

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 596
Tuesday, October 8, 1991, 1:00 p.m.
City Council Room, Plaza Level
Tulsa Civic Center

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Bolzle, Chairman Doverspike Fuller	Chappelle White	Jones Moore	Jackere, Legal Department Hubbard, Protective Inspections Parnell, Code Enforcement

The notice and agenda of said meeting were posted in the Office of the City Clerk on Monday, October 7, 1991, at 11:47 a.m., as well as in the Reception Area of the INCOG offices.

After declaring a quorum present, Chairman Bolzle called the meeting to order at 1:00 p.m.

MINUTES:

On **MOTION** of **FULLER**, the Board voted 3-0-0 (Bolzle, Doverspike, Fuller, "aye"; no "nays"; no "abstentions"; Chappelle, White, "absent") to **APPROVE** the Minutes of September 24, 1991.

UNFINISHED BUSINESS

Case No. 15809

Action Requested:

Variance to waive the screening requirements from an abutting residential zoned district to the north - **Section 1213.C.2. Use Conditions** - Use Unit 13, located 4903 East Admiral Place.

Presentation:

The applicant, **QuikTrip**, was represented by **David Grooms**, 901 North Mingo, Tulsa, Oklahoma, who requested a waiver of the screening requirement between the QuikTrip and the abutting church property. He explained that both properties have been surveyed, and there is an 11' strip of land that is not a part of either tract, and will not be maintained if a screening fence is erected on the QuikTrip boundary line. Mr. Grooms advised that the church has a chain link fence in place, and is concerned that a solid fence could encourage vandalism in this area (Exhibit A-1). He stated that QuikTrip will landscape and mow the 11' strip if the screening requirement is waived, but will not maintain this area if solid screening is installed. Mr. Grooms informed that similar relief was granted for a QuikTrip store at 15th Street and Denver Avenue.

Protestants: None.

Case No. 15809 (continued)

Board Action:

On **MOTION** of **FULLER**, the Board voted 3-0-0 (Bolzle, Doverspike, Fuller, "aye"; no "nays"; no "abstentions"; Chappelle, White, "absent") to **APPROVE** a **Variance** to waive the screening requirements from an abutting residential zoned district to the north - **Section 1213.C.2. Use Conditions** - Use Unit 13; finding that the abutting property owners had previously installed a chain link fence on their boundary line, and were opposed to solid screening for security reasons; on the following described property:

The west 235' of the south 300' of Lot 4, Section 3, T-19-N, R-13-E, City of Tulsa, Tulsa County, Oklahoma.

NEW APPLICATIONS

Case No. 15842

Action Requested:

Variance of the permitted display surface area for three wall signs to exceed a total of 40.2 sq ft - **Section 1221.D.2 - Use Conditions for Business Signs** - Use Unit 16, located 102 South Utica.

Comments and Questions:

Mr. Jones informed that the application for the sign in question was inadvertently omitted from a previous agenda which contained several similar Texaco sign requests. He pointed out that Board of Adjustment approval will not be required for back-lighted awnings if the new sign ordinance is adopted.

In response to Mr. Bolzle's question, Mr. Jackere informed that the required relief for each sign would depend on the size of the building.

Presentation:

A representative for **Terry Howard**, 6550 East Independence, Tulsa, Oklahoma, requested that the sign, which is similar to those previously approved, be permitted.

Protestants: None.

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Doverspike, Fuller, "aye"; no "nays"; no "abstentions"; Chappelle, White, "absent") to **APPROVE** a **Variance** of the permitted display surface area for three wall signs to exceed a total of 40.2 sq ft - **Section 1221.D.2 - Use Conditions for Business Signs** - Use Unit 16; per plan submitted; subject to internal illumination of the awnings being less than 25 foot candles measured at a 2' distance, as proposed in the amendment to the Zoning Code; and subject to no further Board approval of similar applications (filed after September 24, 1991) prior to the adoption of the Zoning Code amendment concerning back-lighted awnings; on the following described property

Lot 1, Block 1, Midway Second Addition, a resubdivision of Lots 1-3 and 24, Midway Addition, City of Tulsa, Tulsa County, Oklahoma.

