

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1053
Tuesday, August 9, 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 Van De Wiele White, Vice Chair	Tidwell, Secretary	Alberty Sansone Sparger	Boulden, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, August 4, 2011, at 9:29 a.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. Sansone read the rules and procedures for the Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **WHITE**, the Board voted 3-0-1 (Henke, Stead, White "aye"; no "nays"; Van De Wiele "abstaining") to **APPROVE** the **Minutes** of the July 26, 2011 Board of Adjustment meeting (No. 1052).

Mr. Henke welcomed Mr. Chris Sansone to the Board of Adjustment meeting, and announced that he would be replacing Mr. Duane Cuthbertson in the interim.

Mr. Henke announced that there were only four Board members present for today's meeting, and if there were any parties that would like to have their case heard before a full board to please come forward to request a continuance.

NEW BUSINESS

21302—Kaveh Adib-Yazdi

Action Requested:

Special Exception to permit Auto Detailing (Use Unit 17) in the CS district (Section 701). **Location:** 2204 East 15th Street

Presentation:

John Moody, 6004 South Marion Avenue, Tulsa, OK; stated he represents Mr. Kaveh Adib-Yazdi and he wants a full Board present to hear this case to forestall a tie vote. Therefore, he requests a continuance on behalf of his client.

Interested Parties:

Dan Morgan, 1523 South Gillette Avenue, Tulsa, OK; stated he objects to the request for a continuance on this case. He stated there are several parties present for whom a continuance would present a hardship on them to come back for another hearing. Mr. Morgan stated that it is also hardship to have the car wash running continuously, and the neighborhood strenuously objects to the operation of this car wash. Mr. Morgan asked the Board to hear this case today, and if the vote were to end up in a tie vote, then the missing Board member could review the records and observe TGOV to give his vote at a later date. Mr. Henke stated that would be impossible because the missing Board member would not be able to voice his opinion in the open Board discussion as part of the deciding factors in the voting process. Mr. Morgan then asked that if a continuance would be granted that the car wash be suspended until the next hearing.

Comments and Questions:

Mr. Boulden stated that the Board does not have the authority to suspend the operation of the car wash while the case is waiting for a continuance.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Stead, Van De Wiele, White “aye”; no “nays”; no “abstentions”) to **CONTINUE** the request for a Special Exception to permit Auto Detailing (Use Unit 17) in the CS district (Section 701) to the meeting of August 23, 2011; for the following property:

LOT 1 & LOT 2 LESS S 13.4' BLK 2, HOPPING'S ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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UNFINISHED BUSINESS

21294—Lamar Outdoor Advertising

Action Requested:

Verification of the spacing requirement for an outdoor advertising sign of 1,200 feet from another outdoor advertising sign on the same side of the highway (Section 1221.F.2) and a Verification of the spacing requirement for a digital outdoor advertising sign of 1,200 feet from any other digital outdoor advertising sign facing the same traveled way (Section 1221.G.10). **Location:** 2511 East 15th Street South

Presentation:

Lorinda Elizando, Lamar Outdoor Advertising, 7777 East 38th Street, Tulsa, OK; stated she is before the Board to request a spacing verification, and she presented an updated version of the survey for the property concerned. The proposed billboard moved approximately 11'-0" north from the previous submitted survey.

Ms. Stead asked staff if the material needs to be updated since there has been a recent change in the code, stating the six month expiration stipulation in the new code. Mr. Boulden stated there is no true provision for that because the Board is only verifying the spacing because there is no condition to be imposed as in a request for a special exception. Mr. Boulden stated the six month expiration imposed is a proposal and will probably be applied to the building code for a building permit.

Interested Parties:

Teena Kauser, Conner and Winters, 4000 One Williams Center, Tulsa, OK; stated she represents Freda Jo Cariker, the property owner. Ms. Cariker's concern is if Lamar removes the sign it will affect her property rights; that she will be forever prohibited from installing another sign. Currently there are two conventional signs approximately 200'-0" apart, and if the sign in question is removed, Ms. Cariker is concerned that another sign could not be erected because of the 1,200 feet spacing requirement.

Ms. Stead stated that Ms. Cariker's lease with Lamar expired July 1, 2011. Ms. Kauser confirmed that statement and her concern is that the sign is being removed without compensation. Ms. Cariker's request is that the spacing verification the Board is about to rule on not be subject to the sign removal on her property.

