

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 412
Thursday, May 3, 1984, 1:00 p.m.
Langenheim Auditorium, City Hall
Tulsa Civic Center

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Chappelle Clugston Victor	Purser Smith	Augustine Gardner Jones Wiles	Hubbard, Protective Inspections Jackere, Legal Department

The notice and agenda of said meeting were posted in the Office of the City Auditor, Room 919, Wednesday, May 2, 1984, at 11:55 a.m., as well as in the Reception Area of the INCOG offices.

After declaring a quorum present, Mr. Victor called the meeting to order at 1:06 p.m.

MINUTES:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to approve the Minutes of April 5, 1984 (No. 410).

UNFINISHED BUSINESS:

Case No. 12933

Action Requested:

Variance - Section 930 - Bulk and Area Requirements in the Industrial Districts - Use Unit 1211 - Request for a Variance of the frontage requirement from 150' to three lots having frontages of 0', 146', and 79', respectively, to permit a lot split in an IL District under the provisions of Section 1670, located at the NW corner of East 58th Street and South Mingo Road.

Presentation:

The applicant, Roy Hinkle, 1515 East 71st Street, Suite 301, was not present.

Protestants: None.

Comments:

Mr. Jones informed that this has been continued seven times. It seems that there is a conflict with the applicant on a lot split and a rezoning. He suggested that the Board deny the case without prejudice. They have contacted the applicant several times.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to DENY a Variance (Section 930 - Bulk and Area Requirements in the Industrial Districts - under the provisions

Case No. 12933 (continued)

of Use Unit 1211) of the frontage requirement from 150' to three lots having frontages of 0', 146', and 79', respectively, to permit a lot split in an IL District under the provisions of Section 1670, without prejudice for failure to present, on the following described property:

Lot 6 and the East 115 feet of Lot 7, Block 1, Anderson Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

Case No. 13046

Action Requested:

Special Exception - Section 410 - Principal Uses Permitted in Residential Districts - Use Unit 1211 - Request for an exception to permit a 4-foot wide x 10-foot high sign for an existing office building in an RM-1 District under the provisions of Section 1680.

Variance - Section 1221.3 (g) - Business Signs and Outdoor Advertising - Use Unit 1211 - Request for a variance of the required setback from the centerline of Yale from 60 feet to 50 feet to permit placement of a sign in an RM-1 District under the provisions of Section 1670, located south of the SE corner of 33rd Street and Yale Avenue.

Presentation:

The applicant, Gary Van Fossen, P. O. Box 2875, was not present.

Protestants: None.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to continue Case No. 13046 to the May 17, 1984, meeting.

Case No. 13067

Action Requested:

Variance - Section 430.2 - Bulk and Area Requirements in the RMH District - Use Unit 1209 - Request for a variance of the livability space in an RMH District under the provisions of Section 1670, located at the SW corner of the Crosstown Expressway and 129th East Avenue.

Presentation:

The applicant, Warren G. Morris, P. O. Box 45551, was not present.

Protestants: None.

Comments:

Mr. Jones informed that this case has been continued several times. The applicant has been contacted in writing, and they have not had any correspondence from him. He suggested that this application be denied without prejudice.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions";

Case No. 13067 (continued)

Purser, Smith, "absent") to DENY a Variance (Section 430.2 - Bulk and Area Requirements in the RMH District - under the provisions of Use Unit 1209) of the livability space in an RMH District under the provisions of Section 1670, without prejudice for failure to present, on the following described property:

The SE/4 of the SE/4 of Section 32, Township 20 North, Range 14 East, lying South of I-244, City of Tulsa, Tulsa County, Okla.

Case No. 13074

Action Requested:

Variance - Section 410 - Principal Uses Permitted in Residential Districts - Use Unit 1208 - Request for a variance to allow an existing 4-plex in an RS-3 District under the provisions of Section 1670, located north of the NW corner of Newport Avenue and East 15th Street South.

Presentation:

Aloah B. Kincaid, 1346 East 26th Street, informed her attorney did not plan to attend this meeting because it was their understanding that they would not have an opportunity to speak.

Protestants:

There were protestants present.

Comments and Questions:

Mr. Victor informed there were three members present at the last meeting. These three members heard the presentation and protests for this case. It was continued so the Board members could look at the site and the building. Since that time, one of the three members who was at the last meeting has been replaced. He asked Mr. Clugston if he would have trouble voting on this case without being able to hear all the evidence that was presented previously. Mr. Clugston informed he would like to hear any comments that Mrs. Kincaid would like to make and see if there is any opposition.

Mrs. Kincaid informed she was told when they were here before that they would not have an opportunity to make comments. She is not prepared to make a presentation without her legal counsel present. Mrs. Kincaid informed there are 31 people in the area, and many of the people are in favor of this project.

Mr. Clugston asked if there are any new developments since the Board viewed the site, and he was informed that there are not.

Mr. Victor informed he is not sure that the Board wants to hear the case today if the applicant wants to be represented by her attorney. She was thinking that she would not need her attorney at this meeting. He suggested that the item be continued for two weeks.

Mr. Jackere informed the applicant will not be prejudiced against a continuance, because the applicant is currently using the property for the purpose that the variance is sought. It is the protestants who may be prejudiced or put out because the use is in violation of the zoning laws at this time. Mr. Jackere informed the statements

Case No. 13074 (continued)

were made at the last meeting that the Board members would not consider hearing arguments all over again. This is a peculiar situation in that we have a new Board member. He has no problem with a continuance.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to continue Case No. 13074 to the May 17, 1984, meeting.

Additional Comments:

Mr. Gardner informed he sees no alternative but to rehear this item from the beginning.

Case No. 13097

Action Requested:

Variance - Section 430.1 - Bulk and Area Requirements in the RS, RD, and RM Districts - Use Unit 1206 - Request for a variance of the lot area from 6,900 sq. ft. to 6,250 sq. ft. and a variance of the land area from 8,400 sq. ft. to 7,812 sq. ft. all to permit a lot split in an RS-3 District under the provisions of Section 1670, located at the SE corner of West Easton Court and South 27th West Avenue.

Presentation:

The applicant, Susanna Rongey, 2546 West Easton Court, was not present.

Protestants:

There were four protestants present: Mrs. Raymond Smith, 2701 West Easton; Bruce Gourd, 546 North 27th West Avenue; Nell M. Dell, 517 North 27th West Avenue; and Daina Lofton, 2510 West Easton Court.

Comments:

Mr. Gardner informed this case is a lot split request. The property has lots running north and south that are 50 feet wide; however, there is a house in the middle of the property. What the applicant is wanting to do is to split the south portion of the property facing both lots east and west. He assumes this is to build another house on the southernmost lot. The Planning Commission has approved the lot split.

A spokesman for the protestants informed they know what the applicant wants to do on the property and that is why they are here to protest.

