

**CITY BOARD OF ADJUSTMENT**  
MINUTES of Meeting No. 837  
Tuesday, March 12, 2002, 1:00 p.m.  
Francis F. Campbell City Council Room  
Plaza Level of City Hall  
Tulsa Civic Center

**MEMBERS  
PRESENT**

Dunham, Vice Chair  
Perkins  
Turnbo  
White, Chair

**MEMBERS  
ABSENT**

Cooper

**STAFF  
PRESENT**

Beach  
Stump  
Butler

**OTHERS  
PRESENT**

Romig, Legal  
Cox, NBH Inspector

The notice and agenda of said meeting was posted in the Office of INCOG, 201 W. 5<sup>th</sup> St., Suite 600, on Friday, March 8, 2002, at 8:55 a.m., as well as at the City Clerk's office, City Hall.

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

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**Case No. 19289**

**Action Requested:**

Special Exception to permit an office in an RM-2 district (photography studio).  
SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS –  
Use Unit 11, located 1437 S. Carson.

Mr. Beach informed the Board that the applicant asked for a continuance. Mr. Beach stated he has talked with the applicant and he needs a new notice. He recommended a continuance to April 9, 2002.

**Board Action:**

On **MOTION** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Turnbo, Perkins "aye"; no "nays"; no "abstentions"; Cooper "absent") to **CONTINUE** Case No. 19289 to the meeting on April 9, 2002.

**Case No. 19314**

**Action Requested:**

Special Exception to permit existing construction company uses in CS district.  
SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS –  
Use Unit 15; a Special Exception to permit Building Contract Construction Services, Use Unit 25, in a CH district, including but not limited to heavy construction equipment/storage parking. SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS, located 401 S. Memorial.

**Presentation:**

**Kelly Knopp**, 320 S. Boston, stated she represented the applicant. She informed the Board that she met with Mr. Beach on Friday afternoon. She requested the continuance when she realized they were not advertised for all of the relief needed.

Mr. White recognized the interested parties present. He asked Ms. Knopp if they would speak with the interested parties before the next meeting and see if they can work out any issues. She assured the Board her firm would have been willing to meet with any interested parties before if they had known the parties had issues. She responded that they would be glad to meet with the interested parties.

**Interested Parties:**

**Tom Hutchinson**, 8345 E. 5<sup>th</sup> Pl., and his wife Toni were present for the hearing. He stated that the applicant has not contacted them, and yet they are next-door neighbors. He had a packet of information to submit to the Board. He added they were opposed to any exceptions to the code in this application.

**Board Action:**

On **MOTION** of **Turnbo**, the Board voted 4-0-0 (White, Dunham, Turnbo, Perkins "aye"; no "nays"; no "abstentions"; Cooper "absent") to **CONTINUE** Case No. 19314 to the meeting on April 23, 2002.

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**MINUTES:**

On **MOTION** of Dunham, the Board voted 4-0-0 (White, Dunham, Turnbo, Perkins "aye", no "nays", no "abstentions", Cooper "absent") to **APPROVE** the Minutes of February 26, 2002 (No. 836).

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**UNFINISHED BUSINESS**

**Case No. 18706**

**Action Requested:**

Consider and determine upon remand of the District Court whether two existing ponds on the property are "reservoirs" or otherwise included within Use Unit 1. Area-Wide Uses By Right; And whether or not a variance or variances should be granted to permit uses ancillary to a batch plant/ready mix concrete plant to be located within the OL and RS-2 zoning portions of the property which uses may include truck storage, miscellaneous materials and equipment storage, concrete block storage, and ponds (if the Board should determine such ponds are not included within Use Unit 1. Area-Wide Uses By Right), located 13521 East 11<sup>th</sup> Street.

