

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 749
Tuesday, May 12, 1998, 1:00 p.m.
Francis F. Campbell City Council Room
Plaza Level of City Hall
Tulsa Civic Center

MEMBERS PRESENT

Dunham
Perkins
Turnbo
White, Chair

MEMBERS ABSENT

Cooper

STAFF PRESENT

Beach
Stump
Arnold

OTHERS PRESENT

Ballentine, Code
Enforcement
Parnell, Code
Enforcement
Romig, Legal
Department

The notice and agenda of said meeting was posted in the Office of the City Clerk on Friday May 8, 1998, at 12:57 p.m., as well as in the Reception Area of the INCOG offices.

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

Mr. White introduced Ms. Cheryl Perkins. Mr. White stated that Ms. Perkins replaces Bruce Bolzle who was the Vice Chair. Mr. White appointed Monte Dunham as interim Vice Chair for the rest of the fiscal year.

MINUTES:

On **MOTION** of **TURNBO**, the Board voted 3-0-1 (Dunham, Turnbo, White, "aye"; no "nays" Perkins "abstentions"; Cooper "absent") to **APPROVE** the minutes of April 14, 1998 (No. 747).

UNFINISHED BUSINESS

Case No. 17976

Action Requested:

Variance of allowable size for an accessory building from 750' to 912' for new garage. **SECTION 402.B.1.d ACCESSORY USE CONDITIONS IN RESIDENTIAL DISTRICTS – Use Unit 6** and a Variance of the required 85' setback from the centerline of Apache to 62' to permit the proposed accessory building. **SECTION 403. BULK AND AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS** located 2558 N. Madison Ave.

Presentation:

Mr. Beach stated that Mr. Edd is before the Board to ask the Board to reverse the condition of their previous approval that would not permit him to have access to his driveway from Apache. Since that time, Mr. Edd has received several letters from Traffic Engineering stating that they would approve his access onto Apache according to the new plan, which is in the Board packets.

Mr. White stated that since the reconsideration was approved in the last meeting, could they make this a positive motion as opposed to a double negative. Mr. Beach answered that the Board could revise the previous condition of approval. Mr. Romig stated that the easiest way would be to grant the same relief without the condition.

Mr. White asked if Mr. Edd had anything to say. Mr. Edd just asked for approval from the Board.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Dunham, Turnbo, Perkins, White, "aye"; no "nays", no "abstentions"; Cooper "absent") to **APPROVE** Variance of allowable size for an accessory building from 750' to 912' for new garage. **SECTION 402.B.1.d ACCESSORY USE CONDITIONS IN RESIDENTIAL DISTRICTS – Use Unit 6** and a Variance of the required 85' setback from the centerline of Apache to 62' to permit the proposed accessory building. **SECTION 403. BULK AND AREA REQUIREMENTS IN RESIDENTIAL DISTRICTS** per plan submitted on the following described property:

Lot 1, Block 3, Emerson Second Addition

Case No. 18015

Action Requested:

Special Exception to operate a flea market in a CS zoned district. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS – Use Unit 15** located 1823 & 1831 N. Lewis Ave. E.

Comments & Questions:

Mr. Beach stated that this case was continued to the meeting of May 26, 1998. Mr. Beach mentioned that after review, Staff found that it did not need any additional notice so it was put on the agenda for today. Mr. Beach stated that the applicant might not have been notified of the new hearing date.

Mr. Stump stated that Staff found that this is a Use Unit 15 use and there is a small flaw in the Code and there is no 300' spacing requirement from RS districts for outdoor display of merchandise for Use Unit 15 uses. The relief is not needed.

Case No. 18015 (continued)

Board Action:

No action was needed or taken.

Case No. 18024

Action Requested:

Variance of requirement for all weather parking surface. **SECTION 1303.d. DESIGN STANDARDS FOR OFF-STREET PARKING AREAS – Use Unit 23** and an interpretation of previous action, Case BOA 11981, June 17, 1982 located 61 N. Yale.

Presentation:

The applicant, **Elizabeth Davis**, 61 N. Yale, stated that she is trying to get a permit to have gravel parking. The only other business that is close to hers is a church and they have gravel parking. Ms. Davis has kept a record of how many times cars come and go from the church and her lot.

Comments & Questions:

Mr. White stated that the church has an L-shaped parking lot. The legal description sketched on the plat shows Ms. Davis' property as being T-shaped. Mr. White asked Ms. Davis if the gravel parking lot to the east belongs to the church or to her. Ms. Davis answered that it belonged to the church.

Mr. White mentioned that he didn't believe the question of the gravel lot is a problem. The problem is the mobile home use and screening.

Mr. Dunham stated that the only issue that the case was continued for was the mobile home issue.

Mr. White stated that he brought up the issue of screening only because of the appearance of the stored vehicles. Mr. White stated that while driving around the other surrounding properties, some of the other properties looked worse than the wrecked, stored vehicles. Mr. White stated that his only concern now is the Yale exposure.

Ms. Parnell stated that Code Enforcement always has this problem when there is a service that tows cars from accidents for the Highway Patrol. They are under contract to pick up the vehicles and take them to their lot. They're obligated to store them until they are released. Ms. Parnell stated that she did not know if there was a proper place for this type of a use unless you put it in Industrial zoning.

Mr. White mentioned that the particular corner of Yale and Admiral has been upgraded significantly with some newer businesses lately and the general perceived appearance of a salvage yard is a concern. Mr. White suggested that a screening fence along Yale may help the look of the area.

Ms. Parnell stated that from the conversations she has had with Ms. Davis, she doesn't feel that Ms. Davis would have a problem with the screening from Yale. The problem is that the owner of the property may not do it. Ms. Davis would have to move her business because she can't afford to put up the screening. Ms. Parnell suggested that the owner be required to put up the fencing.

Mr. Dunham asked the applicant how many years she has been at this location. Ms. Davis answered 2 years.