Mr. Jackere informed this is the second continuance and she has not shown up for either meeting. He sees no reason why the Board should pass this to the end of the agenda. The Board can vote on the case without hearing from anybody. He thinks a denial at this point would not be a denial on its merits. There would be nothing to prevent the applicant from refileing this case whenever she wants to for the same relief. He has no problem with a denial at this time. It would be a denial based on the applicant failing to present.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to DENY a Variance (Section 430.1 - Bulk and

Case No. 13097 (continued)

Area Requirements in the RS, RD, and RM Districts - under the provisions of Use Unit 1206) of the lot area from 6,900 sq. ft. to 6,250 sq. ft. and a variance of the land area from 8,400 sq. ft. to 7,812 sq. ft., all to permit a lot split in an RS-3 District under the provisions of Section 1670, without prejudice for failure to present, on the following described property:

Lots 1 and 2, Block 2, Easton Heights Second Addition to the City of Tulsa, Tulsa County, Oklahoma.

Case No. 13107

Action Requested:

Variance - Section 430.1 - Bulk and Area Requirements in the RS, RD, and RM Districts - Use Unit 1206 - Request for a variance of the setback from the centerline of South Lakewood from 55' to 45' to permit construction in an RS-2 District under the provisions of Section 1670, located at East 107th Street and South Lakewood Avenue.

Presentation:

The applicant, E. O. Sumner, 8173 East 31st Place, was present. A plat was resubmitted (Exhibit "A-1").

Protestants: None.

Comments and Questions:

Mr. Gardner informed when the Staff reviewed this item, they looked at the request for the waiver which was 10 feet assuming that there was a 25-foot setback. That would have left only 15 feet of yard. In fact, there is 20 feet of yard. There is 25 feet of right-of-way and 20 feet of yard. That makes this 45 feet from the centerline of the street. Their concern was that if there was only 15 feet and they had a garage on the side of the structure, the car would actually be on City land. The Staff does not have a problem with this since there will be 20 feet rather than 15 feet.

The Staff said that one concern was that all of the houses on the western lots would have to face either north or south. The applicant stated that that was no problem. They plan to face them in that direction; however, they may want to build a garage on the side.

Mr. Victor wanted to know what the hardship is for the granting of the variance. The hardship is that these are corner lots and the setbacks on the corner lots would be a hardship on them.

Mr. Gardner informed the applicant has a front yard setback on both streets. They want one of those to be a side yard. The Staff has no problem with the application as long as there is at least 20 feet so that the automobiles will not be on the City right-of-way.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to approve a Variance (Section 430.1 - Bulk and Area Requirements in the RS, RD and RM Districts - under the provisions of Use Unit 1206) of the setback from the centerline of South

Case No. 13107 (continued)

Lakewood from 55' to 45' to permit construction in an RS-2 District under the provisions of Section 1670, per plot plan with the condition that all the houses face either north or south (or meet the 25' setback per Zoning Code), on the following described property:

Lots 8 and 9, Block 2, Lots 6, 7, and 12, Block 3, Lot 1, Block 4, Forest Park South Addition to the City of Tulsa, Tulsa County, Oklahoma.

Case No. 13110

Action Requested:

Appeal - Section 1650 - Appeal of the Building Inspectors Denial to permit a ground sign in a CS District.

Variance - Section 1221.5 (3) - CS District Use Conditions - Use Unit 1221 - Request for a variance to permit an outdoor ground sign in a CS District containing more than one business under the provisions of Section 1670, located at the NW corner of East 11th Street and 95th East Avenue.

Presentation:

Bob McGarvey, 2816 East 51st Street, was present.

Mr. Victor informed that this item was continued from the last meeting to allow the Board members time to study the Zoning Ordinance requirements regarding signs in a CS District.

Mr. McGarvey informed the essence in this case is the distinction between on-premise and off-premise signs. He described what the difference is in the two kinds of signs. They were denied a permit in a CS zone for an outdoor structure. He submitted a part of the Zoning Ordinance which relates to on-premise signs (Exhibit "B-1"). He feels this part of the Ordinance is designed to prohibit the tenants in an area where there is more than one business from all having huge signs and from competing with each for sign space. This would cause a real clutter of ground signs in a very small amount of area. An outdoor advertising structure does not fit that category because it is just one more sign and it is high so it is not part of the clutter of the rest of the area. He thinks these rules are inaccurate and he feels there is ambiguity in the Ordinance. He feels the businessman and the property owner should be able to make money off of his commercial property.

Protestants: None.

Comments and Questions:

Mr. Victor informed that after studying the Ordinance, he does not feel there is any ambiguity. There may be some things that a person might not agree with, but he does not think it is ambiguous. He described the two types of signs that the Code deals with and told his interpretation of the Code concerning the signs.

Mr. Victor feels the Code is very definite in saying that a person cannot have an outdoor advertising sign on a lot if there is more than one business.

Case No. 13110 (continued)

Mr. McGarvey informed his contention is that there is no where that it states that a person cannot have an outdoor advertising structure on a piece of property with more than one business.

Mr. Gardner described why the Code reads as it does. He informed the applicant could consider getting a lot split and have one business on each lot. If he did that, the frontage requirement would apply.

Mr. McGarvey informed he knows his options in putting up a sign. He would like a separate ruling on the interpretation of the Code.

Mr. Jackere informed that a member of the public does not have any right to ask this Board for an interpretation. There is an administrative process that a person goes through to get an interpretation. The Board can make an interpretation based on the appeal that the applicant has filed.

Mr. Victor informed that after studying the Code, he would support the decision of the Building Inspector.

McGarvey informed he was told by the Sign Inspector that he did not want to deny the application, but that was how he was told to interpret the Code. The Sign Inspector advised him to go before the Board to ask for an appeal of his determination.

Mr. Jackere informed if the Sign Inspector wants an interpretation, he can come to the Board or to the Legal Department. They have not come to the Board.

Mr. Clugston stated that there must be several variances like this around town, because he has seen several off-site advertising structures on multiple-business lots. Mr. Jackere informed he does not know how new this Code provision is. Those other signs could be nonconforming.

Mr. Jackere gave his interpretation of the Code on this matter.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to uphold the decision of the Building Inspector in his denial to permit the proposed ground sign (outdoor advertising sign) in a CS District.

Additional Discussion:

Mr. Victor informed that in order for the Board to grant a variance, Mr. McGarvey would need to demonstrate some sort of hardship which would have to do with the physical aspects of the land.

Mr. McGarvey submitted a copy of what the Code says the purpose of CS is (Exhibit "B-2"). The CS District is called the shopping center district. This lot has only two businesses on it--a bar and a liquor store. Both businesses are owned by the same man. He does not think this property fits in the norm of the CS zoning.

Mr. Jackere informed that unless the applicant gets three affirmative votes to approve his application, then it is technically denied. Mr.

Case No. 13110 (continued)

Gardner described the Board's alternatives in making and seconding a motion.

