

**CITY BOARD OF ADJUSTMENT**  
MINUTES of Meeting No. 859  
Tuesday, February 25, 2003, 1:00 p.m.  
Francis F. Campbell City Council Room  
Plaza Level of City Hall  
Tulsa Civic Center

**MEMBERS  
PRESENT**

Dunham, Vice Chair  
Cooper  
Perkins  
White, Chair

**MEMBERS  
ABSENT**

Turnbo

**STAFF  
PRESENT**

Beach  
Butler

**OTHERS  
PRESENT**

Boulden, Legal  
Romig, Legal

The notice and agenda of said meeting was posted in the City Clerk's office, City Hall, on Thursday, February 20, 2003, at 2:50 p.m., as well as at the Office of INCOG, 201 W. 5<sup>th</sup> St., Suite 600.

After declaring a quorum present, Chair White called the meeting to order at 1:05 p.m.

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Mr. Jim Beach read the rules and procedures for the Board of Adjustment Public Hearing.

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**MINUTES**

On **MOTION** of Dunham, the Board voted 3-0-0 (White, Dunham, Cooper "aye"; no "nays"; no "abstentions"; Perkins, Turnbo "absent") to **APPROVE** the Minutes of February 11, 2003 (No. 858) as amended.

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**UNFINISHED BUSINESS**

**Case No. 19498**

**Action Requested:**

Mr. Coutant asked if this case could be tabled until later on the agenda.

**Board Action:**

The case was tabled.

## **Case No. 19516**

### **Action Requested:**

Special Exception to construct a 90' monopole tower 68' ~~from an adjoining lot line of an RS-3 zoned lot~~ from the site to the closest residential district. SECTION 1204.C.4.a. USE UNIT 4. PUBLIC PROTECTION AND UTILITY FACILITIES, Use Conditions – Use Unit 4, located SE/c E. 61<sup>st</sup> St. & Memorial Dr. (Words deleted are shown as **strikeout**; words added or substituted are **underlined**.)

### **Presentation:**

**Kevin Coutant**, 320 S. Boston, Ste 500, stated this application for a special exception for a 90' steel monopole telecommunications tower was continued from the previous meeting. He pointed out the zoning code has language regarding a 110% setback requirement from the adjoining residential lot line, to which the application complies. There is another provision that refers to the 110% from a residential zoning line. In this case it would not clear 110% from the nearest residential zoning line requirement, as it is 68' away.

### **Perkins arrived at 1:08 p.m.**

He referred the Board to the applicant packet (Exhibit B-1). The tower would be located in a CS district. It would have panel antennas with collocation possible. They plan to put brick on the retaining wall, construct an 8' privacy fence, and provide continuous landscaping. To the north is a CS district. South of the property is 63<sup>rd</sup> St., which is a boulevard with a center island and on the other side is a residential lot line, with about 300' of open area covered by a grove of trees in front of the developed residential neighborhood. The closest residential district to the south is 68' from the site, and 180' east. Surrounding uses to the south are drainage/park/multi-family residential. To the east is an apartment project, the closest building is about 190' away. The closest residence is over 200' to the east. West of the property is Bally's and Memorial Dr. with retail use. A 12' X 20' prefabricated building at the base would house necessary equipment for the tower. The applicant made an agreement with Jerry Ledford, Jr. to put a brick façade on any exposed retaining wall that is built as part of the compound, to match as closely as possible to Bally's brick façade; to construct an eight foot privacy fence around the compound; and to place and maintain continuous landscaping around the perimeter of the compound. Mr. Ledford would be in support of the application with this agreement. The surrounding topography is slightly rolling. The tower is designed for nine EMS panel antennas and three Antel panel antennas. Access would be via existing driveway and parking lot. The tower is needed to offload capacity from other sites. The tract is 1,173 square feet and the existing development is the adjacent health club.

### **Comments and Questions:**

Mr. White asked about collocation on an existing tower 300' to the northwest of the proposed site. Mr. Coutant responded that collocation was not possible and was documented in the applicant's packet (Exhibit B-1) under tab's two and three. It is

not engineered strong enough to support the kind of antennas that are required for this facility. Mr. Beach explained that in this case the tower should be set back 110% from the zoning line.