**Ms. Perkins stated she would abstain from Case No. 18706.**

**Presentation:**

**Roy D. Johnsen**, 201 W. 5<sup>th</sup>, Ste. 501, stated he was representing APAC-Oklahoma, Inc. APAC has owned the subject property since July 1999. He submitted a packet of information (Exhibit A-1) to the Board. The Board heard this application almost two years ago. In January of this year the case went to District Court on appeal. The court has remanded the case back to the Board to consider the two issues named in the Action Requested. Mr. Johnsen stated they are basically trying to distinguish a variance to permit an ancillary use as opposed to a principal use is not prohibited by the City of Tulsa Zoning Code.

Rainbow Concrete operates the batch plant on the subject property. The plant commenced operations in 1969. The zoning code was amended and adopted in 1970. At that time all-weather surface parking requirements, screening requirements, enclosure requirements, and others were imposed. The batch plant is located in an IM zoned area and is permitted by right in that district. The previous company extended outside the boundaries of the IM in 1974. An additional 70' was rezoned adjoining the north boundary to an IL zoning for storage of materials, and zoned property to the immediate east of the IM to an OL classification to house the administrative offices of the operation. This triggered a platting requirement. The company continued to expand the operations into the R zoned property. Neighborhood Inspections wrote a notice of zoning violation and it was appealed to the Board of Adjustment. A substantial amount of the plant is in a floodplain. The batch plant is being operated in the same area as in 1999 except for a second pond just north of the office building. The first pond has been there for at least 30 years. The second pond is the only change to the area being used since APAC purchased the property.

Mr. Johnsen cited a case in which the Oklahoma Supreme Court quoted from a case, "In *Modern Builders vs. Building Inspector of City of Tulsa*, 197 Okl. 80, 168 P.2d 883, it is said: "Zoning ordinances being in derogation of the common-law right to use private property so as to realize its highest utility, should not be extended by implication to cases not clearly within their scope and purpose." In a second case, he quoted the Oklahoma Supreme Court, "Zoning ordinances are to be strictly construed and not extended by implication. Any ambiguity or uncertainty should be decided in favor of the property owner whose use of the premises, actual or proposed, is in contest." Mr. Johnsen proposed that the ponds are reservoirs and fall within Use Unit 1, and are permitted by right in all districts. He raised the question of whether this is a principal use or an ancillary use. He recognized that in the County use variances are allowed but the City Code has not been amended and speaks to principal use in Section 1607.

Mr. Johnsen described the process of washing out the trucks in cells and the overflow drains into the ponds. APAC has a plan to improve the process with a new piece of equipment called a reclaimer. It is intended to recover rock and sand

and recycle the remaining water. They have applied for a permit to construct the walls needed to use the reclaimer in the IL district.

Mr. Johnsen explained that the first pond discharges to the second pond at a certain level and the second pond discharges into the creek. He pointed out that they have to meet the standards to have a permit from Department of Environmental Quality. They are required to submit monthly samples for lab tests. The significant change would be that the truck washout would never get into the pond with the reclaimer.

#### **Comments and Questions:**

Mr. Romig asked what the purpose and use of the ponds would be if the reclaimer was used. Mr. Johnsen stated they would capture the water that drains from the balance of the reclaimer process. Mr. Stump asked if the ponds are currently licensed by the Oklahoma Department of Environmental Quality, and what kind of permits is current. Mr. Johnsen referred him to the permit in the applicant's exhibit packet and pointed out the sign at the site with a DEQ permit number. Mr. Stump noted the permit information refers to total retention with no runoff. Mr. Stump stated that the information on the permit means that the flow through and the total retention facilities are all considered industrial wastewater disposal facilities. He added that the current process is not under a new permit for the use of the reclaimer because it is not in use yet. Mr. Stump asked, for clarification for the Board, if Mr. Johnsen was saying the Court interpreted that these facilities permitted for disposal of industrial wastewater are reservoirs in a Use Unit 1 and are allowed in any district anywhere in the city. Mr. Johnsen replied no, that a permit could be issued that addresses an industrial operation some of which may include portions that could be reservoirs. He added that the truck washout facility presently in place, he is not calling a reservoir, but if the two ponds as they existed and exist now, if they are a reservoir. Mr. Johnsen indicated that they want a determination if what they are proposing is a reservoir. Mr. Stump asked for more clarification of the source of the water that flows into the ponds presently. Mr. Johnsen explained that the washout area has holding cells that are not very large and some of the water overflows into the pond, in addition water runoff from the yard flows into the pond. Mr. White noted there is nothing about the reclaimer being required in the new permit. He stated it appears that they are renewing the same conditions as exist currently. Mr. Johnsen responded that the classification for T01 listed on the last page of the permit in the exhibit has to do with the reclaimer process.

