

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1036
Tuesday, November 9, 2010, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Henke, Chair Stead Tidwell, Secretary White, Vice Chair Van De Wiele		Cuthbertson Sparger	Boulden, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Wednesday, November 4, 2010, at 11:07 p.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

On **MOTION** of **TIDWELL**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the **Minutes** of October 26, 2010 (No. 1035).

UNFINISHED BUSINESS

NEW APPLICATIONS

Case No. 21158-Tana Parks

This case was withdrawn.

Case No. 21164-Melinda Bennett

Action Requested:

Variance of the maximum number of dwellings permitted on a lot of record (Section 207) to permit two dwellings on the AG-zoned lot. **Location:** 9404 South Delaware Avenue

Mr. Cuthbertson stated the application, by the applicant, was made at the direction of staff as well as the City permit office. However, it was determined that this request is not one the Board has the ability to grant, as it would constitute a use variance. The applicant was informed too late to remove the request from the agenda and too late to submit a different request for this hearing to accomplish what they are trying to do. The applicant would like to continue this request to the November 23, 2010 hearing, thus allowing the applicant time to provide adequate notice for a new request if they so choose.

Presentation:

None.

Interested Parties:

Stephen Gray, 4530 South Sheridan Road, Suite 205, Tulsa, OK; stated he is trying to help his client, Mrs. Bennett, make a decision on whether to go forward or not to go forward. The Sears & Roebuck Craftsman house that Mrs. Bennett is trying to move was built by her grandfather in 1926. The City of Jenks will not allow any building to be moved within the city limits and it does not matter the history of the home. The school district has acquired the land where the house currently sits so Mrs. Bennett was forced, by eminent domain, to allow the school to make the land a parking lot.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **CONTINUE** the request for a Variance of the maximum number of dwellings permitted on a lot of record (Section 207) to permit two dwellings on the AG zoned lot to November 23, 2010; for the following property:

GOV LT 4 BEG 50W NEC SE NW TH W417.2 S208.6 E417.2 N208.6 POB LESS BEG
50W NEC TH SLY ALONG R/W 208.6 WLY51.51 NLY120.87 NLY88.28 TO A PT NL
E40 POBSEC 20 18 13

Case No. 21151-Betty Earnest

Action Requested:

Verification of the spacing requirement for a family daycare home of 300 ft. from another daycare home on the same street (Section 402.B.5.g). **Location:** 6520 South Hudson Place

Presentation:

Betty Earnest, 6520 South Hudson Place, Tulsa, OK; stated the daycare home that was going to move into the neighborhood across from her house has moved to another location after learning that Ms. Earnest had applied for her permit with the City and applied her verification request with the Board.

Interested Parties:

There were no interested parties were present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **ACCEPT** the Verification of the spacing requirement for a family day care home of 300 ft. from another day care home on the same street (Section 402.B.5.g), as they presently exist, subject to the action of the Board being void should another family day care home be established prior to this family day care home; for the following property:

LT 6 BLK 3, HIDDEN VALLEY EST RESUB L15-20 B2 & B3-5 SOUTHMONT EST

Case No. 21160-Global Sign Solutions

Action Requested:

Variance of the maximum number of signs permitted on a lot in the OL district from one (1) to two (2) signs (Section 602.B.4.b); and a Variance of the maximum permitted display surface area for a sign in the OL district from 32 S.F. to 100 S.F. (Section 602.B.4.c). **Location:** 4625 South Harvard Avenue

Presentation:

Richard Craig, 1889 North 105th East Avenue, Tulsa, OK; Mr. Craig did not make a presentation but did take questions from the Board.

Ms. Stead asked Mr. Craig where the proposed sign was to be placed, because there is an existing ground sign located to the south and there is a huge bush located north of the lot. Mr. Craig stated the proposed sign and the existing signs would be more than 30 feet apart.

Mr. Van De Wiele asked Mr. Craig if the realtor signs were going to be removed and he stated they would be removed.

Mr. Henke asked Mr. Craig what the hardships were for the Variances. Mr. Craig stated there is a dental office and two other tenants in the office space that have no recognition.

Ms. Stead stated the irregular shaped commercial property, 125'-0" and 325'-0" deep, impairs businesses to the east of being identified thus creating a hardship.

Mr. Cuthbertson asked Mr. Craig if the sign on the building in the back of the lot is a wall sign. Mr. Craig replied that he thought it was a banner.