**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, Perkins, Cooper "aye"; no "nays"; no "abstentions"; Turnbo "absent") to **APPROVE** a **Special Exception** to construct a 90' monopole tower 68' from an adjoining lot line of an RS-3 zoned lot district, per plan, finding the twelve conditions for approval were addressed in the presentation and applicant's exhibit and have been met; with additional conditions for brick façade on any retaining wall; to construct an eight foot privacy fence around the structure; and to place continuous landscaping around the perimeter of the compound, 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:

Lot 1, Block 1, Southeast Square Addition, City of Tulsa, Tulsa County, State of Oklahoma.

(Words deleted are shown as **strikeout**; words added or substituted are **underlined**.)

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**Case No. 19498**

**Action Requested:**

Special Exception for church use in RM-1 district. SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS; a Variance of required one acre minimum lot size to 33,000 square feet. SECTION 1205.B.1.a. USE UNIT 5. COMMUNITY SERVICES AND SIMILAR USES; and a Variance of 25' setback from residential area. SECTION 404.F.4. SPECIAL EXCEPTION USES IN RESIDENTIAL DISTRICTS, REQUIREMENTS, located 4635 South Madison Place

Mr. Boulden expressed his concern about references the applicant made regarding the Religious Land Use and Institutionalized Persons Act. He informed the Board that this Act stated if our zoning laws put a substantial burden on the exercise of religious activity by a person or assemblies or institutions, then we may not impose that burden on the institution/person(s) in the exercise of religious activity, unless it is in the furtherance of a compelling state interest; and the least restrictive means should be used in imposing requirements on a religious institution. He suggested that parking or traffic concerns might be a compelling state interest. If the case should go to court, the burden would be on the applicant to show that the Board's actions imposed a substantial burden on the religious activities of the church. However, when a prima facie (bare minimum) case is made by the applicant the burden shifts back to the city to prove that we had a compelling state interest and

and used the least restrictive means in trying to accomplish that compelling state interest.

**Presentation:**

**Kevin C. Coutant**, 320 S. Boston, Ste. 500, stated the applicant believes the application has merit without the federal act. He reviewed the zoning, history of the property, physical facts of the property, and intensity of use by the previous owner.

**Dunham out at 1:50 p.m., and returned at 1:53 p.m.**

Mr. Coutant expressed the desire to obtain the least restrictive means by which the applicant might accommodate the concerns of the Board. He suggested the proposed use is consistent with the previous use. He stated the parking is adequate for the size of the sanctuary and revealed how the parking could be increased if necessary. He mentioned frequent evening events when the masons used the property and added the church use would be decreased in intensity.

**Comments and Questions:**

Mr. Cooper noted the conflict in comparison between the use by the church and the masons. He stated it has been said the proposed use would be consistent with the previous use and then he heard the church use would be a decreased intensity.

**Max Tankersley**, 4240 S. Peoria, stated that the masons used the property three to five nights per week by five different groups. The attendance at their meetings was often from 200 to 400 people. Most of the meetings were in the evening. Mr. Cooper asked for the most recent time period that the masons met so frequently. Mr. Tankersley replied that within the last two to three years. Mr. Cooper also asked for hardships for the two variances, and the days/hours of church services.

**Hamilton Okotie**, 9241 S. 85<sup>th</sup> E. Ave., replied to Mr. Cooper that they would meet on Sundays from 11:00 a.m. to 2:00 p.m., Wednesdays 7:00 p.m. to 8:15 p.m., and one Friday per month 10:00 p.m. to 12:00 a.m.

Mr. Coutant asked that the Board consider some leniency regarding these days and hours, as ministries do change. Mr. White asked if they have discussed the application with the neighbors. Mr. Coutant responded that they have not. Mr. White asked about the proposed temporary status of the church at this location. Mr. Coutant stated they plan to build their own facility, possibly in two to three years. Mr. Coutant indicated that the hardships were more of a special and unique quality than to do with the land and asked for consideration due to the structure being 50 years old, adapted to more recent zoning codes.

### Interested Parties:

**Nancy Apgar**, 3914 S. Norfolk, stated she was speaking for the Brookside Neighborhood Association, as the past president. They are opposed to the application, finding it would have a negative impact on the quality of life for the neighbors. She indicated that neighborhood activities of yard work and outdoor activities would be in conflict with traffic for services on Sunday. They questioned if the church plans to have a nursery since they indicated they would have play ground equipment on the property, as they have had problems in the past with nurseries in residential areas. She also expressed concern it would set a precedent for future use.