Case No. 15843

Action Requested:

Variance to allow parking in the designated right-of-way - **Section 215. STRUCTURE SETBACK FROM ABUTTING STREETS** - Use Unit 11, located 1768 South Utica.

Comments and Questions:

Mr. Jones advised that Staff received a letter (Exhibit C-1) from the applicant's attorney, **Kenneth Hird**, requesting that Case No. 15843 be continued to October 22, 1991, due to illness in his clients family.

Protestants: None.

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzie, Doverspike, Fuller, "aye"; no "nays"; no "abstentions"; Chappelle, White, "absent") to **CONTINUE** Case No. 15843 to October 22, 1991, as requested by counsel for the applicant.

Case No. 15844

Action Requested:

Appeal from the decision of the Code Enforcement officer that the existing use is a sexually-oriented business - **Section 1605. APPEALS FROM AN ADMINISTRATIVE OFFICIAL** - Use Unit 14, located 814 South Sheridan.

Presentation:

The applicant, **Scott Troy**, 707 South Houston, Suite 407, Tulsa, Oklahoma, who represented the Elite Bookstore, stated that the ordinance referred to on the notice of violation to his client is unconstitutional. He pointed out that the language is vague and it cannot be determined what is meant by the words significant and substantial. Mr. Troy submitted a layout of the store (Exhibit D-3) and photographs (Exhibit D-2) of items displayed for sale. He explained that the inventory consists of top selling magazines, paperback books, videos, cards, lingerie, newspapers, novelties, and lotions. It was noted by the applicant that a substantial portion of the material for sale in the store is not sexually-oriented.

Comments and Questions:

Mr. Fuller asked if the diagram before the Board is different from the one submitted at the previous hearing concerning this bookstore, and the applicant replied that the layout has not changed since that time.

In review, Mr. Bolzie clarified that the previous decision was made because of the type of inventory displayed when the Code Enforcement officer issued the citation (August 23, 1991), and the displayed material at the time of the hearing was not under consideration.

Mr. Troy stated that there is no way that this store can be characterized as an adult bookstore, because there are no age restrictions for individuals entering the store. He added that all novelty items displayed in the Elite Bookstore can be purchased at numerous stores in the City.

Case No. 15844 (continued)

Mr. Bolzle stated that the novelty showcase, the toys, games, books and the sexually-oriented videos are not visible in the submitted photographs, and Mr. Troy replied that he may have overlooked these photographs when gathering his information.

Mr. Doverspike asked the applicant if sales records are available which would indicate the amount of sales for certain types of material, and he replied that he has not seen sales records indicating the percentage of adult and nonadult material.

Mr. Jackere asked if the sexually-oriented magazines are displayed in such a way that any age child could view the cover, and Mr. Troy answered in the affirmative.

In response to Mr. Fuller, the applicant stated that he is reasonably confident that a 14-year-old individual could not purchase sexually-oriented items in the store.

Mr. Doverspike asked if the videos are purchased or rented, and Mr. Troy stated that the store has videos for sale or rent.

Interested Parties:

Candy Parnell, Code Enforcement, stated that she viewed the store on August 9, 1991 and took photographs (Exhibit D-5) of the displayed inventory. She informed that when a return visit was made on August 23, 1991, the display was essentially the same. Ms. Parnell submitted a list (Exhibit D-4) of some of the magazines that were offered for sale.

Mr. Jackere asked Ms. Parnell if the magazines on the submitted list are covered, and she replied that the magazines are sealed, but the covers are visible. She stated that, in her opinion, the Elite Bookstore is in violation of the Zoning Code, because sexually oriented material is on display and for sale to anyone that enters the store. Ms. Parnell stated that she is not aware of another store in Tulsa, except the Whittier Bookstore, that displays and sells similar material. She stated that the Whittier Bookstore has also been cited for violating the Zoning Code.

Mr. Doverspike asked Ms. Parnell if, in her opinion, a significant portion of the materials on display, and the stock in trade available for sale at this location, consists of sexually-oriented materials as defined in Section 705 of the Zoning Code, and she answered in the affirmative.

