

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 867
Tuesday, June 24, 2003, 1:00 p.m.
Francis F. Campbell City Council Room
Plaza Level of City Hall
Tulsa Civic Center

**MEMBERS
PRESENT**

Dunham, Vice Chair
Cooper
Turnbo
White, Chair
Perkins

**MEMBERS
ABSENT**

**STAFF
PRESENT**

Beach
Butler

**OTHERS
PRESENT**

Boulden, Legal

The notice and agenda of said meeting was posted in the City Clerk's office, City Hall, on Thursday, June 19, 2003, at 4:08 p.m., as well as at the Office of INCOG, 201 W. 5th St., Suite 600.

After declaring a quorum present, Chair, White called the meeting to order at 1:00 p.m.

Mr. Jim Beach read the rules and procedures for the Board of Adjustment Public Hearing.

REQUEST TO CONTINUE AND CASES TO WITHDRAW

Case No. 19570

Presentation:

Mr. Beach informed the Board that the applicant asked for his case to be heard at the end of the agenda.

The case was tabled until the end of the agenda.

Case No. 19593

Action Requested:

Special Exception for a "Tunnel" type, enclosed car wash in a CS district per plan. SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS – Use Unit 17, located 1440 E. 71st St.

Presentation:

Mr. Beach informed the Board that John Moody asked for a continuance to July 22, 2003 because his client has not provided a site plan.

Board Action:

On **Motion of Dunham**, the **Board** voted 4-0-0 (White, Dunham, Turnbo, Cooper, Perkins “aye”; no “nay”; no “absences”) to **CONTINUE** Case No. 19593 to the meeting on July 22, 2003, regarding the following described property:

The N 290.00’ of the W 44.30’ of Lot 1 and the N 290.00’ of the E 35.70’ of Lot 2, Valley Bend Subdivision, City of Tulsa, Tulsa County, State of Oklahoma, less and except a parcel of land lying in the W 44.30’ of Lot 1, and the E 35.70’ of Lot 2, of Valley Bend Subdivision, more particularly described as follows, to-wit: the N 35.00’ thereof.

* * * * *

Case No. 19620

Action Requested:

Variance of side yard setback from required 5’ to 3’ to permit an addition in an RS-2 district. SECTION 403.A. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS, Bulk and Area Requirements in the RE, RS, RD, RT and RM Districts – Use Unit 6, located 2240 S. Troost Ave.

Mr. Beach informed the Board that Interest Parties asked for a continuance of this case to obtain counsel.

Presentation:

The applicant had not yet arrived.

Mr. Cooper arrived at 1:09 p.m.

Interested Party:

Catherine J. Depew, 1570 E. 22nd Pl., stated she lived immediately next door to the subject property. She informed the Board that she and two other neighbors were opposed to the application and they asked for a continuance to prepare for the case. Mr. White asked when she received notice of the case, to which she replied she received it about five days ago. She stated they had asked about the plans and did not receive any information until this morning. She expressed concern that it was to be attached to the house and not detached at the rear as others in the neighborhood.

Mr. White asked if she had met with the applicant. She replied that she had this morning. She informed the Board that the applicant told her that he had no idea what the zoning requirements were and he was surprised when she told him that it was supposed to be a detached garage to the rear of the house.

previous hearing she had decided to get a smaller mobile home and withdrew the request for a minor variance of the required side yard. Since then she decided to purchase a larger trailer and she wanted to reinstate the request for the minor variance. A site plan was provided (Exhibit B-1).

Interested Parties:

There were no interested parties present who wished to speak.

Board Action:

On **Motion of Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Cooper, Perkins "aye"; no "nay"; no "absences") to **APPROVE** a **Minor Variance** of the required 5' side yard to 4' on one side on a lot 25' in width, per plan, finding the lot is 25' wide, on the following described property:

Lot 3, Block 18, Original Townsite of Dawson, City of Tulsa, Tulsa County, State of Oklahoma.

