

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 936
Tuesday, June 27, 2006, 1:00 p.m.
Francis F. Campbell City Council Room
Plaza Level of City Hall
Tulsa Civic Center

**MEMBERS
PRESENT**

Dunham
Henke, Chair
Stead, Vice-Chair
Stephens
Tidwell, Secretary

**MEMBERS
ABSENT**

**STAFF
PRESENT**

Alberty
Butler
Cuthbertson

**OTHERS
PRESENT**

Ackermann, Legal

The notice and agenda of said meeting was posted in the City Clerk's office, City Hall, on Friday, June 23, 2006, at 10:34 p.m., as well as at the Office of INCOG, 201 W. 5th St., Suite 600.

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

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

MINUTES

On **MOTION** of **Tidwell**, the Board voted 5-0-0 (Dunham, Henke, Stead, Tidwell, Stephens "aye"; no "nays"; no "abstentions"; "absent") to **APPROVE** the Minutes of June 13, 2006 (No. 935).

REQUEST TO CONTINUE AND CASES TO WITHDRAW

Case No. 20289

Action Requested:

Special Exception to modify the screening requirement to permit an access point onto S. Lewis Pl., Section 212 , located: 1112 South Lewis Place.

Presentation:

Mr. Cuthbertson informed the Board that the applicant discovered he did not need the special exception and he withdrew the application.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

There was no action required on the following described property:

Lot 3, Block 4, BOSWELL'S ADDN, City of Tulsa, Tulsa County, State of Oklahoma

* * * * *

Case No. 20296

Action Requested:

Variance of the 100 ft. separation between ground signs in a PUD (Section 1103.B.2.b.3), located: 7711 East 81st Street South.

Presentation:

Mr. Henke noted the applicant requested a continuance to July 11, 2006.

Board Action:

On **Motion** of **Stephens**, the Board voted 5-0-0 (Dunham, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **CONTINUE** Case No. 20296 to the meeting of July 11, 2006, on the following described property:

Lot 2, Block 1, WOOD NICHE II RESUB L2&3 & RES A&B B1 WOOD NICHE, City of Tulsa, Tulsa County, State of Oklahoma

* * * * *

UNFINISHED BUSINESS

Case No. 20246

Action Requested:

Variance to reduce the required 75' setback in an IL district from an R District, located: 5705 South 107th Avenue East.

Presentation:

The applicant was not present and the case was moved down on the agenda.

LT 9 LESS S80 W180 & LESS BEG NEC TH S160.24 W317.23 N67.80 NE53.08
N77.62 NL E266.93 POB BLK 1, GOLDEN VALLEY, City of Tulsa, Tulsa County,
State of Oklahoma

NEW APPLICATIONS

Case No. 20290

Action Requested:

Verification of 300 ft spacing from another family daycare home (Section 402.B.5.g), located: 1532 North Greenwood Avenue.

Presentation:

Montenette Spencer, 1532 North Greenwood Avenue, provided verification of spacing per the agenda.

Interested Parties:

William Morrison, 548 East Pine Place, referred to the deed of dedication for Heritage Hills III, and he was informed the Board does not take action of private covenants. He had questions about other day care facilities in the neighborhood.

Comments and Questions:

Mr. Cuthbertson stated there is a difference in a day care center and a day care home. He added that this case is regarding any other day care home within 300 ft. on the same street, which would be Pine and Greenwood Avenue.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (Dunham, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** Verification of 300 ft spacing from another family daycare home (Section 402.B.5.g), on the following described property:

Lot 6, Block 2, HERITAGE HILLS III ADD RSB PT INVESTORS & HARDING & DUNBAR, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20291

Action Requested:

Special Exception to permit a Bed and Breakfast (Use Unit 2) in an RS-3 district (Section 401), located: 1445 South Oswego Avenue.

Presentation:

Tricia Kirkstra, stated she is Jim Duff's wife, and they have lived in and around this neighborhood for twenty years. They were seeing a decline in the

neighborhood and thought it would be a way to help keep up the integrity of the neighborhood. A site plan and photographs were provided (Exhibit B-1 and B-3). They have made improvements and discussed their plans with the neighbors. Ms. Kirkstra mentioned there are two parking spaces in the garage and two in the driveway. They will be there to host the guests and maintain the property.

Comments and Questions:

In response to questions from the Board, Ms. Kirkstra stated they will not have a sign and host only one group at a time in two bedrooms. They will be living there in the third bedroom when there are guests. They would limit the vehicles to cars and no trailers or RV's.