Mr. Dunham asked what use she would suggest as less intrusive on the neighborhood. She suggested an office use that does not generate a lot of traffic.

**Rod Puckett**, 5533 E. 61<sup>st</sup> Pl., stated he owns numerous properties in the neighborhood. He stated he has not seen the heavy use of the property that has been mentioned since 1994. He observed parking on the street for a Christmas party in 1994 and that was the only time since then. He expressed a desire to see a time limit placed on the special exception.

Mr. White referred to a letter of opposition from **Steve Tulk**, 4622 S. Madison Pl., regarding an athletic field in the neighborhood that has generated more traffic than originally proposed.

**Houston Mount**, P.O. Box 14010, Tulsa, stated he owns nearby residential property. He referred to several years ago when the parking spilled over onto the streets and caused safety problems. Neighbors could not get in and out of their driveways or neighborhood. He also mentioned on-street parking would cause access problems for emergency vehicles.

**Perkins out at 2:24 p.m. and returned at 2:27 p.m.**

### Applicant's Rebuttal:

Mr. Coutant reminded the Board the church is only made up of 32 families. He pointed out that it is a temporary situation. They plan to build their own facility on another property. It is an attractive facility and would be functional for the church. He stated it would be good for the neighborhood. He pointed out it is surrounded by nice rental property, and there are not a lot of single family residential owners objecting to the application.

The Board discussed the issues at length. Mr. White stated they meet the parking requirements. He mentioned an S turn in the street where emergency vehicles would have difficulty if there were cars parked on the street. Mr. Dunham noted that the building has been non-conforming for fifty years as far as the setbacks.

**Mr. Boulden out and Mr. Romig stepped in for him at 2:35 p.m.**

Mr. Cooper stated he was looking at the whole neighborhood. The fact that the church and school generate traffic needs to be considered. The intensity makes it unique. Mr. Cooper added that he has not heard a hardship at either hearing.

Mr. Dunham asked again about days/hours of operation, to which Mr. Coutant responded: Sunday 10:00 a.m. to 2:00 p.m., Wednesday 6:00 p.m. to 9:00 p.m., and one Friday per month 7:00 p.m. to 9:00 p.m.

**Board Action:**

On **MOTION** of **Dunham**, to **APPROVE** a **Special Exception** for church use in RM-1 district; a **Variance** of required one acre minimum lot size to 33,000 square feet; and a **Variance** of 25' setback from residential area, finding the hardship is that the purpose of the one acre minimum is for the property to meet the parking standards, with conditions for the property to meet the parking standards now and continue throughout the time allotted (if the sanctuary is enlarged the parking would be enlarged); the days/hours of operation be Sunday 10:00 a.m. to 2:00 p.m., Wednesday 6:00 p.m. to 9:00 p.m., and Friday 7:00 p.m. to 9:00 p.m. as regular services; no windows or doors installed on the south and east walls of the building; no lighting on the property that would diffuse onto the neighborhood; weddings and funerals would be permitted for members to be held no later than 7:00 p.m., the motion **Died** for lack of a second.

On **MOTION** of **Cooper**, the Board voted 2-2-0 (Perkins, Cooper "aye"; White, Dunham "nay"; no "abstentions"; Turnbo "absent") to **DENY** a **Special Exception** for church use in RM-1 district, finding it would not be in harmony with the spirit and intent of the Code, and would be injurious to the neighborhood or otherwise detrimental to the public welfare; a **Variance** of required one acre minimum lot size to 33,000 square feet; and a **Variance** of 25' setback from residential area, finding it would cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan, and presents a life safety concern when combined with the school use, **Died** for lack of a minimum affirmative vote of three.