..*.*.*.*.*.*.*.*.

Case No. 19584

Action Requested:

Variance of the required rear yard from 20' to 7'. SECTION 403.A. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS, Bulk and Area Requirements in the RE, RS, RD, RT and RM Districts, located 2680 E. 69th St.

Presentation:

Paul Prather, 525 S. Main, Ste. 1000, submitted a packet of photographs (Exhibit C-2) to the Board. He described the property as a pie shaped lot with an extreme slope to the property. The back yard is tiered. There is a fence, which he believed to be 8' at the highest point. They proposed to lower the second tier to the level of the house. He added that because of the terrain he needs the space closer to the fence line than normal.

Interested Parties:

There were no interested parties present who wished to speak.

Board Action:

On **Motion of Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Perkins, Cooper "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Variance** of the required rear yard from 25' to 7', per plan, finding the topography and the size of the lot to be the hardship, on the following described property:

Lot 2, Block 3, Sherrelwood Addition, City of Tulsa, Tulsa County, State of Oklahoma.

Case No. 19620

Action Requested:

Variance of side yard setback from required 5' to 3' to permit an addition in an RS-2 district. SECTION 403.A. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS, Bulk and Area Requirements in the RE, RS, RD, RT and RM Districts – Use Unit 6, located 2240 S. Troost Ave.

Mr. Beach informed the applicant that requests for a 30–day continuance were made that morning. Mr. White added the property owners on both sides and across the street made the requests.

Presentation:

Joseph L. Hull, III, 2240 S. Troost, stated he is the homeowner and asked what the requests for continuance were regarding. Ms. Turnbo responded that one of the neighbors did not get notice until five days ago, and they seem to be confused about the project. Mr. White stated they wanted to retain counsel to address the case. Mr. Hull replied that as much as three weeks ago they attempted to meet with Ms. Depew and the architect to go over the plans. They were not approached by anyone else on the block until late the night before this meeting. They did meet with Ms. Depew and another neighbor with the architect and all of their issues were addressed this morning.

Mr. Dunham confirmed with the applicant contacted Ms. Depew about two weeks previously. She explained that it was at an inconvenient time, but she told them she would like to see the plans. She added they were unaware that a variance was requested and that it would not be built in the rear yard as others in the neighborhood.

Board Action:

On **Motion of Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Perkins, Cooper "aye"; no "nays"; no "abstentions"; no "absences") to **DENY** a request for continuance regarding the following described property:

Lot 17, Block 6, Terwilliger Heights, City of Tulsa, Tulsa County, State of Oklahoma.

Case No. 19614

Action Requested:

Appeal of Tulsa Preservation Commission action in granting a Certificate of Appropriateness to construct a multi-family unit. SECTION 1605. APPEALS FROM AN ADMINISTRATIVE OFFICIAL, located 1730 S. Quincy.

Mr. Dunham asked to hear from legal and staff before hearing the case.

Mr. Boulden asked to hear from the TPC representative first. Mr. Beach clarified that the question is whether the notice is valid.

Kent Schell, 111 S. Greenwood Ave., stated he is the representative for the TPC. He called the Board's attention to his letter regarding this case. He stated concern that the TPC did not receive adequate notice according to the city ordinance. Included in the information received from the TPC (Exhibit F-2) is a letter from Fannie Warrior documenting that only a one paragraph document was received from Paul Atkins, which did not state the grounds for an appeal.

Mr. Dunham asked staff when they received the information they needed from Mr. Atkins. Mr. Beach responded that he received the first one paragraph document on the afternoon of May 16, 2003. He advised Mr. Atkins that it was insufficient to meet the code requirements for a notice, and that he needed to bring in the grounds for the appeal that day since day 10 would be Sunday. Mr. Atkins brought additional information to INCOG for the appeal and they were stamped received after 5:00 p.m. on May 16th. Mr. Schell did not receive the complete package until June 9, 2003. Mr. Schell indicated that he did not receive adequate notice.

