

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 972
Tuesday, January 22, 2008, 1:00 p.m.
Francis F. Campbell City Council Room
Plaza Level of City Hall
Tulsa Civic Center

**MEMBERS
PRESENT**

Henke, Chair
Stead, Vice Chair
Stephens
Tidwell, Secretary
White

**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, January 17, 2008, at 3:16 p.m., as well as at the Office of INCOG, 201 W. 5th St., Suite 600.

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

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

MINUTES

There were no minutes submitted to the Board for approval.

NEW APPLICATIONS

Case No. 20609-A

Action Requested:

Variance of the parking requirement for a mixed use commercial shopping center (Section 1212.a), located: 5800 South Lewis Avenue.

Presentation:

Tom Dittus, 2032 East 14th Place, Tulsa, Oklahoma, stated the original owner, Harold Burlingame, Sr. Now the business is run by his son, Haden Burlingame. Mr. Burlingame did not know why the parking lot was not re-striped. It would have

raised the parking capacity from 224 to 254 spaces. The site plan and a tenant list (Exhibit A-1 and A-3) are in the agenda packet. He added that only three businesses will be open after normal business hours. The hours of operation for this bar would be 2:00 p.m. to 2:00 a.m. He stated the hardship is the majority of his business would be after normal business hours.

Comments and Questions:

Mr. Cuthbertson commented that the parking provided after the re-striping per this variance request would accommodate both bars. Mr. Stephens stated he would like to see documentation from Architects' Collective that they can provide 30 more parking spaces. Ms. Stead stated she expected them to provide proof of the re-striping with the 30 extra spaces by May 1st. A letter was provided to the Board (Exhibit A-2).

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion of White**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Variance of the parking requirement for a mixed use commercial shopping center (Section 1212.a), with condition that documentation be given to INCOG by May 1, 2008 of the completion of the re-striping to include 254 parking spaces, per the plan approved in 2003, finding by reason of extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; and that actual usage of the parking lot is significantly less than the code requires; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted 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:

PRT NE SE BEG 543S NEC SE TH W258 S595.62 E258 N595.50 POB LESS
E50 THEREOF FOR ST SEC 31 19 13 2.84ACS, City of Tulsa, Tulsa County,
State of Oklahoma

Case No. 20625

Action Requested:

Variance of the maximum height of a detached accessory building located in the required rear yard from 18 ft. to 27 ft. (Section 210.B.5.a), located: 8603 South Gary Avenue.

Presentation:

Kenneth Vives, 4241 South Cincinnati, pointed out the 20 ft. utility easement on the north, prompted the need for this variance request. A site plan was provided (Exhibit B-1).

Comments and Questions:

Ms. Stead asked if he would have utilities connected to the garage. Mr. Vives replied the planned for electric and plumbing. He informed the Board there would not be any commercial activity.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Variance of the maximum height of a detached accessory building located in the required rear yard from 18 ft. to 27 ft. (Section 210.B.5.a), with conditions for no commercial activity or rental, per plan, finding the unusual configuration of the lot; finding by reason of extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted 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:

LT 4 BLK 1, WELLINGTON SOUTH, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20626

Action Requested:

Variance of the requirement that landscaping shall be irrigated (Section 1002.D.2), located: Northeast corner of 49th Street South and South 103rd Avenue.

Presentation:

Steve McGrew, 6926 East 75th Street, submitted photographs (Exhibit C-1) to the Board. He stated that though the plats show East 49th Street extends the length of the property, for all practical purposes, it does not exist past 103rd Street. There is a fence constructed down the middle of the street. They also park equipment on what would be the south side of the street. He pointed out that the normal boundaries of a street are not in place, such as drainage ditches. He stated it

would be difficult to landscape and maintain a street without defined boundaries. He added there are other vacated streets in the area. He has a building on what was 104th Street. He stated his landlord owns the property to the south. Mr. McGrew added that they have a shop but also a nice building with a showroom. He did not want to avoid the intent of the code because he wants to present the business well to their clientele. He submitted the required landscaping to obtain a permit.

Comments and Questions:

Ms. Stead asked Mr. McGrew to describe what he wanted. He replied that his preference is for a variance of all three sides. He was willing to plant trees along Highway 169. He did not want to irrigate such a long distance. Mr. McGrew suggested they could landscape more in the proximity of the building site. He added they could plant two trees on the east along Highway 169. Mr. White noted the manholes for the sanitary sewer and indicated the City would not vacate the street. Mr. Ackermann stated that sometimes one can ask the City Council to close a street and follow-up with a district court action to vacate the street. In a case where there are utilities in the right-of-way, the City agrees to vacate the street subject to the granting of an easement to maintain the utilities. Mr. McGrew stated if they vacate the street all the way to 103rd Street the landlord would be land-locked.

