkbeck and Edwards property. She pointed out that water runoff is a serious problem in the area, and it has been monitored by Stormwater Management on numerous occasions. Ms. Phillips pointed out that the applicant has only owned the property for approximately two years, and it was acquired in exchange for fees owed to Ms. Birkbeck. She asked the Board to preserve the character of the neighborhood and deny the request.

Pam Deatherage, District 6 Chairman, stated that she has had numerous phone calls from concerned residents in the area. She informed that **Councilor Dewey Bartlett** has withdrawn his support for the variance (Exhibit G-4). She pointed out that the lot could not have been split under the previous RS-1 zoning classification, without Board approval.

A letter from **Dianna Collins** (Exhibit G-2) was submitted.

Applicant's Rebuttal:

Ms. Birkbeck stated that she intends to live in the dwelling that will be constructed on the rear lot. She pointed out that the septic tank will not be an issue, because the City sewer will eventually serve this area.

Mr. Birkbeck pointed out that his attorney has advised him that the lateral line issue should be resolved soon.

Additional Comments:

Mr. Doverspike remarked that the Board must find a hardship unique to the property before granting a variance request. He pointed out that the pending litigation, previous ownership or hearings by the City Council and TMAPC have no bearing on the application before the Board at this time.

Mr. Bolzle stated that he is unable to find a hardship, because the property can be developed without the lot-split.

Mr. Chappelle advised that he is in agreement with Mr. Doverspike and Mr. Bolzle.

Board Action:

On **MOTION** of **CHAPPELLE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **DENY** a **Variance** of the lot width from 150' to 92.6', and a **Variance** of lot area from 22,500 sq ft to 17,757 sq ft -

Case No. 16321 (continued)

Section 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS - Use Unit 6; finding that the lot can be developed in its current state, and a hardship was not demonstrated that would warrant the granting of the variance requests; on the following described property:

E/2 of Lot 10, Block 1, Bolewood Acres, City of Tulsa, Tulsa County, Oklahoma.

Case No. 16322

Action Requested:

Variance of the required 50' setback from the centerline of East 11th Street to 35' to permit a sign -
Section 215. STRUCTURE SETBACK FROM ABUTTING STREETS - Use Unit 21, located 2508 East 11th Street.

Presentation:

The applicant, **Oklahoma Neon**, 6550 East Independence, was represented by **Terry Howard**, who submitted photographs (Exhibit H-1) and explained that the new sign will be 5' from the property line, which is further back than the existing one. He informed that, if made to comply with the current Code requirement, the sign would be in the parking lot. He pointed out that all signs in this older area encroach into the setback. A plot plan (Exhibit H -2) was submitted.

Protestants:

None.

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **APPROVE** a **Variance** of the required 50' setback from the centerline of East 11th Street to 35' to permit a sign -
Section 215. STRUCTURE SETBACK FROM ABUTTING STREETS - Use Unit 21; per plan submitted; finding that the new sign will actually be further from the centerline of the street than the existing one; and finding that signage in the older area does not comply with required setbacks, and the sign would be in the parking lot if the applicant complied with the current setback requirement; on the following described property:

Lots 8, 9 and 2, Block 2, Amended Tulsa Square, City of Tulsa, Tulsa County, Oklahoma.

Case No. 16323

Action Requested:

Variance of the required 30' front yard to 26', and a variance of the required 5' side yard to 3' - **Section 403 - BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** - Use Unit 6, located 3818 South Wheeling Avenue.

Presentation:

The applicant, **Roger Bentz**, 3815 South Wheeling, was represented by **Mike Dwyer**, 201 West 5th Street, who informed that his client's proposed garage will encroach approximately 4½' into the front yard setback, and 2' into the required side yard. He pointed out that the lot is more narrow in the rear than at the front of the dwelling. A plot plan (Exhibit J-3) was submitted.

Comments and Questions:

In response to Mr. Doverspike, Mr. Dwyer stated that there is no other location on the lot that would be suitable for a garage.

