CITY BOARD OF ADJUSTMENT

MINUTES of Meeting No. 881
Tuesday, February 10, 2004, 1:00 p.m.
Francis F. Campbell City Council Room
Plaza Level of City Hall
Tulsa Civic Center

MEMBERS MEMBERS STAFF **OTHERS** PRESENT ABSENT PRESENT PRESENT Dunham, Vice Chair Perkins Beach Boulden, Legal Butler Stephens Turnbo Alberty White. Chair

The notice and agenda of said meeting was posted in the City Clerk's office, City Hall, on Friday, February 6, 2004, at 8:14 a.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.

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

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REQUEST TO CONTINUE AND CASES TO WITHDRAW

Case No. 19749

Action Requested:

Special Exception to allow a duplex in a CS zoned district. SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS – Use Unit 7; a Variance of required 50' setback for a two-story multifamily dwelling on the west side to 25'. SECTION 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS; a Variance of the setback for a two-story duplex dwelling from 50' to 10'. SECTION 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS; and an Approval of an amended site plan previously approved by BOA 19510. SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS – Use Unit 8, located: 513 – 515 West Newton, and 1003 – 1011 West Newton.

Presentation:

Mr. Beach reminded the Board this case was continued to give new notice. They have made further changes and asked to continue to February 24, 2004.

Board Action:

On **Motion** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Turnbo, Stephens "aye"; no "nays"; no "abstentions"; Perkins "absent") to **CONTINUE** Case 19749 to the meeting on February 24, 2004 for further notice, regarding the following described property:

Lots 1, 2 and 3, Block 2 and Lots 1 through 4, Block 1, Osage Place Addition, City of Tulsa, Tulsa County, State of Oklahoma.

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Case No. 19755

Action Requested:

Special Exception to allow a bar/night club in an IM zoned district. SECTION 901. PRINCIPAL USES PERMITTED IN INDUSTRIAL DISTRICTS – Use Unit 12a, located: 1800 North Sheridan.

Presentation:

Mr. Beach informed the Board there was a flaw in the legal description and the case needs to be re-advertised.

Board Action:

On **Motion** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Turnbo, Stephens "aye"; no "nays"; no "abstentions"; Perkins "absent") to **CONTINUE** Case No. 19755 to February 24, 2004 for proper notice: regarding the following described property:

Lots 1, 2, 3, 4, and 5, Block 6, Houston Addition to the City of Dawson, now an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, And That part of the NE/4 SE/4 of Section 13, T-20-N, R-13-E of the IBM, Tulsa County, State of Oklahoma, according to the U.S. Government Survey thereof, more particularly described as follows: Beg. at a point 827' S of the NE/c SE/4 of said Section; thence W a distance of 224.50' to a point; thence S 30.00' to the NE/c of Lot 1, Block 6, Houston Addition to the City of Dawson, now an Addition to the City of Tulsa; thence continuing S a distance of 180.40' to the SE/c of Lot 5, Block 6, Houston Addition; thence NEly to a point on the E line of said Section , 191.00' S of the POB; thence N 191.00' to the Point and Place of Beg.. Less and except the E 30.00' thereof.

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Case No. 19757

Action Requested:

Special Exception to permit an adult entertainment establishment in a CH district within 150' of residential zoned land. SECTION 701. PRINCIPAL USES

PERMITTED IN COMMERCIAL DISTRICTS – Use Unit 12a; a Special Exception to allow required parking to be located on a lot other than the lot with the principal uses. SECTION 1301.D. OFF-STREET PARKING AND OFF-STREET LOADING; GENERAL REQUIREMENTS, located: 800 North Peoria.

Presentation:

Mr. Beach stated the applicant requested additional notice of a variance of spacing from another Use Unit 12.a; and to continue to February 24, 2004.

Board Action:

On **Motion** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Turnbo, Stephens "aye"; no "nays"; no "abstentions"; Perkins "absent") to **CONTINUE** Case No. 19757 to the meeting on February 24, 2004, regarding the following described property:

S 17' of Lot 13, All of Lots 14, 15, 16, 17, and 18, Block 1, Bullet Addition to the City of Tulsa, Tulsa County, State of Oklahoma.

MINUTES

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On **MOTION** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Turnbo, Stephens "aye"; no "nays"; no "abstentions"; Perkins "absent") to **APPROVE** the Minutes of January 27, 2004 (No. 880).