Ms. Davis stated that most people do not notice her lot because the gate is off of Yale and everything sits farther back on the lot.

Mr. Dunham asked Staff if the only thing before them today was the Variance for all weather parking. Mr. Stump answered yes.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Dunham, Turnbo, Perkins, White, "aye"; no "nays", no "abstentions"; Cooper "absent") to **APPROVE** Variance of requirement for all weather parking surface. **SECTION 1303.d. DESIGN STANDARDS FOR OFF-STREET PARKING AREAS – Use Unit 23** finding that the hardship is the surrounding area on the following described property:

A tract of land beginning 400' N and 30' E of the SW/c of Lot 4; thence N 120'; thence E 190'; thence N 125'; thence E 100.67'; thence S 362.77'; thence W 100.67'; thence N 100'; thence W 190' to Point of Beginning in Section 3, T-19-N, R-13-E of the IBM, Tulsa County, Oklahoma.

NEW APPLICATIONS

Case No. 18028

Action Requested:

Special Exception to permit RV, boat, auto storage and parking in a CG district.

SECTION 1217. USE UNIT 17. AUTOMOTIVE AND ALLIED ACTIVITIES SECTION 1223. USE UNIT 23. WAREHOUSING AND WHOLESALING, located 12906 E. 11th St.

Presentation:

The applicant, **Walt Aaron**, 12906 E. 11th St., stated on the request he had asked for a home dwelling. Mr. Aaron also has a kennel license on the property and must take care of the dogs. Mr. Aaron said that it would create a hardship for them to have to give that up. Mr. Aaron stated that the only surrounding properties are an abandoned motel and Metro Portable Buildings and Allied Towing. The owner of the property has owned the property for 31 years and there have been people living there and a dog kennel has been there for a number of years. Mr. Aaron stated that everything is hooked up to septic tanks and there are seven or eight on the property. Mr. Aaron mentioned that there are several disabled people who live on the property and work on the property doing maintenance, etc.

Comments and Questions:

Mr. White asked the applicant if Allied Towing still works out of that property. The applicant answered yes, out of one end of the property. Mr. Aaron mentioned that there is a privacy fence there and one on his property on the 129th St. side. Mr. Aaron stated that the 11th St. side would have a privacy fence soon.

Mr. White asked Mr. Aaron how many RV's on the property are being used as residences. Mr. Aaron answered 4, the RV parts are removed and are hooked up to sewer, and they are more like a mobile home.

Mr. Dunham mentioned that Staff comments say that all the RV's are hooked up to one septic system. Mr. Aaron stated that they are hooked up to three septic systems.

Ms. Turnbo asked Staff if this is considered a storage area, is it allowed to have dwellings in a storage area. Mr. Stump stated that it would be allowed if it was an RV campground. Ms. Turnbo stated that storage is not an RV campground. Mr. Stump stated that Staff did not put mobile home into the request because that is not really what he is doing. They are not mobile homes by definition of the Code but recreational vehicles. In the CG district, campgrounds are allowed by right. Mr. Aaron needs to make it an RV campground or get rid of them.

Ms. Turnbo asked if a dog kennel was allowed. Mr. Aaron stated that there was a dog kennel there 30 years ago. Mr. Stump stated that it was allowed by right in a CG district.

Mr. Dunham asked if Use Unit 23 is permitted by right in the CG district. Mr. Beach answered no, only by special exception.

Ms. Turnbo asked Staff about Allied Towing also using the property. Can you have that many uses on that property?

Mr. Beach asked Mr. Ballentine about his concerns pertaining to this property. Mr. Ballentine stated that this was brought to his attention by the Tulsa County Health Department, and that they said when they went to inspect the property they knew of only one septic system and that these units were all hooked into that. Mr. Ballentine stated that he has not been able to gain entry to the property. When you approach the gates, there are a large number of dogs. Mr. Dunham asked if the County Health Department had a right to check those things, the Board does not. Mr. Ballentine agreed.

Mr. Romig stated that several years ago he was involved with the eminent domain side of their office and this happens to be one of the properties that he was involved with. Mr. Romig stated that one of the issues that was brought up in that case was the fact that there was only one septic system on the property. If any more have gone in, they are obviously without health department approval. The other thing that concerns him is the ability of that section to perk.

Mr. Dunham stated that he understands everything that has been said but believes that it is a health department issue and not a Board of Adjustment issue.

Ms. Turnbo asked if the kennel, four dwellings, storage and the towing company were permitted by right in a CG district. Mr. Stump answered that the storage is not permitted and that is what is before the Board today and the dwellings may have been there prior to any restrictions or zoning. The only way the RV's could be there is if it was part of an RV campground. Mr. Stump said that it appears that they are randomly scattered around and it would be hard to say that the area is an RV campground. The wrecker service, a Use Unit 17, would be allowed by right in a CG district. The long-term storage of wrecked vehicles, a Use Unit 28, could not be allowed in a CG district by any approval. Mr. Stump stated that there are several things here that make the area look like a junkyard.

Ms. Turnbo stated that she was having a hard time finding favor with this application because there is so much else going on.

Board Action:

On **MOTION** of **TURNBO** the Board voted 4-0-0 (Dunham, Turnbo, Perkins, White, "aye"; no "nays", no "abstentions"; Cooper "absent") to **DENY** a Special Exception to permit RV, boat, auto storage and parking in a CG district. **SECTION 1217. USE UNIT 17. AUTOMOTIVE AND ALLIED ACTIVITIES SECTION 1223. USE UNIT 23. WAREHOUSING AND WHOLESALING** on the following described property:

N/2, W/2 NW NW NW & N/2, S/2, W/2 NW NW NW less N 24.75' and W 50' S 470.25' for ST Section 9 T-19-N R-14-E for 3.023 acres.