#### **Interested Parties:**

**Pat Boulden**, with the City of Tulsa Attorney's Office, City Hall, Ste. 300, 200 Civic Center, submitted a packet of information (Exhibit A-2) to the Board. He stated that he is the attorney representing the City of Tulsa in relationship with the Board of Adjustment in the District Court case, which resulted in the issues that have been remanded to the Board. He stated that the Board decided that the ponds were an ancillary use to the concrete batch plant and therefore a Use Unit 26, per

the staff notes. The Court wants the Board to address an issue that Mr. Johnsen raised, that these ponds are not a Use Unit 26, but reservoirs in a Use Unit 1. The judge also wants the Board to address whether variances should be granted for the storage of trucks, equipment, and concrete blocks. Mr. Boulden encouraged the Board to consider their previous decision and rely on it to determine that the ponds are a Use Unit 26. This would call for these activities to cease in the OL and RS-2 districts, just as this Board ordered previously. Mr. Boulden submitted a packet of DEQ permits, and related information (Exhibit A-2). He informed the Board that the information provides a definition for wastewater that will address what is in the DEQ permits. He does not believe that the statutory interpretations, cited by Mr. Johnsen, apply to this case. He does not believe that the definitions for Use Unit 1 in Section 1201 are ambiguous or uncertain. He read the included uses listed in the code for Use Unit 1. He negated agricultural use, public use, and open land use for the ponds. He provided photographs to demonstrate to the Board (Exhibit A-4). He pointed out the DEQ permit # WD79-067 and asked the Board to consider the language in the permit. Mr. Boulden read portions of the permit regarding the wastewater in the ponds: consisting of exterior concrete mixer truck rinse water and storm water runoff, classified as Class III; and interior concrete mixer truck rinse water, classified as Class II. He noted these two classifications include at worst: waste water containing or suspected to contain pollutants for which the toxicity, concentration and volume pose a moderate risk to humans, aquatic life, wild life, or the environment either through potential to migrate in ground water or reasonable possibility if discharged. This water does cause adverse effects. It does not fit the definition of reservoir in the plain, ordinary meaning. Mr. White asked if the DEQ permit overrides any of the zoning code. Mr. Boulden replied that it does not, but he referred to a letter from Jon Craig, with DEQ, to the Honorable Kevin Easley. They recognize the municipal and local governments may impose other requirements, but those are not considered when DEQ issues permits. Mr. Craig wrote that the permit issued by DEQ will require the permittee to remove and replace two of the existing cells with a much bigger concrete lined surface impoundment that will receive the interior truck or mixer wash water. The DEQ agrees the ponds are part of the concrete plant and therefore, an accessory use to the Use Unit 26 of the concrete batch plant. Mr. Boulden stated that the Code refers to accessory uses and the word ancillary has crept into use in this case. He heard Mr. Johnsen using it. He added that ancillary is another way to refer to an accessory use, which is an incidental and subordinate use to the principal use. He suggested they should probably get away from the use of the word ancillary because it is not used in the Zoning Code, unless it has some special meaning to someone. Mr. Boulden concluded that these industrial wastewater surface impoundments are a Use Unit 26; should not be interpreted as a reservoir that could be located anywhere in the city; and they should not be allowed because they are not allowed by the Zoning Code.

Mr. Boulden addressed the issue of the storage of concrete blocks and trucks, stating they are an accessory use, as are the ponds. They should follow the requirements for Use Unit 26 and not be allowed in the RS-2 or OL districts. He

encouraged the Board to compare how the property has been used in the past and compare to more recent photographs. He noted that the concrete blocks have recently been removed.

