

**CITY BOARD OF ADJUSTMENT**  
MINUTES of Meeting No. 896  
Tuesday, September 28, 2004, 1:00 p.m.  
Francis F. Campbell City Council Room  
Plaza Level of City Hall  
Tulsa Civic Center

**MEMBERS  
PRESENT**

Dunham, Vice Chair  
Stephens  
Turnbo  
White, Chair  
Perkins

**MEMBERS  
ABSENT**

**STAFF  
PRESENT**

Beach  
Butler  
Alberty

**OTHERS  
PRESENT**

Boulden, Legal

The notice and agenda of said meeting was posted in the City Clerk's office, City Hall, on Thursday, September 23, 2004, at 10:24 a.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 1:00 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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**REQUEST TO CONTINUE AND CASES TO WITHDRAW**

**Case No. 19874**

**Action Requested:**

Appeal from the determination that the operations on the subject property do not violate the light industrial classification. Appellant contends there are environmental influences from emission of odors from the operation of a blast furnace on the subject property, located: 4133 South 72<sup>nd</sup> Avenue East.

**Presentation:**

Mr. Beach stated the applicant, Andrew S. Hartman, requested a continuance to October 24, 2004.

**Melinda Martin**, 6144 South Lewis, Suite. 200, stated they have engineers working to resolve the problem.

**Terry Thomas**, 500 Kennedy Building, stated he represented the respondents. He informed the Board it will take the engineers some time, and construction changes have been made in the alley. They are testing to evaluate the results.

**Board Action:**

On **Motion** of **Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Stephens, Paddock "aye"; no "nays"; no "abstentions"; no "absences") to **CONTINUE** Case No. 19874 to the meeting on October 26, 2004.

LTS 13 & 14 BLK 8, KATY FREEWAY INDUSTRIAL PARK ADDN

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**Case No. 19901**

**Action Requested:**

Variance to expand a non-conforming structure. SECTION 1405.A. STRUCTURAL NONCONFORMITIES, located: 3144 South Birmingham Av. E.

**Presentation:**

Mr. Beach stated this case was continued to today. The applicant needed no further relief.

The item was stricken from the agenda.

LT-11-BLK-5, TIMBERLAND ADDN

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**MINUTES**

On **MOTION** of **Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Perkins, Stephens "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the Minutes of September 14, 2004 (No. 895).

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**UNFINISHED BUSINESS**

**Case No. 19890**

**Action Requested:**

Variance of required setback from centerline of Peoria from 35 ft to 31 ft to allow a structure (rock wall) SECTION 215. STRUCTURE SETBACK FROM ABUTTING STREETS, 1304 East 27<sup>th</sup> Street South.

### **Presentation:**

**Nick LaRosa**, 1304 East 27<sup>th</sup> Street, stated the case was continued to this meeting because the City of Tulsa was concerned that the wall was built over a water line. The survey showed the wall is about 7'10" from the water line. Ron Cannon the crew chief prepared the survey for the City.

### **Comments and Questions:**

Ms. Turnbo asked Mr. LaRosa if he ever applied for a building permit. He replied that he applied, received a verbal approval, and went ahead and built the wall. He added he received a letter from the permit office after the wall was near completion. Mr. Boulden asked who gave a verbal approval. Mr. LaRosa replied the man in charge at the permit office. He stated that even the inspector that came to his house thought everything was ok. Mr. Paddock asked why the permit was denied. Mr. LaRosa replied the permit office called him to measure to see if it was 35' but when he measured it was 31'. They told him he needed to obtain a variance. Mr. Dunham asked if the new wall was in the same location as the original one. Mr. LaRosa responded that it was identical within six inches. Mr. Dunham asked about the construction of the original wall. Mr. LaRosa indicated it was a masonry wall, higher than the new one, and had existed since 1927. Mr. Dunham asked if there was a period of time between tearing down the old wall and building the new one. He did not reply as to the length of time. Mr. LaRosa stated that the wall is farther from the curb than other walls on Peoria.

### **Interested Parties:**

**Greg Jennings**, 2260 South Troost, stated the wall is out of character with the neighborhood. He submitted photographs (Exhibit A-2). He pointed out that though the applicant indicated the wall was not near any utilities with the exception of a phone line, the photograph shows the proximity of the phone line. Another photograph showed how the wall was cut out to go around a sewer man-hole. He showed a photo taken of the house when it was put on auction early in 2004. He pointed out there was no fence in the photo. Mr. Jennings indicated that the view at the corner is obstructed by the wall. He questioned if the wall would be safe if the City needed to do any work using the man-hole. He pointed out the wall was extended to the front yard unlike the original wall.

