

BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1055
Tuesday, September 13, 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		Alberty Sansone Sparger	Swiney, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, September 8, 2011, at 10:33 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 **TIDWELL**, the Board voted 5-0-0 (Henke, Stead, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions") to **APPROVE** the **Minutes** of the August 23, 2011 Board of Adjustment meeting (No. 1054).

NEW BUSINESS

21314—Stephen Schuller

Action Requested:

Special Exception to permit Inpatient Hospice, Senior Living, Respite Care, Alzheimer's Assistance, and/or Skilled Nursing Facility (Use Unit 2) in an RS-3 district (Section 401); Minor Special Exception to reduce the required front yard in an RS-3 district from 35' to 30' (section 403.A.7); Special Exception to increase the

height of a decorative wall in the required front yard from 4 feet (section 210.B.3); Minor Variance from the minimum building setback of 25 feet from an R district for a special exception use to 20 feet (section 404.F.4). **Location:** 7600 East 31st Street South

Presentation:

Rania Nasreddine, for Stephen Schuller, 100 West 5th Street, Tulsa, OK; no presentation was made; a request for continuance has been requested.

Interested Parties:

George Hoos, 7731 East Skelly Drive, Tulsa, OK; stated he would not be able to present at the September 27th meeting but wanted to let the Board know that he is in support of this proposal because it make sense and is a good use of the property.

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 Inpatient Hospice, Senior Living, Respite Care, Alzheimer's Assistance, and/or Skilled Nursing Facility (Use Unit 2) in an RS-3 district (Section 401); Minor Special Exception to reduce the required front yard in an RS-3 district from 35' to 30' (section 403.A.7); Special Exception to increase the height of a decorative wall in the required front yard from 4 feet (section 210.B.3); Minor Variance from the minimum building setback of 25 feet from an R district for a special exception use to 20 feet (section 404.F.4) to the meeting of September 27, 2011; for the following property:

A Tract of Land in Two Parcels in the Northeast Quarter (NE/4) of Section Twenty-three (23), Township Nineteen (19) North, Range Thirteen (13) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, According to the U.S. Government Survey thereof, being More Particularly Described as Follows, to-wit: Commencing at the Northwest corner of said NE/4; thence North 90°00'00" East along the North line of said NE/4 for 761.92 feet; thence South 00°08'01" East for 35 feet; thence North 90°00'00" East along the South right of way line of East 31st Street for 129.99 feet to the Point of Beginning; thence South 00°00'00" East for 14.99 feet; thence South 60°25'48" East for 139.37 feet; thence South 69°48'42" East for 173.05 feet; thence South 49°06'43" East for 109.18 feet; thence South 85°55'14" East for 84.01 feet to a point on the I-44 right of way; thence North 48°34'30" East along said I-44 right of way for 297.92 feet; thence North 41°25'30" West for 11.76 feet; thence North 90°00'00" West for 97 feet; thence North 00°00'00" East for 15 feet to a point on the South right of way line of said 31st Street; thence North 90°00'00" West along said right of way line for 568.58 feet to the Point of Beginning, and Commencing at the Northwest corner of said NE/4; thence North 90°00'00" East along the North line of said NE/4 for 761.92 feet; thence South 00°08'01" East partly along the East line of Block 1, "Magnolia

Terrace,” an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, for 285.85 feet to the Point of Beginning; thence continuing South 00°08’01” East along the East line of said Block 1 for 543.47 feet to a point on the North right of way line of I-44; thence North 48°55’30” East along said right of way for 169.38 feet; thence North 37°36’54” East along said right of way for 254.95 feet; thence North 48°34’30” East along said right of way line for 139.46 feet; thence North 49°12’33” West for 98.54 feet; thence North 73°18’40” West for 180.51 feet; thence North 81°17’44” West for 143.21 feet to the Point of Beginning, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21306—A-MAX Sign Company

Action Requested:

Variance of the maximum permitted display surface area for signs in the OH district (Section 602.B.4); and a Variance of the maximum number of signs permitted in the OH district (Section 602.B.4). **Location:** 1120 South Utica Avenue

Presentation:

Brian Ward, 7623 South Trenton, Tulsa, OK; stated the request for a non-illuminated sign for the Oklahoma Heart Institute on the west wing lecture hall at the street level. Currently there is no signage at the street to identify Oklahoma Heart or the lecture hall; all the allocated signage has been used for the sign on the tower that faces the Broken Arrow Expressway. There has recently been a monument sign reinstalled that was taken before Oklahoma Heart was constructed, and that used the allowed signage for that lot.