Comments and Questions:

Mr. Alberty asked Ms. Elizando about the exhibit she submitted today. The exhibit states the existing outdoor advertising sign #8 is to be removed but the legend on the exhibit says sign #8 is a proposed outdoor advertising sign. Ms. Elizando stated the proposed outdoor advertising sign should be only sign #1 and the sign to be removed should be sign #8. Ms. Elizando stated that sign #1 is existing and will be digital.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Stead, Van De Wiele, White “aye”; no “nays”; no “abstentions”) to **ACCEPT** the request for a Verification of the spacing requirement for an outdoor advertising sign of 1,200 feet from another outdoor advertising sign on the same side of the highway (Section 1221.F.2) and a Verification of the spacing requirement for a digital outdoor advertising sign of 1,200 feet from any other digital outdoor advertising sign facing the same traveled way (Section 1221.G.10). based upon the facts in this matter as they presently exist, and subject to the removal of the sign as identified on today’s submitted survey located northwest and designated as sign #8, of the proposed sign site before said proposed sign is constructed. The Board accepts the applicant’s verification of spacing between outdoor advertising signs of conventional and digital billboards subject to the action of the Board being void should another conflicting outdoor advertising sign be constructed prior to this sign, with the additional comment that on the surveyor’s certificate the sign description column/legend sign #4 should be changed from proposed to existing, sign #8 should be changed from proposed to be removed; for the following property:

LTS 11 THRU 13 LESS BEG SWC LT 11 TH E150 N APPR 15 SW151.3 TO BEG & LESS BEG NEC LT 13 W17.6 SE55.1 N APPR 10 NW APPR 50 POB BLK 6, CITY VIEW HILL ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21305—Kurt Dodd/Kier Masso

Action Requested:

Variance of the average lot width in the RS-3 district from 60 feet to 50 feet (Section 403); and a Variance of the minimum required land area per dwelling from 8,400 square feet to 8,250 square feet (Section 403) to permit a lot-split. **Location:** 1416 East 34th Street South

Presentation:

Kurt Dodd, 9501 East 108th Street, Tulsa, OK; stated the lots were platted around 1926 and were under separate ownership at that time.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **STEAD**, the Board voted 4-0-0 (Henke, Stead, Van De Wiele, White “aye”; no “nays”; no “abstentions”) to **APPROVE** the request for a Variance of the average lot width in the RS-3 district from 60 feet to 50 feet (Section 403); and

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 3-1-0 (Henke, Van De Wiele, White “aye”; Stead “nay”; no “abstentions”) to **APPROVE** the request for a Variance of the maximum permitted height for a business sign in the CS district (Section 1221.D.1) from 50 feet to 70 feet; **APPROVE** a Variance of the setback requirement for a sign from an abutting freeway street frontage (Section 1221.D.1 & 1221.C.1.c); and **APPROVE** a Variance of the minimum setback required for a sign from an R district from 200 feet (Section 1221.C.1.b). The Board finds for the setback from the R district, though this district is zoned RM-1 there is actually 462 feet to the closest residential structure and will not be adverse to that particular usage; the setback requirement from the freeway frontage the Board finds that the right-of-way line precludes the sign from being anywhere on the property to have the highway visibility; for the 70 feet height level the Board finds that with the combination of the topographical differences and the presence of significant trees that visibility would be significantly limited for sufficient notification for motorists on the east bound I-44 to see the sign in time to exit safely. This will be per site plan on page 4.6 with the change of the height to be 70'-0" instead of 100'-0"; the sign will be backlit with no flashing lights; the sign configuration will be per page 4.5 again with the height of the sign to be only 70'-0" maximum; 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:

**E172.99 N160.33 LT 2 & PRT LT 3 BEG SECR TH N139.72 SW254.95 SE20.37
E211.99 POB BLK 1, INTERSTATE PARK RESUB PRT L1&2 B2 PHEASANT RUN,
CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

21301—Michael Birkes

Action Requested:

Variance of the maximum permitted coverage of the required rear yard by a detached accessory building in the RS-2 district (Section 210.B.5.a) from 25% to permit a covered parking structure. **Location:** 1304 East 26th Place South

Presentation:

Michael Birkes, Michael Birkes Architect, 4910 South Columbia Place, Tulsa, OK; stated the proposed carport is designed to have a minimal impact on the visual views of the neighborhood and it is requested to protect the owner's property from the elements.

Ms. Stead asked Mr. Birkes why the proposed structure was 28'-0" long. Mr. Birkes stated it was to comfortably cover the owner's car and allow walking space and relief behind the car, plus the proposed carport sets back approximately five feet from the existing structure.

