

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1044
Tuesday, March 22, 2011, 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 Van De Wiele White, Vice Chair		Cuthbertson Sparger	Boulden, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Wednesday, March 16, 2011, at 4:48 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 March 8, 2011 (No. 1043).

NEW APPLICATIONS

Case No. 21235-Mark S. Rooney

Action Requested:

Variance of the required front yard in the RS-1 district from 35 ft. to 25 ft. (Section 403) to permit an addition to an existing dwelling. **Location:** 3144 East 33rd Street

Presentation:

None.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Mr. Cuthbertson informed the Board that the applicant has redesigned the proposed addition which resulted in the need for a new notice. He advised the Board the new notice was sent for the April 12th hearing.

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 required front yard in the RS-1 district from 35 ft. to 25 ft. (Section 403) to permit an addition to an existing dwelling to April 12, 2011; for the following property:

LT 6 BLK 6, RANCH ACRES RESUB L5-12 B5 & L4-6 B6, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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Case No. 21240-Jeremy Perkins

Action Requested:

Variance of the rear yard requirement in the RS-1 district (Section 403) from 25 ft. to 9 ft.-10 in. to permit a garage addition to an existing dwelling. **Location:** 4624 South Wheeling Avenue

Presentation:

None.

Interested Parties:

There were no interested parties present.

Comments and Questions:

Mr. Cuthbertson advised that the new notice is needed to accommodate a redesign.

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 rear yard requirement in the RS-1 district (Section 403) from 25 ft. to 9 ft.-10 in. to permit a garage addition to an existing dwelling; for the following property:

LT 1 BLK 2, BOLEWOOD ESTATES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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UNFINISHED BUSINESS

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Mr. Henke recused himself from this case and left the room at 1:05 P.M.

Case No. 21225-Brad Lewis

Action Requested:

Variance of the minimum lot width required in the RS-3 district (Section 403) from 60 ft. to 50 ft. and a Variance of the minimum land area required in the RS-3 district (Section 403) from 8,400 sq. ft. to permit lot-splits; a Variance of the side yard required abutting South Quincy Avenue from 15 ft. to 5 ft. (Section 403); and a Special Exception to reduce the required front yards in the RS-3 district from 25 ft. to 20 ft. (Section 403); all to permit residential development. **Location:** SW/c of East 35th Place and South Quincy Avenue

Presentation:

Roy Johnsen, 1 West 3rd Street, Suite 1010, Tulsa, OK; stated he represents the applicant. He provided that the subject property is a deep lot, 140'-0" deep; a normal RS-3 lot would be 60'-0" wide x 120'-0" approximately in depth, thus being a 6,900 sq. ft. lot. The subject property clearly exceeds that square footage. The subject property is located in a 1927 subdivision, and since 1970 there have been a series of lot-splits and a majority of the lots are now 50'-0" front lots. The five feet being asked for under the Special Exception request is considered a minor special exception under the rules. The selection to have the driveway in the rear will be provided through a mutual access easement and there will be a document that restricts the use; i.e., no parking on the drive because it is a means to access a rear garage. The Variance being requested for the lot area is a 1.7% reduction in size. Instead of 8,400 sq. ft., each of the three lots has a 150 foot difference, which is minimal. There is an almost identical situation to the north, across the street. Mr. Beattie, an interested party, has stated that the

neighborhood association he represents is not objecting to the four lots but wants a PUD filed. The Brookside study has found this proposal completely in accordance with the comprehensive plan for Brookside because of two things, greater density and walkability. Under this proposal there will be a sidewalk along 35th Place and along South Quincy. The Board has been presented with a site plan showing the mutual access easement on the back, sidewalks, and detached single-family homes, thus the Board would have the critical standards imposed. Therefore, if the property were to be sold those standards would remain applicable. There is no zoning ordinance that restricts a mutual access easement and there is no frontage requirement in a residential district. This is not a historic preservation district, therefore, the architecture is irrelevant to this Board. The staff, Mr. Cuthbertson, has stated in the case report, as presented to the Board, that a PUD is not necessary and the reasons have been outlined in the case report. This is a matter of policy and this application is fully justified.