Case No. 18030

Action Requested:

Variance to allow 2 detached accessory buildings to exceed 750 SF, to allow a proposed garage of 546 SF and a workshop of 320 SF. **SECTION 210.B. YARDS, Permitted Obstructions in Required Yards – Use Unit 6.**

Board Action:

Inadequate notice was sent to the public. Case will not be heard on this date. Has been readvertised to be heard on May 26, 1998.

Case No. 18031

Action Requested:

Variance of average lot width requirement of 60' down to 50.75' and 49.3'. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** and a Variance of livability space requirement of 4,000 SF down to 2,465.5 SF for lot split purposes. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** located 1332 E. 35th St.

Comments and Questions:

Mr. Beach stated to the applicant that additional relief will be needed when creating two separate lots. When you have created two separate lots, you have zero side yards along the common lot line and you would need relief from the side yard requirements. Mr. Beach stated that there would have to be additional advertising over and above what the Board could hear today.

Presentation:

The applicant, **Rusty Patton**, 1008 E. 67th, #1414, Tulsa, OK, stated that on July 8, 1997, the Board approved a Special Exception to allow a duplex in an RS-3 district. Mr. Patton stated that since that time he has applied for financing and they don't seem to grasp the concept of two dwellings on a single lot and have requested that the lot be split.

Comments and Questions:

Mr. Dunham asked Mr. Beach to explain the additional relief. Mr. Beach answered that it would be for the required side yard. The requirement would be for 5' for either side of the lot line. Mr. Dunham asked if the applicant will have to make additional application or can the Board continue it for additional relief. Mr. Beach answered that the Board could continue it for additional relief but that new notice will have to be given. If the Board denies the case then the whole subject becomes moot.

Mr. Dunham stated that there is no real difference between this and what was approved last time. Ms. Turnbo stated that the Code enforces the hardship.

Case No. 18031 (continued)

Mr. Stump mentioned to the Board that if they are inclined to approve the Variances, it appears that the driveway on Tract B will serve both garages and they need to make a condition of a mutual access easement for the owner of Tract to get to his garage.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Dunham, Turnbo, Perkins, White, "aye"; no "nays", no "abstentions"; Cooper "absent") to **APPROVE** Variance of average lot width requirement of 60' down to 50.75' and 49.3'. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** and a Variance of livability space requirement of 4,000 SF down to 2,465.5 SF for lot split purposes. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** per plan submitted with the condition that the driveway on Tract B be a mutual access easement to provide access to the garage on Tract A and to **CONTINUE** to June 9, 1998, the side yard issue on the following described property:

Lot 7, Block 3, Olivers Addition, City of Tulsa, Tulsa County, State of Oklahoma.

Case No. 18032

Action Requested:

Variance to allow 2 dwelling units on one lot of record. **SECTION 207. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD** and Special Exception to permit a duplex in an RS-3 district. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS – Use Unit 7** located 432 S. 74th E. Ave.

Presentation:

The applicant, **HINES CONSTRUCTION SERVICES**, represented by Pete Hines, 4129 S. Peoria, Ste. 203, stated that he is the contractor for Dan King for the addition to his house. Mr. Hines stated that they have applied for and been granted a permit for an addition to the existing dwelling and have a desire to add a kitchen to the addition and that is what makes it a two occupancy dwelling.

Comments and Questions:

Mr. White asked the applicant what the purpose for the additional kitchen and living quarters is. Mr. Hines replied that is for Mr. King's mother-in-law to occupy the back of the house. She is ill and has sold her property to move in with her daughter and son-in-law. Mr. White asked if it was necessary to have a second kitchen. Mr. Hines replied that it is not necessary, but it would be convenient.

Mr. White asked Staff if the kitchen is the only thing making this a duplex. Mr. Stump replied yes.

Case No. 18032 (continued)

Mr. Dunham stated that Staff comments read that if the duplex is approved, two more parking spaces will have to be provided, can you meet that requirement.

Mr. Beach stated that there are some other special exception requirements when you approve a duplex that need to be addressed. Mr. Beach stated that it must have a minimum lot size of 9,000 SF; minimum land area per dwelling unit of 5,000 SF; minimum frontage of 75' and livability space of 2,500 SF per dwelling. Mr. Beach said that he is not sure if the applicant meets any of those requirements so there might be additional relief needed.

Mr. Stump stated that only way to approve it the way it is before the Board now is to decide that it is not a second dwelling unit.

Ms. Turnbo asked if the kitchen, bathroom and living area is separate from the rest of the house. Mr. Hines answered yes, it will be separate. Ms. Turnbo replied that it would then be considered a duplex.

Mr. King, the owner of the property, stated that they are building onto the back of the house. The only reason they are before the Board today is because they want to install a kitchen sink. They have the permit to build the addition. The entrance will be through the front door of the house. Mr. King did not want to apply for a duplex, but because of the City Code, they have to. The house is not set up to be rentable because it is added onto the back of the house and the entrance is through the front of the house. The majority of people in the area have built additions to their homes. Mr. King stated that they don't need it zoned as a duplex, but they want to put a kitchenette in the addition for the mother-in-laws convenience. Mr. King said that he is allowed to have 5 bathrooms and 3 wetbars but no extra kitchen sink.

Mr. Dunham stated that one entrance through the front door is different from a duplex; most duplexes have separate entrances.

Mr. Romig asked the applicant if the dwelling will be used as one house. The applicant replied yes. Mr. Romig read the definition for a duplex and a dwelling unit. Mr. Romig mentioned that to him it sounded like they were not going to have any independent living.

Mr. Dunham asked if the solution was for the applicant to ask for a variance for to permit the addition and not a duplex. The Board could approve the addition, per plan submitted and call it one dwelling unit. Mr. Dunham stated that they would be opening a can of worms if they called it a duplex and approved a duplex in the area.