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 request for a Variance of the maximum permitted display surface area for signs in the OH district (Section 602.B.4); and a Variance of the maximum number of signs permitted in the OH district (Section 602.B.4), finding that the many additions to the hospital have necessitated more directional and other signs for the benefit of the public. The Board is approving two large wall signs as shown on page 2.7 and page 2.9, each containing 205.90 square feet. These are to be placed one on the east and one on the west of the west wing lecture hall. The Board also approves the replacement of a ground sign at the intersection of 12th Street and Trenton as shown on page 2.6 and page 2.8 as sign number 12. For the reasons above the Board has found that there are extraordinary

and exceptional conditions or circumstances, which are peculiar to the structure and buildings 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; for the following property:

LTS 1 THRU 12 & 16 & 17 & 19 & 23 THRU 25 & 27 THRU 40 & VAC ALLEY ADJ THERETO & W10 VAC TRENTON AVE ADJ ON E LESS BEG 21.675 NEC BLK 3 TH E12.70 S147 W160 N60 W26.66 N27 E26.66 N60 E147.30 POB & LESS N3 LTS 1 & 25 BLK 3,FOREST PARK ADDN RE-AMD, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21316—Eric Richards

Action Requested:

Verification of the spacing requirements for an adult entertainment establishment in a building in the CBD district from an R district, church, school, or park (Section 1212.a.C.3) to permit a bar. **Location:** 427 South Boston

Presentation:

Annie Ballenger, 5818 East 77th Street, Tulsa, OK; stated this request is for a bar that is proposed for the ground floor of the PhilTower. The building is a nationally registered building and it will be an upscale bar.

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 Wlele, White “aye”; no “nays”; no “abstentions”) it was moved that based upon the facts in this matter as they presently exist, to **ACCEPT** the applicant's verification of spacing for the proposed adult entertainment establishment subject to the action of the Board being void should another conflicting use be established prior to the expansion of this adult entertainment establishment; for the following property:

LT 4 BLK 137,TULSA-ORIGINAL TOWN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21317—Betty Baker

Action Requested:

Special Exception to permit a manufactured home dwelling in an RS-3 District (401) and an exception to extend the one-year time limit (404.E). **Location:** 2111 West 42nd Court South

Presentation:

D. Ray Pierson, 2111 West 42nd Court, Tulsa, OK; stated he is requesting a special exception to place a manufactured home on the property to replace the existing residence because it has become unlivable.

Ms. Stead stated that the Board had denied a request to allow a manufactured home several years ago, and she has not seen anything that has changed in the area; several people have added onto their homes or installed siding on their homes and nothing at this point in time would change her mind from the previous vote.

Mr. Pierson stated there is a mobile home attached to an existing home in the area. They have opened the front portion of the mobile home to make it a garage and there are wheels underneath it proving it is a manufactured home. The manufactured home Mr. Pierson is proposing to bring in will be set on a concrete full foundation and once the manufactured home is set on the foundation it will no longer be eligible to be repossessed, meaning that if the payments cease before being paid in full he would lose home and property. Once the manufactured home is set on the concrete foundation Mr. Pierson proposes to have a sandstone foundation with a deck making it look like a home similar to the others in the neighborhood.

Interested Parties:

Randy McDevitt, 2116 West 42nd Place, Tulsa, OK; stated he has lived in the neighborhood for 30 years, and the mobile home that Mr. Pierson refers to is not a mobile home. A portable building has been moved onto the lot and has been attached to the rear of the existing house. All the houses in the neighborhood are the same, wood structures with a wooden floor and a manufactured home will not do the historic Red Fork neighborhood any good.

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 **DENY** the request for a Special Exception to permit a manufactured home dwelling in an RS-3 District (401) and an exception to extend the one-year time limit (404.E); for the following property:

LT 11 BLK 6, CLINTON HOME ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21319—Rob Hart

Action Requested:

Variance of the average lot width in the AG district from 200' to 85' (section 303) and a Variance of the minimum required Lot Area from 2 acres to 1.25 acres and land area per dwelling unit from 2.2 acres to 1.25 acres (section 303). **Location:** 5705 East 121st Street South

Presentation:

Rob Hart, 4253 East 72nd Street, Tulsa, OK; stated he represents the owners, Tommy and Trudy Williams. The property is five acres zoned agriculturally with two residences and divided into two parcels. The two parcels are nonconforming; they do not have the average lot width of 200 feet but each is 164 feet. One of the residences is intersected by the parcel line that divides the two properties. These conditions cause some title issues for Mr. Williams and any future plans he would have for the property, and he would like to solve the issues now instead of their heirs dealing with it in the future. They are requesting to have the property line moved between the two parcels off the structure and those improvements they are a part of, most notably a driveway and pipe rail fencing. The variance would require the average lot width be changed from 200 feet down to 85 feet with the minimum lot area of two acres and land area of 2.2 acres be dropped to 1.25 acres. The area around the property is in transition and is now mostly residential. This would be consistent with the properties to the west. Properties to the south, north, and east are still agricultural, thus making the second parcel consistent with the surrounding area.