Mr. Van De Wiele asked Mr. Cuthbertson about the minimum land area requirement; Mr. Cuthbertson stated that the minimum lot area is 6,900 square feet and the minimum land area requirement is 8,400 square feet.

Mr. Boulden asked how the mutual access easement would be memorialized, and Mr. Johnsen stated it would be a mutual access easement established of record. Mr. Johnsen stated one of the key parts of that is prohibiting parking because it is used purely as access, a means of accessing the rear garage.

Interested Parties:

David Tompkins, 1409 East 35th Place, Tulsa, OK; stated he lives east and north of the subject property. He moved to the area in 2005 from a small community in Georgia, and chose to live in the Brookside area because of what the area is becoming, which is a work/live space. Mr. Tompkins likes the area and supports Mr. Lewis's proposed project because it is good for the neighborhood economically and aesthetically.

Herb Beattie, 3474 South Zunis Avenue, Tulsa, OK; stated he opposes the proposed project. He wants to help protect people and their homes who live in the Brookside area so they will continue living in the area. Mr. Beattie told the Board that he would like to clarify that he probably said the neighborhood does not object to four homes being on the two lots but he does not think he advocated four lots. He wants the Board to deny the application and encourage the owner to pursue the PUD process, which is a legitimate process that the zoning code encourages. The policy says proposed development projects requiring multiple variances, the use of private streets or a variance of frontage are encouraged to utilize the PUD process. This application has three variances, a private street, and a variance on frontage; it meets all three of the criteria which were set up to require a PUD. Mr. Beattie continued, in regards to a hardship, Mr. Johnsen stated the hardship would be because the lots are deeper it would not allow the owner to maximize the value. That is an economic hardship and the Board is not to approve an economic hardship. Mr. Beattie asked the Board what stipulated a private street. Mr. Beattie thought a private street is a street that is privately

owned; therefore, the garage access should be considered a private street. Mr. Beattie stated there is a flooding problem in Brookside.

Ms. Stead stopped Mr. Beattie to remind him that the Board cannot address flooding or drainage problems. Mr. Beattie asked Ms. Stead where it was written that the Board of Adjustment could not address flooding issues.

Mr. Boulden stated that the Board has no ability to impose any kind of conditions regarding development. The Board could consider the density and the type of development, how it might to that extent, impact utility usage including stormwater, but it is not specifically in the Board's purview. That is regulated by another ordinance by the City of Tulsa. This Board generally operates with the knowledge that those ordinances are dealt with by Development Services.

Mr. Beattie stated that if the Board approves this application there will be four lots developed. Development Services is doing a much better job of reviewing stormwater impact; however, all the City can require on the four lots is that the stormwater not damage the adjacent property. Mr. Beattie stated that if a PUD were developed the City would have more flexibility regarding the stormwater.

Mr. Boulden asked Mr. Beattie why he thought the subject lots should not be treated as other lots in the area, because exhibit page 2.16, which is a copy of an old plat, that shows the lots to be 100'-0" lots and exhibit page 2.15, which is a copy from the assessor's records, shows the lots to be 50'-0" lots. Mr. Beattie stated lot-splits are why there are flooding problems and hardships probably were proven to allow those lot-splits.

Ms. Stead let Mr. Beattie know that 91% of the lots are 50'-0" lots according to exhibit page 2.15.

Mr. Van De Wiele reminded Mr. Beattie that in the subject area, regarding the private street issue, there are side-by-side lots that share a driveway so the subject property is proposing a shared driveway not a private street. Mr. Beattie responded, regardless if it is called a private street or alley, there is a policy that addresses private streets and he asked what it takes to meet that standard.

Mr. White told Mr. Beattie there is one criterion that has been seen numerous times regarding a private street on which there is legal public access; in this case the driveway provides a mutual public access to the four lots, not a legal public access to the four lots.