**James Mautino**, 14628 E. 12<sup>th</sup> St., submitted a warranty deed that shows Concrete Industries purchased the property in 1971, not 1969 as Mr. Johnsen stated. He submitted a copy of the warranty deed and a copy of the BOA minutes of a meeting in July 1974 (Exhibit A-3). The minutes recorded that the company started an industrial use in the IM district as a temporary use until they develop a workable plan under the proposed PUD ordinance. Mr. Mautino reminded the Board there was only one pond at that time with existing trees for screening. He submitted a packet of exhibits and photographs (Exhibits A-4 and A-5) to the Board of the previous and existing conditions. The photographs showed the results of the creek that was diverted, the sludge pile, water leaking from the pond, a second pond, trees bulldozed down, increase in number of trucks and truck size. He complained that the hardships were on the residents of the neighborhood. He listed numerous problems including an increased number of trucks, water, and dust; and the floodplain was pushed closer to the residential neighborhood. The photographs indicated that the outside storage of concrete blocks is still not in compliance.

**White out at 2:40 p.m.**

He complained that the company built a block wall without a permit. Mr. Mautino suggested that most of the problems would be alleviated if this business were within a building.

**White returned at 2:42 p.m.**

**Jack Page**, as the Floodplain Administrator, stated he was present not in opposition or support, but to give testimony regarding whether the ponds are storm water detention ponds. It is true there are detention ponds in the city that are outside the zoned area with the purpose of storm water detention in general floodplains. They are specifically identified as storm water detention ponds and have reserved areas, drainage easements, and are depicted as a drainage facility. Reservoir is not defined in the zoning code, but detention is defined in Title 11a, Chapter 3, which is the storm water development ordinances for the City of Tulsa, that regulates all development as it pertains to storm water runoff and storm water control. Detention is the temporary storage and controlled release of storm water runoff, and it is defined as a facility for such. If a property is defined as being part of a storm water detention facility, it must meet certain criteria, and specific development standards associated with it. It must be permitted to distinguish how the facility regulates or controls the runoff. Calculations must be submitted to determine what impact the facility has on the reduction or mitigation of storm water runoff in the basin. Easements are required to identify to everyone that it is a storm water detention pond for the purposes of storm water runoff. A natural pond

has some benefit to detain storm water runoff in the area, but calling it that does not make it a storm water detention pond, because it has not been proven that is beneficial for storm water runoff. The city of Tulsa does not recognize natural ponds as storm water facilities. This pond was not permitted as a storm water detention pond, but by a water quality agency.

**Jonathon Prosser**, 788 S. 138<sup>th</sup> E. Ave., stated he lives immediately east of the plant. He stated he has spoken with numerous neighborhood residents and wanted to share the concerns he heard. They expressed concern for the negative impacts including dust, and noise; history of expansion with and without permits; and a history of disregard for the neighbors.

A list of signatures of interested parties in opposition, in attendance at this hearing was entered as Exhibit A-6.

#### **Applicant's Rebuttal:**

Mr. Johnsen refuted the remark that the applicant misled the Board. He reminded the Board that the IM zoning predated the 1970 zoning code that required enclosure. He stated that his previous comments were that no part of the property required enclosure within 300' of residential property other than their own, and the property to the west that was zoned office and residential. The batch plant in the IM is a lawful use; and the use of the IL is a lawful use. There is good separation from the residential neighborhood.

Mr. Johnsen agreed to the use of the word accessory rather than ancillary. He added that he disagrees with Mr. Boulden in that statutory interpretation means just what he read out of the Oklahoma Supreme Court cases that the term reservoir is ambiguous, not clear, won't be extended by implication. He was adamant that the ponds meet the dictionary definitions for reservoir. Mr. Johnsen stated that toxic was a misuse of terms concerning the pond water. He stated that the pond water was Class III on the new permit. He reminded the Board that a Class III classification means that there may be substances in the water but are not likely to degrade the beneficial use of the water to which it is discharged. He also stated that a brood of ducks was raised on the pond. He informed the Board that when the reclaimer system is put in there would not be contamination of the ponds or creek. He stated that APAC hauled off concrete that was washed off into the pond. He added they are no longer making the concrete blocks at this site.