Case No. 18032 (continued)

Ms. Turnbo asked if the mother-in-law was going to have her own living room and laundry room, etc.; what exactly is going to be in the addition. Mr. King replied that they are trying to make her as independent as they can. She will have a separate bathroom and bedroom but it is going to be a mutual living area. The only reason for a kitchen sink is so she can have a little more privacy so she doesn't have to come into the family kitchen for a glass of water or make a pot of coffee.

Ms. Turnbo mentioned that since it has only one entrance, that it is not a duplex.

Interested Parties:

James Brighton, 422 S. 75th E. Ave., stated that he lives next door to the applicant. He is opposed to a duplex going in because it will ruin the value of the property in the neighborhood. Mr. Brighton stated that there is no room for parking extra cars on the lot.

Board Action:

The Board made the determination that the dwelling was not a duplex and therefore the Variance to allow 2 dwelling units on one lot of record. **SECTION 207. ONE SINGLE-FAMILY DWELLING PER LOT OF RECORD** and Special Exception to permit a duplex in an RS-3 district. **SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS – Use Unit 7** are not needed, per plan submitted on the following described property:

Lot 16, Block 21, Tommy Lee, City of Tulsa, Tulsa County, State of Oklahoma.

Case No. 18033

Action Requested:

Variance of the required maximum 20% coverage of a required rear yard to allow construction of a detached accessory building. **SECTION 210.B.5. YARDS, Permitted Obstructions in Required Yards**, located 1023 E. Zion Ct.

Presentation:

The applicant, **P. DAVID GIACOMO**, is an employee of Urban Development representing the Tulsa Development Authority. TDA wants to develop some vacant lots. This particular lot has been vacant since 1974. They are relocating a house from the North Cincinnati project and rehab it. TDA has spent \$47,000 on the project. TDA now has a person wanting to move into the house. The person moving in would like a two car garage. Mr. Giacomo stated that the homes on either side of the property are relatively stable and they don't expect the neighborhood to change.

Comments and Questions:

Ms. Turnbo asked the applicant if other houses in the area have detached garages. Mr. Giacomo replied yes.

Board Action:

On **MOTION** of **TURNBO**, the Board voted 4-0-0 (Dunham, Turnbo, Perkins, White, "aye"; no "nays", no "abstentions"; Cooper "absent") to **APPROVE** Variance of the required maximum 20% coverage of a required rear yard to allow construction of a detached accessory building. **SECTION 210.B.5. YARDS, Permitted Obstructions in Required Yards** finding that it fits 1607 C, per plan submitted on the following described property:

Lot 15, Block 1, Emerson Second Addition, City of Tulsa, Tulsa County, State of Oklahoma.

Case No. 18035

Action Requested:

Variance to allow an accessory building covering an area that is over 20% of required rear yard. **SECTION 210.B.5. YARDS, Permitted Obstructions in Required Yards** and a Variance of the required 3' setback for a detached accessory building to 1.5' to permit rebuilding a detached garage. **SECTION 402.B.1.b. ACCESSORY USES IN RESIDENTIAL DISTRICTS, Accessory Use Conditions** located 1628 S. Troost.

Presentation:

The applicant, **Matt Gawey**, 1628 S. Troost, stated he and his next door neighbor share a driveway that goes to the back of their properties. Mr. Gawey and his wife purchased the property last spring and have completely rebuilt the home. Mr. Gawey stated that the existing garage was a health hazard and he has torn it down and they are before the Board to ask permission to rebuild a garage in its place. Mr. Gawey stated that the plans submitted stated that they want to rebuild it in its current position. They are also asking that it be expanded by 5'. The old garage was 15' x 20'. Mr. Gawey wants to build a 20' x 20' garage.

Comments and Questions:

Mr. White asked the applicant if he is proposing a zero lot line both on the south and the west. Mr. Gawey said no, 1.5 on the south. Mr. Gawey stated that his next door neighbor wants to take his garage down as well. Mr. Gawey said Steve Jackman, Building Permits, mentioned that by putting in a one hour fire wall, it would pass their inspection as long as it was approved by the Board.

Mr. Dunham asked the applicant if he was aware that his property was in a historical preservation district and he would have to get permission from the Historic Preservation Commission, regardless of what the Board of Adjustment approves. Mr. Gawey said yes, he brought that up with the building permits office and they said he did have to go before the Commission and then they said he did not have to. Mr. Gawey will do what he needs to do.

Ms. Turnbo asked if garages are included within historic regulations. Mr. Stump answered if it was visible from the street he would have to get a Certificate of Appropriateness from the Tulsa Preservation Commission.

Mr. White asked Staff what the order of approval should be, Board of Adjustment or Tulsa Preservation Commission first. Mr. Stump answered that it does not matter.

Interested Parties:

David Robertson, 1632 S. Troost, stated that he is happy with what the Gaweyes have done to the home and they want him to be able to get the garage that he wants. Mr. Robertson also wants to tear down his garage and rebuild it also.

Mr. White asked Mr. Robertson if he has coordinated his garage in design or any way. Mr. Robertson answered that they have not made any plans at this point in time.

Paul Atkins, President of Swan Lake Homeowners Association, stated that they approved this project, but the Homeowners Association was a little concerned about how the garage was going to be designed, because right now, they are connecting garages as the photos show. Swan Lake does not understand the 1.3' variance. Mr. Stump answered that there would not be a requirement for variance if he had rehabilitated the existing garage. Once he tore it down, it no longer had nonconforming status and they have to meet the current requirements which is 3' from the property line for the new structure. Mr. Atkins asked if the garage was going to have a rear exit or entrance. The neighbors are talking about abandoning the alleyway in the future. If the alleyway is abandoned, the entrance and exit to that drive will be deleted.

Applicant's Rebuttal:

Mr. Gawey stated that their plan is to build a standard, pitched-roof garage to match the house. It will be a single entrance and exit through the front.