Protestants:

Bruce Thompson, 3814 South Wheeling, stated that he owns property to the north of the subject tract. He submitted photographs (Exhibit J-1) and letters (Exhibit J-2) of opposition to the request, and noted that other garages in the neighborhood comply with the setback requirement. He further noted that the construction of the proposed addition on the side of the dwelling will disturb the roots of a large tree located on the boundary line.

Additional Comments:

Mr. Gardner asked Mr. Thompson if his house aligns with the subject dwelling, and he answered in the affirmative. He pointed out that, although the variance is for 4', the actual structure will extend 14' beyond the present dwelling.

In response to Mr. Doverspike, Mr. Thompson stated that the structure would extend approximately 5' further toward the street than other houses in the neighborhood.

Applicant's Rebuttal:

Mr. Dwyer pointed out that the dwellings at this location do not have uniform visual setbacks because of the curvature of the street.

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **DENY** a **Variance** of the required 30' front yard to 26', and a **Variance** of the required 5' side yard to 3' - **Section 403**

Case No. 16323 (continued)

- **BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS**
- Use Unit 6; finding that the applicant failed to demonstrate a hardship that would warrant the granting of the request; and finding that approval of the variances would be detrimental to the neighborhood, and would violate the spirit and intent of the Code; on the following described property:

Lot 10, Block 14, Amended Plat of Blocks 1, 2, 3, 11 and 12, Highland Park Estates, City of Tulsa, Tulsa County, Oklahoma.

Case No. 16324

Action Requested:

Special Exception to allow a fruit stand in an AG zoned district for 150 days for three consecutive years - **Section 301. PRINCIPAL USES PERMITTED IN THE AGRICULTURE DISTRICTS** - Use Unit 2, located 9220 South Delaware Avenue.

Presentation:

The applicant, **Mike McLearn**, 9220 South Delaware, was represented by **Roy Johnsen**, 201 West 5th Street, who explained that his client has previously operated a fruit stand at the above stated location, and is requesting permission to continue the use during a 150-day period for three years. Mr. Johnsen pointed out that the surrounding property is rural in nature, and requested that the use be approved and the remainder of the application be continued to allow sufficient time to determine if additional setback relief is needed for the existing concrete slab.

Interested Parties:

Matthew Schumacher, 110 North 3rd Street, Muskogee, Oklahoma, stated that he is counsel for the property owner, and that **Eddie McLearn** is leasing the tract in question. He advised that the **Mr. McLearn's** lease terminates February 27, 1994, and noted that a portion of the frontage property will be condemned for proposed road construction.

Mr. Jackere pointed out that **Mr. McLearn** is requesting a use for a period of time that extends beyond the lease agreement. He asked **Mr. Schumacher** if his client is opposed to this type of agreement, and he replied that they are agreeable to the three-year approval.

Additional Comments:

Mr. Doverspike asked if Christmas trees sales at this location continue to have an annual review by the Board, and **Mr. Jackere** advised that the approval is for 150 days

Case No. 16324 (continued)

each year, with 120 being devoted to fruit sales and the balance of the time devoted to Christmas tree sales.

Mr. Doverspike remarked that the area is in transition; however, it will probably be at least three years before a development pattern is evident.

Protestants:

None.

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **APPROVE** a **Special Exception** to allow a fruit stand in an AG zoned district for 150 days for three consecutive years (1993, 1994 and 1995); and to **CONTINUE** the balance of the application for additional relief if needed - **Section 301. PRINCIPAL USES PERMITTED IN THE AGRICULTURE DISTRICTS** - Use Unit 2; finding the use to be compatible with the surrounding area, and in harmony with the spirit and intent of the Code; on the following described property:

S/2 of East 20 acres of Government Lot 1, less the east 50' x north 290' and 30' x south 370' thereof, Section 20, T-18-N, R-13-E, City of Tulsa, Tulsa County, Oklahoma.