Mr. Chappelle does not feel that the applicant has shown a hardship.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to DENY a Variance (Section 1221.5 (3) - CS District Use Conditions - under the provisions of Use Unit 1221) to permit an outdoor advertising ground sign in a CS District containing more than one business under the provisions of Section 1670, on the following described property:

Lot 39, Block 32, Clarland Acres, an Addition to the City of Tulsa, Tulsa County, Oklahoma.

Case No. 13111

Action Requested:

Variance - Section 610 - Principal Uses Permitted in Office Districts - Use Unit 1214 - Request for a variance to permit retail sales (Satellite dishes) in an OL District under the provisions of Section 1670.

Variance - Section 620.2 (d) - Request for a variance of sign display surface area from one sign having 32 sq. ft. to two signs having 50 sq. ft. of display surface area.

Variance - Section 1214 - Request for a variance to permit open air storage and display within 300' of an abutting "R" District and a variance of the required 6' solid screening fence from the abutting "R" District.

Variance - Section 1340 - Design Standards for Off-Street Parking Areas - Request for a variance to permit parking on areas not concrete or asphalt, located south of the SE corner of 41st Street and Harvard Avenue.

Presentation:

David A. Leggett, 4131 South Harvard Avenue, requested by letter that this case be withdrawn and that he be refunded his application fees (Exhibit "C-1").

Protestants: None.

Comments:

Mr. Jones informed that all the work has been done on processing the application except the public hearing. The Board could refund the Public Hearing Fee which is \$25.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to withdraw Case No. 13111 and to refund \$25 to the applicant.

Action Requested:

Special Exception - Section 710 - Principal Uses Permitted in the Commercial Districts - Use Unit 1217 - Request for an exception to permit an oil/lubrication and muffler installation service in a CS District under the provisions of Section 1680, located east of the SE corner of 31st Street and Mingo Road.

Presentation:

The applicant, Roy D. Johnsen, attorney, 324 Main Mall, was present.

Mr. Victor informed Mr. Johnsen that the Board received a letter (Exhibit "D-1") from a protestant that is not present requesting the Board to continue this case for 30 days. They said that they did not receive notice of the hearing. The letter was from Regency Oldsmobile.

Mr. Johnsen informed he has a letter from Regency Oldsmobile supporting this application. His letter was dated May 1, 1984 (Exhibit "D-2") which is after the other letter was sent.

Both letters were signed by the same person. Mr. Johnsen informed they were set for hearing two weeks ago, but the notice was defective. They asked for a continuance so they could expand the notice. He instructed his client to contact Regency Oldsmobile and explain to them this proposal. When they understood what the application was all about, they were supportive of it.

Mr. Johnsen informed that the property is zoned CS as are the properties both to the west and to the east of the subject property. They would like to put an oil/lubrication service on the property. The building would have three bays. This use would be permitted by right in a CS District. In addition to this, in a separate building, they are proposing a muffler installation service--this falls into Use Unit 17. In a CS District this is a use by special exception--no showing of hardship is required. This Board needs to determine the compatibility of the proposal with the surrounding property. He described the surrounding property and uses in the area. He submitted 2 photographs of the surrounding property and described them (Exhibit "D-3"). He does not feel that this use is inconsistent with what is in the area now.

Comments and Questions:

Mr. Victor asked what the muffler inspection service involves. Mr. Johnsen informed it will be in a 3-bay building. They install mufflers. The building will not be metal--it will be either brick or concrete block. The bays will face the street. He presented a site plan and informed there will be two free-standing structures which will be owned by one owner.

Mr. Clugston asked how much parking they will have on the subject tract. Mr. Johnsen informed they will probably have about 8 spaces in front and 10 to 12 in the rear. They will meet the Code on parking requirements.

Mr. Chappelle asked Mr. Johnsen if they would have any outside storage, and Mr. Johnsen informed they will not. There will be some sort of receptacle in the rear, and it will be screened.

Case No. 13112 (continued)

Mr. Johnsen suggested that the Board limit this to the three bay installation in both buildings, that there be no outside storage, and that the construction be of concrete block, brick, or tilt-up concrete.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to approve a Special Exception (Section 710 - Principal Uses Permitted in the Commercial Districts - under the provisions of Use Unit 1217) to permit an oil/lubrication and muffler installation service in a CS District under the provisions of Section 1680, subject to the following conditions: (1) That each building be limited to three bays; (2) that there be no outside storage; and (3) that the building be other than metal structure (brick, block, concrete), on the following described property:

Lot 1, Block 1, Mingo Valley Estates Amended Addition, an Addition to the City of Tulsa, Tulsa County, Oklahoma.

MINOR VARIANCES AND EXCEPTIONS:

Case No. 13115

Action Requested:

Variance - Section 430.1 - Bulk and Area Requirements in the RS, RD, and RM Districts - Use Unit 1206 - Request for a variance of the required setback from the centerline of South 148th East Place to permit an addition to an existing residence in an RS-3 District under the provisions of Section 1670, located at the NW corner of South 148th East Avenue and 148th East Place.

Presentation:

The applicant, Michael Chandler, 3449 South 148th East Avenue, was not present.

Protestants: None.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to continue Case No. 13115 to the May 17, 1984, meeting.

NEW APPLICATIONS:

Case No. 13114

Action Requested:

Special Exception - Section 610 - Principal Uses Permitted In Office Districts - Use Unit 1205 - Request for an exception to permit a day care and preschool center in an OL District under the provisions of Section 1680, located south of the SE corner of 36th Street North and Cincinnati Avenue.

Presentation:

Teresa Shields, 2436 North Main Street, informed she was advised by the City Building Inspector's office that this was zoned properly for a day care center. She has met all the requirements. When she filed for her certificate of occupancy, she was notified that her zoning was inadequate. She has spent a lot of time and money on this building for this use. She will be utilizing an existing building. The only modifications were those they needed to make to meet the requirements of the Health Department and the Building Inspector. The building used to be a doctor's office. She described changes that they made. They will be licensed for 30 children right now. The size of the structure would permit more. They have 3,200 sq. ft. They do not have enough restrooms to meet the requirements for more than 30 children. If they add more restrooms, they will be able to increase the number of children. The only thing around her property beside vacant lots is a church. There is a house on the property right next door to the south of her, but she has been told by the County that they are going to tear it down. She described where the churches are located in the area.

Protestants: None.

Comments and Questions:

Mr. Victor asked the applicant about the signage on the property. Ms. Shields informed there was an existing sign on the property and they will be using that. The sign is located on the property, and not on City property.

Mr. Gardner suggested that if the Board is inclined to approve the application, they could approve it per the existing building. He informed she would be allowed 32 sq. ft. of signage in this district. This should be sufficient to meet her needs.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to approve a Special Exception (Section 610 - Principal Uses Permitted in Office Districts - under the provisions of Use Unit 1205) to permit a day care and preschool center in an OL District under the provisions of Section 1680, per the existing building, on the following described property:

The North 124 feet of the West 341.64 feet of the S/2 of the N/2 of the SW/4 of the NW/4 of Section 24, Township 20 North, Range 12 East, City of Tulsa, Tulsa County, Oklahoma.