Interested Parties:

There were no interested parties who wished to speak.

Board discussion ensued.

Board Action:

On **Motion** of **White**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the Variance of the requirement that landscaping shall be irrigated (Section 1002.D.2), with condition to apply the variance to the west 200 ft. of said property, finding that the area in question is a potentially vacated street, subject to further development; and due to the significant distance of 225 ft. to the building site to the west; finding by reason of extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted 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:

Lots 13-24, Block 34, and the South 10' of the alleyway lying adjacent to Lots 13-24, Block 34, and the West 25' of South 104th East Avenue lying adjacent to Lot 24 beginning at a point 10' North of the Northeast corner of Lot 24, Block 34, and Lots 3-4 less and except the North 25' thereof, Block 33, and the South 10'

of the alleyway lying adjacent to Lots 3-4, Block 33, and the East 25' of South 104th East Avenue lying south of Lot 2 and beginning at a point 10' South of the Southwest corner of Lot 2, Block 33, all in the Town of Alsuma aka Alsuma Addition, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20627

Action Requested:

Variance to temporarily permit parking on a surface containing a non-all-weather material (gravel) (Section 1303.D), located: 9719 East 61st Street South.

Presentation:

Richard Walker, represented Brothers Houligan Restaurant. He stated they have purchased the subject property and are in the process of developing that lot. They have allowed their employees to park on the subject property to make more convenient parking available to the customers. They are negotiating the sale of the subject property. He asked for temporary approval to permit parking for six months. The prospective buyer has given verbal agreement to share fifteen parking spaces with the restaurant.

Interested Parties:

Maynard Ungerman, 6203 South Jamestown, Tulsa, Oklahoma 74136, stated he represented Julie Mueller. He referred to photographs submitted (Exhibit D-1). The subject property was used for a dumping ground during the reconstruction of Mingo Road. He mentioned issues of standing water, elevated ground, gravel roads and uncut brush. He suggested 60 to 90 days would be a reasonable temporary permit.

Julie Mueller, 9721 East 61st Street, objected to the elevation of the subject property that is causing problems on her property.

Applicant's Rebuttal:

Mr. Walker responded that they have been leveling the earth. He added they have improved that corner. He stated his business constructed parking that complies with the code.

Mr. Henke mentioned the Board received a petition of adjacent business owners in support of the application (Exhibit D-2 and D-3).

Roger Johnson, P.O. Box 35828, Tulsa, Oklahoma 74153, contractor for the project expressed concern that he has to wait six weeks for a building permit. He wanted the Board to consider that the request for six months is reasonable.

Board Action:

On **Motion of Stead**, the Board voted 4-1-0 (White, Henke, Stead, Tidwell "aye"; Stephens "nay"; no "abstentions"; no "absences") to **APPROVE** a Variance to temporarily permit parking on a surface containing a non-all-weather material (gravel) (Section 1303.D), for six months from January 22, 2008, finding by reason of exceptional conditions, which is the temporary nature of the variance peculiar to this project, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted 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:

S431 W116.6 E306.6 W/2 LT 4 LESS S60 FOR ST SEC 31 19 14 .993AC, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20628

Action Requested:

Variance of the required building setback from abutting R districts (Section 603), located: Northeast corner of 66th Place and Riverside Drive.

Presentation:

Steve Powell, 10830 East 45th Street, Tulsa, Oklahoma 74146, represented Mike Kissler and Shadow Mountain Behavioral Health Services. He stated the property is a long and narrow tract of land adjacent to Riverside Parkway. Their client has a facility located contiguous to the east. There is a strip of residential property to the east about 55 ft. wide. That is the reason for the request for relief. The RS-3 property is 100% developed. He pointed out that multi-story and multi-family use is increasing in this area. The property to the north is zoned residential, owned by the City of Tulsa. It is unlikely it will be used for residential purposes. He mentioned PSO cuts through the property with an easement that further encumbers the property for development. They proposed to have two buildings with additional height. He also mentioned the Fire Marshall has required a secondary entrance on the north of the property. It will be used for emergency vehicles only but it will further restrict the building pad. The plans include sidewalks. A site plan was provided (Exhibit E-1).

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion of Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the Variance of the required building setback from abutting R districts (Section 603),

per plan, as shown on page 5.9 in the agenda packet, finding the existing PSO easement and the requirements of Public Works for concrete channels, and sidewalks along Riverside Drive, finding these are extraordinary or exceptional conditions or circumstances which are peculiar to the land involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted 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:

LT 1, Bk 1, 6600 RIVERSIDE DRIVE PRT RSB PT L2 B1 RIVERBANK PLAZA,
City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20629

Action Requested:

Special Exception to permit Use Unit 17 - automotive and allied activities in a CS district (Section 701); and a Variance to permit outside storage and display of merchandise for sale within 300 ft. of an adjoining R district (Section 1217.C.2) to permit limited truck sales, located: 2805 East Admiral Place.