Comments and Questions:

Mr. Stump stated that if the alley was abandoned and each abutting property owner got 10 feet, they would not need that relief.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Dunham, Turnbo, Perkins, White, "aye"; no "nays", no "abstentions"; Cooper "absent") to **APPROVE** Variance to allow an accessory building covering an area that is over 20% of required rear yard. **SECTION 210.B.5. YARDS, Permitted Obstructions in Required Yards** and a Variance of the required 3' setback for a detached accessory building to 1.5' to permit rebuilding a detached garage. **SECTION 402.B.1.b. ACCESSORY USES IN RESIDENTIAL DISTRICTS, Accessory Use Conditions** per plan submitted, finding the hardship to be the size of the lot and subject to the applicant getting a certificate of appropriateness from the Historic Preservation Commission on the following described property:

Lot 7, Block 14, Orcutt Addition, City of Tulsa, Tulsa County, State of Oklahoma.

Case No. 18038

Action Requested:

Special Exception to allow car sales in a CS zoned district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS – Use Unit 17** and a Variance to allow outside display of merchandise within 300' of an R district. **SECTION 1217.C. USE UNIT 17. AUTOMOTIVE AND ALLIED ACTIVITIES** and a Special Exception to allow automobile repair and painting in CS zoned district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS – Use Unit 17** located 1810 N. Lewis.

Presentation:

The applicant, **Warren G. Morris**, stated that property contains a building that was built by the Bricklayers Union and had a school in it. The building has over 5,000 SF and the front of it is used for office and the back was used for classes. There is an overhead door that goes into it. The property also has a parking lot with a brick wall around it. Mr. Morris stated that the building to the south is a company that sells sandwiches and they have an area where they repair their trucks. The north side of the property is a vacant lot and across the street there is a small area of CH zoning. Mr. Morris stated that his client buys vans, remodels them and takes them to California to sell them. His client would like some space to park some of them on the lot next to his building. Mr. Morris stated that his client's intention is to put ornamental iron above the existing fence on the north side to screen the vehicles.

Comments and Questions:

Mr. White asked the applicant if the parking was for storing vehicles or for employees. Mr. Morris answered for employees.

Case No. 18038 (continued)

Ms. Parnell asked the applicant what his client's name is. Mr. Morris replied Jose Herminez. Ms. Parnell asked if this was the gentleman from Boston Place and Apache. Mr. Morris answered yes. Ms. Parnell asked if he is vacating the property at Boston Place and Mr. Morris said that he has already vacated it. Ms. Parnell asked is the owner was going to live in this building. Mr. Morris said no.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Dunham, Turnbo, Perkins, White, "aye"; no "nays", no "abstentions"; Cooper "absent") to **APPROVE** a Special Exception to allow a car sales in a CS zoned district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS – Use Unit 17** and a Variance to allow outside display of merchandise within 300' of an R district. **SECTION 1217.C. USE UNIT 17. AUTOMOTIVE AND ALLIED ACTIVITIES** and a Special Exception to allow automobile repair and painting in CS zoned district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS – Use Unit 17** on the following described property:

N/2 of S/2 less East 8.5' of Lot 1, Block 5, Conservation Acres subdivision, City of Tulsa, Tulsa County, State of Oklahoma.

Case No. 18040

Action Requested:

Special Exception to permit an emergency and protective shelter in a CH and IM district. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS/SECTION 901. PRINCIPAL USES PERMITTED IN INDUSTRIAL DISTRICTS – Use Unit 2** located at SW/c of E. 3rd St. & S. Madison Ave.

Board Action:

Inadequate notice was sent to the public. Case will not be heard on this date. Has been readvertised to be heard on May 26, 1998.

Case No. 18041

Action Requested:

Modification of required parking resulting from change of use (retail to office) the previous use having been nonconforming as to parking and a Variance of required parking from 49 to 40 spaces. **SECTION 1407. PARKING, LOADING AND SCREENING NONCONFORMITIES – Use Unit 14/11 located NW/c 48th & Peoria.**

Presentation:

The applicant, **Roy D. Johnsen**, 201 W. 5th Street, Ste. 440, stated that he is the attorney for Mastermind Learning Center which has acquired the property which has also been known as the Rathbone retail complex at the NW/c of 48th & Peoria. The property is zoned CH and has had a commercial history for more than 40 years. In the 70's it was used as a bowling alley. Throughout the history of this lot it has been nonconforming as to parking. Prior to 1982, in a CH district there was no parking requirement at all. As a consequence, businesses were constructed and often did not meet the current requirement for parking. The Code provides that if you change the use, then you must comply with the parking requirements applicable to the use that you are changing to. The Code also states that the Board can modify that as a Special Exception, no hardship required, finding that the proposed use will not increase the incapability with nearby and proximate properties. What is proposed is to change a retail use with a parking requirement of 1 space per 225 SF (1 – 225 SF) to an office use with a parking requirement of 1 space per 300 SF (1 – 300 SF). The result will be that the parking situation will be improved over what it has been. The as-built survey shows the building's gross square footage as 14,646 SF. If an office classification requirement was put on the building you would need 49 parking spaces. In 1993, new parking design criteria was adopted pertaining to size and configuration of parking spaces and added an aisle space requirement. Mr. Johnsen stated that this building is nonconforming as to those aspects as well. At rear (west) of lot there are 31 parking spaces that would meet today's code requirements for size and accessibility. Along the south boundary of the building there are 9 spaces that have this shortcoming. The rear of these parking spaces is very near the street right-of-way line. In order to pull into one of those parking spaces you have to drive over the right-of-way of 48th St. On the east boundary there are 10 spaces that you can maneuver within the private property, however, because of the design changes in 1993, there is probably not enough aisle space. All spaces are usable and it does not make sense to do away with them. Mr. Johnsen asked the Board to approve a Special Exception to permit this building in its entirety to be used as an office use with the parking being provided as depicted on the as-built survey. If all of the spaces were the correct size, width and configuration they would meet the parking requirement for this use. Mr. Johnsen talked with Traffic Engineer, Jon Eschleman and showed him the photos and asked if there was any concern from them as to the configuration of the parking spaces and he said no.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Dunham, Turnbo, Perkins, White, "aye"; no "nays", no "abstentions"; Cooper "absent") **APPROVE** Modification of required parking resulting from change of use (retail to office) the previous use having been nonconforming as to parking and a Variance of required parking from 49 to 40 spaces. **SECTION 1407. PARKING, LOADING AND SCREENING NONCONFORMITIES – Use Unit 14/11** per plan submitted on the following described property:

Lot 4, Evergreen Subdivision, Tulsa County, State of Oklahoma.