Action Requested:

Special Exception - Section 710 - Principal Uses Permitted in the Commercial Districts - Use Unit 1217 - Request for an exception for a retail tire center sales and front end alignments in a CS District under the provisions of Section 1680, located south of the SW corner of East 36th Street and Sheridan Road.

Presentation:

The applicant, Harold Burlingame, 6660 South Lewis Avenue, was represented by Kenneth Miles, 201 West 5th Street, Suite 400. Mr. Miles informed this is to permit a Use Unit 17 use. This will be a tire center on property that is currently in a CS District. The use is one that is not inconsistent with the properties adjoining it. The intensity across the street from the subject tract is much greater than the CS District. He submitted a packet of plans and explained them (Exhibit "E-1"). The building to the north on the plot plan is an existing lubrication center. It is a one-bay center. It is on the subject tract, but because it is a one-bay center, it is considered a Use Unit 16. The office building on the property is proposed to expand to the rear. The nature of construction that is proposed is totally consistent with the existing office building. The slope of the roofline that will be seen from the street will be shingled just as the office building. It will be masonry construction and the bays will face north. Mr. Miles described the surrounding property. There are two points of ingress and egress to this location which are standard to what is required of a commercial district. This would not cause the intensity of the use of the area to be greater than it currently is. They will be about 40 feet from the fenceline of the apartments to the west.

Protestants: None.

Comments and Questions:

Mr. Victor asked the applicant what kind of vehicles they will be changing the tires on. Mr. Burlingame informed the vehicles will be typical passenger vehicles and pickup trucks.

Mr. Victor informed it seems that the building is kind of tall. The building will have a total height of 19 feet. The doors are 12' by 12'.

Mr. Jackere asked the applicant if they will have any outside storage, and Mr. Miles informed that they will not. This is not intended to be for tractor-trailers or anything like that. They will have storage inside the building, and the loudest piece of machinery they will have will be air guns.

Mr. Jackere asked about the quantity of the storage area in the business. He asked if the applicant is a local distributor for any tire companies. Mr. Miles informed the tires will be installed on these premises. This is one of a number of tire centers of its type. They are a retail operation and are not a local distributor--this is not a local distribution point.

Mr. Miles informed the parking was drawn on the plan for the purpose of showing what the final parking picture will look like. His computations show that there would be 12 spaces required. They have 32 parking spaces.

Case No. 13116 (continued)

Mr. Victor asked if there is any story limitation in a CS District. Mr. Gardner informed the height limitation is based on being adjacent to RS and RD, and there is none of that zoning adjacent to this.

Mr. Victor informed he would like to look at the site and the size of the building.

Mr. Miles described the proposed addition to the building.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to continue Case No. 13116 to the May 17, 1984, meeting to allow the Board members time to view the site.

Case No. 13117

Action Requested:

Variance - Section 730 - Bulk and Area Requirements in Commercial Districts - Use Unit 1214 - Request for a variance of the setback from the centerline of East 2nd Street from 50 feet to 34 feet in a CS District under the provisions of Section 1670, located at the NW corner of 2nd Street and South Lewis Avenue.

Presentation:

Robert L. Curtis, 5931 East Admiral Place, requested that this item be continued for two weeks. He brought the wrong plot plan to this meeting.

Protestants: None.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to continue Case No. 13117 to the May 17, 1984, meeting.

Case No. 13118

Action Requested:

Variance - Section 430.1 - Bulk and Area Requirements in the RS, RD, and RM Districts - Use Unit 1206 - Request for a variance of the setback requirement from the centerline of Peoria from 85' to 80' for a proposed dwelling and from 85' to 60' for a proposed garage in an RS-2 District under the provisions of Section 1670, located at the SW corner of East 24th Street and Peoria Avenue.

Presentation:

Lewis-Pecaut Properties, Inc., was represented by Roy Pecaut, 6923 South Yorktown Avenue. Mr. Pecaut informed they are no longer requesting the variance for the house, but would like the one for the garage. He submitted a plot plan (Exhibit "F-1") and informed that the house is meeting the required setback of 85'. The garage will be detached and will be to the rear of the house. Without this variance, they only have 50' of the actual 100' that is usable to them on the lot. This will all be new construction. With the variance they will still have 25' of side yard. They would have 41 feet from the curbline of Peoria.

This is visibly well-buffered with large trees from Peoria.

Protestants: None.

Comments and Questions:

Mr. Jackere asked if there are other houses along Peoria on the west side that have garages that are this close to the street. Mr. Pecaut gave some examples of other buildings in the neighborhood that are this close to the street. He submitted 4 photographs of these examples (Exhibit "F-2").

Mr. Pecaut informed that under normal circumstances, if they were on an inside lot, they could come within 3 feet of the property line. This is on a main thoroughfare, and that is why they need the variance.

Mr. Clugston asked the applicant if he could connect the garage to the structure or move it to the west. Mr. Pecaut informed if they do that, they will have a sewer problem. He described what the problem would be. If they moved it to the required setback, the garage would be fully behind the house.

Mr. Gardner informed that detached garages in this area are common. Prior to 1970, the applicant could have built it like they are proposing to and would not have had to come before the Board. Peoria is a 100-foot major street, but the street does not contain 100 feet of right-of-way in this location and probably never will. There are other structures up and down the street that sit closer than what the applicant is asking for. His hardship is based on the established setbacks that are there and in place and the fact that the Code has since been changed to require greater setback when, in actuality, none of the structures meet this kind of setback.

Mr. Pecaut informed that within a four block area there are probably 25 or 30 examples of structures that do not meet the setback. This house and garage will fit in with the neighborhood.

There was discussion about why they could not take an average required setback.

Mr. Clugston asked if this is a double garage and if it will be used strictly for automobile storage. Mr. Pecaut informed that it is a 24' wide garage and is strictly for automobiles. There will be some added storage above the garage.

Mr. Jackere informed there are very few, if any, vacant corner lots in this area. For the applicant to wish to use his property in the manner that is being used currently in that neighborhood, he must have this variance; otherwise, he has to put the building behind his house.

Mr. Jackere informed this Board has historically treated corner lots as peculiar and has granted variances of the yard requirements on one of the sides that abut the public street. He informed that every single provision of the Zoning Code presents a hardship because it takes away from a property owner the right to do with his property as he wishes. The question to ask is whether the hardship imposed is necessary to accomplish a legitimate end of zoning. This is why the Board has to

Case No. 13118 (continued)

look at the neighborhood and the peculiarities of this piece of property and this situation. In this case, a precedent will not be set because there are not many, if any, vacant lots on corners.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to approve a Variance (Section 430.1 - Bulk and Area Requirements in the RS, RD and RM Districts - under the provisions of Use Unit 1206) of the setback requirement from the centerline of Peoria from 85' to 60' for a proposed garage in an RS-2 District under the provisions of Section 1670, per plot plan submitted, on the following described property:

Lot 5, Block A, Sunset Park Addition, an Addition to the City of Tulsa, Tulsa County, Oklahoma.