Applicant's Rebuttal:

Mr. Troy stated that Ms. Parnell has submitted the names of 12 sexually-oriented magazines; however, there are many magazines in the store that do not contain sexually-oriented material. He stated that a substantial amount of the inventory is not sexually-oriented.

Protestants:

A letter of protest (Exhibit D-1) was received from the apartment operator to the west, which stated that tenants have moved out because of lewd acts committed on the parking lot. He pointed out that the screening fence does not benefit the residents on the second floor, who have full view of the parking area.

Case No. 15844 (continued)

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzie, Doverspike, Fuller, "aye"; no "nays"; no "abstentions"; Chappelle, White, "absent") to **UPHOLD** the **Decision** of the Code Enforcement officer; and to **DENY** an **Appeal** from the decision of the Code Enforcement officer that the existing use is a sexually-oriented business - **Section 1605. APPEALS FROM AN ADMINISTRATIVE OFFICIAL** - Use Unit 14; finding that, based on the evidence and photographs submitted, a significant portion of the business is sexually oriented as defined by the Code; on the following described property:

The west 165' of the east 180' of Tract 59, Less the north 200' thereof, Glenhaven Addition to the City and County of Tulsa, Oklahoma.

Case No. 15845

Action Requested:

Appeal from the decision of the Code Enforcement officer that the existing use is a sexually-oriented business - **Section 1605. APPEALS FROM AN ADMINISTRATIVE OFFICIAL** - Use Unit 14, located 1 North Lewis Avenue.

Presentation:

The applicant, **Scott Troy**, 707 South Houston, Suite 407, Tulsa, Oklahoma, who represented the Whittier Bookstore, stated that the ordinance referred to on the notice of violation to his client is unconstitutional. He pointed out that the language is vague and it cannot be determined what is meant by the words significant and substantial. Mr. Troy submitted a layout of the store (Exhibit E-2) and photographs (Exhibit E-1) of items displayed for sale. He explained that the inventory consists of various types of magazines, leather jackets, clothing, cards, lingerie, newspapers, games and novelties. It was noted by the applicant that the business is not a sexually-oriented business, since a substantial portion of the material for sale in the store is not sexually-oriented.

Comments and Questions:

In review of the layout, Mr. Troy informed that some of the sexually-oriented magazines are packaged together in a glass case, the novelty items are on a wall rack, R-rated videos and pocket books are displayed nearby.

In response to Mr. Jackere, the applicant stated that the gag gifts and toys may be considered to be sexually-oriented.

Mr. Doverspike asked the applicant if the store restricts the purchase of any merchandise because of age, and he replied that anyone under the age of 21 would not be permitted to purchase sexually-oriented material.

Interested Parties:

Candy Parnell, Code Enforcement, stated that she took photographs (Exhibit E-4) and issued the citation on August 9, 1991, and could see no significant change in the displayed merchandise when she visited the store on August 23, 1991. She informed that the covers of the magazines packaged together were not visible, but the back pages contained full frontal pictures of nude men. A list of sexually-oriented magazines (Exhibit E-3) displayed in the store was submitted.

In response to Mr. Bolzle, Ms. Parnell replied that lesbian pocketbooks were located in the rear portion of the store, and sexually-oriented gag gifts were located on the south wall.

Mr. Doverspike asked Ms. Parnell if, in her opinion, a significant portion of the materials on display, and the stock in trade available for sale at this location, consists of sexually-oriented materials as defined in Section 705 of the Zoning Code, and she answered in the affirmative.

Protestants:

Fran Pace, 1326 South Florence Avenue, Tulsa, Oklahoma, stated that she has been active in the Kendall-Whittier resident and merchant associations, and requested that the appeal be denied. She pointed out that the inventory in this type of business can be temporarily altered in order to get a favorable ruling from the Board.

Applicant's Rebuttal:

Mr. Troy requested that Ms. Parnell disclose the criteria used in making the determination that the business in question violates the Zoning Code.

Ms. Parnell advised Mr. Troy that the titles of the magazines, the displayed photographs, the sexual toys and devices, with instructions, cause the business to be classified as sexually-oriented.