Case No. 18042

Action Requested:

Variance of lot width of 150' to allow a lot split. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** located 2147 Forest Blvd.

Presentation:

The applicant, **Stephen C. Wolfe**, represented by **Charles E. Norman**, stated that he represents the owners of the property. Mr. Wolfe has owned the property since 1979. Mr. Norman presented a packet of information to the Board (Exhibit). The front page is a copy of the case map, the yellow indicates the (west) property owned by Mr. Wolfe with 185' of frontage on Forest Boulevard. They also own a second lot to the east (shown in green) and that is 100' in width. The red lines represent a 15' wide strip that they are asking permission to split from the 185' lot and attach it to the 100' wide lot to the east. The property is located in the RE district as indicated on the case map. The lots in the RE district are required to have 150' of frontage. This resulted from an original property having 285' of frontage having been split into the two lots with 185' and 100' of frontage. Mr. Norman stated that he discovered that there is recent history about the application which is attached to the second page of the packet, which shows the original plat of Forest Hills. The third page shows a current lot split map showing lot splits in the Forest Hills area over the years, including the property owned by Mr. Wolfe. Their property is part of Lot 13, all of Lot 14 and part of Lot 15 so their original 285' of frontage resulted from at least 2 prior lot splits which occurred prior to lot split jurisdiction in the community. The next page is a copy of the mortgage from 1981 which has a description of the property and shows how the neighborhood has been divided. The next page shows a copy of the lot split application filed by Mr. Wolfe in February of 1996. At that time, he asked to split the 100' eastern lot from the 285' and that lot split was processed as a prior approval and was stamped by the Staff and had Planning Commission approval and the deeds were filed of record. However, the property had been rezoned from the RS-1 district to the RE district in December of 1995, about 2 months before the application and consequently the Staff approval of that lot split was in error. Mr. Norman stated that it was not discovered until later.

Subsequently, this came to Mr. Wolfe and Staff's attention in the fall of 1997, that the lot split had been erroneously approved and filed of record. Mr. Norman discussed several letters that appeared in the Board's packets. The application today is to increase the size of the 100' lot to 115' and decrease the 185' lot to 170', which would still be 20' in excess of the requirements in the RE zoned district. Staff mentioned to the applicant that this would require a variance of the lot width requirements in the RE district. Mr. Norman stated that if you are seeking to reduce a nonconformity that would not be considered to require a variance but could be done as a matter of right if you did not create a substandard lot on the other side. This is a very unusual situation in which the applicant is attempting to enlarge a lot and normally when seeking a variance from the lot width requirement you are asking for some relief to create a lot that is smaller. In this case, the owner desires to create a larger lot by adding 15' to make it a more usable lot and one that is more consistent with the requirements of the RE district than the 100' lot. The hardship is created by the terms of the ordinance itself. It does not have any provision for decreasing the nonconformity of a lot size. This application should be subject to the verification of the measurements that the resulting 115' lot would still leave a 15' east side yard on the residence at 2147 as required by the RE district. They do not intend to create or leave the existing structure without the required RE side yard of 15'.

Comments & Questions:

Staff stated that by adding the 15' you are lessening the nonconformity on the eastern lot.

Ms. Perkins asked the applicant if there is a set of neighborhood covenants that states a minimum square footage. Mr. Norman replied that if there are, they would have expired by now. Mr. Norman believes that if they did exist they would not have seen so many lot splits within Forest Hills.

Interested Parties:

Kevin Coutant, 320 S. Boston, represents the Altmans and the Altman Trust, which owns the property directly to the east. For the last decade, the City of Tulsa has been attempting to deal with the risks and problems associated with infill development. One of the biggest steps made in the zoning and planning area was made several years ago when a new residential zoning district was established, the RE or residential estate district, which requires quite large lots. One of the first neighborhoods that was considered for RE zoning was Forest Hills. This was an application that was brought by the TMAPC back in 1996. The zoning lines were drawn so that they conform to the existing zoning pattern in the neighborhood. This is a RE zoned district and this property falls into that zoning. Mr. Coutant stated that this was a nonconforming lot when it was brought for a lot split. It was the easterly 80' which was the property line with the Altmans. After all the effort to preserve the lots by designating them RE, a few months later this lot split was run through that did not satisfy the RE zoning and it was a mistake. This is a great concern for the neighbors. The primary issue is

whether or not this is an appropriate variance. There is a requirement that there be a hardship for the Board to grant the variance. As Mr. Coutant understands it, the basis for finding the hardship is that the Code does not allow the lot split. Mr. Coutant stated that the neighbors do care about anything that will precipitate the infill development of this neighborhood, particularly on lots that are of nonconforming size.

Comments and Questions:

Mr. Dunham asked Mr. Coutant if that is what the situation is now. Mr. Coutant agreed. Mr. Coutant stated that the 80' lot could have been built on, the 100' lot can be built on and if the Board approves this variance for a lot split, the 115' lot can be built on. Mr. Dunham asked Mr. Coutant if he was trying to say that the neighborhood would be harmed more with a 115' lot than they would with 100' lot. Mr. Coutant believes that there is an economic motive about building on the lot. Mr. Coutant stated that to the extent that we accommodate the increase in the size of the lot we increase proportionately the undesired effect that is going to occur, being that it will not be a size that will be valuable in the marketplace and will provoke the sale of it separately and the construction of house on a nonconforming lot.