Presentation:

Brandon Harris, 2805 East Admiral Place, Tulsa, Oklahoma 74110, stated he purchased the subject property. He applied for an auto sales license and found that his property was not zoned for auto sales. He simply wanted to go to the auto dealer auctions to buy and sell trailers. He proposed to have trailers and occasionally two to three automobiles at the most. He does not want to do any auto repairs. He would want trucks that are ready to pull trailers.

Comments and Questions:

Ms. Stead informed Mr. Harris that the driving and parking surfaces must be paved. She also mentioned he would need to maintain the sidewalks. There is one light standard with two lights and security lights on the eave of the building. Mr. Cuthbertson stated the lights need to be shielded and turned away from adjoining residential property. Mr. Harris responded that the QuikTrip next door overpowers any light on his property.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit Use Unit 17 - automotive and allied activities in a CS district

(Section 701); and a Variance to permit outside storage and display of merchandise for sale within 300 ft. of an adjoining R district (Section 1217.C.2) to permit limited truck sales; approval limited to five years from January 22, 2008; with conditions for resale of auto and truck only with a maximum of five at any one time; no storage of parts or inoperable vehicles, or batteries on lot; existing lighting to remain and any additional lighting per Kennebunkport formula; driving and parking surfaces paved; and maintain sidewalks on Admiral Place; finding the progression of non-approved business on this site was influential in the Board decision; finding these are extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted 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:

LT 1 BLK 1, SPEEDWAY HGTS SECOND ADDN RESUB L6-9 B4 SPEEDWAY HGTS, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20631

Action Requested:

Variance to permit an outdoor advertising sign outside a freeway corridor (Section 1221.F.1); a Variance of the maximum permitted display surface area from 140.5 to 447 sq. ft. (Section 1221.F.17) and a Variance to permit an outdoor advertising sign within a required parking space (Section 1221.F.18); all to permit a replacement outdoor advertising sign, located: 3629 South Peoria Avenue.

Mr. Tidwell abstained from Case. No. 20631.

Presentation:

Michelle Smith, 1136 East 36th Place, stated she and her husband have been business owners in Brookside for 27 years. They have been active participants in the Brookside Business Association. They own a residential property across the street from the subject property. She stated they have a grandfathered outdoor advertising sign. They proposed to improve the property by reducing twelve large metal poles to one pole and four signs to two. This will increase parking and reduce pigeon droppings and visual clutter.

William LaFortune, 401 South Boston, Suite 1100, Tulsa, Oklahoma 74103, noted the peculiar circumstance in the existence of legal non-conforming outdoor advertising signs on the subject property. He submitted a book of exhibits, including photographs and a site plan (Exhibits F-1). This project would improve the appearance of the subject property and Brookside in general. He pointed out this would reduce the signs to two on one pole.

Mr. Tidwell out at 2:49 p.m.

He described the reduction of the size and display surface, which would reduce visual clutter. He pointed out the commercial zoning around the subject property. He informed the Board they would exchange four lights with two and light wattage would not increase. The walk-around for the old signs would be improved for safety and pigeon-proofed for public health. He noted the extraordinary and unusual circumstances by which the literal enforcement of the code would result in a hardship. The height would remain the same, with display surface area of 360 sq. ft. instead of the existing 480 sq. ft., one pole instead of twelve, and more parking spaces would be available. He referred to an email letter from Pam Deatherage, from the Brookside Neighborhood Association, in support of the application (Exhibit F-4). A conceptual plan and conditions were provided (Exhibits F-1, F-2, and F-3).

Interested Parties:

Herb Beattie, 3474 South Zunis, Brookside Neighborhood Association, stated he discussed the application with Ms. Deatherage. They decided they do not want the old or the new signs in Brookside. He asked if it was approved to limit the approval to ten years. They also asked there be no flashing lights, and no additional lighting.

LeRoy Wellborn, 2532 South Owasso, Tulsa, Oklahoma 74114, family owns the hardware store property. He expressed concern that the new sign would be larger than the existing signs. He also thought the lights would be increased. He stated it would dwarf the hardware store sign. He stated it would be more intense and attract more attention than the existing sign.

Bill Hickman, 777 East 38th Street, Tulsa, Oklahoma, 74145, represented Lamar Advertising. He stated Lamar owns the existing signs. The sign was built legally and after the zoning code enacted, it was considered legal, non-conforming. He stated he was not here to take a position on this application. Lamar would like to improve their signs, but are not allowed to do so without coming before this Board. He added that efforts to effect changes through the city legislative process have been unsuccessful. Lamar just wants clear directions regarding changing their signs.

Greg Jennings, 2260 South Troost, stated the new signs would still be ugly. He was opposed to billboards on the city streets.