**Rita Henze**, with the City of Tulsa Public Works Department, submitted a survey (Exhibit A-1). She stated that the wall is built on the City of Tulsa property. She noted that the chimney on the house also encroaches onto the property owned by the City of Tulsa. Ms. Henze identified the water line on the survey and stated it is from six and one-half feet to 7.9' from the wall. The line is five and one-half feet deep and is twelve inches in diameter. The engineers object to the location of the wall and want it moved back. There is also a street project planned and funded which will include the addition of sidewalks to the east side of Peoria.

Mr. Boulden stated the Board cannot approve the request of the applicant because he cannot request relief on property he does not own and does not have

permission from the owner. He added that this problem could have been prevented if the applicant had waited for approval of the building permit.

Mr. Alberty stated he spoke with Kurt Ackermann with the permit office. He found that the contractor did not actually apply for a building permit. When an inspector discovered the wall was under construction he notified the owner there would need to be a permit process. The permit was denied.

**Board Action:**

On **Motion of Turnbo**, the Board voted 4-0-1 (Dunham, Turnbo, Perkins, Stephens "aye"; no "nays"; White "abstained"; no "absences") to **DENY** a **Variance** of required setback from centerline of Peoria from 35 ft. to 31 ft. to allow a structure (rock wall), finding that the Board could not grant relief requested without consent of the property owner, City of Tulsa, on the following described property:

E 50 LT 25 BLK 2, SUNSET VIEW ADDN

\*.\*.\*.\*.\*.\*.\*.\*.\*.\*.

**NEW APPLICATIONS**

**Case No. 19908**

**Action Requested:**

Variance of required structure setback to allow existing parking between the building and Yale Avenue in the existing right-of-way; Special Exception to modify the screening requirement to allow a brick planter and landscaping in lieu of 6-foot privacy fence and to waive the screening requirement in the location of the existing drive along East 43rd Street - SECTION 215. STRUCTURE SETBACK FROM ABUTTING STREETS; SECTION 212.C. SCREENING WALL OR FENCE, Modification, 4249 South Yale Avenue East.

**Presentation:**

**Ben Aguirre**, 1204 Southwest 129<sup>th</sup>, Oklahoma City, Oklahoma, stated he represented McDonald's Corporation. The property is an existing restaurant. He submitted photographs (Exhibit B-3). He understood that this parking lot was constructed with the building around 1970. They have used it for parking and drive access onto the main lot. The hardship would be if the variance were not granted they would not meet the current parking requirements. They proposed to tear down the facility and construct a new store with only slightly less footage. They proposed to construct a brick planter with shrubs above instead of a screening fence (Exhibit B-4). This would meet the objective to shield lights. They desire to keep the existing drive cut. Ms. Turnbo asked if it would be evergreen plantings that would stay green year round. Mr. Aguirre replied that they would select something with full foliage year round. A site plan and map were provided (Exhibits B-1 and B-2).

**Comments and Questions:**

Mr. Stephens asked if they have spoken with representatives of the mall regarding more parking. Mr. Aguirre replied they have and it will be a lengthy process but he did not know the specific time frame. Mr. Dunham asked about the location of the new building compared to the existing location. Mr. Aguirre replied that the new building would set back about three feet. Mr. Dunham noted the property is not platted and asked if the right-of-way is dedicated. Mr. Aguirre stated they have requested a license agreement with the City of Tulsa.

**Interested Parties:**

**Rev. Buddy Owen**, 4308 South Braden Avenue, stated he is a homeowner east of the mall. He objects to the application. He agreed with the applicant's attorney that they don't own the front property. He submitted a map (Exhibit B-5) of the area. He described the difficult traffic congestion at 43<sup>rd</sup> and Yale.

Mr. White and Mr. Dunham questioned the ownership of the frontage and if the legal description was advertised correctly. Mr. Beach responded that the variance is granted to the property where the parking is required not to the lot where the parking would be located. It is not necessary to include the remote lot in the legal description.