Case No. 16325

Action Requested:

Special Exception to permit a fruit stand in an CS zoned district for 150 days for three consecutive years - **Section 701. PRINCIPAL USES PERMITTED IN THE COMMERCIAL DISTRICTS** - Use Unit 2, located 8104 South Sheridan.

Presentation:

The applicant, **Mike McLearn**, 9220 South Delaware, was represented by **Roy Johnsen**, 201 West 5th Street, who explained that a fruit stand has previously been in operation at this location for approximately 5 years, and requested permission to continue the use during a 150-day period for three years. He asked that the remainder of the application be continued to allow sufficient time to determine if additional setback relief is needed for the existing concrete slab.

Case No. 16325 (continued)

Comments and Questions:

Ms. Parnell asked if the U-Haul truck leasing business will be discontinued at this location, and Mr. McLearn informed that it has already been discontinued and the trucks have been removed.

Mr. Doverspike asked if Christmas trees sales at this location continue to have an annual review by the Board, and Mr. Jackere advised that the approval is for 150 days each year, with 120 being devoted to fruit sales and the balance of the time devoted to Christmas tree sales

Mr. Doverspike stated that the proposed use is in a development area and yearly review would be appropriate.

Protestants:

None.

Board Action:

On MOTION of DOVERSPIKE, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **APPROVE** a **Special Exception** to permit a fruit stand in an CS zoned district for 150 days for one year only (1993); and to **CONTINUE** the balance of the application if needed for additional relief - **Section 701. PRINCIPAL USES PERMITTED IN THE COMMERCIAL DISTRICTS - Use Unit 2;** finding that the temporary use will not be detrimental to the area; on the following described property:

Lots 1 and 2, Block 1, Lucenta Addition, City of Tulsa, Tulsa County, Oklahoma.

Case No. 16326

Action Requested:

Special exception to permit an outside tent fruit stand in a CS zoned district for 150 days for three consecutive years - **Section 701. PRINCIPAL USES PERMITTED IN THE COMMERCIAL DISTRICTS - Use Unit 2, located 10926 East 21st Street.**

Presentation:

The applicant, **Richard L. Jones**, 309 East 5th, Skiatook, Oklahoma, was represented by **Roy Johnsen**, 201 West 5th Street, who explained that a fruit stand has previously been in operation at this location for several years, and requested permission to continue the use during a 150-day period for three years. He asked that the remainder of the application be continued to allow sufficient time to determine if additional setback relief is needed for the existing concrete slab.

Case No. 16326 (continued)

Protestants:

None.

Board Action:

On **MOTION** of **CHAPPELLE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **APPROVE** a **Special exception** to permit an outside tent fruit stand in a CS zoned district for 150 days for three consecutive years (1993, 1994 and 1995); and to **CONTINUE** the balance of the application if needed for additional relief - **Section 701. PRINCIPAL USES PERMITTED IN THE COMMERCIAL DISTRICTS** - Use Unit 2; finding that the use has been at the current location for several years, and has proved to be compatible with the surrounding uses; on the following described property:

A tract of land beginning at the NW/c of Lot 3, Block 1, Amended Plat of Garnett Acres Addition, thence east 80', south 250', west 80', north 250' to the POB, City of Tulsa, Tulsa County, Oklahoma.

Case No. 16327

Action Requested:

Appeal the decision of the administrative official that the proposed addition is not to the primary home structure and is not one story, or in the alternative a variance of the maximum height for a single family residence to permit an addition - **Section 1605. APPEALS FROM AN ADMINISTRATIVE OFFICIAL and SECTION 210.B.5. YARDS**, located at 2677 East 38th Street.