David Steele, Senior Engineer, City of Tulsa, 175 East 2nd Street, Tulsa, OK; stated the City of Tulsa does have an ordinance that requires drainage plans for individual lots before a permit is issued. The plans must show the drainage before the action proposed and the drainage after to show that it is accepting and conveying waters onto and leaving the site; and the increased runoff is conveyed to the public system without

causing damage to neighbors. In addition, the City of Tulsa requires erosion control plans for the smaller lots so the sediments don't go into a neighbors swimming pool, or the sediment does not get into the public system and clog the stormdrain.

Mr. Van De Wiele asked Mr. Steele how his department made the distinction between a lot split versus a PUD regarding the stormwater. Mr. Steele stated for a larger PUD, larger than the subject property, the department will look at the whole picture of the drainage pattern of the PUD and approve it as a whole; therefore, the City can have greater control rather than projects being piecemealed. On smaller properties, one of the magnitude of the subject property, there is not a whole lot of difference in handling the runoff. The City does not require detention on smaller lots because there not much difference in the runoff patterns, whether it is a PUD or not.

Mr. Boulden asked Mr. Steele if the subject property was approved to be split into four lots the City would require a drainage plan, but if there was only one lot involved the City would not require a drainage plan would the City review to consider the drainage of the surrounding lots. Mr. Steele stated in either case they would not be reviewed any differently. Mr. Boulden stated he has heard Mr. Steele's office staff use the term "fully urbanized" so when the department reviews one individual lot how are the surrounding lots reviewed. Mr. Steele stated that drainage is always reviewed as if the lot were fully developed. It has always been the philosophy of the City, whether it be a large watershed or an individual lot, to consider the runoff as if the area were under fully developed conditions.

Rebuttal:

Mr. Johnsen stated that in a Board of Adjustment work session regarding policy the conclusion was that a specific number of variances to constitute multiple cannot be established because each case is unique.

Mr. Tidwell asked Mr. Johnsen to reiterate his stance on the hardship of the subject property. Mr. Johnsen stated he thought the hardship would be the fact that the lots were platted with a depth that is not typical for the RS-3 district. Usually there is 120 feet with a 60 feet front for a minimum lot size.

Comments and Questions:

None.

Board Action:

On **MOTION** of **STEAD**, the Board voted 4-0-0 (Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the Variance of the minimum lot width required in the RS-3 district (Section 403) from 60 ft. to 50 ft.; **APPROVE** a Variance of the minimum land area required in the RS-3 district (Section 403) from 8,400 sq. ft. to permit lot splits; **APPROVE** a Variance of the side yard required abutting South Quincy Avenue from 15 ft. to 5 ft. (Section 403); and **APPROVE** a Special Exception to reduce the required front yards in the RS-3 district from 25 ft. to 20 ft. (Section 403); all to permit residential development, as shown on lot split exhibit 2.10 and conceptual plan

2.11; any driveway and/or garage access will be from the common easement which will be executed by the owner. The Board has found that 91 out of 112, or 81.25%, of the residential lots in Oliver Addition subdivision are less than 60 feet in width making them non-conforming lots. This area was platted in approximately 1927 with a depth of 140 feet which is not typical for the RS-3 district which was later the designated zoning. In granting the three variances the Board has found that 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 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. In granting the special exception the Board has found that the Special Exception 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:

LT 7 BLK 4, LT 8 BLK 4, OLIVERS ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Mr. Henke returned to the meeting at 2:07 p.m.

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NEW APPLICATIONS

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Case No. 21234-AMAX Sign Company

Action Requested:

Variance of the maximum number of signs permitted per street frontage for a non-residential use in the AG district (Section 302.B.2) to permit two identification signs at the entrance of an existing Country Club. **Location:** 9202 East 81st Street South

Presentation:

Bryan Ward, 9520 East 55th Place, Tulsa, OK; stated recently 81st Street had been widened and the widening project took out the old sign for the country club. The width of the entrance to the golf course and country club has been increased due to the widening project. With the increased traffic speed the country club wants to create more of a focal point on their entrance. There is another entrance east that is used by maintenance crews or deliveries.