**Board Action:**

On **Motion** of **Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Stephens, Paddock "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Variance** of required structure setback to allow existing parking between the building and Yale Avenue in the existing right-of-way; **Special Exception** to modify the screening requirement to allow a brick planter and landscaping in lieu of 6-foot privacy fence and to waive the screening requirement in the location of the existing drive along East 43rd Street, per plan, and on condition of a license agreement with the City of Tulsa; and a 4' high planter, finding an existing condition since 1970's, and would be encroaching no further into the right-of-way, on the following described property:

TR A BEG 1190 S 90 E OF NW COR NW NW TH E 150 N 15 0 W 150 S 150 TO  
PT BEG SEC 27-19-13

\*.\*.\*.\*.\*.\*.\*.\*.

**Case No. 19914**

**Action Requested:**

Variance of required parking spaces from 13 to 10. SECTION 1211.D. USE UNIT 11. OFFICES, STUDIOS, AND SUPPORT SERVICES, 605 South Lewis Avenue East.

**Presentation:**

**Joe Howell**, 1347 South Frisco, stated his architectural firm proposed to convert the fire station to offices. They have discovered the actual parking requirement is 14 but they still want a variance to ten spaces.

**Comments and Questions:**

Mr. White asked if it has been properly advertised. Mr. Boulden and Mr. Beach agreed since the request is still for ten spaces there is no problem with the advertising.

Mr. Howell continued that they only have seven employees and would not expect to ever need that much parking. He submitted a site plan and design (Exhibit C-1 and C-2).

**Interested Parties:**

**Maria Barnes**, 2252 East 7<sup>th</sup> Street, stated she is the President of the Kendall-Whittier Neighborhood Association. The neighborhood is in support.

Mr. White noted a letter of support from Dane Matthews, with the Kendall-Whittier Task Force was received.

**Board Action:**

On **Motion of Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Stephens, Paddock "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE a Variance** of required parking spaces from fourteen to ten, per plan, finding it would be an improvement to the neighborhood, it is an existing facility, and ten parking spaces is more than adequate for the use, on the following described property:

LTS 19 TO 22 BLK 10, COLLEGE VIEW ADD AMD AND N 50 LT 1 BLK 1, HIGHLANDS ADDN

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**Case No. 19915**

**Action Requested:**

Variance of required 300 foot spacing from another Adult Entertainment Establishment; Special Exception to permit required parking on a lot other than that containing the use. SECTION 1212a.C.3. USE UNIT 12a. ADULT ENTERTAINMENT ESTABLISHMENTS; SECTION 1301.D. OFF-STREET PARKING AND OFF-STREET LOADING, GENERAL REQUIREMENTS, 1747 South Boston Avenue East.

**Presentation:**

**Josh Martin**, 2635 East 14<sup>th</sup> Place, proposed to redevelop the existing service station structure into an adult entertainment establishment. He stated that existing

adult entertainment establishments are located on Lots four and six on Block two also on Lots one and two on the south side of 18<sup>th</sup> Street. He noted BOA Case No. 19883 was approved sixty days ago for the same relief. He submitted three letters of support (Exhibit D-1). He stated the hardship as the size of the existing structure and the area has established itself already as an entertainment district.

**Comments and Questions:**

Mr. Dunham asked what type of adult entertainment. Mr. Martin replied this would be a neighborhood bar with no sexually oriented business. He indicated there might be some music outside at a low volume but nothing that would disturb the neighboring businesses. Mr. Dunham noted there was no relief requested from the parking requirement. Mr. Martin responded he was confident they would not need additional relief. Mr. White asked since the building overlaps all three lots if the relief was necessary. Mr. Boulden replied that technically the parking lot is on a different platted lot and relief would be required. Mr. Dunham confirmed the three lots were under the same ownership. Mr. Boulden stated there was no need for a tie agreement. Mr. Stevens asked about the underground storage tanks to which Mr. Martin informed them the tanks have been removed.

**Interested Parties:**

There were no interested parties present who wished to speak.