Ms. Stead asked Mr. Craig if the existing banners would be removed. Mr. Cuthbertson stated the banners, as promotional signs, are permitted in addition to permanent ground and wall signs. Banners are permitted as promotional signs on the buildings, which is differentiated from banners on poles.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the maximum number of signs permitted on a lot in the OL district from one (1) to two (2) signs (Section 602.B.4.b); and a Variance of the maximum permitted display surface area for a sign in the OL district from 32 S.F. to 100 S.F. (Section 602.B.4.c). The Board has found that the office lot is only 125'-0" wide by 325'-0" deep; this impairs the businesses to the east from having any identity in the area; the existing banner and the Accent Realtor ground real estate sign is to be removed. In granting this Variance the Board has found that 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 variances 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, subject to conceptual plan 5.7 relating to the sign dimensions; for the following property:

LT 5 BLK 3, VILLA GROVE HGTS NO 1

Case No. 21162-Erik Miller

Action Requested:

Verification of the spacing requirement for a liquor store of 300 ft. from blood banks, plasma centers, day labor hiring centers, bail bond offices, pawn shops, and other liquor stores (Section 1214.C.3). **Location:** 2237 North Harvard Avenue

Presentation:

Erik Miller, P. O. Box 566, Tulsa, OK; Mr. Miller did not make a presentation but did take questions from the Board.

Mr. White asked Mr. Miller if the proposed liquor store was going to be in the same place as the former liquor store on North Harvard, and Mr. Miller stated affirmatively.

Interested Parties:

Jack Manns, 3330 East Xyler, Tulsa, OK; Mr. Henke stated the case was before the Board strictly as a verification of spacing and asked Mr. Manns if he knew of another liquor store, blood bank, plasma center, day labor hiring center, bail bond office or pawn shop within 300 feet of the proposed liquor store. Mr. Manns stated he was not aware of any of the mentioned businesses being in that area. Mr. Henke stated this Board could not address anything else at this time.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **ACCEPT** the Verification of the spacing requirement for a liquor store of 300 ft. from blood banks, plasma centers, day labor hiring centers, bail bond offices, pawn shops, and other liquor stores (Section 1214.C.3), subject to the action of the Board being void should another above referenced conflicting use be established prior to this liquor store; for the following property:

LTS 1 & 2 BLK 1, DANA ANN ADDN

Case No. 21163-J. R. Donelson

Action Requested:

Special Exception to permit (Use Unit 5) church use in the RS-3 district (Section 401). **Location:** 1825 West 91st Street South

Mr. Henke stated that he had noticed a reference to Creekmore property in the agenda packet on page 7.18 and Mr. Henke's mother's maiden name is Creekmore so he wanted get a clarification in case there was a conflict Mr. Henke was not aware. Mr. Henke asked Mr. Donelson if he knew anything about the subject property, and Mr. Donelson stated he was not aware of any conflict. Mr. Henke proceeded with the hearing.

Presentation:

J. R. Donelson, 8410 East 111th Street South, Bixby, OK; stated presently Village Congregation Church occupies the site. The subject tract has been used by this church and a previous church for approximately 30 years. The church is currently going through TMAPC to have the property platted because the church would like to build an adjacent building to expand their church and the congregation; the church will be leaving two structures on the site in place. The INCOG staff has recommended filing the Special Exception because they were not able to locate in their file that this RS-3 property, as it is presently zoned, has been designated for the use of a church.

Interested Parties:

Angelle Cole, 2440 West 81st Street, Tulsa, OK; stated she lives in the neighborhood and wanted to know what type of building is going to be built. If the Special Exception is granted, Ms. Cole wanted to know what would happen to the property should the church decide to move or expand again; will the property revert back to the RS-3 zoning? Ms. Stead stated the zoning does not change; almost all schools and churches in Tulsa are located on residential property. Ms. Stead stated that if the Special Exception were to be granted the property must be platted and there would be a right-of-way for sidewalks along with other criteria to be met, and the City of Tulsa will perform a stormwater drainage study automatically.

Janelle Robison, 1908 West 91st Street, Tulsa, OK; stated she lives south of where the church rectory is currently located and she has no problem with the church being located on the property.

Winona Holliday, 1725 West 91st Street South, Tulsa, OK; stated she is in favor of the church because she does not want a developer building in the area; the church is a good neighbor.

Comments and Questions:

None.