Presentation:

The applicant, **Darwin Smith, Jr.**, 4929 East 16th Street, was represented by **John Moody**, who submitted a packet (Exhibit L-4) containing height requirements, a site plan, photos and portions of the Zoning Code pertaining to the case. He informed that the 12' by 12' observation deck complies with Section 210.B.5 of the Zoning Code, because it is a detached accessory building, does not exceed one story in height and is not located within 3' of the lot line. Mr. Moody noted that the structure complies with the 35' height limitation, and does not have rooms or a roof, but has Masonite siding encircling the stairway which leads to the deck. He pointed out that the structure abuts the tennis court and is used to observe tennis matches, sunsets, etc. Mr. Moody informed that the Zoning Code defines a "story" as being a room or set of rooms on one floor level of a building. He pointed out that his client did not obtain a building permit, because he determined that the structure would be

Case No. 16327 (continued)

similar to a tree house or a type of accessory deck. Mr. Moody stated that his client is amenable to making any modifications to the deck that might be imposed by the Board. A letter to the mayor (Exhibit L-3), records from the zoning official (Exhibit L-1) and a letter of support (Exhibit L-5) were submitted.

Comments and Questions:

In response to Mr. Jackere, Mr. Moody informed that the observation deck is not located in the required rear yard.

Protestants:

Paul Prather submitted photographs (Exhibit L-2) and informed that he is counsel for Mr. and Mrs Frederick Dorwart, 2668 East 37th Street. He pointed out that the structure in question appears to be a three-story building, and is not a customary accessory use in a residential neighborhood. Mr. Prather stated that the structure resembles a guard shack, which might be found near a prison. He informed that his clients are concerned with the adverse impact the structure would have on property values in the area, and are opposed to a 30' tower overlooking neighborhood yards.

Bob Hensley, 2672 East 37th Street, informed that the rear of his lot abuts the rear of the applicant's lot. He submitted additional photographs (L-2) taken from his back yard, and asked that the Board deny the application.

Applicant's Rebuttal:

Mr. Moody pointed out that the siding can be removed from the structure if necessary. He informed that, based on aerial photographs, the distance from the Dorwart house to the observation deck is 320', and the Hensleys live 325' away.

Additional Comments:

Mr. Gardner advised that Mr. Moody has stated that the structure is less than 35' in height, and the only issue before the Board is whether or not the observation deck is a customary accessory structure.

In response to Mr. Bolzle's question concerning privacy, Mr. Jackere pointed out that a 35' house could be constructed on the property by right.

After discussion, it was the consensus of the Board that the observation structure is not a customary residential accessory use.

Case No. 16327 (continued)

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **UPHOLD** the decision of the administrative official; and to **DENY** the appeal; finding that the proposed addition is not a part of the primary residence; and finding that, although the observation deck does not exceed the 35' height limitation, it is not a customary accessory residential use - **Section 1605. APPEALS FROM AN ADMINISTRATIVE OFFICIAL and SECTION 210.B.5. YARDS;** on the following described property:

Lot 11, Block 2, Oakview Estates, Beginning at the SW/c thence E 165', N 169', N 59°42', W 33', N 12°16', W 100', N 7°, E 19', N 15° 49', W 68.75' to NL W 101', S 370' to beginning, City of Tulsa, Tulsa County, Oklahoma.

Case No. 16328

Action Requested:

Special Exception to allow for off street parking in an RM-2 District - **Section 401. PRINCIPAL USES PERMITTED IN THE RESIDENTIAL DISTRICTS** - Use Unit 10, located 1432 South Rockford Avenue.

Presentation:

The applicant, **Kenprop**, 1408 South Harvard, was represented by **Nancy Gomez**, president of Chimi's Mexican Restaurant, who informed that she is proposing to purchase the residential lot in question to expand the restaurant parking area. A photograph and location map were submitted (Exhibit N-1).

Comments and Questions:

Mr. Doverspike asked if the property to the north of the proposed lot is residential, and Ms. Gomez answered in the affirmative.

In response to Mr. Doverspike's question concerning a buffer, Ms. Gomez informed that she will comply with any Board requirements that are imposed.

Ms. Gomez pointed out that the lot was approved for parking in 1989, but she and the owner could not come to an agreement on the cost for surfacing, and the approval period has lapsed.

Mr. Gardner asked if there is a building on the property, and Ms. Gomez replied that the lot is vacant.

