

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 924
Tuesday, December 13, 2005, 1:00 p.m.
Francis F. Campbell City Council Room
Plaza Level of City Hall
Tulsa Civic Center

MEMBERS

PRESENT

Dunham, Chair
Henke, Secretary
Stead
Stephens
Tidwell

MEMBERS

ABSENT

STAFF

PRESENT

Alberty
Butler
Cuthbertson

OTHERS

PRESENT

Ackermann, Legal

The notice and agenda of said meeting was posted in the City Clerk's office, City Hall, on Thursday, December 8, 2005, at 5:17 p.m., as well as at the Office of INCOG, 201 W. 5th St., Suite 600.

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

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

REQUEST TO CONTINUE AND CASES TO WITHDRAW

Case No. 20166

Action Requested:

Variance of required rear yard from 20 ft to 5 ft to permit an addition (Section 403) located: 1573 East 19th Street.

Presentation:

The applicant, **Nathan Harmon**, 1573 East 19th Street, requested a continuance to January 10, 2006.

Board Action:

On **Motion** of **Henke**, the Board voted 5-0-0 (Dunham, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **CONTINUE** Case No. 20166 to the meeting on January 10, 2006.

W 61 LT 11 BLK 2, SWAN PARK, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20170

Action Requested:

A Special Exception to permit a used car lot (Use Unit 17) in a CS district (Section 701), located: 10875 East Admiral Place.

W/2 W/2 E/2 LT 1 LESS S75 FOR ST SEC 6 19 14 2.29AC, City of Tulsa, Tulsa County, State of Oklahoma

And,

Case No. 20172

Action Requested:

Variance of the required side yard from 5 ft. to 1 ft. to permit a lot split (Section 403), located: 912 South Canton Avenue East.

LT 1 BLK 29, WHITE CITY ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Mr. Cuthbertson informed the Board these two applicants made timely requests for continuance.

Board Action:

On the **Combined Motion** of **Stead**, the Board voted 5-0-0 (Dunham, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **CONTINUE** Case No. 20170 and Case No. 20172 to the meeting on January 10, 2006.

MINUTES

On **MOTION** of **Stead**, the Board voted 5-0-0 (Dunham, Henke, Stead, Stephens, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the Minutes of November 22, 2005 (No. 923).

UNFINISHED BUSINESS

Case No. 20131

Action Requested:

Variance of the rear yard requirement in an RS-1 district from 25 ft. to 10 ft. (Section 403), located: 6336 South Harvard Avenue.

Presentation:

Roy D. Johnsen, 201 West 5th Street, Suite 501, represented Chuck Shipley. The subject property is 1.9 acres with frontage on Harvard. To the north is the Southern Hills Country Club. He proposed to build a second home for himself on this property and to live in the existing home during construction. He pointed out the changes in elevation on the lot.

Comments and Questions:

Ms. Stead asked if the plans were for a one-story structure. Mr. Johnsen replied that it would be for two or two and one-half stories. They contacted Mr. Briggs the owner to the west regarding the application. He added the topography, size of the lot and the substantial open space to the north provide the hardship. Mr. Johnsen stated the purpose for the request of the variance complies with the general purposes of the residential districts. The code states a general purpose: to preserve the openness of the living area and avoid over-crowding by requiring minimum yards, open spaces, lot areas and by limiting the bulk of structures. Mr. Johnsen stated that it was not so much that the view is the hardship but an exceptional circumstance. He added that to not modify the rear yard would result in unnecessary hardship by taking the view away with no real purpose achieved. He pointed out the pertinent questions are: what is the nature of the variance, the purpose of the code that is being varied and what is the impact of the variance on the surrounding property or the public good. He stated this application meets all of those criteria. Mr. Henke commented that the house could be built within the code.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Henke**, the Board voted 2-3-0 (Henke, Stead, "aye"; Dunham, Stephens, Tidwell "nay"; no "abstentions"; no "absences") to **DENY** a **Variance** of the rear yard requirement in an RS-1 district from 25 ft. to 10 ft. for lack of hardship. (Section 403).