Case No. 13119

Action Requested:

Variance - Section 430.1 - Bulk and Area Requirements in the RS, RD, and RM Districts - Use Unit 1206 - Request for a variance of the required setback from the centerline of South Toledo from 55' to 50' and a variance of the required side yard from 10' to 7.4' all for an existing dwelling in an RS-2 District under the provisions of Section 1670, located south of the SE corner of East 83rd Street and Toledo Avenue.

Presentation:

James Heilinger, 5215 East 71st Street, submitted a plat (Exhibit "G-1") and informed this variance is needed to clear title for an existing house. They took the house in trade, and upon trying to refinance and get their equity out of it, they found the encroachment. The people they took the house from enclosed the front porch which created the encroachment of 5 feet. Mr. Heilinger informed it looks like the whole addition is in violation on the side yard requirement--it is typical.

Protestants: None.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to approve a Variance (Section 430.1 - Bulk and Area Requirements in the RS, RD, and RM Districts - under the provisions of Use Unit 1206) of the required setback from the centerline of South Toledo from 55' to 50' and a variance of the required side yard from 10' to 7.4' all for an existing dwelling in an RS-2 District under the provisions of Section 1670, per survey submitted, on the following described property:

Lot 4, Block 3, Brookwood Addition, an Addition to the City of Tulsa, Tulsa County, Oklahoma.

Action Requested:

Special Exception - Section 410 - Principal Uses Permitted in Residential Districts - Use Unit 1211 - Request for an exception to permit office use in an RM-2 District under the provisions of Section 1680.

Variance - Section 630 - Bulk and Area Requirements in the Office Districts - Use Unit 1211 - Request for a variance of the required setback from an abutting "R" District on the north, south and west from 10' to 8.1', 2.2', and 3', respectively, located south of the SW corner of 15th Street and Carson Avenue.

Presentation:

Lonnie D. Eck, 6139 South Victor Avenue, informed he is presently on contract to purchase the subject property subject to the approval of this application. He would like to use the existing residential structure on the property for office use. The variance is requested to allow the existing structure to meet the Bulk and Area requirements. There is 50 feet of frontage. It was originally platted as a 54-foot lot. The north 4 feet were deeded over to the property owner to the north several years ago. He will remove the two-story garage apartment at the rear of the property. He submitted a plat with a picture of the subject property attached to it (Exhibit "H-1").

Protestants: None.

Comments and Questions:

Mr. Jackere informed the consideration for the Board is primarily the Special Exception. If they find the use is appropriate for the area with respect to its location and proximity to other houses, then the variance is merely technical.

Mr. Victor asked the applicant if he has a specific office use in mind or if it will be leased for any kind of office. Mr. Eck informed he is an attorney and he intends to use the building for his office space. He may have as many as two tenants--there could be a maximum of three lawyers in the building. His intent at this time is to have two lawyers in the building.

Mr. Eck informed the plot plan shows the proposed parking spaces. They would be required to have 6 parking spaces, and he has a total of 9 spaces. He informed that there is an office use being made across the street from the subject property and one house down to the south.

Mr. Jackere asked the applicant about the street parking in the area now, and Mr. Eck described what he knew of the parking situation.

Mr. Victor asked about the use of the structures immediately north and south of the subject tract. Mr. Eck described the surrounding land uses. Immediately to the south of the subject tract is a family residence. The only objection he has heard from the residence to the south is that they do not want a screening fence all the way out to the street.

Mr. Eck informed that he would anticipate the parking to be on a concrete parking lot behind the building. At some point in the future, he might glass in the front porch and the balcony. He has no urgent need to do that at this time.

Case No. 13120 (continued)

Mr. Jackere asked the applicant if he is planning to bring a 6-foot privacy fence all the way to the street on his south property line. Mr. Eck informed his proposal as to the screening fence, which his neighbor seemed to agree with, would be to run the fence on the south property line even with the back part of the house on back. It would be to screen the parking area. He also anticipates screening the entire back of the property. It is his understanding that since the property to the north is not residential, he should not have to screen it. Mr. Jackere informed the property to the north is zoned residential and he would technically have to screen it. He could ask the Board for relief on that. He thinks he would go ahead and screen the north side up to the back of the house.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to approve a Special Exception (Section 410 - Principal Uses Permitted in Residential Districts - under the provisions of Use Unit 1211) to permit office use in an RM-2 District under the provisions of Section 1680, and a Variance (Section 630 - Bulk and Area Requirements in the Office Districts - under the provisions of Use Unit 1211) of the required setback from an abutting "R" District on the north, south and west from 10' to 8.1', 2.2', and 3', respectively, per plat submitted, and to continue the balance of the application to the May 17, 1984, meeting so the applicant can advertise for the relief that is necessary insofar as the screening is concerned, on the following described property:

Lot 2, LESS the North 4', Block 3, Stonebraker Heights Addition to the City of Tulsa, Tulsa County, Oklahoma.

Case No. 13121

Action Requested:

Special Exception - Section 910 - Principal Uses Permitted in Industrial Districts - Request for an exception to permit Use Unit 19 in an IL District under the provisions of Section 1680, located at the NE corner of 51st Street and 103rd East Avenue.

Presentation:

David Cannon, 10301-A East 51st Street, informed he has a pending lease which is dependent upon getting approval of this application for a public dance hall. The business will be a youth activity center for minors between the ages of 14 and 21--it will be called The Animal House. The hours of operation will be from 6 p.m. to midnight, with the exception of non-school nights when the closing hour will be 1 a.m. There are operations similar to this in Tulsa. They have no intent to ever have alcohol on the premises. This location has 6,000 sq. ft. and is a new building. He described other uses and occupants in the building on the subject tract. The entrances to the building face south. He informed that 50th Street, for all practical purposes, is non-existent. The right-of-way is still there, but there is no street.

Protestants: None.

Comments and Questions:

Mr. Jackere asked the applicant to describe the character of the area

at 8:00 p.m. The only activity on the premises after 5:00 p.m. is an occasional Board meeting for one of the businesses. There are no businesses in the area that are open at 8:00 at night. Mr. Cannon informed the building is the first building west of the Mingo Valley Expressway.

Mr. Jackere described what he has learned concerning a case for a billiard parlor that the Board denied that is on appeal in District Court. He was told by the Field Superintendent for the Police Department in the area of the proposed billiard parlor that industrial areas are difficult to patrol, generally, because they are located near railroad tracks which cut streets and makes chasing people difficult. It is also difficult because it gives people an excuse to be in the area when the area is shut down.

Mr. Cannon informed that he is concerned about the use of the property in that this is a brand new building. They have included some security provisions in their lease--he described some of these.