UNFINISHED BUSINESS

Case No. 19736

Action Requested:

Variance of the required parking spaces for restaurant from 30 to 15 spaces. SECTION 1212. USE UNIT 12. EATING ESTABLISHMENTS OTHER THAN DRIVE-INS – Use Unit 12, located: 3312 S. Peoria.

Presentation:

Larry Harrell, 3127 S. Rockford Dr., represented the applicants. Mr. Harrell provided several exhibits prior to the meeting and at the meeting (Exhibits A-1 through A-7), including: mutual access agreement, parking leases, petition, list of days/hours of operation of surrounding businesses, letters of support, existing plan and proposed plan. He stated that part of the hardship is the mutual access easement and few parking spaces immediately next to the building as it has been since the 1980's. He pointed out the two parking leases they obtained from Mecca Coffee; and the former Wendy's location at 3520 S. Peoria, which he indicated would be used for employee parking. He proposed they would have a total of 34

parking spaces in all. He stated that 55 adjoining businesses signed a petition in support of this application.

Comments and Questions:

Mr. Dunham questioned the number of parking spaces behind the restaurant. Mr. Harrell showed the proposed plan that identifies 14 parking spaces.

Interested Parties:

Jim Pinkerton, 1722 S. Boston, questioned there could be nine to ten parking spaces on Tract B. He indicated there is no turn around room in the 60' x 60' space behind the building; and cars would have to back out all the way to 33rd St. He suggested several other locations to the applicant but they were not interested in them. He indicated that the applicant admitted they knew they did not have enough parking when they leased the space. He referred to a letter of opposition from the laundromat (see Exhibit A-5).

Nancy Apgar, 3914 S. Norfolk, stated she is a member of the Board of the Brookside Neighborhood Association. She informed the Board that they decided to take no action regarding this application.

Applicant's Rebuttal:

Mr. Harrell stated he believes this would be a popular business in this area. He added that the majority of people he talked with in the area were in support of this case. This is the type of problem that businesses face on Cherry St. but people know the situation. They like these areas and they are thriving.

Board discussion ensued.

Mr. Alberty pointed out the eight on-street parking spaces in front of the buildings on the subject property. They cannot be counted as part of the required parking but they are available. He also mentioned that these businesses are frequented by people living in the Brookside neighborhood, and many of them walk to these locations.

Board Action:

On **Motion** of **Dunham**, the Board voted 3-1-0 (White, Dunham, Stephens "aye"; Turnbo "nay"; no "abstentions"; Perkins "absent") to **APPROVE** a *Variance* of the required parking spaces for restaurant from 30 to 15 spaces with conditions for a limited time period to November 30, 2006 while parking is available with Mecca Coffee Company, and on Tract B behind the subject space; and days/hours of operation Tuesday through Saturday, 5:00 p.m. to 10:00 p.m., on the following described property:

W 150.00' of Lot 9, Block 1, Peebles Addition, City of Tulsa, Tulsa County, State of Oklahoma.

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NEW APPLICATIONS

Case No. 19754

Action Requested:

Appeal of an administrative decision that a violation of the Title 42, Sections 222, 301 and 302 exists on the subject property; located: 11366 East Independence Street.

Presentation:

Don Izett, 11366 E. Independence, stated he has lived on the property since 1952. They received a voluntary compliance card and they discussed the problem with Paulette Allison. She informed them the vehicles must be parked on an all-weather surface. They were also asked to remove other items from the yard such as a stainless steel sink and camper shell. His father operated Garnett Auto Service on the property since the 1950's but it is no longer a business. His son does work on their own vehicles occasionally. Mr. Izett informed the Board they looked up guidelines for all-weather and complied with the requirements. Ms. Allison inspected and approved the work. Since then another inspector informed them that nothing was right and everything had to be moved. They met with a supervisor but were not satisfied with the outcome. A survey, photographs and a letter were provided (Exhibit B-1, B-2, B-4).

Comments and Questions:

Mr. Dunham asked what they are doing specifically on the property presently. Mr. Izett replied they have two farm tractors and a semi-tractor on 6.5 acres. They are not operating a business there. Mr. Boulden asked what material they used for the parking space. Mr. Izet responded it was gravel mixed with a base material.

Interested Parties:

Ed Giehll, 111 S. Greenwood, stated he is with Neighborhood Inspections. He submitted several exhibits including photographs (Exhibit B-3). He pointed out numerous pieces of heavy equipment, including a fork lift and a semi-tractor, stored on the property not parked on all-weather surface. The items are not customary and incidental to the principle use. The photographs were taken from the street. Mr. Boulden asked for a description of the all-weather surface material, but Mr. Giehll did not see it as he did not go on the property.