#### **Board Action:**

On **MOTION** of **Dunham**, the Board voted 3-0-1 (White, Dunham, Turnbo "aye"; no "nays"; Perkins "abstained"; Cooper "absent") determining that the existing ponds are not reservoirs and otherwise not included in Use Unit 1.

On **MOTION** of **Dunham**, the Board voted 3-0-1 (White, Dunham, Turnbo "aye"; no "nays"; Perkins "abstained"; Cooper "absent") to **DENY** a **Variance** or **Variances** to permit uses ancillary to a batch plant/ready mix concrete plant to be located

within the OL and RS-2 zoning portions of the property which uses may include truck storage, miscellaneous materials and equipment storage, concrete block storage, and ponds, finding it is tantamount to a use variance and a change of the zoning; finding the lack of a hardship even if it was not a use variance; and finding it would cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or Comprehensive Plan, on the following described property:

E/2 E/2 SE/4 SW/4 and the W/2 E/2 SE/4 SW/4 all of Section 4, T-19-N, R-14-E of the IBM, City of Tulsa, Tulsa County, State of Oklahoma.

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### **NEW APPLICATIONS**

#### **Case No. 19309**

##### **Action Requested:**

Variance to allow outside, open-air storage and display of merchandise for sale within 300' of an R zoned district. SECTION 1214.C.1.d. USE UNIT 14. SHOPPING GOODS AND SERVICES, Use Conditions; and a Special Exception for open air activities – other sales of merchandise. SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS – Use Unit 14 / 2, located 536 S. Sheridan.

Mr. White asked Mr. Beach about the staff comment that the variance was not needed in this case. Mr. Beach replied that open-air storage is prohibited within 300' of an abutting R district. This property does not abut an R zoned district.

##### **Presentation:**

**Michael Hyche**, 4452 S. 109<sup>th</sup> E. Ave., stated he desires to continue outdoor sales on the subject property. His merchandise is mostly tennis shoes, handbags, telephone accessories and watches. The property was a former gas station with a very small building used for storage. The hours and days of operation are Tuesday through Saturday, 10:00 a.m. to about 5:30 p.m.

##### **Comments and Questions:**

Mr. Stump asked for the number of off-street parking spaces on the property. Mr. Hyche responded there are approximately ten parking spaces and two driveways. Mr. Stump suggested the Board may want to impose a requirement that one parking space be provided for every 225 square feet of building area and display space.

##### **Interested Parties:**

**Kevin Cox**, 111 S. Greenwood, with Neighborhood Inspections, stated they received a complaint and investigated. He informed Mr. Hyche that he would need Board of Adjustment approval. Mr. Cox received a second complaint that the merchandise on the sidewalk was obstructing the view of traffic. He submitted

photographs and related information (Exhibit B-1). He noted that the interested parties did not appear for this hearing. He stated his opinion is this is injurious to the neighborhood and does not meet the intent of the code.

**Board Action:**

On **MOTION** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Turnbo, Perkins "aye"; no "nays"; no "abstentions"; Cooper "absent") to **APPROVE** a **Special Exception** for open-air activities – other sales of merchandise, finding it will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and to **CONTINUE** Case No. 19309 to the meeting on April 23, 2002 for further relief, on the following described property:

E 85' S 152.5' less E 15' for street, Block 29, Glenhaven, City of Tulsa, Tulsa County, State of Oklahoma.

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**Case No. 19310**

**Action Requested:**

Appeal of the Neighborhood Inspector's decision that property with unenclosed parking spaces should be hard-surface; Or a Variance of the hard all-weather surface parking. SECTION 1301. GENERAL REQUIREMENTS and SECTION 1303. DESIGN STANDARDS FOR OFF-STREET PARKING AREAS – Use Unit 17, located 801 N. Mingo Rd.