Interested Parties:

Greg Bledsoe, 1304 East 26th Place, Tulsa, OK; stated that his wife has lived in the home since 1976, and he has lived in the house since 1990. He has spoken to the neighbors to the east and to the south and they have no objections to the proposed carport. Mr. Bledsoe stated he has also spoken with Kevin Coutant whose house faces the driveway and he has no objections to the proposed carport, but he was concerned with the architectural features. Mr. Bledsoe stated the proposed carport is designed to be compatible with the back porch, which was designed to be compatible with the house and was constructed in 1999.

Comments and Questions:

None.

Board Action:

On **MOTION** of **STEAD**, the Board voted 4-0-0 (Henke, Stead, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the request for Variance of the maximum permitted coverage of the required rear yard by a detached accessory building in the RS-2 district (Section 210.B.5.a) from 25% to permit a covered parking structure. These lots were platted in approximately 1929 and are legal non-conforming as to width and area, and this was established well before the zoning code in 1970; subject to conceptual plan on page 5.6. The structure shall be one story with 10'-0" top plate and 18'-0" total with no side enclosures per code. The Board grants this variance finding that this is an extraordinary and exceptional lot due to the legal non-conforming status and 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:

**PT LT 19 BLK 1 BEG 7 S OF NE COR TH S 128 TH W 67 TH N 110 TH NE TO BEG,
TRAVIS HGTS ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

21304—Jamieson Fence Supply

Action Requested:

Special Exception to modify (eliminate) a screening requirement (Section 212.C) for an CH zoned use from an RD district. **Location:** 5305 South 24th Avenue West

Presentation:

Charles Fowler, 2116 Robinwood Drive, Fort Worth, TX; stated that currently there is a forest and large hills next to the subject property so there would no purpose for a screening fence. There is an existing chain link fence and an 8'-0" tall game fence south of the chain link fence.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Stead, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the request for Special Exception to modify (eliminate) a screening requirement (Section 212.C) for an CH zoned use from an RD district; finding that the screening fence would serve no practical puprose in this location considering the topography and vegetation, and the landlocked configuration of the property itself. The Board finds 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:

BEG 957S NEC NW NE TH W1323.05 S362.33 E1323.05 N364.3 POB LESS E600 & LESS S287.33 W423.05 & LESS N75 W473.01 & LESS TR BEG 957S & 600W NEC NW NE TH W220.4 S102 E220.4 N102 POB SEC 34 19 12, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21307—JC Engineering

Action Requested:

Special Exception to permit a construction company office and warehouse (Use Unit 15) in a CS district. **Location:** 5001 South 33rd Avenue West

Presentation:

Joe Kelley, 10035 North 177th East Avenue, Owasso, OK; stated the property was purchased to be an office and storage for JC Engineering. The property is located in a

CS district and the proposed use is for storage of residential construction supplies and a few files.

Interested Parties:

David P. Coman, 2744 East 13th Place, Tulsa, OK; stated he is a co-owner of JC Engineering, and there will be no employees stationed at this location nor would there be any walk-up business because he performs residential construction for Housing and Urban Development and the Tulsa Housing Authority. There will be residential construction materials stored on the site inside the building with an internal office for the storage of files, and possibly an occasional meeting. The building will be a one-story metal building with an overhead door.

Kaye Price, 5815 South 31st West Avenue, Tulsa, OK; stated she is confused as to why the property proposal is listed as a Use Unit 15, because if the proposed building is going to contain a warehouse, that would be Use Unit 23. A Use Unit 23 would be highly inappropriate for the area. Use Unit 23 warehousing is found in the central business district or industrial areas not surrounded by homes. It is usually supported by railroad, highway transportation or ports. The subject property is in the middle of the Carbondale neighborhood. Ms. Price stated she does see where the applicant meets the criteria for a special exception; there is nothing exceptional or unusual about the property because it is a residential lot in a residential neighborhood. Under Use Unit 23, a warehouse could contain heavy duty trucks, dangerous chemicals, trash trucks, and a great number of things that could come in the future. With the subject property being on a corner lot, there is no way it could be properly shielded from the residents, because the north side would have no access if it were shielded with a fence. Mr. Coman has already stated that he was not going to be on the site, that there would be no employees on the site, so he is using the proposed building primarily as a warehouse. There are too many places that are available for purchase in an appropriately zoned area that have what he is seeking.