Applicant's Rebuttal:

Mr. Izett responded that they have parked this same type of equipment since before 1970. He tried to park equipment on his job sites but experienced theft. Mr. Dunham asked where the parking surface was placed. Mr. Izett replied it was about 20' behind the barn.

Board Action:

On **Motion** of **Turnbo**, the Board voted 4-0-0 (White, Dunham, Turnbo, Stephens "aye"; no "nays"; no "abstentions"; Perkins "absent") to **APPROVE** Case No.

19754, to **Uphold the Appeal** of an administrative decision that a violation of the Title 42, Sections 222, 301 and 302 exists on the subject property, finding the Zoning Notice of Violation of December 19, 2003 was faulty because it was on the AG property not the RS-3, regarding the following described property:

E 247.50' E/2 E/2 NW SW, less TR Beg., Section same N 230.00, SW 250.85' S 190.00' E 247.50' POB, Section 32, T-20-N, R-14-E, City of Tulsa, Tulsa County, State of Oklahoma.

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Case No. 19756

Action Requested:

Special Exception to allow required off-street parking on lot other than the lot containing the business. SECTION 1301.D. OFF-STREET PARKING AND OFF-STREET LOADING; GENERAL REQUIREMENTS; and a Variance to reduce required off-street parking spaces from 20 to 10 for restaurant use in non-conforming CH zoned lot with parking easement from adjoining church parking lot. SECTION 1212. USE UNIT 12. EATING ESTABLISHMENTS, OTHER THAN DRIVE-INS; Off-Street Parking and Loading Requirements, located: 3402-3512 South Peoria.

Presentation:

William R. Grimm, 610 S. Main, Ste. 300, stated he is the attorney for the applicant, Aberson Development, LLC. This area is known as Southminster Presbyterian Church, and it is the commercial buildings to the east of the church and the parking lot. The buildings are zoned CS and a portion of the parking lot have been leased by Aberson Development for twenty years. One building identified in applicant's exhibit as (B-1) has been vacant for several years and there are no other businesses that have a contract to use the parking lot with this building. They continue to need the 60 parking spaces on the church lot identified as B-3. The building shown as B-1 is zoned CS and will be divided among several retail merchants. The hours of operation will be approximately 10:00 a.m. to 5:30 p.m., Monday through Friday or Saturday. They would like to use 2,000 sq. ft. of it for restaurant space, though they have not leased it to a business yet. The B-2 building will be a coffee shop. He stated they would be ten spaces short of the parking requirements.

Comments and Questions:

Mr. Boulden asked if they planned for outside seating for the coffee shop also. Mr. Grimm replied that it might since people tend to linger at such establishments. Mr. Beach stated this would increase the parking requirements if the outdoor seating area exceeds 10% of the interior floor area of the coffee shop.

Interested Parties:

There were no interested parties present who wished to speak.

Board Action:

On **Motion** of **Dunham**, the Board voted 4-0-0 (White Dunham, Turnbo, Stephens "aye"; no "nays"; no "abstentions"; Perkins "absent") to **APPROVE** a **Special Exception** to allow required off-street parking on lot other than the lot containing the business; and a **Variance** to reduce required off-street parking spaces from 20 to 10 for restaurant use in non-conforming CH zoned lot with parking easement from adjoining church parking lot, with conditions: building B-1 include a restaurant of no more than 2,000 sq. ft., and balance of building be for retail use; and building B-2 be used for a coffee shop, 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, on the following described property:

A tract of land that is part of Lot 56 of "Burgess Acres Addition", said tract of land being more particularly described as follows, to-wit: Starting at the NE/c of said Lot 56; thence due W along the Nly line of Lot 56 for 18.72' to the POB of said tract of land; thence S 00°00'20" E and parallel with the Ely line of Lot 56 for 70.00' to a point on the Sly line of Lot 56; thence due W along said Sly line for 131.73'; thence N 00°00'20" W and parallel with the Wly line of Lot 56 for 70.00' to a point on the Nly line of Lot 56; thence due E along said Nly line for 131.73' to the POB of said tract of land. And A tract of land that is part of Lot 6, Block 2 of "amended Plat of Peoria Gardens Addition", said tract of land being more particularly described as follows, to-wit: Starting at the NE/c of said Lot 6; thence due W along the Nly line of Lot 6, for 9.02'; thence S 00°00'20" E and parallel with the Ely line of Lot 6 for 10.00' to the POB of said tract of land; thence continuing S 00°00'20" E for 40.00'; thence due W and parallel with the Nly line of Lot 6 for 66.50'; thence due N for 40.00'; thence due E and parallel with said Nly line for 66.50' to the POB of said tract of land. And a tract of land that is part of Lots 5 and 6, Block 2, "Amended Plat to Peoria Gardens Addition" said tract being more particularly described as follows, to-wit: Starting at the NE/c of said Lot 5; thence due W along the Nly line of Lot 5 for 18.72' to the POB of said tract of land; thence S 00°00'20" E and parallel with the Ely line of Lot 5 for 45.00': thence due W for 20.00'; thence due S for 40.50'; thence due E for 20.00'; thence S 00°00'20" E for 24.50'; thence due W for 56.78'; thence due S for 16.00'; thence due W for 27.50'; thence due N for 15.00'; thence due W for 21.50'; thence due S for 54.00'; thence due W and parallel with the Sly line of Lot 6 for 110.50' to a point on the Wly line of Lot 6; thence N 00°00'20" W along the Wly line of Lot 6 and Lot 5 for 159.00'; thence due E for 62.00'; thence due N for 6.00' to a point on the NIy line of Lot 5; thence due E along said NIy line for 154.28' to the POB of said tract of land, all three tracts being Additions to the City of Tulsa. Tulsa County, State of Oklahoma.

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Case No. 19758
Action Requested:

Variance of side yard from required 5' to 3' in a RS-3 district. SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS, located: 1569 Swan Drive

Mr. White abstained from Case No. 19758.

Ms. Turnbo out at 2:41 p.m.

Presentation:

John Walton, 1546 Swan Dr., stated he is the architect for the applicants, Tom and Caroline Benediktson. They purchased the house, which had been gutted and left vacant for three years. The one-car garage has severe termite and structural damage. They propose to demolish the existing structure and replace it with a larger garage to within five feet of the west property line. A site plan and elevation were provided (Exhibits C-1 and C-2).

Ms. Turnbo returned at 2:43 p.m.

They have shared the plans with the neighbors and found them to be supportive. They have obtained a Certificate of Appropriateness. They discovered the plat was incorrect, and they had the property re-surveyed.

Interested Parties:

There were no interested parties present who wished to speak.

Board Action:

On **Motion** of **Turnbo**, the Board voted 3-0-1 (Dunham, Turnbo, Stephens "aye"; no "nays"; White "abstained"; Perkins "absent") to **APPROVE** a **Variance** of side yard from required 5' to 3' in a RS-3 district, per plan, finding the shape of the lot and it is in keeping with the Tulsa Preservation Commission in a historic district, on the following described property:

Lot 9, Block 1, except the E 10.00' thereof, Swan Park, a subdivision of land, City of Tulsa, Tulsa County, State of Oklahoma.

Case No. 19759

Action Requested:

Variance of the required 20' rear yard to 15' for a new dwelling, located: 1420 East 55th Place.

Presentation:

Nan Brainerd stated she purchased the subject property in 1989. She planned to give her daughter one lot. She misjudged the size of the lot. They are short five feet from the rear setback that adjoins another one of Ms. Brainerd's lots. She does not plan to sell her other lots, as they will go to her children. A site plan and applicant's exhibits were provided (Exhibits D-1 and D-2).

Comments and Questions:

Mr. Dunham asked if she owns tracts A, B, C, and D. Ms. Brainerd replied that she owns tracts B, C and D.

Interested Parties:

There were no interested parties present who wished to speak.

Board Action:

On **Motion** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Turnbo, Stephens "aye"; no "nays"; no "abstentions"; Perkins "absent") to **APPROVE** a **Variance** of the required 20' rear yard to 15' for a new dwelling, per plan, finding the lot is shallow; and finding it will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare, on the following described property:

N/2 Lot 2, Block 4, J.E. Nichols Subdivision, City of Tulsa, Tulsa County, State of Oklahoma.

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Case No. 19760

Action Requested:

Special Exception to permit a day care center in an RS-3 district. SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS – Use Unit 5; and a Variance of special exception requirements in residential districts. SECTION 404. F. SPECIAL EXCEPTION USES IN RESIDENTIAL DISTRICTS; REQUIREMENTS, located: 209 East 52nd Place North.