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 per street frontage for a non-residential use in the AG district (Section 302.B.2) to permit two identification signs at the entrance of an existing Country Club. The distances proposed are on exhibit page 3.6 and is to be a conceptual location of the sign. The sign shall not be illuminated internally with the height, width and distance shown on 3.5. In granting this variance the Board has found that 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; for the following property:

PRT NE & NE NW BEG NEC NE TH S2640.4 W2635.68 N1320.16 W454.41 N1320.16 W454.41 N1320.16 W454.41 N1320.16 E3087.57 TO POB LESS BEG NEC NE TH S1207.75 W50 N547.67 W160 N610 W2427.58 N50 E TO POB SEC 13 18 13, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Case No. 21040-A-Coyle Bitson

Action Requested:

Special Exception to permit automotive and mechanical repair (UU17) in a CS district (Section 701); and a Modification of conditions to a previous approval to #1 and #2: permit mechanical repair, #7 permit limited outside storage of tires, #8 eliminate or amend the condition to asphalt or concrete the gravel on the most southerly building 1307, #10 to modify the time limitation; and amend the site plan.

Location: 1307 and 1315 North Harvard Avenue

Presentation:

Coyle Bitson, 603 East 52nd Street North, Tulsa, OK; stated she represents the owner of the subject property who is wanting to have approval for an auto paint and body shop, a tire shop, and an auto mechanical shop.

Mr. White asked Mr. Boulden if the existing fence constructed of 4' x 8' plywood was acceptable for screening coverage, and Mr. Boulden said it was not.

Interested Parties:

Jesus Moreno, 3429 South 110th East Avenue, Tulsa, OK; he came forward and stated he is willing to install a fence with a sliding gate as tall as the tires are high. He will install the fence on the commercial side of the property to the gate with a sliding private gate.

Ms. Stead told Mr. Moreno that the fence could be no taller than eight feet. Mr. Moreno stated he would then lower the top rack of tires to fit the height of the eight foot fence.

Comments and Questions:

None.

Board Action:

On **MOTION** of **STEAD**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, "aye"; no "nays"; no "abstentions") to **APPROVE** the Special Exception to permit automotive and mechanical repair (UU17) in a CS district (Section 701); and a Modification of conditions to a previous approval to #1 and #2: permit mechanical repair, #7 permit limited outside storage of tires, #8 eliminate or amend the condition to asphalt or concrete the gravel on the most southerly building 1307, #10 to modify the time limitation; and amend the site plan. Specifically the Board is modifying the earlier decision of March 23, 2010 as follows: permitting by Special Exception auto body repair and painting under Use Unit 17, no other Use Unit 17 activities are authorized. The Special Exception does not include the sale of automobiles. It is to permit auto body painting within 150'-0" of R zoned land, it is noted that approximately 94 feet of the R zoned land is under common ownership. The Special Exception to modify the screening requirement on all the east and south property lines is modified as follows: the Board understands that an eight foot board fence along the R zoned property, from the southeast corner of the combined properties along the east boundary approximately 180 feet to screen the existing house has been constructed. That any storage of tires shall not exceed a height of eight feet, and that any such tires on racks shall be screened from the R zoned property to the south. All driving and parking surfaces around the building to the south, north, and back will be asphalt or concrete. There shall be no outside storage of batteries or other implements. The gravel around the most southerly building, 1307 North Harvard, shall be covered with concrete or asphalt if it is intended for use as a driving or parking surface. The Board reiterates that no damaged vehicles shall be parked on the lot for more than 30 days. The Board is modifying the approval on all Special Exceptions and the Variance and specifying it shall remain in effect for a six-year period, from March 23, 2010 to March 22, 2016. The hours of operation for either body work, tire shop or mechanical work shall be 7:00 a.m. to 7:00 p.m. In granting the Special Exception the Board finds 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:

**BEG 30N & 40E SWC SW NW NW TH N150 E150 S150 W150 POB SEC 33 20 13,
BEG ON WL OF SEC & SL FRISCO R/W TH S66 E160 N128 TO R/W TH SWLY172
POB SEC 33 20 13, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

Case No. 21236-Justin Moydell

Action Requested:

Variance of the setback requirement for a digital sign from a visible R district (Section 1221.C.2.c) from 200 ft. **Location:** 5674 South 107th Avenue East

Mr. Tidwell stepped out of the meeting at 2:53 p.m.