**Board Action:**

On **Motion** of **Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Stephens, Paddock "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Variance** of required 300 foot spacing from another Adult Entertainment Establishment, finding other such variances approved in the area, and other establishments where the 300' was not adhered to in this neighborhood; 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; **Special Exception** to permit required parking on a lot other than that containing the use, on the following described property:

LTS 4 - 6 LESS BEG SWC LT 6 TH E22 NW ALG CRV TO P T W L S22 POB  
BLK 1 STUTSMAN ADDN., City of Tulsa, Tulsa County, State of Oklahoma

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**Case No. 19916**

**Action Requested:**

Variance to reduce the off-street parking requirements from 117 spaces to 111 spaces to permit the enclosure of 400 square feet of outdoor dining space and deletion of two rear parking spaces. SECTION 1212. USE UNIT 12. EATING ESTABLISHMENTS, OTHER THAN DRIVE-INS, 1317 East 44<sup>th</sup> Place South.



**Case No. 19917**

**Action Requested:**

Special exception to allow off-street parking in an RM-2 zoned district SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS – USE UNIT 10, 1437 South Quaker Avenue East.

**Mr. Stevens out at 3:05 p.m.**

**Presentation:**

**Rick Stuber**, 1221 East 33<sup>rd</sup>, stated the request for an existing single-family dwelling with a garage in the rear. There are parking lots on the north, south and east of the subject property.

**Comments and Questions:**

Mr. White referred to the staff comments of the case report. He added that a new parking lot would be subject to landscape and setback requirements. He asked if the applicant would need additional relief. Mr. Beach replied that he did not have dimensions so he could not say if it would meet the setback, which he advised the applicant. Mr. Stuber responded there is an offer to purchase contingent on the parking being granted. He added that after the purchase they would prepare a detailed site plan and request any relief needed.

**Mr. Stevens returned at 3:07 p.m.**

Mr. Paddock asked if the application was for a business on Cherry Street. Mr. Stuber replied in the affirmative.

**Interested Parties:**

**Bruce Sturnett**, 1313 East 15<sup>th</sup> Street, wanted to know the details regarding the application. When Mr. White informed him, Mr. Sturnett stated he had no objection.

**Board Action:**

On **Motion** of **Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Stephens, Paddock "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Special exception** to allow off-street parking in an RM-2 zoned district, 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:

LT 16 BLK 7, BELLVIEW ADDN

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## **Case No. 19918**

### **Action Requested:**

Appeal from decision of Tulsa Preservation Commission denying Certificate of Appropriateness for the subject property, 2135 East 29<sup>th</sup> Street South.

### **Presentation:**

**Kevin Coutant**, 320 South Boston, Suite 500, represented the owner, Todd Phillips, regarding the Yorktown Historical District. A site plan and a packet of exhibits were submitted to the Board (Exhibits G-1 and G-2). The Tulsa Preservation Commission (TPC) denied a Certificate of Appropriateness. Mr. Phillips proposed to replace red cedar siding with a cementitious product called Hardi-Plank. The committee sent the application to the commission without a recommendation. The commission denied the application at a meeting to which Mr. Phillips did not receive notice. Mr. Coutant reviewed the purposes of the TPC and pointed out one of the main points is preserve the street view of the house. He suggested to the Board that this material does meet the requirements

Mr. Phillips listed the improvements he has made including: new privacy fence, gates, new garage and cobblestone patios, landscaping to be done at the end of the project and the proposed siding.

### **Comments and Questions:**

Mr. White asked about the new siding material. Mr. Coutant described it as having a cement base which is strong, wears well, and receives paint well. It is not subject to termite damage, blistering, or rotting. He pointed out that when the guidelines were written there was not the variety of good siding materials that are available now. Mr. Coutant informed the Board of the neighbors' support. Mr. Paddock asked if there were any minutes to the meetings regarding the application. Mr. Coutant asked for a copy of all the information available but there were no detailed minutes.

### **Interested Parties:**

**Mary Kollmorgen**, 2139 East 19<sup>th</sup> Street, stated she lives behind the subject property. She added though she does not know the owner, she has the good improvements he has made. They have been in keeping with the guidelines. She was in support and was aware there are other homes in the neighborhood with the same siding material.

**Michael Burks**, stated he is with the Tulsa Preservation Commission. He explained there was a regular scheduled meeting for August 12, 2004. The applicant's contractor attended that meeting. There was not a quorum and so they scheduled a special meeting, but because of the five-day turn around they did not have time to notify the applicant. By the guidelines, the existing wall materials should be retained through repair maintenance unless deteriorated beyond reasonable repair. The commission determined the wood siding had not deteriorated beyond reasonable repair, based on samples and photographs.



