

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 899
Tuesday, November 9, 2004, 1:00 p.m.
Francis F. Campbell City Council Room
Plaza Level of City Hall
Tulsa Civic Center

**MEMBERS
PRESENT**

Dunham, Vice Chair
Paddock
Stephens
Turnbo
White, Chair

**MEMBERS
ABSENT**

**STAFF
PRESENT**

Alberty
Butler

**OTHERS
PRESENT**

Boulden, Legal

The notice and agenda of said meeting was posted in the City Clerk's office, City Hall, on Thursday, November 4, 2004, at 10:55 a.m., as well as at the Office of INCOG, 201 W. 5th St., Suite 600.

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

Mr. Wayne Alberty read the rules and procedures for the Board of Adjustment Public Hearing.

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 October 26, 2004 (No. 898).

UNFINISHED BUSINESS

Case No. 19925

Action Requested:

Special exception to permit a 70 ft telecommunications tower to be constructed less the allowable 110% of the height of the tower to 13 ft from an O zoned district. SECTION 1204.C.3.g(1) USE UNIT 4. PUBLIC PROTECTION AND UTILITY FACILITIES; Use Conditions, located: 5320 South Harvard Avenue East.

Presentation:

Kevin Coutant, 320 South Boston, Suite 500, stated the request for a special exception and submitted a book of exhibits including photographs and a site plan (Exhibit A-1). He described the tower, property and surrounding properties as required to comply with the zoning code. It would be a 70 ft. monopole telecommunications tower in a CS district. There would be no lights on the tower. The tower would be located on the southwest corner of the Chimi's restaurant property. The setback requirements do not involve the OL property to the north. There is CS zoning to the east of the property and OL to the south and west. There is a drainage ditch and park to the southwest and west. There is a church to the south. The proximity to residential district and structures is approximately 300 ft. There are no existing towers in the vicinity. The topography is flat with substantial tree coverage to the north and minimal to the south and west. There would be three panel antennas near the top but no large structure at the top. It would be constructed to allow collocation of two similar facilities. The equipment building would be 12 ft. by 20 ft. The ingress and egress would be from existing driving lanes from South Harvard. The tower is needed to provide coverage in this area of town. The tract size is approximately 795 sq. ft. on a 26,000 ft. parent tract. Landscaping would be in compliance with the zoning code. Mr. Coutant stated the applicant would construct an eight foot, wood screening fence around the site. The dumpster would be enclosed in the wood screening fence also. He added that they would put the same fencing along the north property line, as agreed with the property owners.

Comments and Questions:

Mr. White asked if all of the screening fences would be eight feet in height. Mr. Coutant replied that they would be. He submitted those conditions as part of the site plan (see Exhibit A-1). Mr. Boulden asked if an effort was made to collocate. Mr. Coutant replied that the closest tower at 51st to the west of Harvard, and owned by Hemphill Corporation. It is too close to another U.S. Cellular tower and they would interfere with each other. The next one is at 61st and Harvard and did not appear to work either. The site of this application is the best location found. Mr. Paddock asked if the tower could be located on a different portion of this site. Mr. Coutant replied that theoretically it could have been moved closer to Harvard to achieve the 110% setback without the special exception. They decided that moving it closer to Harvard was not the desirable thing to do. It would have involved complexities of parking changes as the restaurant parking lot is very small and compact. Mr. Paddock asked if they considered the Albertson's area. Mr. Coutant responded there were inquiries made but that would be moving it in the wrong direction.

Interested Parties:

Steve Schuller, 100 West 5th Street, Suite 500, stated he represented several interested parties in opposition. Some of the residents of Harvard Park Village, owners of the Kirkpatrick Orthodontist Clinic, and other residents of the area were present today. They do not favor this cellular tower at this site and asked for a

denial. He pointed out the zoning code states a goal to protect the residential neighborhoods from potential adverse impact of these towers. The code also encourages a minimal number of towers and collocation. His clients questioned the applicant's commitment to collocation because of a history of rejecting collocation. He cited two such cases. A tower located one and one-half miles from this location was completed in January 2001, which the applicant refused to collocate and built their own tower less than 150 yards away two months later. He stated that at 11th and Memorial a tower was completed in November 2000, but the applicant built their own tower less than 200 yards just six months later. Mr. Schuller stated that he used his own cellular phone inside his car, in the area in question. He added that he had no problems with his phone in the 61st and Harvard area. He urged the Board if they approved the case, to place conditions for screening for the sake of the orthodontist clinic, and as a safety measure to discourage children from trying to climb the tower. His clients suggested a tilt-up concrete fence would be more attractive, durable, and would require less maintenance than a wood fence. A packet of information (Exhibit A-2) was provided.