Presentation:

Justin Moydell, 5676 South 107th East Avenue, Tulsa, OK; stated he wants to install a digital sign on the subject property.

Mr. Tidwell came back into the meeting at 2:57 p.m.

Interested Parties:

There were no interested parties 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 **APPROVE** the Variance of the setback requirement for a digital sign from a visible R district (Section 1221.C.2.c) from 200 ft. The Board finds that the R district referred to is the last remaining R district in a predominantly IL zoned area, and the entire area has been in transition for many years. The R district in question, is in itself, being used as a business in addition to being used as a residence. This will be a digital sign installed on the existing sign site, as shown on exhibit page 6.7. In granting this Variance the Board finds 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; for the following property:

LT 6 LESS BEG SWC THEREOF TH E297.97 N161.47 W297.37 S161.46 POB BLK 2, GOLDEN VALLEY, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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Case No. 21237-Hoby Ferrell

Action Requested:

Variance of the required front yard in the RS-2 district from 30 ft. to 22 ft. (Section 403) to permit an addition to an existing garage. **Location:** 1134 East 24th Place South

Presentation:

Hoby Ferrell, 2651 East 21st Street, Suite 515, Tulsa, OK; stated he represents Mary and Mark Eck. The property is a 1940's era home with an original one-car garage. The zoning is currently RS-2, and the proposal is to construct an architecturally correct one-car garage addition approximately 12' x 19' located adjacent to the existing garage on the property. The existing structure is close to the street and is nonconforming per current building codes. The proposed addition would be located one foot farther away from the street than the current home. The pie-shaped lot prevents the owner from locating the addition farther away from the street.

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 required front yard in the RS-2 district from 30 ft. to 22 ft. (Section 403) to permit an addition to an existing garage. This neighborhood was developed in the 1930s, and the RS-2 designation was probably established on this portion of the neighborhood more as to preserve lot sizes than it was to preserve an established streetscape. This lot is very unusual, in a triangular shape, contains over 14,000 square feet, is of a unique shape and is also adjacent to 24th Place, which calls for a 60-foot wide right-of-way, or an additional ten feet than is normal for a residential street. Under the code, dwellings are to be set back 55 feet. The addition will be placed, according to the plan submitted, 52 feet from the centerline. This will be per conceptual plan on page 7.6. Any other encroachment is not given relief herein. In granting this Variance the Board has found that by reason of extraordinary or exceptional conditions or circumstances listed above, 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; for the following property:

LT 4 BLK 4, SUNSET TERRACE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Case No. 21238-Wallace Engineering

Action Requested:

Special Exception to permit a public school (Use Unit 5) in an AG district.

Location: East of the NE/c of West 91st Street and South U.S. Highway 75

Presentation:

Jim Beach, 200 East Brady, Tulsa, OK; stated he represents the applicant. The application is for a Special Exception to allow Jenks public schools to establish a 3rd and 4th grade center on the property. Across the street, to the south, is Jenks Intermediate School. One mile north is Tulsa Hills with a lot of new development stimulated by Tulsa Hills. The demand is present for a new school in this location. The applicant will soon be submitting a plat requirement. The building is approximately 80,000 square feet and will be a two-story structure. The parking requirement is 67 spaces at the rate of one per 1,200 square feet, and there will be approximately 180 spaces provided, which will provide parking for larger assembled groups at the school. The ingress and egress drives will be placed on the westerly side of the property, and they will fall between two drives that serve the intermediate school across the street per the City of Tulsa's Transportation Planning Division request. The parking on the northwestern side of the building is designed for car parking/stacking, and the bus loop is situated in front of the building on the southwest side. By situating the school on the west side of the highest point of the property, the topography of the land allows for the hill and trees on the east and the southeast parts of the property to be a buffer zone between the residential property and the school. Initially the school is expected to serve about 650 students with a capacity of about 800, and will service 18 square miles.