On **Motion** of **Stephens**, the Board voted 3-2-0 (Dunham, Stephens, Tidwell "aye"; Henke, Stead "nay"; no "abstentions"; no "absences") to **APPROVE** a **Variance** of the rear yard requirement in an RS-1 district from 25 ft. to 10 ft. (Section 403), finding the literal enforcement of the terms of the code would result in an unnecessary hardship by not modifying the rear yard setback, and that such

extraordinary exceptional conditions or circumstances do not apply generally to other properties in the same use district, on the following described property:

N255 SE NE SE NE SEC 5 18 13, 1.94ACS, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20140

Action Requested:

A Variance of parking requirements to permit a restaurant (Section 1212.D); and a Special Exception to allow required parking on a lot other than the one containing the principal use (Section 1301.D , located: 3346 South Peoria Avenue.

Presentation:

The applicant was not present and has not responded to phone calls and a letter sent through the U.S. Postal Service.

Comments and Questions:

Mr. Dunham commented that the Board has continued this case several times and the applicant has not made an appearance.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (Dunham, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **DENY** a **Variance** of parking requirements to permit a restaurant (Section 1212.D); and a **Special Exception** to allow required parking on a lot other than the one containing the principal use (Section 1301.D), on the following described property:

S20.5 LT 19 N30 LT 20 LESS E25 THEREOF FOR ST BLK1, E 66 LT 21 BLK 1, W66 LT 21 BLK 1, BURGESS ACRES ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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NEW APPLICATIONS

Case No. 20159

Action Requested:

A modification of conditions imposed by the Board of Adjustment in Case #19791 to permit an additional 60 day extension of time to remove existing building, located: 3612 South Sheridan Road.

Presentation:

David Ellis, 6901 South Redbud Avenue, with Modern Star Builders, stated he is an agent for Best Choice Motors. He asked for an extension of time to remove the existing building.

Comments and Questions:

Mr. Dunham remembered when this case was approved and the time for removal of the shed was a condition of the approval.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion of Stead**, the Board voted 5-0-0 (Dunham, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a modification of conditions imposed by the Board of Adjustment in Case #19791 to permit 60 days from today to February 13, 2006 to remove the old building, on the following described property:

N 150 LT 1 BLK 1, WILMOT ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20160

Action Requested:

Variance of the minimum street frontage requirement in an IM district from 200 to 40.56 feet (Section 903), located: 5755 East 15th Street South.

Mr. Henke recused himself from Case No. 20160 and 20161 and left the room.

Presentation:

Robert Sartin, 610 South Main, Suite 300, pointed out the pie shaped lot of approximately four acres. Three businesses occupy the property, a boat storage and two car lots. They proposed to sell a portion of this land on the west side of the 15th Street frontage. A plat of Tract B left a remnant of 200 ft. on the east and 45 ft. on the west side. He informed the Board that they own the 100 ft. abandoned railroad right-of-way to the east of the property. The west 45 ft. is a creek and not usable land. The access is on the west side of the property, which means he must retain it explaining the odd shape of the proposed lot-split.

Comments and Questions:

Ms. Stead noted the poorly maintained condition of the property, including unpaved parking, an occupied house and an occupied trailer.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Stephens**, the Board voted 4-0-1 (Dunham, Stephens, Stead, Tidwell "aye"; no "nays"; Henke "abstained"; no "absences") to **APPROVED** a **Variance** of the minimum street frontage requirement in an IM district from 200 to 40.56 feet (Section 903), finding the literal enforcement of the terms of the code would result in an unnecessary hardship, and that such extraordinary exceptional conditions or circumstances do not apply generally to other properties in the same use district, per plan, on the following described property:

A TRACT OF LAND IN THE SW/4 NE/4 OF SEC. 10, T-19-N, R-13-E, OF THE IB&M TULSA COUNTY, OKLAHOMA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS TO WIT: BEG AT PT 40 FT N OF SW/C OF SAID SW/4 NE/4; TH DUE E 322.58 FT; TH N 17° 15'-00" W 579.78 FT; TH S 62° 32'-00" W 0' TO PT ON CRV TH 356.50 FT ALONG A CURVE TO THE RIGHT WITH A CENTRAL ANGLE OF 31° 14'-28" AND A RADIUS OF 653.81 FT; TH S 235.46 FT TO POB, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20161

Action Requested:

Special Exception to permit an office use (Use Unit 5) in an RM-2 district (Section 401), located:1444 South Carson Avenue.

Presentation:

Matt Gomez, 1447 South Carson Avenue, appeared to present the case. He and Kelly Bell proposed to use the house for their law offices. No one resides there. They would only have one client at a time.

Interested Parties:

Tracy Horner-Shears, 1522 South Carson Avenue, stated she did not represent the entire neighborhood. She mentioned that Urban Development is almost ready to finalize the process of putting this district on the National Historic Register. She indicated the additional business encroachments would lessen the density of historic residences and the chances to be on this register. She requested the days and hours of operation to be Monday through Friday, 8:00 a.m. to 6:00 p.m. should the application be approved. She also objected to the sign and on-street parking for the business. She provided photographs (Exhibit A-1).

Eric Pierce, 1418 South Carson, offered a welcome to the applicants to the neighborhood. He pointed out the on-street no parking signs, indicating no parking between 7:00 a.m. to 6:00 p.m. on one side of the street. He added that they don't want to be a business district.

John Nix, 1448 South Carson, stated the owner improved the subject property and tried to lease it as residential property and was unsuccessful. He considers this application to be appropriate.

Charles Cox, 1432 South Carson, stated the subject property has always been residential. He considered the other two businesses to be inappropriate in the neighborhood. He also objected to the sign.

James Payne, 1426 South Carson, expressed the same objections as previously mentioned.

Applicant's Rebuttal:

Mr. Gomez was apologetic about the sign and failure to contact the neighborhood. He was willing to comply with the days and hours of operation suggested by Ms. Horner-Shears. He was also willing to provide paved parking at the rear of the property.

Comments and Questions:

Mr. Ackermann informed Mr. Gomez of the zoning code requirements for parking on this property. In response to a question from the Board, Mr. Gomez stated they would not see clients on Saturday. Ms. Stead commented that this type of business would probably bring less density to the neighborhood than a family. Mr. Stephens noted the property is two lots into the neighborhood and not compatible to the residential neighborhood.

Board Action:

On **Motion** of **Stead**, the Board voted 3-1-1 (Dunham, Stead, Tidwell "aye"; Stephens "nay"; Henke "abstained"; no "absences") to **APPROVE** a **Special Exception** to permit an office use (Use Unit 5) in an RM-2 district (Section 401), with conditions for the days and hours of operation to be Monday through Friday, 8:00 a.m. to 6:00 p.m., 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:

LT 38 BLK 3, CARLTON PLACE, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20162

Action Requested:

Special Exception to permit required off-street parking on a lot not containing the principal use (University Center at Tulsa); (Section 1301.D), located: 526 North Elgin Avenue.

Presentation:

Dave Huey, 10641 South Sandusky, represented the Board of Regents for Oklahoma A&M Colleges, OSU-Tulsa specifically. They propose to build 125,000 square feet of research space on the Tulsa campus. The research center would be located on its own lot and would not be able to accommodate on-site parking but the building is located within the campus where there is more than adequate parking. A conceptual site plan was provided (Exhibit C-1).