**Presentation:**

**Roy D. Johnsen**, 201 W. 5<sup>th</sup> St., Ste. 501, stated he was representing the applicant Steve Sanders, the owner of the Mingo RV Park. The Sanders family has owned the property since 1981. They converted the area that was formerly a mobile home park into an RV park. Mr. Johnsen submitted photographs (Exhibit C-2, C-3) to the Board. He pointed out the streets are all-weather surface and park is well maintained. He informed the Board there are no junk cars, and the park is clean, with curbing, private streets, and a playground. They made two RV spaces for every one mobile home parking space, so that part of each site has a parking space that is paved and the other is not. Mr. Johnsen stated he understood the inspector's decision based on motorized vehicles parked on grass or gravel. He indicated that the hardship is that the underlying zoning is IL; the way the property was developed in the 1960's; and the fact that it is proven over the last twenty years not to be any sort of injurious impact on other properties in the area. He pointed out that where the traffic is moving on the streets it is paved and the sites do not cause a dust problem.

**Interested Parties:**

**Kevin Cox**, 111 S. Greenwood, with Neighborhood Inspections, stated that he received a complaint related to the all-weather surface. It was inspected and found

a large number of large motorized vehicles, including cars, trucks, and motor homes, not parked on an all-weather surface. He submitted photographs and related information (Exhibit C-1). He reviewed the findings of the investigation with Mr. Sanders. It was determined the property needs to comply with the code.

**Applicant's Rebuttal:**

He reminded the Board that the streets are paved, and there is no dust problem from the parking spaces.

**Comments and Questions:**

Mr. Stump reminded Mr. Johnsen that in 1981 when this was converted to an RV park there was a requirement to pave off-street parking spaces. Mr. Johnsen responded that the supporting evidence should be practical reasons for a variance.

**Board Action:**

On **MOTION** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Turnbo, Perkins "aye"; no "nays"; no "abstentions"; Cooper "absent") to **DENY** the Appeal of the Neighborhood Inspector's decision that property with unenclosed parking spaces should be hard-surface; and **APPROVE** a **Variance** of the hard all-weather surface parking, finding this is an isolated property with no residential property close by, and paving would serve no useful purpose, on the following described property:

A part of Block 1, Amended Plat of Van Estates No. 1, an Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the Recorded Plat thereof, being more particularly described as follows, to-wit: Commencing at the SW/c of Lot 5, Block 2, Expressway Village Center, thence N 79°50'25" E along the S line of said Lot 5 a distance of 203.16' to the SE/c of said Lot 5 to the POB; thence N 0°02'16" W along the E line of Expressway Village, a distance of 698.58'; thence N 89°58'27" E a distance of 90.00'; thence N 0°02'16" W a distance of 684.94' to a point on the N line of the Amended Plat of Van Estates No. 1, said point being 290.00' E of the NW/c thereof; thence N 89°58'27" E a distance of 222.00'; thence N 0°02'16" W a distance of 330.00' to the northernmost NW/c of Amended Plat of Van Estates No.1; thence N 89°58'27" E along the N line of Amended Van Estates No. 1, a distance of 1,044.44'; thence S 20°13'42" W a distance of 1,607.30' to a point on the S line of Amended Van Estates No. 1; thence S 72°36'49" W along the S line of Amended Van Estates No. 1, a distance of 490.41'; thence continuing along said S line on a bearing of S 79°50'13" W a distance of 336.84' to the POB, less and except: Beg. at the northernmost NW/c of said Amended Plat of Van Estates No. 1; thence N 88°48'30" E along the N line of said Amended Plat of Van Estates No. 1, a distance of 621.55'; thence S 19°10'05" W a distance of 334.55'; thence N 62°52'15" W a distance of 183.34'; thence N 01°11'54" W a distance of 26.71'; thence S 88°48'06" W a distance of 343.72'; thence N 01°12'13" W a distance of 200.00' to the POB.