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 request for a Variance of the average lot width in the AG district from 200' to 85' (section 303) and **APPROVE** a Variance of the minimum required Lot Area from 2 acres to 1.25 acres and Land Area per dwelling unit from 2.2 acres to 1.25 acres (section 303). This property which is nonconforming in nature is currently divided and approximately 160 feet wide. The existing dwelling on the west tract is situated over the internal lot line requiring the division of the lots. This application will provide a lot split with the 32.93 feet panhandle leading to the rear portion of the west property is much desired establishing a more unusually shaped lot to maneuver a lot line around the existing dwelling. The Board makes this approval subject to the survey plat on page 6.5 and with the condition that the lot-split process be administered by the Tulsa Metropolitan Area Planning Commission; that an application for such process be submitted and the application be required to provide an adequate right-of-way provision to the City of Tulsa to

accommodate 121st Street. In granting these variances the Board has found that there are extraordinary or exceptional conditions or circumstances pertaining to this well over 108,900 square foot property. The literal enforcement of the terms of the Code would result in unnecessary hardships; 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; for the following property:

W1/2 W1/2 SW/4 SW/4 SE/4 SEC. 34-18-13 and E1/2 W1/2 SW/4 SW/4 SE/4 SEC. 34-18-13, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

21324—Sharon A. Walsh

Action Requested:

Special Exception to allow manufactured/modular homes (UU 9) in an AG District for classroom purposes (Section 301). **Location:** 5150 East 101st Street

Presentation:

Bart Boatwright, 11303 South Harvard, Tulsa, OK; stated he represents the Town and Country School. They provide education to children with learning disabilities and have been doing so at this location for almost 13 years. They are requesting a special exception to have modular classrooms on the property for one year. There has been growth that requires additional space and the school is in the process of looking at alternatives for the future but the modular classrooms are needed for the current school year. There would be two modular classrooms with each having two classrooms contained within the unit. This application has been approved on four previous occasions but three of the approvals have never been implemented; the fourth approval was for construction at the site years ago.

Ms. Stead asked Mr. Boatwright about the status of his permit because it had been issued for five years and it has now been eight years. Mr. Boatwright stated that the five-year permit was not being relied upon because it was expired. There was a temporary occupancy approval permit obtained with the condition that this Board of Adjustment hearing be held and if this application is not approved then the modular units will be moved off the property and relocated. The school is requesting to have a one-year permit because of growth needs and the planning phase should be completed in one year.

Mr. Van De Wiele asked Mr. Boatwright when the school year ended because if the Board were to approve this request, he would not want the approval to terminate in the middle of the school year. Mr. Boatwright stated that May 25th is usually the last day of the school year.

Interested Parties:

Gerald Buckley, 2630 South Trenton Avenue, Tulsa, OK; wanted to let the Board know that he was very grateful to the Board and wanted to extend his, and the other parents, thank you.

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 request for a Special Exception to allow manufactured/modular homes (UU 9) in an AG District for classroom purposes (Section 301) for a period up to July 1, 2013 per plan on page 7.6, finding 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:

Lot 1, Block 1 Life Christian Center, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

17894-A—Wallace Engineering

Action Requested:

Minor Special Exception to amend a previously approved site plan for a school use in the RM-0/RM-2/RS-2/RS-3 districts to permit building additions. **Location:** Southwest corner of 101st Street South and South Yale Avenue

Presentation:

This was withdrawn and a refund has been requested.

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 request for a refund for \$301.00; for the following property:

LT 1 BLK 1, J M REED ESTATES, JENKS SOUTHEAST CAMPUS, KINGSTON, KNOLLWOOD ESTATES, SUNLAND PARK ESTATES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

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OTHER BUSINESS

The Office of Development Services has made a Request for Interpretation regarding crematories as an accessory use. Specifically, can a crematory be considered an accessory use, customarily incidental and subordinate to a funeral home (Use Unit 11)?

Mr. Sansone stated that according to the zoning code a crematory as a principal use is classified within Use Unit 2 – Area Wide Special Exception Uses but the code does not address the crematory as an accessory use. Development Services is also interested in knowing whether an animal crematory be considered an accessory use to a funeral home (Use Unit 11), a kennel use (Use Unit 15) or a veterinarian clinic (Use Unit 11). Incineration/reduction of animals as a principal use is classified as Use Unit 27 – Heavy Manufacturing.