Ms. Turnbo informed Mr. Schuller that he must prove harm by a cellular tower. She added they would have to provide an expert witness to prove any financial harm to the value of nearby property.

Mr. Alberty reminded the Board that the screening requirement does not apply in this case, only when the subject property abuts an R district.

Frank Wolf, 2946 East 56th Court, stated concern for the safety of the children in the area. He felt the tower would be a temptation to climb.

Ms. Turnbo asked Mr. Wolf if he could cite such a case. Mr. Wolf could not.

Gary Connelly, 5206 South Harvard, #114, questioned how the 51st and Harvard tower could interfere with signals. He suggested that the tower at Albertson's is right in line with the area they want to cover and only two out of six collocation spots are in use on that tower.

Rick Hunt, 3515 Dawson Road, with Hemphill Corporation, stated they own the tower at 51st and Harvard. They had no objections to the application. He added that they wanted to be sure their tower was considered, but if it doesn't work they had no argument. Mr. White asked the height of it, which Mr. Hunt replied it is 190'. Mr. White also asked for the levels available for collocation. Mr. Hunt responded that the top and the level at 150' are in use, leaving the other spaces are available. Mr. Stephens asked if they were contacted by U.S. Cellular. Mr. Hunt stated they were not, but if their engineer says it won't work they would not be expected to contact Hemphill Corporation.

Applicant's Rebuttal:

Mr. Coutant responded that U.S. Cellular is not reluctant to collocate. They recently built out a new facility in Oklahoma City. Sixty percent of those tower sites are collocation sites. In the St. Louis area they obtained new licenses and seventy percent of those are collocation sites. This is just one of those cases where a collocation will not work. The expert on location sites wrote that it is the best design to maintain a one mile or more separation between each cell site to prevent signal degradation, interference and dropped calls. The Hemphill tower at 51st and Harvard was considered but found not to be a good location. The Albertson location was not considered a good candidate. The reason they plan for a screening fence with three strands of barbed wire at the top for safety issues.

Mr. White asked if the 57' and 47' collocation levels were viable. Mr. Coutant replied that for other telecommunication type uses they work better than for cellular use.

Board Action:

On **Motion of Dunham**, the Board voted 5-0-0 (White, Dunham, Turnbo, Perkins, Stephens "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a **Special exception** to permit a 70 ft. telecommunications tower to be constructed less the allowable 110% of the height of the tower to 13 ft. from an O zoned district, per plan, with conditions for screening: an eight foot, wood screening fence around entire tower site with three strands of barbed wire at the top; and eight foot, wood screening fence around existing trash dumpster; and an eight foot, wood screening fence along the north property line of 5320 South Harvard Avenue from northwest corner running east for approximately 120 ft.; no lights on tower; to comply with all of the landscaping requirements in the zoning code; and per the cellular tower guidelines required for cellular towers: the height of proposed tower is 70 ft.; the proximity to residential structures is approximately 300 ft., to a residential district is approximately 300 ft., and to existing towers, finding there are none in the vicinity; finding the nature of the surrounding uses are: office to the north, commercial to the east, a church to the south and an open park to the west; the surrounding topography is flat; the tree coverage is substantial to the north, and minimal to the south and west; the design is a monopole tower; the antennas initially will be three (3) panel antennas mounted near top of tower. The tower is engineered for the collocation of two (2) similar antenna facilities at 57 ft. and 47 ft.; the architectural design of the initial building is approximately 12 ft. by 20 ft.; the proposed ingress and egress is Across existing drive lanes in easterly direction to South Harvard Avenue; the tower is necessary to provide coverage in this area of town so as to avoid unavailability of service; the tract size is approximately 795 sq. ft. on the "parent" tract of approximately 26,000 sq. ft., which is for an existing restaurant; landscaping will be as required by the zoning code, on the following described property:

BG 140S NEC SE NE TH W260 S126 E150 NE112.87 N101. 69 TO BG LESS
E50 FOR ST SEC 32 19 13 .60AC

Interested Parties:

Letters of opposition were provided to the Board (Exhibit B-1)

Tracy Horner-Shears, 1522 South Carson Avenue, stated she represented Riverview Neighborhood Association. She submitted a packet of information including photographs of the subject property (Exhibit B-2 and B-3). She stated that according to the applicant's plans he failed to apply for side yard setbacks from ten feet to five feet or to exceed 40% of the floor space for accessory use. She listed items for which the applicant has failed to obtain variances for the existing use, such as, a paved off-street parking lot on two lots; setbacks; and landscaping. She indicated the parking garage would be used for another business, an automobile rental that has been operated since the parking lot was surfaced. They have contacted Neighborhood Inspections regarding this business. She stated the neighbors have seen cars serviced on the lot; found advertising with signs on the lot and in SMARTpages.com. People have come through the neighborhood asking the neighbors for the location of this business. Mrs. Shears stated they would ask for a denial of the application for a parking garage.

Tia Cardoso, 1311 South Frisco Avenue, stated she is the current Riverview Neighborhood Association President. She has not been contacted by Mr. Hjelm. They encourage business owners to contact them to discuss their plans. They are seeking historic designation with the support of Urban Development. She stated the neighborhood is a corridor to the Vision 2025.

Mr. Dunham asked if they consider there is anything to gain by meeting with the applicant if given more time. Ms. Cardoso thought it would be helpful. She was interested in how the garage is to be used.

Mr. Alberty suggested that the applicant submit his plans to the permit office and find out all of the codes that would be required.

Lucky Lamons, Oklahoma State Representative, 205 West 17th Street, stated he lives in the area and he is a Board member of the Riverview Homeowners' Association. He is familiar with the work that Mr. Hjelm has accomplished to improve the corner of 15th and Denver. He asked the Board to give the applicant and neighborhood time to discuss the application in more detail to the benefit of all.

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. 19929 to the meeting of December 14, 2004, (and directed the applicant to submit an application to plans review, for further guidance on code requirements), regarding the following described property:

LT 9 AND LT 10, BLK 3, STONEBRAKER HGTS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 19930

Action Requested:

Special Exception to permit required parking for a nightclub to be on a lot other than the lot containing the use -- Section 1303.D -- Use Unit 12a, 5925 East 11th Street South.

Presentation:

Lou Reynolds, 2727 East 21st Street, stated that he has discussed this case with Pat Boulden and Kurt Ackermann and found this use complies with the zoning code. He added there are no issues to present. The interested party was satisfied with the answers to his questions.

Mr. Paddock was out at 2:47 p.m. and returned at 2:49 p.m.

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 **Special Exception** to permit required parking for a nightclub to be on a lot other than the lot containing the use, subject to a tie agreement; and applies only the parking lot on the north side of 11th Street, regarding the following described property:

PRT E/2 LT 2 & PRT LT 1 BEG 15N & 125W SECR LT 1 TH W100.6 N191.58 SE99.40 S183.2 POB BLK 64, GLENHAVEN AMD AND S200 OF THE W1/2 OF LT 2 BLK 64, N330 NE NW NE LESS E150 & LESS TR BEG 636.57W & 330S NEC NW NE TH N150 E317.65 S150 W317.65 POB & LESS N24.75 THEREOF FOR ST SEC 10 19 13 2.48ACS, City of Tulsa, Tulsa County, State of Oklahoma

NEW APPLICATIONS

Case No. 19936

Action Requested:

Variance of required front yard from 35 ft to 15 ft., located: 2929 South Utica Avenue East.

Presentation:

Frank Cooper, 2929 South Utica, stated he owns his home. He hired Bob Briley as a contractor for this project. He proposed to remodel the home and add a new garage to replace the old one which has been demolished. They need the garage