Case No. 16328 (continued)

In response to Mr. Bolzle, Ms. Gomez informed that there is a curb cut on Rockford, and the lot will accommodate approximately 40 cars.

Protestants:

Steven Walter, 1428 South Rockford, stated that he lives directly to the north of the property in question, and is opposed to the application. He informed that Chimi's closes at 11 p.m. and the employees currently create a lot of noise on a lot 100' from his residence. He pointed out that the proposed parking lot will only be 5' from his bedroom window. Mr. Walter stated that property values in the neighborhood will be adversely impacted by the parking lot.

Applicant's Rebuttal:

Ms. Gomez stated that she is proposing to cover the lot with a hard surface material and install screening.

Mr. Jackere advised that a landscaped buffer, along with the screening fence, might lessen the noise and the negative impact on the property to the north.

Mr. Gardner suggested that, if inclined to approve the request, the Board could require a screening fence and a landscaped buffer along the north boundary.

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **APPROVE Special Exception** to allow for off-street parking in an RM-2 District; and **CONTINUE** the remainder of the application for review of a landscaping plan - **Section 401. PRINCIPAL USES PERMITTED IN THE RESIDENTIAL DISTRICTS** - Use Unit 10; subject to the applicant returning to the Board for approval of a detail landscape plan along the north boundary abutting the residence; subject to a 6' screening fence along the north boundary line; subject to the lot being covered with a hard surface material; subject to all lighting being directed away from the residential neighborhood and subject to Stormwater Management approval; finding that there are numerous parking lots and multiple zoning classifications in the surrounding area; and finding that approval of the request will not be detrimental to the neighborhood or violate the spirit and intent of the Code; on the following described property:

Lots 8 and 9, Block 6, Bellview Addition, City of Tulsa, Tulsa County, Oklahoma.

Case No. 16329

Action Requested:

Special Exception to permit automobile sales in a CS zoned district - **Section 701. PRINCIPAL USES PERMITTED IN THE COMMERCIAL DISTRICTS** - Use Unit 17, located 11339 East 11th Street.

Presentation:

The applicant, **Douglas Gibson**, 3615 South 213th East Avenue, was represented by Ms. Gibson, who requested permission to operate a used car business on the subject property. She informed that the building on the lot has been vacant for a long period of time. Photographs (Exhibit M-2) and a plot plan (Exhibit M-1) were submitted.

Comments and Questions:

Mr. Doverspike asked if all vehicles on the lot will be street operable, and the applicant answered in the affirmative. Ms. Gibson informed that the days and hours of operation will be Monday through Saturday, 10 a.m. to 8 p.m., and there will be no more than 25 vehicles on the lot at any given time.

Protestants:

None

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **APPROVE** a **Special Exception** to permit automobile sales in a CS zoned district - **Section 701. PRINCIPAL USES PERMITTED IN THE COMMERCIAL DISTRICTS** - Use Unit 17; per plot plan submitted; subject to no outside storage of materials or parts; subject to days and hours of operation being Monday through Saturday, 10 a.m. to 8 p.m.; a maximum of 25 automobiles and subject to all vehicles on the premises being street operable; finding that there are similar uses in the area, and approval of the special exception will not be detrimental to the surrounding uses, or violate the spirit and intent of the Code; on the following described property:

A part of the SW/4 SW/4 of Section 5, T-19-N, R-14-E, of the IBM, Tulsa County, Oklahoma, being described as follows to-wit: Commencing at the SW/c of said Section 5, thence S89°46'00" E along the south line of said Section 5, a distance of 518.00', thence N 0°22'00" E a distance of 80.00' to the POB, said point being on the north right-of-way line of East 11th St. S., said point also being the southerly most SE/c of Lot 1, Block 1, Crossroads

Case No. 16329 (continued)

Mall Addition, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof, thence N0°22'00" E along the East line of said Lot 1, Block 1, Crossroads Mall Addition, a distance of 126.15', thence S80°46'00" E a distance of 157.00', thence S 0°22'00" W a distance of 126.15' to a point, said point being on the north right-of-way line of East 11th Street South, thence N 89°46'00" W along said right-of-way line, a distance of 157.50' to the Point of Beginning, City of Tulsa, Tulsa County, Oklahoma.