Interested Parties:

Michele Pagliaro, 3923 East 11th Place, stated his opposition to the application. He stated they were promised the fair grounds would provide the needs of the visitors, including a motel on the property. He complained of traffic congestion in the area. He felt this project would lead to other such activity.

Darla Holmes, 1432 South Oswego, submitted a petition of opposition from the neighborhood (Exhibit B-3). She stated she lives within 300' of the property and they never contacted her or let her know their plans. She was concerned about a proposed addition to the paved driveway.

Duane Cuthbertson clarified the zoning code, Chapter 13, Section 1303, limits the amount of paving in the front yard to 34% in an RS-3 district.

Melissa Shavone, 1432 South Marion Avenue, stated she has a small child. She expressed concern for having transient visitors in the neighborhood.

Councilor Maria Barnes, City of Tulsa, stated that they should not put more burden on Neighborhood Inspections to check parking. She also mentioned additional paving for parking could be a problem and set a precedent. Mr. Stephens noted that they would only have 10% paved parking area.

Applicant's Rebuttal:

James Duff, stated he is a native Tulsan. He informed the Board there is adequate parking at the fairgrounds. He would prefer their guests park at the fairgrounds but they would allow one car to park at the house.

Ms. Stead expressed concern for setting a precedent in the neighborhood and so many of the neighbors in opposition. Mr. Stephens noted the owners planned to be present when there are guests and felt it would be a good use. Mr. Dunham commented on the presence of two bed and breakfasts in similar areas on the same agenda. He stated that with the conditions they discussed it would not be injurious to the neighborhood. He thought the opposition was mostly based on

misinformation. Ms. Stead commented that it appeared there was no effort made to meet with the neighborhood association. Mr. Tidwell would expect conditions for the owners to reside there when guests are staying there and that no horse trailers be parked there if approved. Mr. Henke stated they can limit the parking. He added the Board will be making decisions on a case by case basis not precedent. He stated that with the conditions he would be in favor of the application. He agreed with Mr. Dunham that there is misinformation in the petition, as it is a special exception not a variance or re-zoning.

Board Action:

On **Motion** of **Stephens**, the Board voted 4-1-0 (Dunham, Stephens, Henke, Tidwell "aye"; Stead "nay"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit a Bed and Breakfast (Use Unit 2) in an RS-3 district (Section 401), with conditions: only two rooms available to lease; no trailers or RV's on the property or street in association with this bed and breakfast at any time; no sign; owners on the property whenever they are leasing rooms, 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,

Ms. Stead asked for **discussion on the motion**. She believed someone discussed the subject of no special events on the premises with the owners.

Mr. Stephens amended his motion to include a condition that no special events be permitted, such as weddings, receptions, anniversaries, private dinner parties, business seminars on the premises,

Mr. Dunham asked for the motion to be amended regarding the parking.

Mr. Henke asked for a **motion to reconsider**.

On **Motion** of **Stephens**, the Board voted 4-1-0 (Dunham, Stephens, Henke, Tidwell "aye"; Stead "nay"; no "abstentions"; no "absences") and seconded by Tidwell, to **Reconsider the motion**.

Mr. Stephens **amended his motion** to include: per the parking layout submitted by the applicant with the site plan; and that it be constructed prior to leasing.

Mr. Ackermann suggested the full motion should be restated for accuracy of the record.

On **MOTION** of **Stephens**, the Board voted 4-1-0 (Dunham, Henke, Tidwell, Stephens "aye"; Stead "nay"; no "abstentions"; "absent") to **APPROVE** a Special Exception to permit a Bed and Breakfast (Use Unit 2) in an RS-3 district (Section 401), with conditions: a maximum two rooms for rent; no trailers or RV's allowed on the property; no sign; the parking plan in the site plan to be constructed before leasing; the property owners are to be present at all times when the property is

being leased; no special events such as weddings, receptions, anniversaries, private dinners, or business seminars on the following described property:

Lot 1, Block 10, SUMMIT HGTS ADDN, City of Tulsa, Tulsa County, State of Oklahoma

UNFINISHED BUSINESS

Case No. 20246

Action Requested:

Variance to reduce the required 75' setback in an IL district from an R District, located: 5705 South 107th Avenue East.