## Case No. 19920

### Action Requested:

Special Exception to permit off-street parking in an RM-2 district; Special Exception to waive the screening requirement to allow existing drive cut onto Victor; Special Exception to waive the screening requirement to allow access across the alley; Special Exception to waive the screening requirement along the alley. SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS; SECTION 1212.C.2. USE UNIT 12. EATING ESTABLISHMENTS, OTHER THAN DRIVE-INS, Use Conditions, located: 1708 East 1<sup>st</sup> Street South.

### Presentation:

**Ben Aguirre**, 1204 Southwest 129<sup>th</sup> Oklahoma City, Oklahoma, stated he represented the McDonald's Corporation. He submitted photographs (Exhibit H-1). The store was built in 1977. During the construction of the store a change order was issued and they received approval from the Board of Adjustment for remote parking. He pointed out the lot on a photograph for future parking needs. The structure was removed from that lot. They now propose to construct a parking lot there. They were given access across and alley and they asked for continued access to be allowed. They also asked that the existing drive cut onto Victor Street be allowed. He pointed out on the photographs where they request a waiver of the screening fence, the alley and drive cut. They plan to make improvements to the alley.

### Interested Parties:

**Maria Barnes**, representing Kendall-Whittier Neighborhood Association, expressed concern regarding the waiver of the screening fence. She mentioned the existing fence needs to be replaced. She thought the use of the remote lot for parking was a good use. She suggested there needs to be some landscaping. She has received numerous complaints about junk and debris in the alley.

### Applicant's Rebuttal:

Mr. Aguirre responded by identifying where they would build a retaining wall with a fence on top, provide an opening, and replace the existing fence. This store would also be remodeled for the new look.

### Board Action:

On **Motion of Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Stephens, Paddock "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE a Special Exception** to permit off-street parking in an RM-2 district; **Special Exception** to waive the screening requirement to allow existing drive cut onto Victor; **Special Exception** to waive the screening requirement to allow access across the alley; **Special Exception** to waive the screening requirement along the alley, 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:

LT 1 & E10 VAC ALLEY ADJ ON W BLK 9, LT 2 & E10 VAC ALLEY ADJ ON W BLK 9, LT 1 & W10 VAC ALLEY ADJ ON E BLK 1, GILLETTE-HALL ADDN

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**Case No. 19919**

**Action Requested:**

Variance to reduce minimum frontage along South Sheridan Road to 85 feet and along East 46th Street to 5 feet, 4411 South Sheridan Road.

**Mr. White abstained from Case. No. 19919.**

**Presentation:**

**Kevin Coutant**, 320 South Boston, Suite 500, stated he represented a client, Storage Station of Tulsa. He provided a site plan and a packet of exhibits (Exhibit G-1 and G-2). He believed a lumbar yard and construction operation was on the property previously. He described it to be a unique property with a large building on the southwest quadrant. There was a self-storage project built in the last five years on the north and east sides of the property. The area has transitioned to more retail. They need to straighten things out for the tenant/purchaser. The sewer line runs down the panhandle. This application would allow both the retail and mini-storage to have access to the sewer line. The property was platted for industrial development. They are not changing the use or function. The property is being renovated and improved. The applicant is open to a mutual access easement.

**Comments and Questions:**

Mr. Dunham asked about buildings owned by RSC, facing east and west. He suggested a mutual access easement is a good plan. The hardship is the existing condition, having come about by the development over time.

**Interested Parties:**

There were no interested parties present who wished to speak.

**Board Action:**

On **Motion** of **Paddock**, the Board voted 4-0-1 (Dunham, Turnbo, Stephens, Paddock "aye"; no "nays"; White "abstained"; no "absences") to **APPROVE** a **Variance** to reduce minimum frontage along South Sheridan Road to 85 feet and along East 46th Street to 5 feet, per plan, with condition for a perpetual mutual access easement, finding it is an existing condition from the development of the property over time, on the following described property:

N309.42 LTS 1 THRU 5 & W20 N309.42 LT 6 & E30 S91. 08 N309.42 LT 6 & W32.10 S91.08 N309.42 LT 7 & W12 E17.9 S362.30 LT 7 BLK 1, E30 N218.34 LT 6 & N218.34 LTS 7 THRU 9 BLK 1, E5.90 S362.30 LT 7 & S362.30 LTS 8 & 9 BLK 1, LT 47 LESS BEG NEC LT 47 TH CRV RT 419.77 W499.88 S40 E500.10