Applicant's Rebuttal:

Mr. LaFortune responded that the applicants discussed the application with the neighborhood association. He stated he talked with the President of the neighborhood association and the Vice-Chair of the business association and neither of them was present at this hearing to oppose. When he talked with Mr.

Beattie on the weekend, Mr. Beattie told him that he did not know of any opposition to this application except for Mr. Wellborn. Mr. LaFortune informed the Board that communication from Ms. Deatherage stated yesterday that she thought this would be an improvement. He stated one pole versus twelve reduces visual clutter. He added that one sign versus two and two lights with the same wattage as the existing four is a reduction of visual clutter and distractions.

The Chair recognized Mr. Jennings again. He reiterated that he wanted a time limit on the life of any sign/signs at this location.

Mr. Tidwell returned at approximately 3:30 p.m. and out again.

Mr. Henke asked for a more defined hardship. Mr. LaFortune pointed out the peculiar and unique circumstance, stating there were no other outdoor advertising signs on that side of Peoria. Mr. LaFortune also mentioned that the signs were there when they bought the property. The literal enforcement of the code does not permit them to improve their business property. This relief would allow them to move toward complying with the code rather than away from it. He responded that the applicant sees the time limit to approval as a restriction to a business. Mr. LaFortune also noted that the lights do not come on until after the hardware store closes.

Board discussion ensued.

Board Action:

On **Motion of Stead**, to **DENY** a Variance to permit an outdoor advertising sign outside a freeway corridor (Section 1221.F.1); a Variance of the maximum permitted display surface area from 140.5 to 447 sq. ft. (Section 1221.F.17) and a Variance to permit an outdoor advertising sign within a required parking space (Section 1221.F.18); all to permit a replacement outdoor advertising sign, finding a lack of hardship, seconded by **White**.

Mr. LaFortune asked for discussion on the motion.

Mr. Beattie stated the neighborhood does not like a freeway sign in Brookside. He asked for a time limit on the sign. He referred to the lack of aesthetic appeal. Ms. Stead informed him the Board could not do that.

Mr. Hickman suggested a new ordinance to take down signs and rebuild new signs that comply with the zoning code.

Mr. LaFortune stated the code requires a finding of extraordinary, exceptional condition or circumstance, which is peculiar to the land, structure, or building involved, the literal enforcement would result in unnecessary hardship. The structure is the peculiar and unique circumstance. The structure is unappealing,

peculiar, and unique, and cannot be improved for the public good without the variance.

Mr. Tidwell returned at approximately 3:55 p.m.

Mr. White considered the structure rather than the land after the rebuttal. He stated, based on the structure of the sign not the building, the applicant has a hardship. He added that he could not put a time limit on the approval. He withdrew his second. He still wanted a condition to exclude approval of an LED sign. Ms. Stead withdrew her motion.

On **Motion of White**, the Board voted 4-0-1 (White, Stephens, Henke, Stead, "aye"; no "nays"; Tidwell "abstained"; no "absences") to **APPROVE** a Variance to permit an outdoor advertising sign outside a freeway corridor (Section 1221.F.1); a Variance of the maximum permitted display surface area from 140.5 to 447 sq. ft. (Section 1221.F.17) and a Variance to permit an outdoor advertising sign within a required parking space (Section 1221.F.18); all to permit a replacement outdoor advertising sign; per conceptual plan, page 7.10; per applicant's proposed conditions, pages 7.7, 7.8, 7.9, (exhibit B) in the agenda packet; no internal lighting, no animation or LED sign; finding by reason of extraordinary or exceptional conditions or circumstances which are peculiar to the structure involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted 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:

LTS 1& 2, BROACH ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20614

Action Requested:

Request for Reconsideration of a Variance of the minimum 1,200 ft. separation between outdoor advertising signs to 1,030 ft. (Section 1221.F.2), located: East of the Southeast corner of 165th East Avenue and I-44.

Mr. Cuthbertson reminded the Board of the condition for a lot combination placed on the approval of this case. He stated the Tulsa Metropolitan Planning Commission could not consider a lot combination of two separate parcels that belong to two original subdivisions. The applicant asked for a reconsideration of this case without the condition. The one interested party at the last hearing was notified of this request, but it did not appear he was present. Mr. Cuthbertson asked the Board to reconsider the application at the next hearing without the condition.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **White**, the Board voted 5-0-0 (White, Henke Stephens, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **Reconsider** Case No. 20614 at the meeting on February 12, 2008, on the following described property:

PRT LT 1 BEG NWC LT 1 TH CRV RT 101.91 S94 W100 N75 POB BLK 1, AUD ADDN, City of Tulsa, Tulsa County, State of Oklahoma

There being no further business, the meeting adjourned at 4:10 p.m.

Date approved: 2/26/08


Chair