Case No. 16330

Action Requested:

Variance of the required 40' setback from the centerline of East 22nd Street to permit the construction of a carport - **Section 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** - Use Unit 8, located 2202 South Boston.

Comments and Questions:

Mr. Jones informed that the applicant, **Edward Kerker**, 2202 South Boston, has requested that Case No. 16330 be withdrawn. He informed that the application was withdrawn prior to processing and suggested that the \$180.00 filing fee be refunded.

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent" to **WITHDRAW** Case No. 16330, as requested by the applicant.

OTHER BUSINESS

Amend Statement of Policy on Minor Variances and Special Exceptions

Comments and Questions:

Mr. Gardner advised that No. 1 has been amended and items No. 7 and No. 8 have been added, as a result of two Zoning Code Amendments.

Board Action:

On **MOTION** of **CHAPPELLE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **APPROVE** the Statement of Policy on Minor Variances and Special Exceptions, as amended.

Case No. 16311 - Mike McLearnan - Request refund of fees.

Comments and Questions:

Ms. Parnell informed that the application was taken in error.

Mr. Gardner advised that the application was withdrawn prior to processing and suggested that fees in the amount of \$205.00 be refunded.

Board Action:

On **MOTION** of **CHAPPELLE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **REFUND** application fees in the amount of \$205.00, finding that the application was withdrawn prior to processing.

Mr. Gardner informed that Mr. McLearnan has voiced a complaint because of the fact that the Building Inspections Department would not allow him to apply for a permit in February to begin operation of his fruit stand in May; however, other similar businesses were issued permits. Mr. Gardner stated that Mr. McLearnan contends that he should have been issued a permit without Board relief and has asked that these application fees be refunded. He advised that, if the Board is inclined to refund the fees, the item could be listed on the next agenda.

Mike McLearnan stated that he attended all meetings regarding the regulation of fruit stands, and thought that he understood the process; however, when he attempted to acquire a permit in February, which would stipulate an opening date of May 1, 1993, he was told that he could not get a permit in advance. He pointed out that he later found that his competition had filed for their permit in January, specifying that the opening date would be May 1, 1993. Mr. McLearnan stated that it is his opinion that a portion of his Board of Adjustment filing fees should be refunded.

Mr. Gardner informed that there was a period of time, before the new tent ordinance was adopted, that the applicant could have been issued permits to begin operation in May; however, he was told that he would not be allowed to file early. He pointed out that Mr. McLearnan's competition was issued a permit, but he was forced to file a Board application.

Mr. Jackere advised that this is a confusing issue, and that he could not support the refund of fees without hearing from all individuals involved.

Case No. 16311 (continued)

It was the consensus of the Board that they have no jurisdiction over the permit department, and this is an issue that they should not consider.

Case No. 16330 - Edward Kerker - Request refund of fees.

Comments and Questions:

Mr. Jones informed that the application was withdrawn prior to processing and suggested that fees in the amount of \$180.00 be refunded to the applicant.

Board Action:

On **MOTION** of **CHAPPELLE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **REFUND** \$180.00 in filing fees.

Case No. 16319 - Gary Collins - Request refund of filing fees.

Comments and Questions:

Mr. Jones advised that the applicant withdrew the case prior to processing, and suggested a refund of \$255.00.

Board Action:

On **MOTION** of **CHAPPELLE**, the Board voted 3-0-0 (Bolzle, Chappelle, Doverspike, "aye"; no "nays"; no "abstentions"; S. White, T. White, "absent") to **REFUND** fees in the amount of \$255.00 to Gary Collins; finding that the application was withdrawn prior to processing.

There being no further business, the meeting was adjourned at 4:40 p.m.

Date Approved

May 11, 1993


Chairman