Presentation:

Brad McMains, 10051 South Yale, Suite 200, stated he went to the planning commission for re-zoning from RS-3 to IL. The property to the east is a stormwater detention park and is zoned residential and owned by the City of Tulsa. His client proposed to build two structures on the subject property that has a 75' setback. A site plan was provided (Exhibit A-1).

Comments and Questions:

Ms. Stead asked if any of the Board members disapproved of this case. The members were not opposed. She informed the applicant they were familiar with the property.

Board Actions:

On **MOTION** of **Stead**, the Board voted 5-0-0 (Dunham, Henke, Stephens, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Variance to reduce the required 75' setback in an IL district from an R District, finding the location of the detention pond, which is peculiar to this land and structure, finding the literal enforcement of the terms of the code would result in an unnecessary hardship, and that such extraordinary exceptional conditions or circumstances do not apply generally to other properties in the same use district; 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, per plan, on the following described property:

LT 9 LESS S80 W180 & LESS BEG NEC TH S160.24 W317.23 N67.80 NE53.08 N77.62 NL E266.93 POB BLK 1, GOLDEN VALLEY, City of Tulsa, Tulsa County, State of Oklahoma

NEW APPLICATIONS

Case No. 20292

Action Requested:

Variance of the minimum lot width in an RS-1 district, from 100 ft. to 90 ft. (Section 403.A), located: 2440 East 45th Street South.

Mr. Henke recused himself and left the room at 1:57 p.m.

Presentation:

Roy Johnsen, 201 West 5th Street, Suite 501, represented Barry and Brenda Epperson, the owners of the property. He recognized the interested parties: Mr. Rooney, in support; Mr. Libetty and his wife, Judge Claire Eagen, in support and also interested in purchasing the north lot if the variance is granted. Mrs. Epperson contacted all of the property owners within 300' of the subject property except for one and explained the proposed plans and found them in support. He believed the original, existing house was built in the early 1920's. They have tried to maintain the character of the house as a quaint farm house. Mr. Epperson obtained the deed from his parents. The property is 160' east and west by 195' north and south in total. He proposed to divide the tract into two parcels, the north lot would have 90' of frontage on Atlanta Avenue and the existing house and parcel would have 105' of frontage on Atlanta Avenue. He explained that considering the location of the house and the existing structures and setbacks, the only opportunity for expansion is to the north. He pointed out the size of the parcel, and the minimum size in an R-1 district is 13,000 sq. ft. If you divide the parcels as proposed, the northern parcel would be 14,400 sq. ft. and the southern parcel would be 16,800 sq. ft., which are significantly larger in size than the code permits. He pointed out that they could technically meet the code but it would be a very awkward structure. He stated that the best orientation of the property would be to Atlanta to fit in the neighborhood. He noted the considerations: are the purposes of the ordinance being met; good spacing, light and air; comparable land use; reasonable setbacks; and consistency with other things in the neighborhood. He stated all of those factors are applicable here and they support a variance. Mr. Johnsen stated that the zoning code before the TMAPC was formed had a 7,000 sq. ft. minimum for lot size throughout the city and no frontage requirement. The TMAPC code that began in 1958 required 100' frontage.

Interested Parties:

John Rooney, 4539 South Atlanta Avenue, stated he spoke with Mr. Epperson and he explained this orientation of the property to him. He stated he was in favor of the application.

Bill Asbill, 4509 South Atlanta Avenue, considered this a nice improvement to the neighborhood.

Board Action:

On **Motion of Dunham**, the Board voted 4-0-1 (Dunham, Stephens, Stead, Tidwell "aye"; no "nays"; Henke "abstained"; no "absences") to **APPROVE** a Variance of the minimum lot width in an RS-1 district, from 100 ft. to 90 ft. (Section 403.A), as shown on the plan, finding the hardship to be that the property was platted years before the code came into being; and they are consistent with many lots in the area and are well over the minimum, finding that by reason of extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted 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:

W 160 ft. of the E. 165 ft. of the N. 195 ft. of Lot 6, BARROW'S ACRES, City of Tulsa, Tulsa County, State of Oklahoma

Mr. Henke returned at 2:15 p.m and Mr. Dunham out at 2:15 p.m.

Case No. 20293

Action Requested:

A Special Exception to permit a Bed and Breakfast (Use Unit 2) in an RS-3 district (Section 401); a Variance of the requirement that no required parking space may be accessed through another (Section 1301.F); and a Variance of the parking area dimensions for the width of a parking space from 8' 6" to 8' and for the width of a drive aisle from 24' to 13' (Section 1303.A), located: 1521 East 21st Street.

