

CITY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 1002
Tuesday, May 26, 2009, 1:00 p.m.
Tulsa City Council Chambers
One Technology Chamber
175 East 2nd Street

MEMBERS

PRESENT

Henke, Chair
Stead, Vice Chair
Stephens
Tidwell, Secretary
White

MEMBERS

ABSENT

STAFF

PRESENT

Alberty
Cuthbertson
Butler

OTHERS

PRESENT

Boulden, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Wednesday, May 20, 2009, at 4:32 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 1:02 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 (White, Henke, Stead, Tidwell, Stephens "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the Minutes of May 12, 2009 (No. 1001)

REQUEST TO CONTINUE AND CASES TO WITHDRAW

Case No. 20914

Action Requested:

Special Exception to permit a mini-storage facility (Use Unit 16) in the CS district (Section 701); and a Special Exception to remove the screening requirement along Darlington Avenue (Section 212.C), located: 5303 East Admiral Boulevard.

Comments and Questions:

Mr. Cuthbertson informed the Board of the timely request for a continuance of Case 20914 to June 9, 2009. The applicant needs an additional element of relief that requires notice. The notice has been distributed to include every element of relief for presentation at the same time.

Board Action:

On **Motion of White**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **CONTINUE** Case No. 20914 to the meeting on June 9, 2009, on the following described property:

LOT 7 Thru LOT 9, BLK 32, WHITE CITY ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20915

Action Requested:

Special Exception to permit a 196 ft. communications tower (Use Unit 4) in the RS-2 district (Section 401); and a Special Exception to reduce the setback to 16 ft. for a communications tower from an adjoining lot line of a residentially zoned lot to the west (Manion Park) (Section 1204.C.3.g.1); to permit a communications tower on the west side of Nimitz Middle School, located: 3111 East 56th Street.

Comments and Questions:

Mr. Henke noted receipt of a letter by mail and a request (Exhibit B-1) from Mayor Kathy Taylor for a continuance of this application. He also recognized receipt of a letter from Mr. Johnsen opposing a continuance.

Interested Parties:

Reuben Davis, 2913 East 56th Place, Tulsa, Oklahoma, 74105, stated he is the Vice President of South Creek Homeowners' Association. The reason for the request for continuance is opposition to this site. They feel there are commercial sites that would be better for the tower. They would like to see the radius for RF coverage. He stated they are prepared to suggest other specific sites, where the property owners were open to a tower. They also consider the tower to be an eyesore that would cause depreciation of their property values. Ms. Stead asked if they have been contacted by the applicant. He replied they were contacted about three weeks ago, but they have not had meaningful communication with the applicant as of yet. A petition of opposition was submitted (Exhibit B-2).

Presentation:

Mr. Johnsen, attorney representing Cricket Communications, Inc. stated his client filed a response to the request for continuance. They have an urgent time deadline. The Sprint and Cricket companies both need to replace a tower that will

be acquired by ODOT as a part of the widening of Interstate-44. They received notice of this action in January, giving Cricket until September 20, 2009 to remove the existing tower, and locate a site. The tower they propose would also accommodate Sprint. He stated that a site farther east would not work for the coverage area. The engineer considered one of the suggested sites of the homeowner association and found it was not a viable site. Mr. Johnsen stated he met with the association's attorney, Bill Thomas, early in the process and about three weeks ago he was advised they did not want to have any more meetings.

Comments and Questions:

Ms. Stead asked about the urgency of this application. Mr. Johnsen responded the cell phone companies expected reasonable notification time. He added that it takes time to locate a site with great separation from residential property. She stated she would like to know the property owners that were contacted in the search for a site.

Interested Parties:

Marvin Bright, Utility Branch Manager, ODOT, 200 N.E. 21st Street, Oklahoma City, Oklahoma, 73105, indicated this on-going project is accomplished in phases. He informed the Board that as time goes by the costs increase for this project. They have a deadline for the towers to be removed by the end of September so they can use the allotted federal funds before the end of the fiscal year.

Mr. Johnsen asked for Jonathon Fry to speak for Cricket.

Jonathon Fry, 9 East Greeley Plaza, Houston, Texas, Site Development Manager, for Cricket Communications, stated it was well into the notification period before they were notified in January. He added other businesses received much more notice. They have already made several advance preparations at their financial risk to expedite placement of the tower as soon as permitted. He added that they have the information available for the Board regarding the need for the 200 ft. height of this tower.

Mr. Davis indicated that the homeowner's association feels strongly about this case. He did not know if they could have as much representation at the hearing as is present today if the case is continued.

Councilor G.T. Bynum, noted there are two requests for continuance, separate from each other.

Ms. Stead read from the Telecommunications Federal Order to local governments, that no state or local government may regulate the placement, construction or modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with commissions regulations, concerning these emissions.

Mr. Boulden stated this act also provides that local authorities shall act on an application in a reasonable amount of time. He added there is application before the FCC by the wireless association to limit that time to 75 days. This may be some guidance as to how long to take to act on the application.