In answer to Mr. Doverspike, Ms. Parnell stated that the photographs she submitted of the magazines and sexual devices for sale at this location clearly depict the sexually-oriented nature of the business.

Board Action:

On **MOTION** of **FULLER**, the Board voted 3-0-0 (Bolzle, Doverspike, Fuller, "aye"; no "nays"; no "abstentions"; Chappelle, White, "absent") to **UPHOLD** the **Decision** of the Code Enforcement officer; and to **DENY** an **Appeal** from the decision of the Code Enforcement officer that the existing use is a sexually-oriented business - **Section 1605. APPEALS FROM AN ADMINISTRATIVE OFFICIAL** - Use Unit 14; finding that the submitted photographs depict that a significant portion of the business is sexually oriented, as defined by the Code; on the following described property:

Lot 13, Block 4, East Highland Addition, City of Tulsa, Tulsa County, Oklahoma.

Case No. 15846

Action Requested:

Variance to modify screening requirements to allow chain link fence -
Section 212. SCREENING WALL OR FENCE - Use Unit 13, located South
165th East Avenue and Admiral Place.

Presentation:

The applicant, **David Grooms**, 901 North Mingo, Tulsa, Oklahoma, stated that the abutting church has requested that the requirement for a privacy fence be waived, and a 6' chain link fence be installed on the property line between the church and the QuikTrip store. He explained that the Board previously approved a 4' chain link fence, but the fence was not installed before the 3-year time limitation expired. Mr. Grooms stated that the church is concerned that solid screening would permit cars to park behind the fence and create a security problem for the area. A plot plan (Exhibit F-1) was submitted by Mr. Grooms.

Comments and Questions:

In response to Mr. Bolzie, Mr. Grooms stated that the property slopes approximately 20' from east to west, and the chain link fence will be installed at the top of the slope.

Mr. Doverspike asked if there has been any change in the church or QuikTrip property since 1981, and Mr. Grooms replied that there has been no change.

Mr. Fuller stated that he would not like to see a precedent set for approving all applications requesting a waiver of screening requirements.

Interested Parties:

John Bellamy, 6 South 166th East Avenue, Tulsa, Oklahoma, stated that he lives across the street from the property in question and is representing the church. He informed that the church is supportive of the application, because the area would be exceptionally dark without the QuikTrip lighting, which would be blocked by a solid fence.

In response to Mr. Bolzie, Mr. Bellamy stated that the church has been at this location for approximately 15 years.

Additional Comments:

Mr. Jones advised that the area to the north of Admiral is in transition from residential to industrial. He pointed out that, if the church is sold in the future, the highest and best use for the property would be industrial, which would not require screening.

Protestants: None.

Case No. 15846 (continued)

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Doverspike, Fuller, "aye"; no "nays"; no "abstentions"; Chappelle, White, "absent") to **APPROVE** a **Variance** to modify screening requirements to allow a 6' chain link fence - **Section 212. SCREENING WALL OR FENCE - Use Unit 13**; finding a hardship demonstrated by the fact that the area is in transition from residential to Industrial; and finding that the owner of the abutting church property is supportive of the request; on the following described property:

Lots 1 and 2, Dixie Hill Center, a resubdivision of Lot 3 and 4, City of Tulsa, Tulsa County, Oklahoma.

Case No. 15847

Action Requested:

Variance of the required front yard, as measured from the centerline of East 22nd Place from 50' to 40' to permit a carport - **Section 403 - BULK AND AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS - Use Unit 6**, located 3808 East 22nd Place.

Presentation:

The applicant, **Mary Holt**, 3808 East 22nd Place, Tulsa, Oklahoma, submitted a plot plan (Exhibit G-1) for a proposed carport. She explained that the carport will be located in front of the previous garage, which has been converted into a bedroom.

Comments and Questions:

Mr. Doverspike inquired as to the location of other carports in the immediate vicinity, and the applicant replied that there are none on 22nd Place, but there are others in the area. Ms. Holt pointed out that her neighbors are supportive of the application.