The only relevant case history that was found by staff was Case No. BOA-21094; this case was heard June 8, 2010 and the Board approved a Special Exception to permit a crematory (Use Unit 2) use in the CS district (Section 701), to permit a crematory in coordination with an existing funeral home on property located at 1916 South Sheridan Road.

Mr. Sansone continued to say the Board looked at and permitted a crematory in coordination with an existing funeral home but did not determine that it was an accessory use customarily supported and incidental to the principal use of the property which is a funeral home.

Mr. Van De Wiele asked staff what the implication would be if the Board said it is an accessory or it is not an accessory. Ms. Sansone stated that his personal involvement relates to the Serenity Funeral Home located off I-244 near Yale Avenue, in which a permit was issued allowing a crematory to be constructed on the property with no action as an accessory use. This has been allowed as an accessory use in the past, but now there is possibly a new application and Development Services is questioning the validity of their past decision.

Ms. Stead stated that she does not see the answers spelled out in the code but by tradition the Board has approved human crematories in conjunction with funeral homes. There is a caveat in the code stating that the funeral home must have a minimum lot area of one acre; Use Unit 2 does not include funeral homes. A crematory is Use Unit 2 and a funeral home is Use Unit 11 but a logical conclusion would be that a crematory can be an accessory use and, in some instances, be the principal use.

Mr. Sansone stated that if the principal use of the property is a crematory the applicant must appear before the Board. Development Services is asking for clarification of the crematory used as an accessory use to a piece of property that has a funeral, or a kennel, or a veterinarian clinic existing.

Ms. Stead stated that according to the code a funeral home is permitted within a cemetery but it must be ten acres or more, and it must be approved by the Board of Adjustment. She thinks that all of these instances have to appear before the Board of Adjustment and if Development Services wants an opinion, then history proves the Board approves crematories as an accessory to funeral homes.

Mr. Henke stated that he did not think that an animal crematory is an accessory to a funeral home because that is a Use Unit 27.

Mr. Sansone stated that Development Services was asking if an animal crematory be considered an accessory to a veterinarian clinic or a kennel or a funeral home.

Mr. Van De Wiele stated that the Board should address each separately. He is comfortable in accepting a human crematory as an accessory to a human funeral home. Everyone on the Board concurred.

Mr. Swiney stated that if the Board were to decide that a crematory was an accessory to a human funeral home, from that point forward, once a funeral home is in place it can have a crematory function without needing to come before the Board of Adjustment. There are crematories that exist without being attached to a funeral home so that would be a principal use of a crematory rather than a customary accessory use.

Mr. Sansone stated that he did not think that Development Services was taking into consideration whether the crematory is attached to the building or not because they did not make that stipulation.

Mr. White thinks the crematory as a principal use proliferated because of the condition that it was necessary to come before the Board of Adjustment. So once the Board approves this as an accessory use then the other will probably be reduced in numbers.

Mr. Alberty stated the reason the crematory was placed in Use Unit 2 was for the Board to consider potential adverse effects of a crematory.

Mr. Van De Wiele asked staff if there were standards that a funeral home with a crematory that would not allow this situation. Mr. Alberty stated that is a possibility, and that is the reason it was placed in Use Unit 2; for the Board to consider the facts of the situation. What will happen now, if it goes as an accessory use, those potential concerns will not be addressed because it will be considered that the permit can be issued regardless of the type of apparatus. Initially a crematory was placed in Use Unit 2 and the reason it has always been interpreted, is that a crematory in association with a principal use is in fact the principal use because it is separated requiring it to have a Use Unit 2 Board of Adjustment approval.

Mr. White suggested the Board continue this discussion to the next meeting so the Board can study the standards of the industry. Mr. Swiney stated there are State statutes that regulate funeral directors and undertakers, but if the Board would feel more

comfortable understanding what the statutes are and what the regulations are it would be advisable to continue.

Mr. Alberty stated that it is possible that it is already a requirement for an applicant filing for a building permit for a crematory to come before the Board of Adjustment for approval; that is the information the Board does not currently have before them. Maybe Development Services could respond. Mr. Swiney stated that he would bring the regulations and interpretations to the next meeting for the Board.

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 discussion of the request for interpretation to the meeting of September 27, 2011.

NEW BUSINESS:

None.

BOARD MEMBER COMMENTS:

None.

There being no further business, the meeting adjourned at 2:23 p.m.

Date approved: 9/27/11

Frank X. Swiney

Chair