Board Action:

On **Motion of White**, the Board voted 4-1-0 (White, Henke, Stead, Tidwell "aye"; Stephens "nay"; no "abstentions"; no "absences") to **CONTINUE** Case No. 20915 to the meeting on June 9, 2009, on the following described property:

Beginning at the SW corner of the SE/4 of the NE/4 of Section 32, Township 19 North, Range 13 East, Tulsa County, Oklahoma, thence North 726 feet, thence East 600 feet, thence South 726 feet, thence West 600 feet to the point of beginning, City of Tulsa, Tulsa County, State of Oklahoma

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UNFINISHED BUSINESS

Case No. 20911

Action Requested:

Variance of the parking requirement to permit commercial uses within an existing building in a CH district (Section 1200), located: 118 East 18th Street.

Mr. Stephens recused himself, leaving at 1:43 p.m.

Presentation:

Jack Jones, 1722 South Carson, Tulsa, Oklahoma, 74119, stated he is the owner of the building on the subject property. He informed the Board that he spoke with Ken Wagner to obtain a six-month parking lease for the lots just west of Boston Street, but on a month to month basis. He also contacted Jonathon Graber, regarding the parking lot behind the lot at 112 East 18th Street. Mr. Graber stated he would be willing to provide a short term lease for daytime only. He added that he discovered there is a parking covenant between his lot and (Exhibit A-3) the lot directly across the street at 120 East 17th Street, since 2002. A map, legal description, and project plans were submitted (Exhibits A-1, A-2, A-5).

Comments and Questions:

Ms. Stead and Mr. White questioned the address and suggested it is 120 East 18th Street. Mr. Henke asked how many parking places are there. Mr. Jones indicated it would provide 65 to 70 parking spaces and is paved with asphalt. Mr. Jones stated the covenant stated the ownership of the subject property is tied to the parking lot on Tract 2, with the address 120 East 17th Street.

Interested Parties:

John Calkins, 3133 South Boston Court, stated all of that property is owned by the Jackson Family Trust. The triangle parking lot and the apartments have been owned for about eighty years.

Mr. Jones was not aware of this. He submitted a letter from the Tulsa Parks Department (Exhibit A-6) that supports the use of the parking lot to the east of their building, with nine paved parking spaces. The total of the parking obtained is 73 to 75 parking spaces.

Ms. Stead confirmed that the medical spa is covered under CH zoning.

Mr. Jones stated he obtained some signatures in support (Exhibit A-4) and made the best effort to find parking at the request of the Board.

Mr. Graber expressed his support of the application subject to the irrevocable parking covenant across the street. Mr. Boulden responded that the covenant is not irrevocable as it can be terminated subject to agreement.

Rich Green, 2828 North Lyons, Broken Arrow, Oklahoma, 74012, stated he is a commercial realtor. He stated he is marketing the subject property. The three investors interested in the steak house need the parking variance.

Mr. Jones waived his opportunity for a rebuttal.

Board discussion ensued.

Board Action:

On **Motion** of **Stead**, the Board voted 4-0-1 (White, Henke, Stead, Tidwell "aye"; no "nays"; Stephens "abstention"; no "absences") to **APPROVE** a Variance of the parking requirement to permit commercial uses within an existing building in a CH district (Section 1200), approval is for a catering kitchen and market (Use Unit 14), a training gym (Use Unit 19), a day spa and or medical spa (Use Unit 19), and all other uses permitted in CH zoning with the exception of an adult entertainment establishment within this building, such as the pub now operating; the applicant shall place parking signs to identify designated parking; this decision is based on the submission of a declaration of covenant dated November 5, 2002, document record 02141894, recorded on November 7, 2002 in the Tulsa County Records; finding this building had little or no parking and the owner has made every effort to acquire over 70 parking spaces, which the Board feels would be sufficient for the current entities; finding the lack of parking for this building probably constructed in the 1920's are extraordinary and 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:

E 67' OF LT 1 BLK 3, SIEG ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Mr. Stephens returned at about 2:05 p.m.

NEW APPLICATIONS

Case No. 20912

Action Requested:

Special Exception to modify the height of a fence located in the required front yard from the maximum 4 ft. permitted by right to 5 ft. (Section 210.B.3), located: 2227 East 8th Street.

Presentation:

Rachel Reeves, 2227 East 8th Street, Tulsa, Oklahoma, stated she contacted the permit office before she built her fence and they told her she did not need a permit. She built the fence on that advice. Her next door neighbor has a five-foot chain link fence in the front yard. Then she was cited by Neighborhood Inspections for the fence.

Comments and Questions:

Upon questions from the Board she responded that she told the permit office it was for a five-foot chain link fence around her entire property.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to modify the height of a fence located in the required front yard from the maximum 4 ft. permitted by right to 5 ft. (Section 210.B.3), finding the Special Exception 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 22 BLK 6, HILLCREST ADDN, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20916

Action Requested:

Special Exception to permit a Community Center (Use Unit 5) in an IL district (Section 901); to allow an existing community center to continue, located: 825 North Sheridan Road.

Presentation:

(inaudible), 8112 East 93rd Street, Tulsa, Oklahoma, came on behalf of the applicant, Jannett Talbert.