Ms. Turnbo stated to the applicant that there are several lots that could not meet the requirements today. Mr. Coutant replied that they could not dispute the fact that throughout the RE zoning, there are several smaller lots that do not meet the requirement.

Interested Parties:

Larry Henry, 100 E. 5th St., Ste. 1000, stated that he represents the Gaberino, Richards and Warren families who live in the area. Mr. Henry stated that they have worked very hard to prevent the destruction of that area and infill development. Mr. Henry stated that he got involved in this in the Fall of 1997 when the neighbors realized for the first time that the lot split had happened. No notice was sent to anyone and Mr. Henry believes that a mistake was made by someone thinking that the lot split did not need any approval. Mr. Henry believes that as the lot split stands it should be void and stated that the Board should not approve this application today.

Ms. Turnbo asked Mr. Henry if the neighbors looked into suing the City to have this undone or is there a legal procedure. Mr. Henry answered that if anyone needs to go to court it should be the applicant and not the innocent neighbors.

Gerald Stamper, 2201 Forest, stated that he and his wife live on the second lot east from the Altman property. Mr. Stamper mentioned that as a property owner he asked the Board to consider that the property owners live in the area because of the uniqueness of the area that the City and this Board has fought to preserve. Mr. Stamper stated that the lots were zoned RE because it was found best to leave the lots as they were and stop tinkering with that which is never improved by tinkering and

that is the character of the neighborhood. Mr. Stamper asked the Board to respect that and for their help in preserving the neighborhood.

Mr. Dunham stated that regardless of the lot split, even if it is an illegal lot split, this lot can still be built on at 100' without anyone's permission. Mr. Stamper stated that if someone sought to build on the 100' lot, it would be challenged in the court, as it is not a 100' lot legally, it is an 85' lot. Mr. Stamper said that if the question were modified to discuss an 85' lot, as Mr. Stamper believes it is and would be when the court was finished with it, could someone legally build on an 85' lot, assuming they comply with the setbacks and such? Yes, they could, but practically no one would build on an 85' lot in that area.

Mr. Dunham asked if the lot is existing as 85' or as 100'. Mr. Stamper stated that it was platted as an 85' lot and after the property was rezoned to RE, a lot split was then approved erroneously that enabled 15' to be added to it to make it a 100' lot. Mr. Dunham stated that he was confused, is it going to be a 100' lot or 115' lot. Mr. Romig answered that originally it was 80', a lot split was then approved which created the 100' lot, which is before the Board today. The application today is to approve the additional 15' to make it a 115' lot.

Mr. White asked Mr. Romig if there are any questions about the legality of the 100' lot that the Board is basing this decision on. Mr. Romig answered that the Board should consider it a 100' lot at this point.

Tom Mason, 2146 E. 27th, stated that he is an attorney and lives directly behind the property. Mr. Mason said that the City has messed this up, he got no notice on the lot split. Mr. Mason mentioned that when the zoning was changed to RE, it was changed by the appropriate law, it was published, everyone knew it then Mr. Wolfe applies for a lot split after the fact. Mr. Mason does not believe this is right.

Applicant's Rebuttal:

Mr. Norman stated that the Wolfe's owned an 80' lot prior to the lot split that made the lot 100'. Because the description for many years, the Wolfe's and their predecessors owned the west 80' of Lot 15 and Mr. Altman owned the east 25'. The effort that was made to impose the RE zoning on neighborhoods in the City resulted in a lot of unusual situations, most of the lots did not meet the 150' RE requirement, so they were carved out and left in an unusual configuration and probably contributed to the Staff mistake in processing the lot split 2 months after the zoning change. Mr. Norman stated that from the time those changes were made, there was a lot of publicity. There was a grace time given to anyone that owned property in those neighborhoods to go in and seek lot splits under the original zoning before the new RE zoning took place. Had this application been filed 2 months before, it would have been approved routinely and correctly. Mr. Wolfe simply filed an application, it was processed routinely, was given prior approval and was ratified. Mr. Wolfe did not learn of that mistake until the

for sale sign went up and the neighbors started to complain last fall. Mr. Norman stated that even if the lot was erroneously approved, it did result in the benefit of increasing an 80' lot to 100'. Mr. Norman mentioned that by just driving through the neighborhood you can not discern anything about the price of the homes or economic status of the people according to where the zoning line is drawn. Mr. Norman stated that there is plenty of evidence in this community that you can build homes costing over a half a million dollars on a 100' lot. A 115' lot provides more flexibility in design, provides for better layout, something more compatible with the average lot size and still leaves a significantly greater lot remaining that would be 170' in width. There were several lots in the area that were made nonconforming because of the addition of the RE zoning upon it. This Board is here to deal with the practicalities of the administration of the Zoning Code. There is more to it than just finding a hardship, you must also find that it will not be contrary to the spirit and intent of the Code and the Comprehensive Plan. In this case, they would be decreasing the nonconformity, which is a rare situation and asking for approval on technical grounds.

Comments and Questions:

Ms. Turnbo stated that she had a problem with the City making so many mistakes and she does not feel there is a hardship. Ms. Turnbo mentioned that she feels the City should correct their mistake.

Mr. Dunham stated that he did not disagree with what Ms. Turnbo was saying.