In response to Mr. Doverspike, Mr. Jones replied that INCOG records do not reflect an approval of a carport within a 300' to 500' radius of the subject property.

In reply to Mr. Fuller, Ms. Holt informed that there is a carport directly behind her home, but the garage on that property is detached and is on the rear portion of the lot. She pointed out that the carport in question will only extend 7' beyond the existing front wall of the house.

Mr. Bolzle asked the applicant if the carport will be connected to the roof of the existing garage, and she answered in the affirmative.

Protestants: None.

Case No. 15849

Action Requested:

Special Exception to permit a mobile home - **Section 404. SPECIAL EXCEPTION USES IN RESIDENTIAL DISTRICTS** - Use Unit 9.

Variance of the one year time limit to permanently - **Section 404.F.1. - Special Exception Uses in Residential Districts** - Use Unit 9, located 5521 East Ute Street North.

Presentation:

The applicant, **Carl Miller**, 9139 East Newton, Tulsa, Oklahoma, submitted a plot plan (Exhibit H-3) and requested permission to permanently install a mobile home on his property. He informed that his mother previously lived in a mobile at this location, but it burned and was not replaced. Mr. Miller submitted photographs (Exhibit H-1) and a petition of support (Exhibit H-2).

Comments and Questions:

In response to Mr. Bolzle, the applicant stated that the previous mobile home was installed in 1976 or 1977 and was attached to an existing house.

The applicant remarked that there are numerous mobile homes in the area, and Mr. Jones pointed out that the previously approved requests for mobile home use were approved in 1985 and 1988, with no time limitation. Mr. Jones advised that a portion of the property is located in the regulatory floodplain, and any development in this area will require a Watershed Development Permit.

Protestants: None.

Board Action:

On **MOTION** of **FULLER**, the Board voted 3-0-0 (Bolzle, Doverspike, Fuller, "aye"; no "nays"; no "abstentions"; Chappelle, White, "absent") to **APPROVE** a **Special Exception** to permit a mobile home - **Section 404. SPECIAL EXCEPTION USES IN RESIDENTIAL DISTRICTS** - Use Unit 9; and to **APPROVE** a **Variance** of the one year time limit to permanently - **Section 404.F.1. - Special Exception Uses in Residential Districts** - Use Unit 9; per plan submitted; subject to skirting being installed and a Building Permit acquired; and subject to Stormwater Management and Health Department approval; finding that there are numerous mobile homes in the area, and approval of the requests will not cause substantial detriment to the area, or violate the spirit, purpose and intent of the Code; on the following described property:

South 348.12' of N/2, north 60' of S/2, east 5' of north 60' of S/2 of vacated alley adjacent on west, Block D, Dawson Amended Old Town, City of Tulsa, Tulsa County, Oklahoma.

Case No. 15847 (continued)

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Doverspike, Fuller, "aye"; no "nays"; no "abstentions"; Chappelle, White, "absent") to **APPROVE** a **Variance** of the required front yard, as measured from the centerline of East 22nd Place from 50' to 40' to permit a carport - **Section 403 - BULK AND AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS** - Use Unit 6; per plan submitted; finding the property to be unique due to the size of the house, and the fact that a detached garage is not feasible, since there is not sufficient space on either side of the dwelling to access the back portion of the lot; and finding that the granting of the variance request will not be detrimental to the area or violate the spirit and intent of the Code; on the following described property:

Lot 4, Block 9, Jefferson Terrace, City of Tulsa, Tulsa County, Oklahoma.

Case No. 15848

Action Requested:

Variance of the maximum permitted 20% rear yard coverage to 26% - **Section 210.B.5. - Permitted Yard Obstructions** - Use Unit 6.

Variance of the maximum permitted 750 sq ft for a detached accessory building to 1008 sq ft - **Section 402.B.1.d. - Accessory Use Conditions** - Use Unit 6, located 1938 South Evanston.

Presentation:

The applicant, **Charles Goble**, 1938 South Evanston, Tulsa, Oklahoma, was not present.