Comments and Questions:

Ms. Stead noted the Board approved a special exception for the applicant with a time limit and she let it expire. Mr. Stephens asked if he was the new operator. He replied that he is the manager. He responded to Board questions, stating Ms. Talbert put up a fence on the north, but not the south and east. He replied that they have not had any more problems with their customers parking in the wrong places.

Interested Parties:

Andre Chenault, 17712 East 94th Street North, Owasso, Oklahoma, 74055, stated he manages the property at 802 through 842 North Sheridan. He considers the term 'community center' for this facility as a misnomer. He stated that they have had drive-by shootings. He was advised by police to put up signs for no loitering and no parking. His tenant at 802 North Sheridan Road complains of loitering and harassment from customers attending the subject property. They have observed chases across the 802 property with firearms involved. He submitted a letter from the police (Exhibit C-1).

Comments and Questions:

In answer to Board questions Mr. Chenault mentioned a couple of shootings last summer and fall. He stated the security and trash pick-up does not seem to be an issue now.

Applicant's Rebuttal:

The applicant's representative responded that the drive-by shooting had nothing to do with the community center.

Aaron Durham, 7419 East 3rd Street, Tulsa, Oklahoma, 74112, Head of Security for the event center, stated he has been in law enforcement since 1999 and an employee of this center since it began. They have ten armed security and they patrol the parking lot and the neighboring area. He added they have eight unarmed security within the center. They would only call the police if police action were necessary.

Ms. Stead asked if the center is still rented out to other entities, as she did before. The applicant replied that they still do that, but the same security still works the

events. The applicant thought Ms. Talbert misunderstood the conditions about the fencing. One neighboring property already had a fence between their properties. She has obtained an estimate to finish the fencing. Ms. Stead reminded him that the fence is supposed to be a wood screening fence.

Board Action:

On **Motion** of **Stead**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit a Community Center (Use Unit 5) in an IL district (Section 901); to allow an existing community center to continue, subject to original conditions: security at all events; trash pick-up at all events; construct 8 ft. screening fence on south and east, closing at midnight on weekdays, and 2:00 a.m. on Friday and Saturday events; for this operator only; approval for a period of six months only; acceptable decibel per city ordinance, finding the Special Exception 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:

LTS 3 & 4 LESS W 5' TO CITY, POLSTON SECOND SUB, City of Tulsa, Tulsa County, State of Oklahoma

Case No. 20918

Action Requested:

Request for refund. Case was withdrawn before notices.

Comments and Questions:

Mr. Cuthbertson stated the applicant asked for the Board to do something they could not. Therefore the application was not processed and the applicant requested a full refund of \$233.00.

Mr. White asked Mr. Cuthbertson to explain Mr. Patel's request. Mr. Cuthbertson stated the applicant owns a motel and one customer renting a room was making methamphetamines.

The police were notified and the customer was arrested for having the lab. The room was cleaned. The owner of the hotel was cited by Neighborhood Inspections for manufacturing of drugs on the property. The applicant was perplexed and sought recourse to have his name cleared. Mr. Cuthbertson informed the applicant that the Board could not remove the citation or clear his name. Mr. Patel withdrew his request.

Board Action:

On **Motion of White**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the Refund for \$233.00, finding the application was not processed.

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Case No. 20929

Action Requested:

Minor Special Exception to reduce the required front yard from 30 ft. to 28.2 ft. in an RS-2 district (Section 403.A.7); to permit the existing dwelling, located: 3644 Terwilliger Boulevard.

Presentation:

Mark Nelson, 2125 East 31st Street, stated they built the existing house on the subject property. He added they took care to stay within the 30 ft. setback. Somewhere in the construction phase the front porch section was 1.8 ft. over the setback line. This needs to be cleared to complete the sale of the house. The neighbors support the application, as it is to clear title only (Exhibit D-1).

Interested Parties:

George Bullock, 2025 East 37th Street, expressed his complaints that this home has been vacant for three years. He had to re-design his own plans to fit the zoning code. He understood the alternatives but he desired to speak.

Joe Trotter, is also a neighbor to the south, and had numerous complaints about the construction phase, including erosion, materials and other items placed on his property.

Applicant's Rebuttal:

Mr. Nelson made an apology for the offenses by the construction. He stated the encroachment was unintentional. He mentioned that the front porch overhang has a bathroom above it. He stated his company designs the homes not construct them. They simply want to clear the title and close the sale. He stated the home was designed to stay within the 30 ft. setback.

Board Action:

On **Motion of White**, the Board voted 5-0-0 (White, Stephens, Henke, Stead, Tidwell "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Minor Special Exception to reduce the required front yard from 30 ft. to 28.2 ft. in an RS-2 district. (Section 403.A.7); to permit the existing dwelling as built, and the approval is limited to only the portion that was overbuilt, on the following described property:

PT LT 5 BLK 5 BEG SW COR TH E 130 N 123 W 133 TO W L S 117.9 TO BEG, HIGHLAND PARK EST, City of Tulsa, Tulsa County, State of Oklahoma

There being no further business, the meeting adjourned at 3:00 p.m.

Date approved: 6/09/09

Frank X. Hernandez
Chair