On **MOTION** of **Dunham**, the Board voted 3-1-0 (White, Dunham, Perkins, "aye"; Cooper "nay"; no "abstentions"; Turnbo "absent") to **APPROVE** a **Special Exception** for church use in RM-1 district; a **Variance** of required one acre minimum lot size to 33,000 square feet, finding the requirements are to insure the parking requirements are met; and a **Variance** of 25' setback from residential area, finding the property has been non-conforming for over 50 years, with conditions for the property to meet the parking standards now and continue throughout the time allotted (if the sanctuary is enlarged the parking would be enlarged); the days/hours of operation be Sunday 10:00 a.m. to 2:00 p.m., Wednesday 6:00 p.m. to 9:00 p.m., and Friday 7:00 p.m. to 9:00 p.m. as regular services; no windows or doors installed on the south and east walls of the building; no lighting on the property that would diffuse onto the neighborhood; weddings and funerals would

be permitted for members not later than 7:00 p.m., and this approval be for a period not to exceed five years, on the following described property:

Lot 2, Block 1, Evergreen Subdivision, Tracts 8-10, City of Tulsa, Tulsa County, State of Oklahoma.

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**NEW APPLICATIONS**

**Case No. 19520**

**Action Requested:**

Modification of a previously approved site plan to add an additional building for school purposes. SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS – Use Unit 5, located 3501 E. 30<sup>th</sup> St. N.

**Presentation:**

**Ed Beck**, 3501 E. 39<sup>th</sup> St. N., stated he was representing ABC Learning Academy. In 1999 they obtained a special exception. Since then the school has grown from four to forty students, with a current staff of five. They propose to move in another building, on just under one acre of property, 270' x 161'.

**Interested Parties:**

There were no interested parties present who wished to speak.

**Board Action:**

On **MOTION** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Perkins, Cooper "aye"; no "nays"; no "abstentions"; Turnbo "absent") to **APPROVE** a Modification of a previously approved site plan to add an additional building for school purposes, per plan, on the following described property:

A tract of land in the NE/4 NW/4 SW/4 of Section 21, T-20-N, R-13-E, more particularly described as follows: Beg. at a pent 30.00' E of the W line and 30.00' N of the S line of said NE/4 of NW/4 SW/4 of Section 21, thence N 01°09'35" W a distance of 270.00'; thence N 88°49'52" E a distance of 161.33'; thence S 01°09'35" E a distance of 270.00'; thence S 88°49'52" W a distance of 161.33' to the POB, City of Tulsa, Tulsa County, State of Oklahoma.

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**Case No. 19521**

**Action Requested:**

Variance to allow required parking to be located on a lot other than the principal use. SECTION 1301.D. GENERAL REQUIREMENTS – Use Unit 8, located 1510 – 1520 S. Cincinnati Ave.

**Presentation:**

**Steve Benge**, 9945 S. 79<sup>th</sup> E. Ave., stated he has a contract to purchase the subject property for multi-family housing, but need to satisfy the parking requirements on each lot, as it was platted in 1916. There are three 50' x 130' lots. He could get seven parking spaces per four-plex but the requirement is for eight spaces. This will be a gated community with handicap accessibility. Mr. Beck stated he would be open to a tie-contract.

**Mr. Boulden returned at 3:10 p.m.**

**Interested Parties:**

There were no interested parties present who wished to speak. A notarized agreement to the application from the owner of the property was submitted to the legal department.

**Board Action:**

On **MOTION** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Perkins, Cooper "aye"; no "nays"; no "abstentions"; Turnbo "absent") to **APPROVE** a **Variance** to allow required parking to be located on a lot other than the principal use, finding the property was platted as fifty foot lots many years ago, subject to a tie-agreement, and by means of the tie-agreement the parking will be met, and finding it will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan, on the following described property:

Lots 3, 4 and 5, Block 15, Maplespark Addition, City of Tulsa, Tulsa County, State of Oklahoma.

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**Case No. 19522**

**Action Requested:**

Special Exception to allow auto repair in a CS zoned district. SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS – Use Unit 17, located 9404 E. Marshall.

**Presentation:**

**Jolomi Ogisi**, 9404 E. Marshall St., proposes to do auto repair on the subject property, in the existing building. He stated there is a 6' screening fence on the rear lot line and on the east there is an existing privacy fence. There is all-weather surface on this portion of the property.

**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, Perkins, Cooper "aye"; no "nays"; no "abstentions"; Turnbo "absent") to **APPROVE** a **Special Exception** to allow auto repair in a CS zoned district, with conditions for a 6' screening fence on the south property line, no outside storage of parts and accessories, no inoperable vehicles on the premises for more than sixty days, 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:

The E 50' of the W 255.00' of the N 180.00' of the SE/4 SE/4 NE/4 of Section 36, T-20-N, R-13-E of the IBM, City of Tulsa, Tulsa County, State of Oklahoma.