Mr. Jackere informed this use would be permitted by right in a commercial district. He informed that the Board did grant a special exception on the tract for Use Units 12, 13, and 14, which are also uses by right in commercial, but those uses generally rely upon the neighborhood that it is in for its business.

Mr. Victor stated that the Board would normally not grant such a broad use for an area--they would want to get specific about the kind of use it is.

Mr. Jackere informed the Code says in the industrial area that the Use Unit 19 may be appropriate. There are different types of industrial areas. There are industrial districts that have mixed uses and may border on a commercial area, or they may have many nonconforming commercial uses in the area. This use may be more appropriate in an area such as that.

Mr. Cannon informed this is located on 51st Street which is a major arterial. This fronts on the arterial, not on the industrial streets within an industrial park or an area that does not experience heavy traffic.

Mr. Jackere informed the billiard hall that the Board denied was on a major street also.

Mr. Victor informed he would like to view the site. Mr. Jackere informed they should look at the site at night.

Mr. Cannon informed he would like approval on this, if granted, to be limited to a dance hall for youth between the ages of 14 and 21.

Mr. Jackere informed that any conditions that the Board imposes are enforceable only by the Building Inspector of the City of Tulsa.

Mr. Gardner informed that serving or not serving alcoholic beverages should be a condition.

Case No. 13121 (continued)

Board Action:

On MOTION of CLUGSTON and SECOND by CHAPPELLE, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to continue Case No. 13121 to the May 17, 1984, meeting to allow the Board members time to view the site.

Case No. 13122

Action Requested:

Special Exception - Section 410 - Principal Uses Permitted in Residential Districts - Use Unit 1205 - Request for a special exception to permit church use in an RS-2 District under the provisions of Section 1680, located at the SW corner of 133rd East Avenue and 23rd Court.

Presentation:

Paul Bendure, 4936 East 49th Street, submitted a copy of a plot plan (Exhibit "I-1") and informed the church will face 133rd East Avenue. He submitted a letter from the City Commission (Exhibit "I-2") giving them permission to open the street up as a 24' wide private drive only to the driveway of the church. He described the surrounding area and its uses. The first part of development would be the 3,200 sq. ft. sanctuary. Later on they would add an expansion of classrooms for Sunday School use.

Henry Snyder, 816 Mason Drive, Broken Arrow, is the minister for the Church of God of Prophecy. The building will be approximately 60% masonry, either brick or stone, and frame. They do not intend to start a preschool or a private school. The building will be strictly for church services. They have no plans for a metal building.

Protestants: None.

Comments and Questions:

There was discussion about the access into the area and development in the area. The access to the proposed Hart Elementary School location would be off of 24th Street. Mr. Bendure informed it is his understanding that the proposed school location is now for sale.

Mr. Gardner informed the right-of-way for 24th Street is 50 feet.

Mr. Gardner informed the Board has reviewed some churches recently that were interior where the church property was subdivided lots laid out for houses. That is not the case in this instance. The subject tract is vacant as is the property to the east. The surrounding lots back to the subject tract--they do not front into it. The subject tract is not subdivided into single-family lots as a part of the overall subdivision.

Mr. Victor asked Mr. Gardner if the Staff would have a problem with the access into the site. Mr. Gardner informed the fact that the lot is just strictly interior is not the sole determining factor. The Board has to look at the land-use relationships. There will be traffic coming into the area, but the traffic will be coming at certain hours and days of the week. It will not be constant traffic.

Case No. 13122 (continued)

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to approve a Special Exception (Section 410 - Principal Uses Permitted in Residential Districts - under the provisions of Use Unit 1205) to permit church use in an RS-2 District under the provisions of Section 1680, per plot plan submitted, on the following described property:

Part of the S/2 of the NW/4 of Section 16, Township 19 North, Range 14 East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, more particularly described as beginning at a point 980' East and 28' South of the Northwest corner of the S/2 of the NW/4; thence East 315'; thence South 607'; thence West 150'; thence North 123'; thence West 165'; thence North 484' to the point of beginning, LESS a tract beginning 512' South and 1,295' East of the Northwest corner of the S/2 of the NW/4 of Section 16, Township 19 North, Range 14 East; thence South 123'; thence 150' West; thence North 123'; thence East 150' to the point of beginning, according to the U. S. Government Survey thereof.

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to amend the motion to include the condition that the building not be a metal building.

Case No. 13123

Action Requested:

Variance - Section 730 - Bulk and Area Requirements in Commercial Districts - Use Unit 1211 - Request for a variance of the setback from an abutting "R" District from 10' to 0' in a CS District under the provisions of Section 1670, located at the SW corner of 32nd Street and 114th East Avenue.

Presentation:

Paul Bendure, 4936 East 49th Street, informed the south 11 feet of the subject tract is zoned RM-2. The rest of the piece of property is zoned CS. He submitted a plot plan (Exhibit "J-1") and informed they would like to put their building approximately 3 feet from the RM/CS line. They will construct a screening fence on the property line. The building will actually be sitting 14 feet from the property line. Their plans show one parking space in this 14 feet. Mr. Bendure was not sure how close his proposed building would be from the house to the south. He described the surrounding area.

Comments and Questions:

Mr. Victor informed he feels the hardship would be that the applicant would be sitting back on his own property.

Mr. Gardner informed he was not aware of the dual zoning on the lot. This is an unusual zoning pattern. The lots are zoned Commercial, but he is not sure that they were not platted as a part of the single-family subdivision. The Board needs to find out if they are a part of the single-family subdivision. There may be restrictions on the property which could be the reason that the property has not been developed to

date. He wondered if the residential zoning was put on the south portion of the property as a buffer. If it was put there for a buffer, then this application would be asking to reduce that buffer. If it is not there for a buffer, it would be a different story. The area is developed single-family but zoned for apartments. It has never been rezoned as a single-family subdivision. It is bound by and restricted to single-family not by the zoning, but by the restrictive covenants.

Mr. Jackere informed he does not think the Board should be concerned with plat restrictions.

There was discussion about continuing this item to allow the Staff to do some research into the zoning and how it got the way it is.

Mr. Bendure informed that the lot to the north of the subject tract is zoned commercial. There is presently a new office building on that piece of property. Mr. Bendure informed they plan to build approximately a 2,400 sq. ft. rock or brick office building which would be used by a partnership for their offices.

Mr. Clugston asked the applicant why he needs the 10 feet. Mr. Bendure informed they need the 10 feet so they can construct a building that is, from the shape, easier to deal with. It will be a standard rectangular building. They would like to have some grassy areas around the property so that it will blend in with the transition from the retail areas to the residential. They also would like to have their driveways structured where they could have a flow-through on the corner.

Mr. Gardner informed that if the applicant is proposing to build an office in a commercial district, the 11 feet of buffer (if that is what it is) may not be that significant. He asked the applicant what the southern boundary of the office building will be like. Mr. Bendure informed the southern boundary of the building will be a solid wall with one door. They do intend to put a screening fence on the property line.