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (Dunham, Henke Stephens, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Special Exception** to permit required off-street parking on a lot not containing the principal use (University Center at Tulsa); (Section 1301.D), per conceptual plan, 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:

PRT SW NE BEG 305S NWC SW NE TH E585.03 S580 W585.05 N580 POB SEC 6 18 13 7.79AC, PRT SW NE BEG 350S & 585.03E NWC SW NE TH E555.03S580 W555.03 N580 POB SEC 6 18 13 7.39ACS, COLLEGIATE SQUARE, SOUTHERN HILLS VIEW B5-6, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20163

Action Requested:

Special Exception to reduce the combined required parking for a commercial mixed use development by 10% (Section 1305); and a Variance of required parking of 7 spaces (Section 1219), located: 8102-8222 South Lewis Avenue.

Presentation:

Rick Stuber, 1221 East 23rd, explained to the Board the space being considered for lease is at the far northeast corner of the property. He pointed out on a map the parking situation. He stated the bulk of the parking is at lunch time and only the restaurants are open after 6:00 p.m. Mr. Stuber submitted photographs (Exhibit D-1).

Comments and Questions:

Ms. Stead asked for the hardship. Mr. Stuber replied that the hardship would be the literal interpretation of the code. They have only filled the parking lot one time, during a Garth Brooks concert. He added that at peak parking times there are still empty spaces. Mr. Stephens asked if there is a tie agreement between the

shopping center and Arvest Plaza for shared parking. Mr. Stuber responded the properties are under the same ownership and they have a legal tie agreement.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Henke**, the Board voted 5-0-0 (Dunham, Henke Stephens, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Special Exception** to reduce the combined required parking for a commercial mixed use development by 10% (Section 1305), 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; and a **Variance** of required parking of 7 spaces (Section 1219), finding that such extraordinary exceptional conditions peculiar to this shopping center, which has several businesses that are closed when others are open, do not apply generally to other properties in the same use district, and finding it will not cause substantial detriment to the public good or impair the purpose or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan, on the following described property:

LT 1, LT 2, LT 7 BLK 2, RIVERBEND ADDN, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20164

Action Requested:

A Special Exception to permit a single-family dwelling in a CS zoned district (Section 701), located: 2451 North Gilcrease Museum Road.

Presentation:

Brandon Jackson, 320 South Boston, Suite 1026, represented Tara Custom Homes. The subject property is zoned CS and surrounded by agricultural and residential land uses. They proposed to construct one single-family dwelling on three acres or less. A site plan was provided (Exhibit E-1).

Comments and Questions:

Ms. Stead asked if the property extends to Apache and what type of fence is planned. Mr. Jackson replied the property extends to Apache and the fence will have a brick entry wall, with a combination of post and rail and some wrought iron. There would be a six-foot wood privacy fence running east and west on the southern boundary.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (Dunham, Henke Stephens, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Special Exception** to permit a single-family dwelling in a CS zoned district (Section 701), per plan, 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:

THE E 280 FT OF THE W 330 FT OF THE S 463.33 FT. OF THE N 523.33 FT OF NW/4 OF NW/4 OF SEC 27 T-20-N R-12-E OF IB&M OSAGE COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE US GOVT SURVEY

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Case No. 20165

Action Requested:

Special Exception to replace existing non-conforming carports with prefabricated metal in the same location (Section 1405.B), located: 5160 South Yale Avenue East.

Presentation:

Clint Case, 4200 East Skelly Drive, with Case and Associates, stated they own and manage Barcelona Apartments. They have had carports since the apartments were built in 1970. They propose to replace the wood carports with metal carports in the same locations. He submitted photographs (Exhibit F-1).

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Henke**, the Board voted 5-0-0 (Dunham, Henke Stephens, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Special Exception** to replace existing non-conforming carports with prefabricated metal in the same location (Section 1405.B), 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:

LT 1 & N25 VAC STREET ADJ ON S LESS BEG MOST NORTH SECR TH W15 N330 E15 S329.96 POB BLK 1, LINCOLN ESTATES, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20167

Action Requested:

A Variance to permit 12 children cared for in a Family Day Care Home from 7 (Sec. 402.B.5c); a Verification of Spacing to permit a Family Day Care Home(Section 402.B.5.g), located: 6121 East 75th Street South.