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 Special Exception to permit a public school (Use Unit 5) in an AG district, subject to conceptual plan presented

March 22, 2011; with the conditions that sidewalks are to be constructed along the north side of 91st Street to the extent of the property boundaries. All parking or driving surfaces are to be concrete or asphalt; landscaping is to be per code; lighting is required and is to be per code. The Board is approving the use of this land as public school use. In granting the Special Exception the Board has found that 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:

SE SW LESS S24.75 THEREOF FOR ST SEC 14 18 12, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Case No. 21239-Bill McCullough

Action Requested:

Special Exception to permit a duplex dwelling (Use Unit 7) in an RS-3 district (Section 401); and a Variance of the minimum required lot area for a duplex dwelling in the RS-3 district (Section 404.C.1) from 9,000 sq. ft. to 7,000 sq. ft.

Location: 1648 South Indianapolis Avenue

Presentation:

The applicant was not present; no presentation was made.

Interested Parties:

Barbara Nottingham, 1634 South Indianapolis Avenue, Tulsa, OK; stated she represents the homeowners in the area. She owns her home, which is three blocks north of the subject property. The homeowners in the area oppose the request for a special exception and variance and she presented the Board with signed letters from various residents. The residents have a concern that if the special exception and variance were granted for this duplex it will allow further infiltration of duplexes in the neighborhood. There are 194 single-family dwellings and 58 duplexes in the subdivision. The duplexes in the neighborhood are on larger lots and are owner-occupied. The area residents would not object to a single-family dwelling being built on the site as that is what existed previously. Another concern of the residents is that the proposed duplex is proposed by a large developer who will re-sell the duplex as investment property, and it will not be owner-occupied. The Sidney Lanier Elementary School is directly across the street from the proposed duplex, and duplexes tend to attract single renters who will be more transient in nature. A single-family dwelling will attract families. The variance of 2,000 square feet will set a precedent so that almost any lot in the neighborhood, of mostly 7,000 square foot lots, will be able to have a duplex built on it, and by increasing the number of rentals in the neighborhood it will drive the property values down which greatly concerns the area homeowners.

Mr. White asked Ms. Nottingham if she was aware that the structure directly west of the subject property is a duplex, and Ms. Nottingham affirmed that she knew it was a duplex

but that it was zoned CS. Ms. Nottingham also stated that she did not know if the CS-zoned duplex was still occupied because the owner lived on one side and had his business on the other side and the neighbors have not seen him for quite some time.

Ms. Stead asked Mr. Cuthbertson if he knew why Mr. McCullough did not attend today's hearing, and Mr. Cuthbertson stated he did not know but that he had tried to call the applicant and the call went to voice mail.

Comments and Questions:

Mr. Henke stated that this case will be held until the end of the meeting and a decision will be made at that time.

Board Action:

No action at this time; this case will be decided at the end of today's meeting.

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Case No. 21242-Allan Breedlove

Action Requested:

Variance of the maximum permitted size of a detached accessory building in the RS-3 district (Section 402.B.1.d) from 1,235 sq. ft. **Location:** 8119 South 33rd West Avenue

Presentation:

Allan Breedlove, 8119 South 33rd West Avenue, Tulsa, OK; stated he wants to replace the accessory building that was destroyed by a tornado in May, 2010.

Interested Parties:

There were no interested parties 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 **APPROVE** the Variance of the maximum permitted size of a detached accessory building in the RS-3 district (Section 402.B.1.d) from 1,235 sq. ft. Finding that the proposed structure is to replace what was destroyed by a tornado last year, and the tract is 2.51 acres in size. There are numerous structures of this proposed size, which is 40' x 60', in the immediate area and will be in keeping with the general use and nature of the area, subject to conceptual plan on exhibit page 11.7. In 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; for the following property:

N221 S1105 W495 NW NW SEC 15 18 12, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Case No. 21244-Clarence Smith

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:** 4711 East 51st Street

Presentation:

Clarence Smith, 7427 South Winston Place, Tulsa, OK; no presentation was made.