Comments and Questions:

Mr. Jones informed that this case was initially advertised with an incorrect map and must be continued to October 22, 1991 to allow sufficient time for correct notification of surrounding property owners.

Protestants: None.

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzle, Doverspike, Fuller, "aye"; no "nays"; no "abstentions"; Chappelle, White, "absent") to **CONTINUE** Case No. 15848 to October 22, 1991.

Case No. 15850

Action Requested:

Variance of the required 45' setback from the centerline of East 16th Street to 34' - **Section 402.B.1.C. - Accessory Use Conditions - Use Unit 6.**

Variance of the maximum 20% coverage for an accessory building in the rear yard - **Section 210.B.5. - Permitted Yard Obstructions - Use Unit 6,** located 1603 South Rockford.

Presentation:

The applicant, **Loretta Wright**, 2552 East 22nd Place, Tulsa, Oklahoma, who submitted a plot plan (Exhibit J-1) and photographs (Exhibit J-2), stated that she is asking for the variances in order to build a garage that will align with the existing dwelling. She pointed out that the structure would be located in the middle of the back yard without the requested relief. Ms. Wright noted that there are numerous garages along the alley that have been constructed on the lot line.

Comments and Questions:

Ms. Fuller inquired as to the distance from the front of the garage to the property line, and the applicant stated that the garage will align with the house which is 9' from the front boundary.

In response to Mr. Fuller, Mr. Jones clarified that the lot in the older area is smaller than the 60' minimum lot width in the current Zoning Code.

Protestants: None.

Board Action:

On **MOTION** of **FULLER**, the Board voted 3-0-0 (Bolzle, Doverspike, Fuller, "aye"; no "nays"; no "abstentions"; Chappelle, White, "absent") to **APPROVE** a **Variance** of the required 45' setback from the centerline of East 16th Street to 39' - **Section 402.B.1.C. - Accessory Use Conditions - Use Unit 6;** and to **APPROVE** a **Variance** of the maximum 20% coverage for an accessory building in the rear yard - **Section 210.B.5. - Permitted Yard Obstructions - Use Unit 6;** subject to the maximum size of the structure being 16' by 20'; finding the lot to be less than the 60' minimum standard lot width; and finding that the garage will not encroach further into the required setback along 16th Street than the existing dwelling; on the following described property:

Lot 16, Block 12, Orcutt Addition, City of Tulsa, Tulsa County, Oklahoma.

OTHER BUSINESS

Case No. 15832

Action Requested:

Michael Sweat, 4206 Mossy Gate Drive, Spring, Texas, requests a refund of filing fees.

Comments and Questions:

Mr. Jones explained that Case No. 15850 was withdrawn at a previous Board of Adjustment meeting and the applicant has requested that filing fees be refunded. He stated that it was determined by a City representative that a contractor for City repairs is permitted to use the lot temporarily without Board approval. Mr. Jones suggested that the entire \$195.00 filing fee be refunded to the applicant, **Michael Sweat**.

Board Action:

On **MOTION** of **DOVERSPIKE**, the Board voted 3-0-0 (Bolzie, Doverspike, Fuller, "aye"; no "nays"; no "abstentions"; Chappelle, White, "absent") to **REFUND** application fees in the amount of \$195.00 to Michael Sweat.

Consider Approval of July 9, 1987 minutes (correct legal) for Case No. 14538

Mr. Jones advised that the minutes for Case No. 14538 reflect an incorrect legal description (Lot 19, Block 12, Morningside Addition), which was originally supplied by the applicant. He informed that the correct legal description for the property is Lots 9-17, Block 7 and Lots 1-24, Block 12, Morningside Addition, and Lot 1, Block 1, Maple Heights Addition, City of Tulsa, Tulsa County, Oklahoma.

Board Action:

On **MOTION** of **FULLER**, the Board voted 3-0-0 (Bolzie, Doverspike, Fuller, "aye"; no "nays"; no "abstentions"; Chappelle, White, "absent") to **APPROVE** the corrected legal description in the minutes for July 9, 1987, Case No. 14538.

There being no further business, the meeting was adjourned at 2:58 p.m.

Date Approved

October 22, 1991


Chairman