Mr. Gardner informed a commercial use could be built on this property. The Board has an opportunity to restrict this piece of property to office if that is what the applicant is proposing. If there were no relief requested, the Board could not bind him to an office use.

Mr. Victor informed the Board can impose restrictions at this point, but they couldn't if there was a commercial use that met the setback.

Mr. Clugston asked what the setback requirement is off of 32nd Street. Mr. Gardner informed he has a 25-foot setback plus half of the abutting street. He asked if the applicant could build any closer to the street than what the plans show, and he was informed that he could not.

Protestants:

Joe Craten, 3210 South 114th East Avenue, submitted a petition from the neighborhood (Exhibit "J-2"). He informed his property is immediately to the south of the subject tract. He is concerned that he will have a large wooden fence that will completely block him off from anything. He is also concerned about the traffic problems they already have in the area. There is only one way in on 32nd Street and one way out on 116th East Avenue.

Comments and Questions:

Mr. Victor informed the petitioner that the petition states that they are against the rezoning of the property. He explained that this Board does not rezone property.

Mr. Jackere informed the protestant that the applicant can build a commercial building with retail shops on the property. He asked Mr. Craten if he has a specific objection to the applicant bringing the building further to the south. He does not think they are increasing the size of the building. Mr. Craten informed when they bring the building to the south, he will be closed off.

Mr. Gardner informed the lot where the office is built to the north and the house further to the north are both zoned commercial. There is no setback requirement between commercial. That owner had the right to go right to the property line. This is a different situation. With what the applicant is proposing, the office building will be about 19 feet from the protestant's house. He explained the application to Mr. Craten. He informed that right now the applicant could put a bar 26 feet from Mr. Craten's house or he could put an office 19 feet from his house and the Board could restrict the use to office now and forever. He feels that Mr. Craten needs to weigh the options. He may be much better off with the office than with some commercial usage. The applicant has to put up a screening fence between the subject tract and Mr. Craten's house.

Mr. Victor informed that in his opinion the protestant is better off by this applicant asking for this relief and having to accept the conditions that the Board imposes on him.

Mr. Gardner informed he thinks the Board can make a decision on having an office use on the property without going back and checking the zoning.

Mr. Clugston wanted to know what the hardship would be in this case. Mr. Gardner informed that technically this applicant has legitimate reason to ask the Board for the variance because of the double-zoning. The ordinance contemplates that his setback is measured from an abutting property which usually belongs to someone else. An 11-foot strip of RM cannot be developed. If the Board grants the relief of the setback, they can condition the use. If they don't grant relief of any setback, they have no jurisdiction.

Additional Protestants:

Jodie Albers, 3211 South 117th East Avenue, is a resident of this neighborhood. She informed their main concern is where the entrance to the parking area for this building will be. She was concerned because 114th East Avenue is a residential street. There are only two entrances in and out of this addition. She described the parking problems they have in the area.

Comments and Questions:

Mr. Victor informed Ms. Albers that all the parking will be off the street.

Mr. Craten informed he would agree with this use if it will be restricted to office use.

Case No. 13123 (continued)

Mr. Jackere informed that at some later date the applicant could come back before the Board and ask to use the property for commercial purposes, but the neighbors would be given notice if that were to occur.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to approve a Variance (Section 730 - Bulk and Area Requirements in Commercial Districts - under the provisions of Use Unit 1211) of the setback from an abutting "R" District from 10' to 0' in a CS District under the provisions of Section 1670, per plot plan submitted, subject to the following conditions: (1) that the use be restricted to office use only; (2) that the height be limited to one story; and (3) that the building will be constructed of rock or masonry materials, on the following described property:

Lot 18, Block 3, Briarglen Center, a Resub. of a portion of Amended Plat of a Resub. of Blocks 2 and 3, Briarglen Center Addition, to the City of Tulsa, Tulsa County, Oklahoma.

Case No. 13124

Action Requested:

Request withdrawal of application and refund of fees.

Presentation:

B. Kenneth Cox, 4100 Williams Center, requested by letter (Exhibit "K-1") that this application be withdrawn.

Protestants: None.

Comments:

Mr. Jones informed that when the applicant applied he asked that they hold off processing any of his case because he thought at the time that he might withdraw the case. He wanted to file it to meet a deadline. The day after he filed the application, he contacted the Staff and said he did want to withdraw the application. Nothing has been processed on this case.

Board Action:

On MOTION of CLUGSTON and SECOND by CHAPPELLE, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to withdraw Case No. 13124 and to refund \$125 to the applicant.

Case No. 13125

Action Requested:

Variance - Section 430.1 - Bulk and Area Requirements in the RS, RD, and RM Districts - Use Unit 1206 - Request for a variance of the rear yard setback from 20' to 5' to allow an addition to an existing dwelling in an RS-3 District under the provisions of Section 1670, located south of the SE corner of 15th Street and South Indianapolis Avenue.

Presentation:

Kenny Winegarten, 9806 East 118th Street South, informed this is an old house that they are remodeling. He submitted a site plan (Exhibit "L-1"). They want to add seven feet to the back porch to make it into a laundry room. He will not be going past the existing walls of the house in any direction--it will line up with the existing structure. Mr. Winegarten informed he has a building permit to remodel the house. He has just dug and poured a footing for this addition.

Protestants:

Cleo Mace, 1512 South Jamestown, informed they are opposed to this because this house is nothing more than a shack right now and that is what it has been for many years. He described a large tree that is on the applicant's property and the problems they have had with that tree. He described the subject property and how it has been kept in the past. He does not want the applicant to build any closer to his house than he already is, because he has demonstrated to them that he will not take care of the property. He sees no point in letting him add to a shack.

Clifton Coleman, 1516 South Jamestown, lives directly across the fence from the subject property--their back yards abut. He also has concerns about the tree on the applicant's property. Mr. Coleman does not want any more development on the property until this tree is taken care of. He does not care what the applicant builds as long as it is safe for the people to live in.

Comments:

Mr. Jackere informed the Board members that if this is a dangerous condition, they have a remedy, but it is not with this Board. A condition made by this Board to remove the tree would be totally out of place.

Applicant's Rebuttal:

Mr. Winegarten described the tree on his property--it is 150 years old. They do have someone coming to trim the tree. The house has been run-down. He described the remodeling they are doing on the house.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to approve a Variance (Section 430.1 - Bulk and Area Requirements in the RS, RD and RM Districts - under the provisions of Use Unit 1206) of the rear yard setback from 20' to 5' to allow an addition to an existing dwelling in an RS-3 District under the provisions of Section 1670, per plot plan submitted, on the following described property:

Lot 4, Block 2, Sunrise Terrace Addition, an addition to the City of Tulsa, Tulsa County, Oklahoma.

Additional Comments:

Mr. Victor informed this Board has no authority in the area of the applicant's tree. The Board deals with zoning matters only. The existing structure is nonconforming, and this Board has found historically in the past that a hardship exists because of the placement of the existing structure on the lot.