Interested Parties:

There were no interested parties 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 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:

PRT LT 8 BEG 170E SWC TH N212.46 E85.25 SE68 S157.40 W125 POB BLK 1, INTERSTATE CENTRAL EXT, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

Case No. 21226-Bill LaFortune

Action Requested:

Request a Reconsideration of a Board of Adjustment determination on an 'Appeal of the determination from an administrative official in denying the

issuance of a digital outdoor advertising sign permit (Application No. 246571)'.
Location: 6618 South 107th East Avenue

Presentation:

William B. LaFortune, 2100 South Utica Avenue, Suite 210, Tulsa, OK; stated the reasons for the request for reconsideration are as follows: first, the LED messaging center, messaging display, or messaging board is a digital outdoor advertising sign; secondly, since the decision of the Board was made, Mr. LaFortune has confirmed, informally, with certain planners at INCOG, their position based on the Board's determination was the LED electronic messaging centers would be installed all over Tulsa without any permitting requirements; third, what is the unintended consequence potentially of the Board's decision, in terms of if it goes into effect, what would it do to the Tulsa area? During the last hearing there was some reference to Section 1221.G.13 of the code, today Mr. LaFortune has a new argument using the same provision that has not been previously considered by the Board. The language in that section talks about pre-existing outdoor advertising signs that may have electronic messages, may even be attached to an outdoor advertising sign. Since the last hearing, in reviewing that provision, Mr. LaFortune thinks it provides great support for the Board to reverse their decision and to find the subject LED electronic messaging center is a digital outdoor advertising sign. The language in that section makes it clear that the electronic LED digital messaging center will be grandfathered in, but after May 1, 2008 if the center is to be modified or enlarged there must be a permit for a digital outdoor advertising sign. If the Board were to reverse its previous decision Mr. LaFortune would like to present new testimony from Pat Selcer, General Manager of Lamar Outdoor Advertising. He was involved in every step of the process as the new digital outdoor advertising sign ordinance was being crafted, negotiated and finally passed by the City, with the Sign Advisory Committee, with TMAPC, and with the City Council. What Mr. Selcer will tell the Board is that once the recommendations were made there were certain negotiations with the outdoor companies, all of them, with TMAPC and with the Council. It was absolutely the intention that these types of electronic messaging centers were to be considered digital outdoor advertising signs once everything was finalized.

Interested Parties:

Andrew Shank, 2727 East 21st Street, Suite 200, Tulsa, OK; stated he respectively disagrees with Counsel LaFortune. The previous hearing on this case was over two and a half hours, there were reports by staff and it was supplemented with information from the Sign Advisory Board. It is perplexing how this discussion can be delved into much deeper. An appeal has been perfected to District Court, so by turning down this hearing today the Board is not eliminating the party's rights in any manner. Mr. LaFortune has not presented new information. Today Mr. LaFortune stated that Mr. Shank did not raise the issue of cutouts Mr. Shank stated that in his opening statement at the last hearing he explained to the Board what a cutout is. He stated they do exist, and if they are 15% or less it is unpermitted and allow to be installed; they are unregulated and that is why there was support for the Board's previous decision. So Mr. LaFortune did not present new information today. Mr. Shank stated that Section

1221.G.13, which Mr. LaFortune refers to, is a new argument not new information; the Board's packet contained information regarding Section 1221.G.13 from Mr. Cuthbertson. Finally, testimony on the issue has been heard from the liaison from the Sign Advisory Board about the process so Mr. Shank does not think Mr. Selcer could enlighten the Board further; therefore, there is no reason to reconsider.

Mr. Van De Wiele asked Mr. Shank to confirm that an appeal has been filed in District Court. Mr. Shank stated that he understood the appeal had been filed, pursuant to the Zoning Code, with the Clerk of the Board, Mr. Cuthbertson, and with the administrative official. Mr. Henke stated that there are ten days to preserve the appeal. Mr. Boulden stated the record had not been transmitted to District Court, therefore, their jurisdiction has not been invoked yet.