Presentation:

Mark Mobbs, 1521 East 21st Street, stated they fully understand the conditions in Section 1202.c of a bed and breakfast and will abide by them. The applicant submitted exhibits to the Board (Exhibit C-1). They propose to rent out three rooms around a common room upstairs. The owners will reside downstairs and it is their primary residence. They made a concerted effort to contact all of the neighbors door to door and sent a letter to all interested parties within 300'.

Mr. Dunham returned at 2:18 p.m.

They also passed out a second notice to the Swan Lake neighbors. They did not receive any response from neighbors that were not at home when they went door to door. He referred to a letter from Chip Adkins to the Board in support of the application (Exhibit C-2).

Comments and Questions:

Ms. Stead responded to the applicant that Mr. Adkins letter requested the action be limited to the applicant only but the Board could not do that. Mr. Mobbs also wanted to point out there are two retaining walls that have existed for eighty-plus years and they were concerned that it would be detrimental to the neighbors to the east and to themselves to remove them. It would also take away from the character of the neighborhood. Ms. Stead asked if there was room to turn around at the back of the drive or do they have to back out onto the street. Mr. Mobbs replied if there is just one vehicle you could probably turn around but they routinely back out of the driveway. He added they have clear access to get out of the driveway. Ms. Stead referred to the staff comments that the two square foot sign might be subject to the Tulsa Preservation approval.

Interested Parties:

Leo Haas, 1516 East 21st Street, stated they live across the street from the subject property. He expressed concern for creeping commercialism into the neighborhood and the steep driveway. He indicated it could become like Cherry Street. He did not want to see an increase of parking on the sidewalks and or the parkway. The hill on 21st Street is dangerous because people slow down to turn into the park. He added that if it were approved he would ask that no signage be allowed.

Susan Cook, 2121 Terwilliger Boulevard, agreed with what Mr. Haas said. She expressed concern that more people would open their homes for the same. She stated that her neighborhood association did not contact her about this application and she is opposed to it. She had not spoken with anyone in support of it.

Applicant's Rebuttal:

Janet Mobbs, 1521 East 21st Street, stated she is Mark Mobb's wife. She stated their mission is to showcase mid-town Tulsa's charm. It is not a commercial business and there is a misunderstanding among the neighbors. Ms. Stead was concerned about the narrow drive and difficulty pulling onto the street.

Mr. Mobbs, reminded the Board of the various types of dwellings, including apartment buildings, duplexes, and garage apartments. He considered this to be the same as what the neighborhood is about.

Board Action:

On **Motion of Stead**, the Board voted 5-0-0 (Dunham, Henke Stephens, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **DENY** a Special Exception to permit a Bed and Breakfast (Use Unit 2) in an RS-3 district (Section 401); a Variance of the requirement that no required parking space may be accessed through another (Section 1301.F); and a Variance of the parking area dimensions for the width of a parking space from 8' 6" to 8' and for the width of a drive aisle from 24' to 13' (Section 1303.A), finding lack of hardship and traffic concerns, on the following described property:

W. 64 E. 191.13 OF LT 4 BLK 28, PARK PLACE, City of Tulsa, Tulsa County,
State of Oklahoma

* * * * *

Case No. 20294

Action Requested:

Variance of the setback for a garage from a side street to permit an extension (Section 403.A.5); and a Variance of the structure setback from the centerline of an abutting street to permit an existing pool and a new fence in the right-of-way (Section 215), located: 227 East 25th Street South.

Presentation:

Chris Fling, 227 East 25th Street South, proposed to replace an existing six-foot fence along Norfolk Avenue. The pool was on the property when he purchased it and to move the fence to conform with the code would be inside the actual swimming pool area. The detached garage was built in 1927 and in need of repair. The carport is what makes it a two-car structure. They want to extend it about twelve feet to make it a two-car garage. A site plan and a petition of support were provided (Exhibits D-1 and D-2).

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion of Stead**, the Board voted 5-0-0 (Dunham, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Variance of the setback for a garage from a side street to permit an extension (Section 403.A.5); and a Variance of the structure setback from the centerline of an abutting street to permit an existing pool and a new fence in the right-of-way (Section 215), finding the house and garage built around 1927 creates a hardship for the current zoning code; finding that by reason of extraordinary or exceptional conditions due to that structure and building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan, subject to the applicant furnishing evidence to INCOG staff that a license agreement from Public Works has been granted, per plan, on the following described property:

LT 13 BLK 5, SUNSET TERRACE, City of Tulsa, Tulsa County, State Oklahoma

* * * * *

Case No. 20295

Action Requested:

Variance of the 20 ft. setback for an accessory building from an abutting street (Section 210.B.5.b), located: 1601 East 36th Court South.