The chair called Paul Atkins:

Paul Atkins, IV, 1638 E. 17th Pl., stated that he presented his appeal to INCOG on Friday, May 16, 2003 and returned Monday, May 19, 2003 to complete his application and pay the fees. He stated when he arrived at TPC on Friday, May 16, 2003 no one was there to receive his paperwork so he took it back to them on the following Monday. He informed Fannie Warrior that INCOG would send the complete appeal packet to TPC. He did not meet with the neighborhood association until after the appeal was filed, though he did meet with the immediate neighbors to the subject property. An applicant packet was provided (Exhibit F-1).

Mr. Boulden summarized the notice requirements in the ordinance finding that identification of the appellant was not a major issue since Ms. Warrior and Mr. Beach recognized Mr. Atkins. On the issue of timeliness, since the tenth day fell on a Sunday it could not be filed then, but it could have been filed on the eighth day. He thought the courts would frown on the shortening of the filing period to eight days, but would probably allow the extension to the following working day. The code makes reference to following ordinances and no ordinances followed and guidelines followed. There is an obvious omission there. He indicated the Board could speculate to that but it could be putting words in the appellant's mouth. Mr. Boulden stated that the Board needs to consider whether or not they can determine the grounds for the complaint from the appeal paragraph received by Mr. Schell.

Board Action:

On **Motion of Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Perkins, Cooper "aye"; no "nays"; no "abstentions"; no "absences") for **Dismissal** of an Appeal of Tulsa Preservation Commission action in granting a Certificate of

Joyce Scroggins, 1207 S. Delaware Pl., asked if there would be access from the parking lot to 12th Street. Mr. White replied that the plans do not show any access to Delaware. She stated her concern about traffic into the neighborhood, citing a previous case.

Applicant's Rebuttal:

Mr. Norman responded that there may be a curb cut but access onto 12th Street is not in the plans. Mr. Norman informed the Board that he gave the interested party of a copy of the landscaping plans. He stated that the lots were intended for employee parking only.

Board Action:

On **Motion of Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Perkins, Cooper "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** an **Amended Exhibit H**, Tract C, off-street parking plan east of South Delaware Avenue to add the two lots to the site, landscape, screening and lighting plan approved by the Board in Case No. 19528; a **Variance** deleting the screening requirements of Section 504.B of the Tulsa Zoning Code to permit off-street parking on the west side of the PK parking district lots on the east side of South Delaware Avenue, without a 3' high screening fence or berm as shown on Amended Exhibit H. (The screening requirements of Section 504.B will be met along the south side of the PK lots along East 12th Street); a **Variance** of the off-street parking setback from the centerline of South Delaware Avenue required by Section 1302.B of the Tulsa Zoning Code from 50' to 35'; a **Variance** of the off-street parking setback from the centerline of East 12th Street required by Section 1302.B of the Tulsa Zoning Code from 50' to 38'; a **Variance** deleting the screening requirement of Section 1302.E to permit the use of the two PK district lots with screening as shown on Amended Exhibit H. (The two PK district lots will be screened on the east side by a 6' high screening and on the south side by a 3' high screening fence required in the PK district.), per plan, finding it will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan, and would help alleviate the parking problems of the area, on the following described property:

Lots 13 and 14, Block 3, Signal Addition, City of Tulsa, Tulsa County, State of Oklahoma.

..*.*.*.*.*.*.*.*.

Case No. 19616

Action Requested:

Special Exception to permit private photography studio (Use Unit 11) as a home occupation. SECTION 402.B.6.b. ACCESSORY USES IN RESIDENTIAL DISTRICTS, Accessory Use Conditions – Use Unit 11; a Variance to permit same to be conducted in separate detached accessory building situated in rear yard of residential property (instead of within principal residence). SECTION 404.B.4. SPECIAL EXCEPTION USES IN RESIDENTIAL DISTRICTS, REQUIREMENTS; a

Variance to permit area in which home occupation is conducted to exceed 500 square feet. SECTION 404.B.8. SPECIAL EXCEPTION USES IN RESIDENTIAL DISTRICTS, REQUIREMENTS; and a Variance to permit 10' setback of accessory building from abutting property. SECTION 404.F.4. SPECIAL EXCEPTION USES IN RESIDENTIAL DISTRICTS, REQUIREMENTS, located 7108 Sleepy Hollow Drive.