Board Action:

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to permit (Use Unit 5) church use in the RS-3 district (Section 401). This approval is subject to the platting of the property and will necessitate additional right-of-way for sidewalks; there shall be no parking in the 35 foot front yard; parking within 50 feet of the residential property on the east and west is required to be screened in accordance with the code; all lighting is to be shielded, down and away from the abutting properties; a height limitation of 35 feet for the structure except architectural elements such as towers, spires, etc. which can extend up to 150% of the maximum building height for RS-3. In granting this Special Exception the Board has found 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; for the following property:

**PRT SE SE BEG 25N & 741.7W SECR SE TH W206.9 NW TO PT N342.4 E315.25
S183.7 W104.35 S208.7 POB SEC 15 18 12 2.32ACS**

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OTHER BUSINESS

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Case No. 21147-Erica Dorwart

Action Requested:

Request to modify the record to remove an image from the record. **Location:**
2249 South Troost Avenue

Mr. White recused himself at 1:45 P.M.

Presentation:

Jennifer Mills, Frederic Dorwart Lawyers, 124 East 4th Street, Tulsa, OK; represents Ms. Dorwart, and she stated Ms. Dorwart only wanted the image of her minor daughter removed from the pictures, Exhibit 2-G.

Ms. Stead asked Mr. Boulden why this request of image removal had come before the Board because this case had been appealed by Ms. Dorwart and the case would be going to District Court, and the Board of Adjustment records would not be used in District Court. Mr. Boulden stated that the Board of Adjustment records would be made part of the District Court record; in the past parties have asked the Board of Adjustment records be an exhibit in the trial.

Ms. Stead stated that applicants are notified at the first of every meeting, and often during the meeting, that if they present an exhibit it becomes property of the Board of Adjustment; therefore, the image should remain part of the record.

Mr. Van De Wiele asked Mr. Boulden if he had any concerns as to the Board's abilities to grant the image removal request. Mr. Boulden stated this is a unique situation; that by State Statute, the Board is required to transmit the record to the District Court once an appeal has been filed but whether the Board loses jurisdiction over the record is the issue. Mr. Boulden stated that the request is immaterial to the actual decision made by the Board. With both parties agreeing to what is currently being presented, there is very little harm or consequence.

Ms. Stead stated that she feels there is harm or consequence any time the Board changes a record.

Interested Parties:

Patty Harwell, 2249 South Troost Avenue, Tulsa, OK; presented revised pictures showing the removal of the image of Ms. Dorwart's daughter. Ms. Harwell stated that when the pictures were taken, the purpose was not to show Ms. Dorwart's minor daughter; the purpose was to show that Ms. Dorwart was on the Harwell's property. Ms. Harwell wants the pictures to stay part of the record because she thinks they are relevant, but as far as the minor daughter is concerned, she is not needed in the picture. Ms. Harwell stated the daughter has never been on the Harwell property, thus making her not relevant to the situation.

Mr. Henke asked Mr. Boulden about the audio and video record of the previous proceedings and what happens to the images in those recordings. Mr. Boulden stated that the TGOV recording has never been transmitted to the District Court; sometimes parties will present a DVD as evidence.

Mr. Henke asked Mr. Boulden if this request should be continued in order to allow Mr. Boulden to study case law or clarification in order to advise the Board with sufficient advice to enable a decision. Mr. Boulden stated if the Board would like to scrutinize the request that closely, he would get additional information for the Board, but Mr. Boulden did not think the Board is risking anything by redacting the image as requested by Ms. Dorwart.

Comments and Questions:

None.

Board Action:

On **MOTION** of **STEAD** to **DENY** the Request to modify the record to remove an image from the record, there was no second, therefore the motion died for lack of a second.

On **MOTION** of **VAN DE WIELE**, the Board voted 3-1-0 (Henke, Tidwell, Van De Wiele "aye"; Stead "nay"; no "abstentions") to **ACCEPT** the Request to modify the record to

remove an image from the record and use the redacted photos for the record in case BOA-21147; for the following described property:

LT 12 & N 12' LT 13 BK 7, TERWILLEGER HGTS

Mr. White reentered the meeting at 1:53 P.M.

NEW BUSINESS:

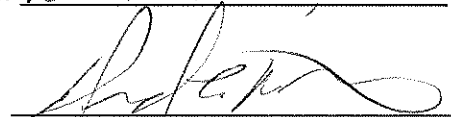
None.

BOARD MEMBER COMMENTS:

None.

There being no further business, the meeting adjourned at 1:55 p.m.

Date approved: NOVEMBER 23, 2010



Chair