OTHER BUSINESS:

Case No. 13105

Action Requested:

Consider approval of substitute plot plan for Case No. 13105.

Presentation:

The applicant, Kelsey Company, 5815 South 94th East Place, was not present.

Protestants: None.

Comments and Questions:

The Staff informed the applicant may not have the plot plan ready yet.

Board Action:

The Chair, without objection, struck this item from the agenda.

Case No. 12977

Action Requested:

Request to correct footage resulting from a typographical error.

Presentation:

The applicant, John Sublett, One Williams Center, Suite 1776, was not present.

Protestants: None.

Comments:

Mr. Augustine informed that in the original request, the frontage was advertised as 131.36 feet. This was a typographical error. It should have been 121.36 feet. This action would just be to make the correction so that it will be proper. Everything has been readvertised and notice was re-sent.

Board Action:

On MOTION of CLUGSTON and SECOND by CHAPPELLE, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to correct action previously taken on Case No. 12977 granting 131.36 feet by changing that 131.36 to 121.36 feet to be in compliance with the request and the published notification.

Case No. 13059

Action Requested:

Consider approval of Plot Plan for Case No. 13059.

Presentation:

Ken Hunter, 1008 South 5th Street, McAlister, Okla., submitted a plot plan (Exhibit "M-1"). This is for a day-care center in the Swan Lake area. The case was heard on March 22, 1984.

Protestants: None.

Comments:

Mr. Gardner informed the Board approved the day-care center subject to the applicant coming back with a plot plan.

Case No. 13059 (continued)

Mr. Hunter informed that the structures are existing one-story structures.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to approve the plot plan for Case No. 13059.

Case No. 13113

Action Requested:

Consider approval of minutes for Case No. 13113 heard April 19, 1984.

Presentation:

This case is on appeal to District Court.

Board Action:

On MOTION of CHAPPELLE and SECOND by CLUGSTON, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to approve the minutes of Case No. 13113 heard April 19, 1984.

Case No. 13147

Action Requested:

Requested a refund of fees for Case No. 13147.

Presentation:

The applicant, Holly Nielson Keaton, 2400 First National Tower, was not present.

Protestants: None.

Comments:

The Staff informed the case was withdrawn before much work was done on it. Only one map was made.

Mr. Gardner recommended that the full \$125 be refunded. He explained why the application was withdrawn.

Board Action:

On MOTION of CLUGSTON and SECOND by CHAPPELLE, the Board voted 3-0-0 (Chappelle, Clugston, Victor, "aye"; no "nays"; no "abstentions"; Purser, Smith, "absent") to refund \$125 to the applicant.

Case No. 13113

Action Requested:

Dick Cleverdon: Request waiver of 6 months policy regarding hearing of a new application on a matter previously heard and denied--Salvation Army request for pre-release center at Brady and Denver.

Presentation:

Dick Cleverdon, attorney, 202 West 8th Street, represented the Salvation Army. He informed that Case No. 13113 was heard and denied by this Board on April 19, 1984. The application was denied on a vote of two

in favor of allowing the application and one in opposition of approving the application. The Salvation Army feels that this application is of serious importance to the community. There are some economic constraints that enter into this problem. The present pre-release facility being operated by the Salvation Army is in an old building that has been sold. The program will have to be abandoned or at least stopped at the time possession is given for the old building that has been occupied by the Salvation Army for the pre-release center. Mr. Cleverdon informed there were things that they probably did not cover adequately in the previous hearing before this Board. One is the criteria by which this location was chosen for the social services which the Salvation Army conducts. It is necessary for a center such as this to be located in the area where the people needing the services are located. There is a practicality involved in having all the services that will be available at this center concentrated in one facility. He is not sure that they adequately described the differences between some of the other nonconforming uses in the general area and what they would conduct in this new facility. Under their operation, there will be great insulation of the community from the pre-release center by the way that it is required to be operated. The total impact of this facility is that it removes people from the streets who need shelter who would otherwise be on the streets seeking shelter. Mr. Cleverdon read from an article from the April 1984, issue of the Tulsa World, which is based on a speech given by Chief Justice Warren Burger, who is Chief Justice of the United States Supreme Court. The article addresses the problem that they are trying to serve with this pre-release center. Mr. Cleverdon requested that they be allowed to file an additional application, that the Staff be authorized to publish the notice of hearing, and that they be allowed to have the hearing on May 31, 1984, if that is possible.

Comments and Questions:

Mr. Victor asked Legal Counsel if a motion to waive this policy would have to be approved by a unanimous vote. Mr. Jackere informed that anything other than the consideration of an application requires a majority of those present. He informed that he would have a problem if the Board voted today to set this matter for reconsideration; but, rather, he thinks that the protestants should be allowed to speak to this request.

Mr. Victor informed this was a technical denial in that there were not enough votes to support this because of the number of Board members that were present. He is not sure they would be denying the protestants any rights because they would have the opportunity to appear again.

Mr. Jackere informed he does not think it is appropriate for anyone to come back with new evidence. The applicant can do that in court. The technical denial, however, may be justification for this Board, because of the gravity of the public good that these facilities serve, to rehear the case. He does not think that decision should be made today. He thinks the application should be filed and notice should be given of the application. At that time, the applicant can present his argument for asking the Board to rehear the case even though it is the same application.

Mr. Gardner informed the Board, for years, has had a policy of requiring an applicant to wait 6 months before he files an identical application.

Case No. 13113 (continued)

Legal Counsel says that just because 6 months went by does not change anything. He will bring up the point of Res Judicata. The Board has already made a decision on this. The Staff does not think they or this Board should have to accept an application if 6 months haven't gone by unless this Board waives this policy. The policy does not make the application any better just because 6 months have gone by. The Board will decide on the day of the hearing whether or not they will rehear the case.

Mr. Jackere has a problem with the policy because it puts the Staff in the position of making the decision that this application is the same as the first one.

There was a great deal of discussion on whether or not the Staff should take applications that have been heard before and whether or not the 6-month policy is appropriate.

Mr. Clugston made a motion to deny the request for a waiver of the 6-month rule pending a legal opinion to the contrary.

Mr. Jackere informed the motion would not prevent the applicant from filing a new application.

Mr. Jackere informed that his legal opinion today is that the 6-month rule is not appropriate and that anybody has the right to refile. For the Staff to prejudge the application and say there is nothing different about it is usurping the function of the Board, in his opinion.

Mr. Gardner suggested that the Board strike this item based on Legal Counsel's advice that he does not think this policy is valid.

Mr. Clugston withdrew his motion for denial.

Mr. Jackere informed the applicant that he has the right to file an application. Whether or not the Board will give him a full hearing on the merits of his application is the question that will be decided at the hearing.

Board Action:

Based upon Legal Counsel and without hearing objection, the Chair struck this item from the agenda.

There being no further business, the Chair adjourned the meeting at 4:58 p.m.

Date Approved _____

5-17-84


Chairman