Mr. White announced he would abstain.

Presentation:

Steve Schuller, 100 W. 5th St., Ste. 500, stated he is the attorney for Robert Simpson, the applicant. He described the property surrounded by a 6' to 8' fence and wall. There is a house, swimming pool, pool house and storage building existing on the property. The applicant is retired and his hobby is photography. He occasionally develops enlarged prints of his photos. The equipment and counter surface needed for this require a considerably larger space. He added that more storage space is also needed for these projects.

Comments and Questions:

Mr. Schuller stated there would not be a kitchen, sleeping facilities, commercial sign, or employees. He would need a sink with running water, and planned for a toilet. Mr. Schuller pointed out the height of the building would be lower than the house and pool house. His client informed his neighbors of his plans. The existing storage building would be removed. Mr. Cooper asked if this work would increase traffic to the home for photo shoots, and other related activity. Mr. Schuller assured him that was not the nature of this home occupation. Ms. Perkins asked if there would be deliveries of paper, chemicals and other needs, to which Mr. Schuller replied there would not be.

Interested Parties:

John Hokason, 3411 E. 72nd St., informed the Board that he is the Vice-President of the Pebble Creek Board of Directors. The Board voted unanimously to oppose the application, considering it to be detrimental to the 45 units of this neighborhood. They oppose commercial development in that area. Mr. Dunham explained to Mr. Hokason that the Board does not have the right to approve commercial use in a residential neighborhood. He added that the applicant could open an artist studio by right.

Ed Cox, 7349 S. Sleepy Hollow Dr., considers this studio a Use Unit 11, which gives him in effect, a right to a commercial establishment. He opposed the size and a home occupation in a separate building outside the home. He opposed any increased traffic that he expects it would generate.

N. Franklin Casey, 3801 E. 74th St., stated he owns property adjacent to the subject property. He was opposed to the application as stated by Mr. Cox.

Mona Miller, 7211 S. Gary Pl., was opposed to any possible commercial activity at the 71st and Harvard Ave.

Kellie Kenny, 7214 S. Urbana Ave., stated she is the Co-President of the Southridge Homeowners' Association. They believe this application to be inappropriate for the neighborhood.

Frank Robles, 3714 E. 72nd St., and **Frank Munn**, 7125 Sleepy Hollow, expressed concerns as previously stated above.

Applicant's Rebuttal:

Mr. Schuller reminded the Board that the application is for a home occupation only, with no employees. He stated that personally he has taken a stance against commercial activity in this area. He stated they would be willing to withdraw the special exception and consider it an artist studio only. Mr. Beach noted if he withdrew the special exception then the variance of the setback would not be needed either.

Two letters of opposition were submitted (Exhibit H-2).

Comments and Questions:

Mr. Boulden pointed out it is not within the home, but a separate building. He reminded the applicant that the Board cannot approve a use variance. Mr. Schuller responded that the needed space is not feasible in the home. Mr. Cooper stated the hardship is self-imposed.

Board Action:

On **Motion of Perkins**, the Board voted 4-0-1 (Dunham, Turnbo, Perkins, Cooper "aye"; no "nays"; White "abstained"; no "absences") to **DENY** a **Variance** to permit same to be conducted in separate detached accessory building situated in rear yard of residential property (instead of within principal residence); a **Variance** to permit area in which home occupation is conducted to exceed 500 square feet, and a **Variance** to permit 10' setback of accessory building from abutting property, finding lack of a hardship, on the following described property:

Lot 1 (less the Nly 10' thereof), Block 1, Town and Country Estates, City of Tulsa, Tulsa County, State of Oklahoma.