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**Case No. 19311**

**Action Requested:**

Variance of the allowable 18' in height for an accessory building to 26' for new garage. SECTION 210.B.5.a. YARDS, Permitted Obstructions in Required Yards; and a Variance of the size from 750 sq. ft. to 965 sq. ft. SECTION 402.B.1.d. ACCESSORY USES IN RESIDENTIAL DISTRICTS, located 1350 E. 27<sup>th</sup> Pl.

**Presentation:**

**Tony Jordan**, 52250 E. 191<sup>st</sup> St. S., Bixby, Oklahoma, stated they asked for a variance on the height to build the garage to match the 1920 design of construction of the house.

**Comments and Questions:**

Ms. Turnbo informed Mr. Jordan that the code does not permit living quarters or bathroom facilities in this addition of the house.

**Interested Parties:**

There were no interested parties who wished to speak.

**Board Action:**

On **MOTION** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Turnbo, Perkins "aye"; no "nays"; no "abstentions"; Cooper "absent") to **APPROVE** a **Variance** of the allowable 18' in height for an accessory building to 26' for new garage; and a **Variance** of the size from 750 sq. ft. to 965 sq. ft., per plan, finding it would be in keeping with the neighborhood, the height and size are common in the area, and this facility can only be used for garage or storage, on the following described property:

E 200.00' of E 360.00' of N/2 SW NW SW, Section 18, T-19-N, R-13-E, City of Tulsa, Tulsa County, State of Oklahoma.

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**Case No. 19313**

**Action Requested:**

Special Exception under Section 701 of the Tulsa Zoning Code to permit the building located on Tract One in a CH Zoning district to be used for light manufacturing as permitted under Use Unit 25. SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS – Use Unit 25; and a Special Exception under Section 1301.D. to permit part of the off-street parking required for the Use Unit 25 uses to be located on Tract Two. SECTION 1301.D. GENERAL REQUIREMENTS, located SW/c E. 9<sup>th</sup> St. & RR ROW & NE/c E. 11<sup>th</sup> St. & RR ROW.

**Presentation:**

**Dunham out at 3:54 p.m.**

**Charles Norman**, 2900 Mid-Continent Tower, stated he represented the applicant, Simon Marshall, and Hudson Surfaces. The company proposes to manufacture a hard surface material similar to Corian. He submitted a brochure (Exhibit D-2) from the company. He informed the Board that it is a process of mixing polymer resin with aluminum hydroxide. The process includes a sanding machine.

**Dunham returned at 3:57 p.m.**

He assured the Board that DEQ requires that the process be self-contained and enclosed to capture and dispose of dust. He submitted photographs (Exhibit D-1) to the Board to review the subject property and surrounding properties.

**Comments and Questions:**

Ms. Perkins asked about odors. Mr. Norman explained that the ventilation fans are on the roof to draw exhaust up high above the building. Ms. Turnbo was interested in any fumes that might be emitted. Mr. Norman was confident that since OSHA and DEQ had already approved the proposed process there should be no problem with fumes. Ms. Perkins inquired about the days and hours of operation. He stated the days and hours of operation would be Monday through Friday, 7:00 a.m. to 12:00 midnight. Ms. Perkins asked about the noise level of the business. Mr. Norman replied they would be in the building near the residential homes, but the walls of the building are concrete blocks and are very good sound barriers.

**Interested Parties:**

**Don Farris**, 5515 E. 9<sup>th</sup> St. S., stated that the previous owner of Oklahoma Fixtures kept the grounds well maintained. He complained of strong fumes, so bad he had to call the fire department at one time because the fumes caused him to have a headache. The fire department confirmed that it was fumes from this business blowing in the direction of his house. He mentioned that it has not happened again. He also noted there are a lot more homes in the neighborhood than the applicant's pictures showed. He indicated that he does yard work regularly across the street and one time he got a rash like a chemical burn after handling the grass and suspected some sort of residue from the plant. He objects to the plant so close to a residential neighborhood.