Presentation:

Mattece Mason, 209 E. 52nd Pl. N., stated her proposal to have a day care center. She currently runs an in-home day care. The hours of operation would be 5:30 a.m. to midnight. The front yard would be furnished with Tyke toys. She currently provides transportation for 70% of the children. She has two employees and one vehicle used daily and parked at the home and one backup vehicle. DHS approved her for 45 children in the day care center. She stated she would need a minimum of 30 to make a profit.

Comments and Questions:

Mr. White asked if she had talked with her neighbors regarding this plan. She responded that the neighbors all indicated support. Ms. Turnbo commented she was concerned about the number of children, long hours and traffic it would

involve. Mr. Dunham commented on the small size of the lot. Ms. Mason responded that she was open to suggestions and a compromise on the hours of operation and other concerns of the Board. Mr. Beach pointed out that the applicant cannot meet any of the special exception requirements in a residential district and needs a variance. He noted she has not requested relief of the parking requirements. He explained that as a residence, two parking spaces are required and with the day care center, four more parking spaces would be required to be accessible without passing through another parking space. Ms. Mason responded that she did not intend to live there when it is a day care center.

Interested Parties:

There were no interested parties present who wished to speak.

Board Action:

On **Motion** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Turnbo, Stephens "aye"; no "nays"; no "abstentions"; Perkins "absent") to **DENY** a **Special Exception** to permit a day care center in an RS-3 district; and a **Variance** of special exception requirements in residential districts, finding the use to be too intense for the neighborhood, on the following described property:

Lot 20, Block 43, Valley View Acres Second Addition, City of Tulsa, Tulsa County, State of Oklahoma.

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Case No. 19761

Action Requested:

Reinstatement of previously approved: Special Exception to allow a mini-storage in a RM-1 zoned district. SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS – Use Unit 16; a Variance of required setback from a freeway service road from 50' to 24'. SECTION 404.I.2. SPECIAL EXCEPTION USES IN RESIDENTIAL DISTRICTS; REQUIREMENTS; and a Variance of required frontage on and access to an arterial street. SECTION 404.I.8. SPECIAL EXCEPTION USES IN RESIDENTIAL DISTRICTS; REQUIREMENTS, located: 7715 East Easton Street.

Presentation:

Jerry Ledford, Jr., 6737 S. 85th E. Ave., stated he represented the applicant, Crosstown Partners. He added this is a request for reinstatement of Board of Adjustment Case No. 18441, approved on June 22, 1999. There have been other applications approved by the Board since that time: 19637 for setback variance for the mini-storage and alternative screening; 19693 for signage; 19724 for signage. A final plat was approved by the City Council, but by that time the zoning permit had expired. The building permit has been approved; the water line has been put in; the detention pond was built; and the storm sewer is being put in.

Interested Parties:

Joy McDaniel, 578 N. 78th E. Ave., expressed concern that traffic coming from Easton Street would not be able to see traffic from below the hill. She explained there are no shoulders to the road just ditches. She opposed the mini-storage backing up to her property. She stated she has not received notices of the Board of Adjustment hearings regarding this property. Mr. Beach noted that her property is just outside the 300' radius for notification. She was also concerned about the safety of children from items that might be dumped there. Mr. White replied there would be a six-foot screening fence around the mini-storage.

Applicant's Rebuttal:

Mr. Ledford submitted zoning and BOA history (Exhibit E-1). He informed the Board that the plans have been through traffic engineering and transportation. The parking is located on the high side of the lot where sight distance is better. The screening fence is tilt up concrete panels on the outside of the structure that are eight feet in height, which have already been approved.

Board Action:

On **Motion** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Turnbo, Stephens "aye"; no "nays"; no "abstentions"; Perkins "absent") to **APPROVE** a Reinstatement of a previously approved: **Special Exception** to allow a ministorage in a RM-1 zoned district; a **Variance** of required setback from a freeway service road from 50' to 24'; and a **Variance** of required frontage on and access to an arterial street, finding the street parallels the I-244 and provides sufficient access, on the following described property:

Lots 14 and 15, Bloomfield Heights, less and except a re-subdivision of the E 126.75' of said Lots 14 and 15, City of Tulsa, Tulsa County, State of Oklahoma.

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There being no further business, the meeting was adjourned at 3:25 p.m.	
Date approved:	
Chair	