Mr. White stated he did not feel this was the venue to rectify this. Their job is to deal with land use. Mr. White mentioned that he agreed with the concept of RE zoning, he stated that they are a City Board and their Counsel, City Legal is saying that the lot is 100'.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 3-1-0 (Dunham, Perkins, White, "aye"; Turnbo "nays", no "abstentions"; Cooper "absent") to **APPROVE** Variance of lot width of 150' to allow a lot split. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** on the following described property:

Part of Lot 13 and part of Lot 14, Block 6, Forest Hills, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, and more particularly described as follows: BEGINNING at a point on the S line of said Lot 13 above described, 95' W of the SE/c of said Lot; thence Nly on a straight line to a point on the N line of said Lot, 97' from the NE/c of said Lot; thence Ely along the N lines of Lots 13 and 14, above described, 185' to a point on the N line of said Lot 14, 20' W of the NE/c of said Lot 14; thence Sly on a straight line to a point on the S line of said Lot 14, 20' from the SE/c of said Lot 14, thence Wly along the S lines of said Lot 14 and 13 above described, 185' to the point of beginning and part of Lot 14 and Part of Lot 15 of Block 6, Forest Hills, an Addition to the City of

Case No. 18042 (continued)

Tulsa, Tulsa County, State of Oklahoma, and more particularly described as follows: BEGINNING at a point on the N line of said Lot 15, 76' E of the NW/c of said Lot 15, thence Sly on a straight line to a point on the S line of said Lot 15, 80' from the SW/c of said Lot 15, thence Wly along the S lines of Lots 15 and 14, 100' to a point on the S line of Lot 14, said point being 20' W of the NE/c of said Lot 14, thence N 159.2' and thence E along the N boundary of Lot 14 and 15 to the point of beginning.

Case No. 18043

Action Requested:

Variance of the required rear yard from 20' to 15.1'. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** and a Variance of the required side yard from 5' to 4.5' to permit an addition to a nonconforming building. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** and a Variance to permit the alteration of a nonconforming structure to increase the nonconformity. **SECTION 1405. STRUCTURAL NONCONFORMITIES** located 2207 E. 52nd Pl.

Presentation:

The applicant, **RONALD L. BEASLEY**, stated that he is an estimator for Four Seasons Sunrooms, 5345 E. 41st St. Mr. Beasley represents Mr. L.E. Walters who owns the subject property. Mr. Beasley wants Four Seasons Sunrooms to build a 12'x28' sunroom structure with glass walls and aluminum frame. There is a 24' patio cover that does cross the rear yard setback. Mr. Beasley said that the lot is in Rondo Valley V which was platted in 1965, the home was built in 1966 and Mr. Walters has lived there since 1968. The property backs up to The Lewiston apartment complex. There is a jog in 52nd Pl. that causes this particular lot to be the shallowest lot in the neighborhood. There is a wide utility easement in the back of the property and Mr. Walters wants to build right up to that utility easement. Mr. Walters submitted signatures of eight neighbors who have no problem with the room. Mr. Beasley stated that when he filed the application, Jo Casey (INCOG Staff) informed him that the house was nonconforming.

Board Action:

On **MOTION** of **TURNBO**, the Board voted 3-0-1 (Dunham, Turnbo, Perkins, "aye"; no "nays", White "abstentions"; Cooper "absent") to **APPROVE** Variance of the required rear yard from 20' to 15.1'. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** and a Variance of the required side yard from 5' to 4.5' to permit an addition to a nonconforming building. **SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS** and a Variance to permit the alteration of a nonconforming structure to increase the nonconformity. **SECTION 1405. STRUCTURAL NONCONFORMITIES** finding that it meets 1607 C of the Code on the following described property:

Lot 4, Block 2, Rondo Valley V, City of Tulsa, Tulsa County, State of Oklahoma.

Case No. 18044

Action Requested:

Variance of required 50' front setback on an arterial street to 10'. **SECTION 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS – Use Unit 17** and a Special Exception for a quick change oil facility in CS zoning. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** located 3307 E. 51st St. S.

Presentation:

The applicant, **MICHAEL DODSON**, represents Ozark Resources, 601 S. Boulder, Ste. 500, stated that the application is for a new Texaco Express Lube business. It is a three bay quick change oil business and also does some additional maintenance services such as fluid exchanges. Both services are done in less than 25-30 minutes. Mr. Dodson stated that the site plan has been revised from what is in the initial application. It reflects new construction at the NE/c of 51st & Harvard Ave. Mr. Dodson stated that he currently had another business open East of Garnett on 31st St. The present 50' building line precludes most business uses for this particular parcel of land and that is the reason for requesting a 10' building setback at that location. Mr. Dodson stated that they have located the building as far to the north and east as possible to improve the site as far as business use and traffic flow. It is a fairly low intensity business and the traffic will actually enter the business on the western side and turn back to the east to enter the building and exit back out, so it will be a circular traffic flow.

Comments and Questions:

Mr. Dunham asked Staff about its comments regarding the building plans. Mr. Stump stated that Staff has not seen the one the applicant presented today. Mr. Beach stated that the site plan and other information submitted with the application has few dimensions. It would not be adequate to obtain a building permit. Mr. Beach mentioned to the Board that he had several questions about the site plan and he would not want to see the Board approve that plan.

Mr. Stump stated that looking at the new site plan, it does not meet the landscape ordinance requirements. There is a 5' frontage landscape requirement along 51st St. and along the expressway and the frontage on Harvard.

Mr. Dunham asked if the Board decided that the Variance and Special Exception were appropriate then it should be subject to submittal of an acceptable site plan or he could advertise for complete relief from the landscaping requirement.

Mr. White asked if the current buildings were coming down. The applicant answered yes.

Board Action:

On **MOTION** of **DUNHAM**, the Board voted 4-0-0 (Dunham, Turnbo, Perkins, White, "aye"; no "nays", no "abstentions"; Cooper "absent") to **APPROVE** Variance of front setback on an arterial street, from 50' down to 10'. **SECTION 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS – Use Unit 17** and a Special Exception for a quick change oil facility in CS zoning. **SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS** subject to the approval of a detailed site plan on the following described property:

Beginning 100.55 N and 55.85 E SW/c SW th NE 279.02 S 77.15 E .25 S 25 W 300.22' N 50.55 POB, Sec. 28, T-19-N, R-13-E of the City of Tulsa, Oklahoma.

There being no further business, the meeting was adjourned at 3:19 p.m.

Date approved: JUNE 9, 1998

Chair