Presentation:

Brandon Jackson, stated he is the contractor for the owners, Dr. and Mrs. McCormick. The property abuts a street on three sides and the north side has been determined to be the front yard. The hardship is the positioning of the house on the property, the existing trees and a 45 ft. setback, which is excessive for the neighborhood. A site plan was provided (Exhibit E-1).

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion of Dunham**, the Board voted 5-0-0 (Dunham, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Variance of the 20 ft. setback for an accessory building from an abutting street (Section 210.B.5.b), per plan, finding the hardship to be the large trees, fronting on three side to the street, configuration of the lot; finding that by reason of extraordinary or exceptional conditions or circumstances which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted 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:

LOT 1 & 6 BLK 7, WOODLAND HGTS, City of Tulsa, Tulsa County, State of Oklahoma

* * * * *

Case No. 20313

Action Requested:

Site plan review for an approved duplex use in an RS-3 district, located: 3736 South Norfolk Avenue East.

Presentation:

Catherine Hall, 4156 South St. Louis Avenue, submitted her site plan for review, and elevation (Exhibit F-1). A site map, photographs and a floor plan were also provided (Exhibits F-2, F-3 and F-4).

Comments and Questions:

Ms. Stead noted the plans were considerably different than previously presented. She commented that on three different occasions the applicants stated they wanted to present a cottage-type front to appear like a single-family house. She asked if this plan had two garages on the front. She remembered that before they proposed a story and one-half and this one is obviously a two-story house. Ms. Stead stated the site plan submitted is inadequate and totally different than the previous presentation that was approved. She did not consider the applicants' exhibit to be a detailed site plan. Ms. Wall responded that after talking with a neighbor that owns duplexes in the neighborhood, they felt this type of plan would encourage off-street parking.

Interested Parties:

Guy DeVerges, 1343 East 35th Place, complained of a history of code violations on the property. Mr. Henke reminded him this case is strictly regarding the site plan review and asked if they have any opposition to the plan, to which Mr. DeVerges replied that they do.

Mike James, 1016 East 37th Place, stated that the lot is not wide enough for this site plan.

Daniel Kitchens, 1041 East 37th Place, stated this plan is not compatible with the neighborhood. He expected the parking would still be a problem. He informed the Board that the applicant did not contact the neighborhood as the Board instructed.

Sally McGrew, 1101 East 38th Street, was concerned that the plan appears too large for the lot. She reminded the Board that the street is not curbed, as people tend to park on her property where it is not curbed. She stated the parking needs to be in the rear of the property.

Bruce Huckett, 1044 East 37th Place, indicated if the parking is in the rear then no one would use it. He questioned if the occupants have two cars where would guests park.

June Metts, 1032 East 37th Place, stated her agreement with the previous interested parties.

Applicant's Rebuttal:

Ms. Wall stated they originally wanted the structure to appear as a single-family dwelling. They changed plans to solve potential parking issues. She responded to the Board that she did not know how much more detailed to make their plan for review.

Comments and Questions:

Mr. Dunham asked staff to describe a detailed site plan. Mr. Cuthbertson stated the degree of detail is determined by the sensitivity of a case. The Board needs

enough detail to be comfortable to approve the plan. The amount of detail is defined by the Board for each case. Typically plans show the dimensions of the property with setbacks and could include sidewalks, location of trees, and other detail. Elevations may also be necessary.

Board Action:

On **Motion** of **Dunham**, the Board voted 4-1-0 (Dunham, Henke, Stead, Tidwell "aye"; Stephens "nay"; no "abstentions"; no "absences") to **DENY** a site plan for an approved duplex use in an RS-3 district, finding lack of detail to the plan and the Board is not inclined to approve of two front-loading garages, on the following described property:

N/2 EACH LTS 17 & 18 BLK 2, RIVERLAWN ADDN, City of Tulsa, Tulsa County, State of Oklahoma

There being no further business, the meeting was adjourned at 3:21p.m.

Date approved: 7/11/06

Frank X. McSwain
Chair