Presentation:

Bill Brightmire, 1831 East 71st Street, presented for the applicant. The applicants acquired a bigger home to accommodate more children in a daycare home. She has three children of her own and an Oklahoma license for a daycare home for twelve children (Exhibit G-1). They have 2,700 square feet. He stated they have five cars for this household, all on the driveway. There is a park and three apartment complexes nearby so there is a lot of traffic. He stated some children are picked up from her house around 5:30 p.m. and some around 10:30 p.m. She has been operating this daycare since June at this house.

Mr. Stephens out at 3:02 p.m.

Comments and Questions:

Ms. Stead asked Mr. Ackermann about the home daycare ordinance. Mr. Ackermann replied that the code will allow up to seven children, including your own children over the age of five, with a zoning clearance permit. Mr. Alberty mentioned with that permission there cannot be any outside employees. He noted that her certification requires two caregivers. Mr. Dunham asked the applicant for an answer regarding employees.

Angela Flores, 6121 East 75th Street, stated the only employee is her husband, who lives there.

Mr. Stephens returned at 3:05 p.m.

Interested Parties:

John Moody, 1800 South Baltimore, Suite 900, represented the Minshall Park Homeowner's Association. He indicated the Board of Adjustment does not have jurisdiction in this case, because the Zoning Code only authorizes an accessory use up to seven children. He submitted copies of portions of the zoning code, and photographs (Exhibits G-2 and G-4). He suggested that the request changes the use from an accessory use to a home occupation. He considered this to be a Use Variance request.

Mr. Dunham out at 3:08 p.m.

He pointed out the number of cars and people at the home, indicating there is more than one family living in the home. He also noted parking on the grass and an inoperable car parked on the street for several months. He called attention to a

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (Dunham, Henke Stephens, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **DENY** a **Variance** of the minimum lot area in an AG district from 2 acres to 1.6 acres; a **Variance** of minimum land area per dwelling unit from 2.2 acres to 2 acres; a **Variance** of the minimum average lot width from 200 ft. to 143 ft (Section 303); and a **Variance** of minimum required frontage on a public street from 30 ft. to 0 ft. (Section 206), finding a lack of hardship, noting it would form three non-conforming lots, on the following described property:

N 527.7 OF THE E/2 SE/4 SE/4 SEC 19 T-18-N R-14-E, City of Tulsa, Tulsa County, State of Oklahoma

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Case No. 20171

Action Requested:

A Special Exception to permit a school (Use Unit 5) in an AG district in the existing church building (Section 301), located: 10901 South Yale Avenue East.

Presentation:

Jim Beach, 111 South Elgin, stated the operator of the school, Mr. Charlie Pennington and Rick Brewer with the church were present to answer questions. He informed the Board that the school wanted to request a sign. He asked if they could continue to the next meeting for the additional relief.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (Dunham, Henke Stephens, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Special Exception** to permit a school (Use Unit 5) in an AG district in the existing church building (Section 301),

And to **CONTINUE** Case No. 20171 for additional relief to the meeting on January 10, 2006, on the following described property:

S75 N375 W580.8 SW SW LESS W33 THEREOF SEC 27 18 13 .94AC, PRT SW SW BEG 508.2E NWC SW SW TH E72.6 S300 W72.6 N300 POB SEC 27 18 13 .5AC, PRT SW SW BEG NWC SW SW TH E508.2 S300 W508.2 N300 POB LESS W33 THEREOF SEC 27 18 13 3.27AC City of Tulsa, Tulsa County, State of Oklahoma

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There being no further business, the meeting was adjourned at 3:47 p.m.

Date approved: _____

Chair