Case No. 19617

Action Requested:

Special Exception to allow manufactured home in RS-3 district. SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS S; a Special Exception to allow it permanently. SECTION 404. SPECIAL EXCEPTION USES IN RESIDENTIAL DISTRICTS, REQUIREMENT; and a Variance of required setback from centerline of Apache from 85' to 71'. SECTION 403. BULK AND

AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS, located 2603 N. Toledo Ave.

Presentation:

Floyd E. Brown, Sr., 11976 E. 37th Pl., proposed to place a manufactured home on the subject property, as a permanent dwelling. They plan to make it an improvement that will encourage other property owners to improve the area. The hardship is the depth of the lot. A site plan and photographs were provided (Exhibit I-1 and I-2).

Interested Parties:

One letter of opposition was submitted (Exhibit I-3). There were no interested parties present who wished to speak.

Board Action:

On **Motion of Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Perkins, Cooper "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Special Exception** to allow manufactured home in RS-3 district; a **Special Exception** to allow a time limit of thirty years; and a **Variance** of required setback from centerline of Apache from 85' to 71', per plan, finding the hardship to be the depth of the lot.

On **Amended Motion of Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Perkins, Cooper "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Special Exception** to allow manufactured home in RS-3 district; a **Special Exception** to allow a time limit of thirty years; and a **Variance** of required setback from centerline of Apache from 85' to 71', per plan, with conditions for a permanent foundation and tie-downs, finding the hardship to be the depth of the lot, on the following described property:

Lot 12, Block 22, Mohawk Heights IV, City of Tulsa, Tulsa County, State of Oklahoma.

Case No. 19619

Action Requested:

Variance of required setback from 85' to 79.5' from East 41st Street South. SECTION 403.A.8 BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS, Bulk and Area Requirements in the RMH District – Use Unit 6, located E. 41st St. & Rockford.

Presentation:

Eric Sack, 111 S. Elgin, stated they propose 0' lot line town homes. They have been through the design process over the last two to three years. They had numerous conversations with traffic engineering, transportation, and the fire marshal over several layouts of the property. He pointed out that the apartment

complex on the west has a setback of 70'. The residences to the east are set back about 74'. The plan at this time is not intended to be gated, but probably will be gated in the future. There will be a perimeter wall about 35' off of the centerline. There is some shallow flooding at the south end of the property therefore they planned for compensatory storage and overland drainage on the south. An aerial map was submitted (Exhibit J-1).

Comments and Questions:

Mr. Beach stated Section 211 allows for averaging of the setback when structures on either side are encroaching.

Ted Sack, 111 S. Elgin, stated concern that a decision of record is needed so they do not have to prove this point every time they go for a permit, or other action.

Interested Parties:

There were no interested parties present who wished to speak.

Board Action:

On **Motion of Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Cooper, Perkins "aye"; no "nay"; no "absences") to **STRIKE** the **Variance**, because of Section 211 of the zoning code that allows averaging of the adjacent setbacks on properties to the east and west, and no relief is needed. The applicant can use a setback of 79.5' from 41st Street by right, on the following described property:

A tract of land that is all of Block 1 and part of Block 2, Forty First Addition, City of Tulsa, Tulsa County, State of Oklahoma, vacated S. Rockford Ave., bounded on the N by E. 41st St. S. and on the S by E. 42nd St. S., and Lot 1, Block 1, Don-Lee Addition, said tract of land being more particularly described as follow, to-wit: Beg. at a point that is the NE/c of said Block 1 of Forty First Addition; thence due S along the Ely line of said Block 1 and the Ely line of said Lot 1, Block 1, Don-Lee for 594.70' to the SEly corner of said Lot 1; thence N 89°38'24" W along the Sly line of Lot 1 for 134.60' to the SWly/c of Lot 1; thence N 89°38'24" W along the Sly line of Lot 1 for 134.60' to the SWly/c of Lot 1; thence N 15°58'09" W along the Wly line of Lot 1 for 28.22' to a point of curve; thence continuing along said Wly line on a curve to the right with a central angle of 04°29'53" and a radius of 301.00' for 23.63' to the NWly/c of Lot 1 and a point on the Sly line of said Block 1, Forty First Addition; thence N 89°38'24" W along said Sly line and Wly extension thereof and along the Sly line and Wly extension thereof and along the Sly line of said Block 2, Forty First Addition for 219.76' to the most Sly SW/c of said Block 2; thence N 00°16'24" E along a Wly line of Block 2 for 122.70'; thence S 89°38'24" E and parallel with the Nly line of Block 2 for 27.40' to a point on the Sly extension of a Wly line of Block 2; thence N 00°16'24" E along said Sly extension and said Wly line of Block 2 for 422.00' to the most Nly NW/c of Block 2; thence S 89°38'24" E along the Nly line of Block 2 and Ely extension thereof and along the Nly line of said Block 1, Forty First Addition for 337.72' to the POB of said tract of land.

Case No. 19620

Action Requested:

Variance of side yard setback from required 5' to 3' to permit an addition in an RS-2 district. SECTION 403.A. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS, Bulk and Area Requirements in the RE, RS, RD, RT and RM Districts – Use Unit 6, located 2240 S. Troost Ave.

Presentation:

Joseph L. Hull, III, 2240 S. Troost, stated he and his wife own the subject property. The property has a unique shape and they need a variance to build an addition of an attached two-car garage with rooms above. A site plan was provided (Exhibit K-1). He pointed out on the plat of survey (Exhibit K-2) that the frontage is 120' and the rear is 30'.

Interested Parties:

Catherine Depew, 1570 E. 22nd Pl., stated that the previous garage was within the code, but it was removed to put in the pool. She complained of the height of the addition, blocking her view and the close proximity to her porch.

Comments and Questions:

Mr. White asked staff what the applicant could do without the two-foot variance. Mr. Beach stated the wall could be 35' in height, and 5' from the property line.

David Browning, 2245 S. Troost, stated that he lives across the street and he has not seen the plans. He objects to the application. He stated he came to affirm the zoning code and sought preservation of the neighborhood. He asked for a continuation to obtain a valuation of his property and expert opinion of degradation of property value. He pointed out the series of measures that brought the applicant to this point, including removing a garage, and construction of a pool.

Letters of opposition were submitted (Exhibit K-5).

Applicant's Rebuttal:

Mr. Hull stated that in 1974 his architect, Donald Buoen, helped them remodel, adding on a third story to this home. It appeared in the Southern Living Magazine. He stated that his house is currently 43' from Ms. Depew's porch and with the improvement it would still be 21'. He submitted photographs and elevations (Exhibits K-6 and K-7). The houses in the area average 10' to 15' between them, but this would be 21'. Floor plans were provided (Exhibit K-3).

Board Action:

On **Motion of Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Perkins, Cooper "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Variance** of side yard setback from required 5' to 3' to permit an addition in an RS-2 district, per plan, finding the hardship to be the configuration of the lot, on the following described property:

screening on north where new parking area abuts a residential district; a **Variance** from the requirement to provide a 5' landscape area along the abutting street rights-of-way; a **Variance** from the requirement to set the parking lot back 50' from the centerline of the street along East 22nd Street; and a **Variance** from the structure setback requirement, per plan, with the exception of the shape of the sanctuary, which can be changed but the size of the sanctuary cannot be changed, on the following described property:

Block 1, Wil-Ray Terrace, Lot 1, Block 1 and Lot 1, Block 7, Bonnie-Brae Addition, City of Tulsa, Tulsa County, State of Oklahoma.

..*.*.*.*.*.*.

There being no further business, the meeting was adjourned at 4:14 p.m.

Date approved: _____

Chair