Mr. Boulden stated the Board should be extremely concerned about the warehouse being part of the request. If it is accessory, it is accessory; if it is not, then warehousing is not allowed in a CS district.

Mr. Van De Wiele asked Mr. Boulden what the difference is between storage and a warehouse, i.e., if he has a business at one location and stores implements of his business at another facility does that make it a warehouse or is it storage, or is there a difference? Mr. Boulden stated it comes down to what is customary and incidental and what the definition of what accessory use is; therefore this is a judgment call.

Kim Spradlin, 5043 South 34th West Avenue, Tulsa, OK; stated she totally agrees with Ms. Kaye Price and is in opposition of the special exception request being granted.

Rebuttal:

Mr. Coman stated that his intention is not to upset anyone. Typically his ten construction employees meet at the job site. That is why there would be no employees

stationed at this building. There is no secretary because all calls are directed to his cell phone.

Mr. Henke asked Mr. Coman if he would classify his proposed building more as storage than office, and Mr. Coman confirmed that statement.

Mr. Van De Wiele asked Mr. Coman what he planned on filling the proposed 5,600 square feet with. Mr. Coman stated there would be a bobcat, a forklift, building materials such as tiles, leftover building materials, and a few other items.

Mr. Henke asked Mr. Coman when he purchased the subject property, and Mr. Coman stated he had purchased it approximately one year ago. Mr. Henke asked Mr. Coman if he knew the property was zoned CS when he purchased it, and Mr. Coman confirmed that. Mr. Henke asked what he planned to do with the property when he purchased it and Mr. Coman stated exactly what he is requesting the special exception for today. Mr. Henke asked Mr. Coman if he was under the impression if he could use the subject property in this fashion without any zoning relief, and Mr. Coman stated an employee at INCOG, before the property was purchased, had told him that he should not have any problems.

Mr. Kelley came forward and stated that he wanted the Board to be aware that Mr. Coman had met with the residents in the area and no one showed concern or spoke opposition for the proposed building.

Comments and Questions:

Mr. Wayne Alberty stated the issue is what the principal use is. If the principal use was declared as a warehouse, then it would be classified as a Use Unit 23. In this case, it would be permitted under Use Unit 15 for the principal use to be a construction office with warehousing as an accessory to the principal use.

Board Action:

On **MOTION** of **STEAD**, the Board voted 4-0-0 (Henke, Stead, Van De Wiele, White “aye”; no “nays”; no “abstentions”) to **DENY** the request for Special Exception to permit a construction company office and warehouse (Use Unit 15) in a CS district finding that it would be harmful to the neighborhood; for the following property:

LTS 1 & 2 BLK 4, CARBONDALE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21239-A—Joe McGraw

Action Requested:

Variance of the minimum livability space required for a permitted duplex in the RS-3 district (Section 404.C.4); and a Modification of conditions of a previous approval for a permitted duplex use in the RS-3 district. **Location:** 1648 South Indianapolis Avenue

Mr. Henke recused himself from this case and left the room at 2:40 P.M.

Presentation:

Bill McCollough, 6923 East 111th Place South, Bixby, OK; stated he represents Mr. Joe McGraw and with Mr. Henke's recusal he would like to request a continuance.

Barbara Nottingham, 1634 South Indianapolis Avenue, Tulsa, OK; she stated that she understood from the last meeting regarding the subject property that today's meeting was for a site plan to be presented. She asked if she could be given a copy of the proposed site plan so she could study it in preparation for the next meeting; Ms. Nottingham was given a copy of the subject property site plan.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **VAN DE WIELE**, the Board voted 3-0-0 (Stead, Van De Wlele, White "aye"; no "nays"; no "abstentions") to **CONTINUE** the request for a Variance of the minimum livability space required for a permitted duplex in the RS-3 district (Section 404.C.4); and a Modification of conditions of a previous approval for a permitted duplex use in the RS-3 district to the meeting of August 23, 2011; for the following property:

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

Mr. Henke re-entered the meeting at 2:42 P.M.

OTHER BUSINESS

None.

NEW BUSINESS:

None.

BOARD MEMBER COMMENTS:

The Board wished Mr. Patrick Boulden good luck in his future endeavors. Mr. Boulden will be leaving his position with the City of Tulsa and will be going to work for the City of Bixby.

There being no further business, the meeting adjourned at 2:43 p.m.

Date approved: 8/23/11

Frank X. ...
Chair