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**Case No. 19525**

**Action Requested:**

Special Exception to permit vehicle repair and service (Use Unit 17) use of property. SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS and SECTION 1608. SPECIAL EXCEPTION – Use Unit 17; and a Variance from minimum required building setback from Zion Street (or in the alternative Apache Street). SECTION 215. STRUCTURE SETBACK FROM ABUTTING STREETS; SECTION 703. BULK AND AREA REQUIREMENTS IN THE COMMERCIAL DISTRICTS; SECTION 1302. SETBACKS; and SECTION 1607. VARIANCES, located 4600 E. Apache St.

**Presentation:**

**Stephen Schuller**, 100 W. 5<sup>th</sup> St., Ste. 500, stated he represented the applicant. He referred to Lots 6 and 7 as in the CS district, and Lots 1 through 5 were in the RM-1 district. Lots 1 through 5 have been re-zoned to CS, per City Council, as of last month. The approval would have to be conditioned upon the publishing of the re-zoning ordinance. The building would be constructed on the property. Service and repairs would be conducted indoors; there would be no long-term parking of vehicles on the property; and no outside storage of materials. The business would face Apache. The building would be 100' x 70', 18' in height, with a peaked roof slightly less than 21' in the center, and two service bay overhead doors on the west side. The front of the building will contain the business office, tool storage, with service and repair in the rear of the building. They plan for a screening fence to the south and west residential properties. Access would be from Apache Street, and if permitted, from the commercial property on the east. A site plan was provided (Exhibit D-1).

**Interested Parties:**

**Councilor David Patrick** stated he is in support of the application. He mentioned the area is unique, as the existing convenience store is more like a truck stop. He is familiar with the business and considers it to be a good development in the area. They need these services for big trucks in this area. The applicant's existing

operation is next to a mobile home park and he found the residents had no complaints.

**Board Action:**

On **MOTION** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Perkins, Cooper "aye"; no "nays"; no "abstentions"; Turnbo "absent") to **APPROVE** a **Special Exception** to permit vehicle repair and service (Use Unit 17) use of property, subject to completion of the CS zoning of the property; and a **Variance** from minimum required building setback from Zion Street (or in the alternative Apache Street), no closer than ten feet from the property line on the south, finding the hardship to be the lots are 120' deep and it would be difficult to use the property for any use and meet the setback requirements from Apache St., subject to construction of screening fences along the west and south property lines, per plan, on the following described property:

Lots 1 to 7, inclusive, Block 2, Smithdale, City of Tulsa, Tulsa County, State of Oklahoma.

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**Case No. 19533**

**Action Requested:**

Variance of the minimum average lot width in the RS-3 district from 60' to 49'. SECTION 403. BULK AND AREA REQUIREMENTS IN THE RESIDENTIAL DISTRICTS – Use Unit 6, located 4619 E. 37<sup>th</sup> Pl.

**Presentation:**

**Frank Spielberg**, 100 W. 5<sup>th</sup> St., Ste. 900, stated he is the counsel for the Dixons. This is to clean up a legal dispute of a property line. A site plan was provided (Exhibit E-1).

**Interested Parties:**

**Jim Inhofe**, 320 S. Boulder, submitted handouts (Exhibit E-2) of the plat to the Board. An agreement has been established between the two property owners. He is in support of the application.

**Board Action:**

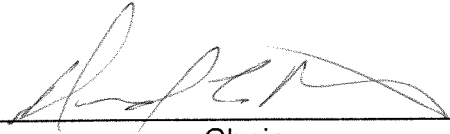
On **MOTION** of **Dunham**, the Board voted 4-0-0 (White, Dunham, Perkins, Cooper "aye"; no "nays"; no "abstentions"; Turnbo "absent") to **APPROVE** a **Variance** of the minimum average lot width in the RS-3 district from 60' to 49', per plat submitted today, finding the hardship to be the long, narrow lots, and this action is necessary to correct an existing condition, on the following described property:

Lots 15 & 16, Block 2, Max Campbell 4<sup>th</sup> Addition, City of Tulsa, Tulsa County, State of Oklahoma.

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There being no further business, the meeting was adjourned at 3:39 p.m.

Date approved: MARCH 11, 2003

  
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Chair