**Steve McCullough**, 725 S. Erie, stated that fumes have forced them from their home in one incidence. He stated his objection to the application because he does not know what they are doing; but he would like to discuss it with the applicant.

**Applicant's Rebuttal:**

Mr. Norman responded that the applicant is the same company. They will be making a product that competes with Corian. There have been two complaints in

the last two years regarding fumes at the other building. There are plans to install a better ventilation system in the building where Corian is being made, like the one for the building in this application.

**Comments and Questions:**

Ms. Perkins expressed concern regarding noise, odors and long hours of operation. Ms. Turnbo also expressed the same concerns as Ms. Perkins. Mr. Dunham suggested that the applicant and interested parties need time to discuss the issues. He was not convinced that these would be valid issues. Mr. Dunham stated that he would not be in support of long hours of operation at this site because of the proximity to the residential district.

**Interested Parties:**

Mr. Farris stated that the noise is constant from the filtering and he considers it to be a major problem. He stated that he would listen to what the applicant has to say, but at this point he was unwilling to compromise on the issues.

Mr. McCullough felt that the issue of the fumes must be resolved. He was willing to meet with the applicant.

**Board Action:**

On **MOTION** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Turnbo, Perkins "aye"; no "nays"; no "abstentions"; Cooper "absent") to **CONTINUE** Case No. 19313 to the meeting on March 26, 2002, to allow the applicant and interested parties to meet.

Tract 1: Lot 1, less the N 25' and the W 5' thereof and the N 200' of Lot 12, Block 1, Sanford Addition, a resubdivision of Block 26 and vacated E. 10<sup>th</sup> St. of Blocks 1 and 2, White City Addition; And Tract 2: Lot 1, Block 70, Glenhaven Addition, all in the City of Tulsa, Tulsa County, State of Oklahoma.

\*\*\*\*\*.

**Case No. 19315**

**Action Requested:**

Variance of the screening requirements where parking abuts R zoned property. SECTION 1303. DESIGN STANDARDS FOR OFF-STREET PARKING AREAS – Use Unit 11, located NW/c W. 14<sup>th</sup> Pl. & S. Carthage.

Mr. Beach pointed out this relief would be a Special Exception, not a Variance.

**Presentation:**

**Joe Coleman**, 610 S. Main St., stated they propose to build a one-story building for their architectural firm. They obtained OL zoning for the property. They want it to have the appearance of a park. They want to save the trees on the property so they do not want to construct a screening wall. He informed the Board that Quik Trip had the same issue and used landscaping, and they would like to do the

same. He stated they felt that a wall would cause security problems because there is a lot of pedestrian traffic. Photographs (Exhibit E-1) were submitted to the Board.

**Interested Parties:**

**Curtis Beckwith**, 1402 S. Carson, stated his support of the application. The neighborhood association board members are concerned about transients, litter and an increased noise level in this area. He added they were not in favor of a screening fence on the subject property. He stated they welcome this firm into the neighborhood and would like to work with them for the benefit of the neighborhood.

**Board Action:**

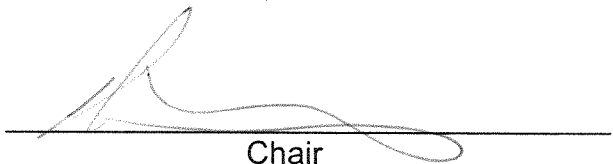
On **MOTION** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Turnbo, Perkins "aye"; no "nays"; no "abstentions"; Cooper "absent") to **APPROVE** a **Special Exception** of the screening requirements where parking abuts R zoned property, per plan, finding it will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare, on the following described property:

Lots 2 through 6, Block 1, Campbell Addition, City of Tulsa, Tulsa County, State of Oklahoma.

\*\*\*\*\*.

There being no further business, the meeting was adjourned at 4:45 p.m.

Date approved: MARCH 26, 2002

  
Chair