Mr. Tidwell asked Mr. Shank to confirm that if a cutout, or eyebrow, is installed that is less than 15% there is no permit required by the City, and Mr. Shank confirmed this statement.

Pat Selcer, General Manager, Lamar Advertising, 7777 East 38th Street, Tulsa, OK; stated the rule for cutouts is a 15% extension can be done. He has worked with Mr. Alberty at INCOG, the Sign Advisory Board, the planning commission, and the City Council; there was a lot of work and a lot of change of the digital outdoor advertising sign ordinance from the Sign Advisory Board to the City Council. The change happened in three areas; one is spacing; two, illuminance was made more restrictive; and three, they changed what a digital sign is and made it more restrictive. Prior to the digital ordinance there were four LED message centers installed on existing billboards and the City Council specifically said they were to be considered digital. By that reason, the difference between the cutouts, a cutout can be installed 15% above the board without a permit.

Mr. Tidwell asked Mr. Selcer where the four LED message centers were before the digital ordinance. Mr. Selcer stated one was at the Broken Arrow Expressway and Sheridan, the Coca-Cola board; one was on Highway 169; and one was at Memorial and the Creek Turnpike. Mr. Tidwell asked Mr. Selcer if the Coca-Cola board, that is still up and has the cutout, is considered a digital board. Mr. Selcer stated that board was not considered a digital board before before May 2008; after May 2008 if a bulb burned out on the Coca-Cola sign and the unit needed to be changed out or replaced a digital permit would be required. A permit for an extension can be given but not if it is a digital extension, that is why the City Council, in Section 1221.G.13, added the phrase "or attached"; for three years Lamar Advertising has had to file for permits for digital extensions. Mr. Selcer continued to say that a permit for the subject sign was not filed for until after Mr. Stokely had been denied his request for his digital billboard across Highway 169 by the planning commission.

Rebuttal:

Mr. LaFortune stated the appeal on this case had been filed to protect the applicant's rights because of the ten-day rule, and this hearing was to be after the ten-day limitation.

Comments and Questions:

Mr. Tidwell stated he felt the Board made the right decision.

Ms. Stead provided the digital billboard issue is unique and the zoning code is not clear and provides statements supporting either side of the argument.

Mr. Van De Wiele stated that he can't read the code and come to any other conclusion than that sign is a digital sign. He felt that the Board should rehear the case to prevent the digital cutouts from appearing all over the City.

Board Action:

On **MOTION** of **TIDWELL**, the Board voted 3-2-0 (Stead, Tidwell, White "aye"; Henke, Van De Wiele "nay"; no "abstentions") to **DENY** the Request for Reconsideration of a Board of Adjustment determination on an 'Appeal of the determination from an administrative official in denying the issuance of a digital outdoor advertising sign permit (Application No. 246571)'; for the following property:

LT 2 BLK 1, TULSA COMMONS, THE PRT RSB PRT L1 B1 THE BEDFORD, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

This case is continued from earlier in the meeting.

Case No. 21239-Bill McCullough

Action Requested:

Special Exception to permit a duplex dwelling (Use Unit 7) in an RS-3 district (Section 401); and a Variance of the minimum required lot area for a duplex dwelling in the RS-3 district (Section 404.C.1) from 9,000 sq. ft. to 7,000 sq. ft.

Location: 1648 South Indianapolis Avenue

Presentation:

The applicant is still absent; no presentation made.

Interested Parties:

Ms. Barbara Nottingham was an interested party and made her presentation earlier in the meeting.

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 **Special Exception** to permit a duplex dwelling (Use Unit 7) in an RS-3 district (Section 401); and a **Variance** of the minimum required lot area for a duplex dwelling in the RS-3 district (Section 404.C.1) from 9,000 sq. ft. to 7,000 sq. ft. to April 12, 2011; for the following property:

LT 11 BLK 8, SUNRISE TERRACE ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

None.

NEW BUSINESS:

None.

BOARD MEMBER COMMENTS:

None.

There being no further business, the meeting adjourned at 4:00 p.m.

Date approved: 4/12/11


Chair